

NATIONAL CRIME VICTIM LAW INSTITUTE

at Lewis & Clark Law School

PROTECTING, ENFORCING, and ADVANCING VICTIMS' RIGHTS

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WASHINGTON VICTIMS' RIGHTS LAWS¹

Constitution

Article 1, § 35 – Victims of Crime-Rights

Effective law enforcement depends on cooperation from victims of crime. To ensure victims a meaningful role in the criminal justice system and to accord them due dignity and respect, victims of crime are hereby granted the following basic and fundamental rights.

Upon notifying the prosecuting attorney, a victim of a crime charged as a felony shall have the right to be informed of and, subject to the discretion of the individual presiding over the trial or court proceedings, attend trial and all other court proceedings the defendant has the right to attend, and to make a statement at sentencing and at any proceeding where the defendant's release is considered, subject to the same rules of procedure which govern the defendant's rights. In the event the victim is deceased, incompetent, a minor, or otherwise unavailable, the prosecuting attorney may identify a representative to appear to exercise the victim's rights. This provision shall not constitute a basis for error in favor of a defendant in a criminal proceeding nor a basis for providing a victim or the victim's representative with court appointed counsel.

Statutes

Title 7, Special Proceedings and Actions; Chapter 7.69, Crime Victims, Survivors and Witnesses

§ 7.69.010 – Intent

In recognition of the severe and detrimental impact of crime on victims, survivors of victims, and witnesses of crime and the civic and moral duty of victims, survivors of victims, and witnesses of crimes to fully and voluntarily cooperate with law enforcement and prosecutorial agencies, and in further recognition of the continuing importance of such citizen cooperation to state and local law enforcement efforts and the general effectiveness and well-being of the criminal justice system of this state, the legislature declares its intent, in this chapter, to grant to the victims of crime and the survivors of such victims a significant role in the criminal justice system. The legislature further intends to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy, and sensitivity; and that the rights extended in this chapter to victims, survivors of victims, and witnesses of crime are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protections afforded criminal defendants.

¹ Not intended to be exhaustive.

§ 7.69.020 – Definitions

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (1) "Crime" means an act punishable as a felony, gross misdemeanor, or misdemeanor under the laws of this state or equivalent federal or local law.
- (2) "Survivor" or "survivors" of a victim of crime means a spouse, child, parent, legal guardian, sibling, or grandparent. If there is more than one survivor of a victim of crime, one survivor shall be designated by the prosecutor to represent all survivors for purposes of providing the notice to survivors required by this chapter.
- (3) "Victim" means a person against whom a crime has been committed or the representative of a person against whom a crime has been committed.
- (4) "Victim impact statement" means a statement submitted to the court by the victim or a survivor, individually or with the assistance of the prosecuting attorney if assistance is requested by the victim or survivor, which may include but is not limited to information assessing the financial, medical, social, and psychological impact of the offense upon the victim or survivors.
- (5) "Witness" means a person who has been or is expected to be summoned to testify for the prosecution in a criminal action, or who by reason of having relevant information is subject to call or likely to be called as a witness for the prosecution, whether or not an action or proceeding has been commenced.
- (6) "Crime victim/witness program" means any crime victim and witness program of a county or local law enforcement agency or prosecutor's office, any rape crisis center's sexual assault victim advocacy program as provided in chapter 70.125 RCW, any domestic violence program's legal and community advocate program for domestic violence victims as provided in chapter 70.123 RCW, or any other crime victim advocacy program which provides trained advocates to assist crime victims during the investigation and prosecution of the crime.

