
SUBSTITUTE HOUSE BILL 2457

State of Washington 61st Legislature 2010 Regular Session

By House Judiciary (originally sponsored by Representatives Williams, Campbell, Chase, Simpson, Ormsby, and Moeller)

READ FIRST TIME 02/02/10.

1 AN ACT Relating to pro se defendants in criminal cases questioning
2 victims of sex offenses; adding new sections to chapter 9A.44 RCW; and
3 creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) Sexual abuse is one of the most
6 difficult crimes to detect and prosecute, in large part because there
7 often are no witnesses except the victim. A defendant generally has
8 the right, under the Sixth Amendment, to demand the physical presence,
9 at trial, of accusatory witnesses. Courts have held that this right is
10 not absolute and that in some cases, the defendant's right may be
11 outweighed where necessary to further an important public policy and
12 only where the reliability of the testimony is otherwise assured.
13 Courts have held that a state's interest in the physical and
14 psychological well-being of child abuse victims may be sufficiently
15 important to outweigh, at least in some cases, a defendant's right to
16 face his or her accusers in court.

17 (2) A defendant also has a right to represent himself or herself in
18 criminal proceedings. The right to appear pro se exists to affirm the
19 dignity and autonomy of the accused and to allow the presentation of

1 what may be the accused's best possible defense. Courts have held that
2 the right to self-representation is not infringed when the defendant
3 has a fair chance to present his or her case in the defendant's own way
4 and to make his or her voice heard. The right to self-representation
5 is also not an absolute right and courts have required the assistance
6 of standby counsel in some situations. In addition, courts are
7 entitled to control the mode of witness interrogation so as to more
8 effectively ascertain the truth and to protect the witness from
9 harassment or undue embarrassment to the extent the defendant's rights
10 are not violated.

11 (3) The legislature declares that the state has a compelling
12 interest in the physical and psychological well-being of victims of sex
13 offenses. The legislature intends to help protect victims of sex
14 offenses during the questioning of the victim by pro se defendants in
15 criminal proceedings.

16 NEW SECTION. **Sec. 2.** (1) When a defendant has waived his or her
17 right to counsel and is representing himself or herself in a criminal
18 trial, the court, on a motion by the prosecuting attorney and pursuant
19 to this section, may restrict the defendant from directly questioning
20 a victim and instead require that the defendant question the victim
21 through a court-appointed attorney.

22 (2) Subsection (1) of this section applies when:

23 (a) The proceeding is a criminal prosecution for a sex offense, as
24 defined in this chapter, allegedly committed by the defendant or
25 committed at the direction of the defendant against the victim;

26 (b) The victim's testimony will describe an act or attempted act of
27 sexual contact or sexual intercourse performed with or on the victim by
28 the defendant or performed with or on the victim by another person at
29 the defendant's direction; and

30 (c) The court finds by substantial evidence, in a hearing conducted
31 outside the presence of the jury, that requiring the victim to be
32 questioned directly by the defendant will cause the victim to suffer
33 serious emotional or mental distress that will prevent the victim from
34 reasonably communicating at the trial.

35 (3) The court shall enter its findings under subsection (2) of this
36 section in writing.

1 (4) The court shall allow the defendant to prepare