§ 7.69.030 – Rights of victims, survivors, and witnesses

There shall be a reasonable effort made to ensure that victims, survivors of victims, and witnesses of crimes have the following rights, which apply to any criminal court and/or juvenile court proceeding:

- (1) With respect to victims of violent or sex crimes, to receive, at the time of reporting the crime to law enforcement officials, a written statement of the rights of crime victims as provided in this chapter. The written statement shall include the name, address, and telephone number of

a county or local crime victim/witness program, if such a crime victim/witness program exists in the county;

- (2) To be informed by local law enforcement agencies or the prosecuting attorney of the final disposition of the case in which the victim, survivor, or witness is involved;
- (3) To be notified by the party who issued the subpoena that a court proceeding to which they have been subpoenaed will not occur as scheduled, in order to save the person an unnecessary trip to court;
- (4) To receive protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts, and to be provided with information as to the level of protection available;
- (5) To be informed of the procedure to be followed to apply for and receive any witness fees to which they are entitled;
- (6) To be provided, whenever practical, a secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families or friends of defendants;
- (7) To have any stolen or other personal property expeditiously returned by law enforcement agencies or the superior court when no longer needed as evidence. When feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, and property of which ownership is disputed, shall be photographed and returned to the owner within ten days of being taken;
- (8) To be provided with appropriate employer intercession services to ensure that employers of victims, survivors of victims, and witnesses of crime will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearance;
- (9) To access to immediate medical assistance and not to be detained for an unreasonable length of time by a law enforcement agency before having such assistance administered. However, an employee of the law enforcement agency may, if necessary, accompany the person to a medical facility to question the person about the criminal incident if the questioning does not hinder the administration of medical assistance;
- (10) With respect to victims of violent and sex crimes, to have a crime victim advocate from a crime victim/witness program, or any other support person of the victim's choosing, present at any prosecutorial or defense interviews with the victim, and at any judicial proceedings related to criminal acts committed against the victim. This subsection applies if practical and if the presence of the crime victim advocate or support person does not cause any unnecessary delay in the investigation or prosecution of the case. The role of the crime victim advocate is to provide emotional support to the crime victim;

- (11) With respect to victims and survivors of victims, to be physically present in court during trial, or if subpoenaed to testify, to be scheduled as early as practical in the proceedings in order to be physically present during trial after testifying and not to be excluded solely because they have testified;
- (12) With respect to victims and survivors of victims, to be informed by the prosecuting attorney of the date, time, and place of the trial and of the sentencing hearing for felony convictions upon request by a victim or survivor;
- (13) To submit a victim impact statement or report to the court, with the assistance of the prosecuting attorney if requested, which shall be included in all presentence reports and permanently included in the files and records accompanying the offender committed to the custody of a state agency or institution;
- (14) With respect to victims and survivors of victims, to present a statement personally or by representation, at the sentencing hearing for felony convictions;
- (15) With respect to victims and survivors of victims, to entry of an order of restitution by the court in all felony cases, even when the offender is sentenced to confinement, unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment; and
- (16) With respect to victims and survivors of victims, to present a statement in person, via audio or videotape, in writing or by representation at any hearing conducted regarding an application for pardon or commutation of sentence.

§ 7.69.040 – Representation of incapacitated or incompetent victim

For purposes of this chapter, a victim who is incapacitated or otherwise incompetent shall be represented by a parent or present legal guardian, or if none exists, by a representative designated by the prosecuting attorney without court appointment or legal guardianship proceedings. Any victim may designate another person as the victim's representative for purposes of the rights enumerated in RCW 7.69.030.

§ 7.69.050 – Construction of chapter-Other remedies or defenses

Nothing contained in this chapter may be construed to provide grounds for error in favor of a criminal defendant in a criminal proceeding, nor may anything in this chapter be construed to grant a new cause of action or remedy against the state, its political subdivisions, law enforcement agencies, or prosecuting attorneys. The failure of a person to make a reasonable effort to ensure that victims, survivors, and witnesses under this chapter have the rights enumerated in RCW 7.69.030 shall not result in civil liability against that person. This chapter does not limit other civil remedies or defenses of the offender or the victim or survivors of the victim.

Chapter 7.69A, Child Victims and Witnesses

§ 7.69A.010 – Legislative Intent

The legislature recognizes that it is important that child victims and child witnesses of crime cooperate with law enforcement and prosecutorial agencies and that their assistance contributes to state and local enforcement efforts and the general effectiveness of the criminal justice system of this state. Therefore, it is the intent of the legislature by means of this chapter, to insure that all child victims and witnesses of crime are treated with the sensitivity, courtesy, and special care that must be afforded to each child victim of crime and that their rights be protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protection afforded the adult victim, witness, or criminal defendant.

§ 7.69A.020 – Definitions

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (1) "Crime" means an act punishable as a felony, gross misdemeanor, or misdemeanor under the laws of this state or equivalent federal or local law.
- (2) "Child" means any living child under the age of eighteen years.
- (3) "Victim" means a living person against whom a crime has been committed.
- (4) "Witness" means a person who has been or is expected to be summoned to testify for the prosecution in a criminal action, or who by reason of having relevant information is subject to call or likely to be called as a witness for the prosecution, whether or not an action or proceeding has been commenced.
- (5) "Family member" means child, parent, or legal guardian.
- (6) "Advocate" means any person, including a family member not accused of a crime, who provides support to a child victim or child witness during any legal proceeding.
- (7) "Court proceedings" means any court proceeding conducted during the course of the prosecution of a crime committed against a child victim, including pretrial hearings, trial, sentencing, or appellate proceedings.
- (8) "Identifying information" means the child's name, address, location, and photograph, and in cases in which the child is a relative or stepchild of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator.

(9) "Crime victim/witness program" means any crime victim and witness program of a county or local law enforcement agency or prosecutor's office, any rape crisis center's sexual assault victim advocacy program as provided in chapter 70.125 RCW, any domestic violence program's legal and community advocate program for domestic violence victims as provided in chapter 70.123 RCW, or any other crime victim advocacy program which provides trained advocates to assist crime victims during the investigation and prosecution of the crime.

§ 7.69A.030 – Rights of child victims and witnesses

In addition to the rights of victims and witnesses provided for in RCW 7.69.030, there shall be every reasonable effort made by law enforcement agencies, prosecutors, and judges to assure that child victims and witnesses are afforded the rights enumerated in this section. Except as provided in RCW 7.69A.050 regarding child victims or child witnesses of violent crimes, sex crimes, or child abuse, the enumeration of rights shall not be construed to create substantive rights and duties, and the application of an enumerated right in an individual case is subject to the discretion of the law enforcement agency, prosecutor, or judge. Child victims and witnesses have the following rights, which apply to any criminal court and/or juvenile court proceeding:

- (1) To have explained in language easily understood by the child, all legal proceedings and/or police investigations in which the child may be involved.
- (2) With respect to child victims of sex or violent crimes or child abuse, to have a crime victim advocate from a crime victim/witness program, or any other support person of the victim's choosing, present at any prosecutorial or defense interviews with the child victim. This subsection applies if practical and if the presence of the crime victim advocate or support person does not cause any unnecessary delay in the investigation or prosecution of the case. The role of the crime victim advocate is to provide emotional support to the child victim and to promote the child's feelings of security and safety.
- (3) To be provided, whenever possible, a secure waiting area during court proceedings and to have an advocate or support person remain with the child prior to and during any court proceedings.
- (4) To not have the names, addresses, nor photographs of the living child victim or witness disclosed by any law enforcement agency, prosecutor's office, or state agency without the permission of the child victim, child witness, parents, or legal guardians to anyone except another law enforcement agency, prosecutor, defense counsel, or private or governmental agency that provides services to the child victim or witness.
- (5) To allow an advocate to make recommendations to the prosecuting attorney about the ability of the child to cooperate with prosecution and the potential effect of the proceedings on the child.

- (6) To allow an advocate to provide information to the court concerning the child's ability to understand the nature of the proceedings.
- (7) To be provided information or appropriate referrals to social service agencies to assist the child and/or the child's family with the emotional impact of the crime, the subsequent investigation, and judicial proceedings in which the child is involved.
- (8) To allow an advocate to be present in court while the child testifies in order to provide emotional support to the child.
- (9) To provide information to the court as to the need for the presence of other supportive persons at the court proceedings while the child testifies in order to promote the child's feelings of security and safety.
- (10) To allow law enforcement agencies the opportunity to enlist the assistance of other professional personnel such as child protection services, victim advocates or prosecutorial staff trained in the interviewing of the child victim.
- (11) With respect to child victims of violent or sex crimes or child abuse, to receive either directly or through the child's parent or guardian if appropriate, at the time of reporting the crime to law enforcement officials, a written statement of the rights of child victims as provided in this chapter. The written statement shall include the name, address, and telephone number of a county or local crime victim/witness program, if such a crime victim/witness program exists in the county.

§ 7.69A.040 – Liability to failure to notify or assure child’s rights

The failure to provide notice to a child victim or witness under this chapter of the rights enumerated in RCW 7.69A.030 shall not result in civil liability so long as the failure to notify was in good faith and without gross negligence. The failure to make a reasonable effort to assure that child victims and witnesses are afforded the rights enumerated in RCW 7.69A.030 shall not result in civil liability so long as the failure to make a reasonable effort was in good faith and without gross negligence.

§ 7.69A.050 – Rights of child victims and witnesses-Confidentiality of address-Notice of right-penalty

At the time of reporting a crime to law enforcement officials and at the time of the initial witness interview, child victims or child witnesses of violent crimes, sex crimes, or child abuse and the child's parents shall be informed of their rights to not have their address disclosed by any law enforcement agency, prosecutor's office, defense counsel, or state agency without the permission of the child victim or the child's parents or legal guardian. The address may be disclosed to another law enforcement agency, prosecutor, defense counsel, or private or governmental agency that provides services to the child. Intentional disclosure of an address in violation of this section is a misdemeanor.

Chapter 7.69B, Crime Victims and Witnesses-Dependent Persons

§ 7.69B.005 -- Intent-Finding

The legislature recognizes that it is important that dependent persons who are witnesses and victims of crime cooperate with law enforcement and prosecutorial agencies and that their assistance contributes to state and local enforcement efforts and the general effectiveness of the criminal justice system. The legislature finds that the state has an interest in making it possible for courts to adequately and fairly conduct cases involving dependent persons who are victims of crimes. Therefore, it is the intent of the legislature, by means of this chapter, to insure that all dependent persons who are victims and witnesses of crime are treated with sensitivity, courtesy, and special care and that their rights be protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protection afforded to other victims, witnesses, and criminal defendants.

§ 7.69B.010 – Definitions

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (1) "Crime" means an act punishable as a felony, gross misdemeanor, or misdemeanor under the laws of this state or equivalent federal or local law.
- (2) "Dependent person" has the same meaning as that term is defined in RCW 9A.42.010.
- (3) "Victim" means a living person against whom a crime has been committed.
- (4) "Witness" means a person who has been or is expected to be summoned to testify for the prosecution or defense in a criminal action, or who by reason of having relevant information is subject to call or likely to be called as a witness, whether or not an action or proceeding has been commenced.
- (5) "Family member" means a person who is not accused of a crime and who is an adult child, adult sibling, spouse, parent, or legal guardian of the dependent person.
- (6) "Advocate" means any person not accused of a crime, including a family member, approved by the witness or victim, in consultation with his or her guardian if applicable, who provides support to a dependent person during any legal proceeding.
- (7) "Court proceedings" means any court proceeding conducted during the course of the prosecution of a crime committed against a dependent person, including pretrial hearings, trial, sentencing, or appellate proceedings.

- (8) "Identifying information" means the dependent person's name, address, location, and photograph, and in cases in which the dependent person is a relative of the alleged perpetrator, identification of the relationship between the dependent person and the alleged perpetrator.
- (9) "Crime victim/witness program" means any crime victim and witness program of a county or local law enforcement agency or prosecutor's office, any rape crisis center's sexual assault victim advocacy program as provided in chapter 70.125 RCW, any domestic violence program's legal and community advocate program for domestic violence victims as provided in chapter 70.123 RCW, or any other crime victim advocacy program which provides trained advocates to assist crime victims during the investigation and prosecution of the crime.

§ 7.69B.020 – Rights enumerated

- (1) In addition to the rights of victims and witnesses provided for in RCW 7.69.030, there shall be every reasonable effort made by law enforcement agencies, prosecutors, and judges to assure that dependent persons who are victims or witnesses are afforded the rights enumerated in this section. The enumeration of rights under this chapter shall not be construed to create substantive rights and duties, and the application of an enumerated right in an individual case is subject to the discretion of the law enforcement agency, prosecutor, or judge. Dependent persons who are victims or witnesses in the criminal justice system have the following rights, which apply to any criminal court or juvenile court proceeding:
 - (a) To have explained in language easily understood by the dependent person, all legal proceedings and police investigations in which the dependent person may be involved.
 - (b) With respect to a dependent person who is a victim of a sex or violent crime, to have a crime victim advocate from a crime victim/witness program, or any other advocate of the victim's choosing, present at any prosecutorial or defense interviews with the dependent person. This subsection applies unless it creates undue hardship and if the presence of the crime victim advocate or other advocate does not cause any unnecessary delay in the investigation or prosecution of the case. The role of the crime victim advocate or other advocate is to provide emotional support to the dependent person and to promote the dependent person's feelings of security and safety.
 - (c) To be provided, whenever possible, a secure waiting area during court proceedings and to have an advocate or support person remain with the dependent person prior to and during any court proceedings.
 - (d) To allow an advocate to make recommendations to the prosecuting attorney about the ability of the dependent person to cooperate with prosecution and the potential effect of the proceedings on the dependent person.
 - (e) To allow an advocate to provide information to the court concerning the dependent

person's ability to understand the nature of the proceedings.

- (f) To be provided information or appropriate referrals to social service agencies to assist the dependent person with the emotional impact of the crime, the subsequent investigation, and judicial proceedings in which the dependent person is involved.
- (g) To allow an advocate to be present in court while the dependent person testifies in order to provide emotional support to the dependent person.
- (h) To provide information to the court as to the need for the presence of other supportive persons at the court proceedings while the dependent person testifies in order to promote the dependent person's feelings of security and safety.
- (i) To allow law enforcement agencies the opportunity to enlist the assistance of other professional personnel such as victim advocates or prosecutorial staff trained in the interviewing of the dependent person.
- (j) With respect to a dependent person who is a victim of a violent or sex crime, to receive either directly or through the dependent person's legal guardian, if applicable, at the time of reporting the crime to law enforcement officials, a written statement of the rights of dependent persons as provided in this chapter. The statement may be paraphrased to make it more easily understood. The written statement shall include the name, address, and telephone number of a county or local crime victim/witness program, if such a crime victim/witness program exists in the county.

(2) Any party may request a preliminary hearing for the purpose of establishing accommodations for the dependent person consistent with, but not limited to, the rights enumerated in this section.

§ 7.69B.030 – Testimony-Videotaped depositions

- (1) The prosecutor or defense may file a motion with the court at any time prior to commencement of the trial for an order authorizing the taking of a videotape deposition for the purpose of preserving the direct testimony of the moving party's witness if that witness is a dependent person.
- (2) The court may grant the motion if the moving party shows that it is likely that the dependent person will be unavailable to testify at a subsequent trial. The court's finding shall be based upon, at a minimum, recommendations from the dependent person's physician or any other person having direct contact with the dependent person and whose recommendations are based on specific behavioral indicators exhibited by the dependent person.
- (3) The moving party shall provide reasonable written notice to the other party of the motion and order, if granted, pursuant to superior court criminal rules for depositions.
- (4) Both parties shall have an opportunity to be present at the deposition and the nonmoving

party shall have the opportunity to cross- examine the dependent person.

- (5) Under circumstances permitted by the rules of evidence, the deposition may be introduced as evidence in a subsequent proceeding if the dependent person is unavailable at trial and both the prosecutor and the defendant had notice of and an opportunity to participate in the taking of the deposition.

§ 7.69B.040 – Liability for violating chapter-Actions based on other state or federal law

- (1) The failure to provide notice to a dependent person of the rights enumerated in this chapter or the failure to provide the rights enumerated shall not result in civil liability so long as the failure was in good faith.
- (2) Nothing in this chapter shall be construed to limit a party's ability to bring an action, including an action for damages, based on rights conferred by other state or federal law.

§ 7.69B.050 – Severability

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.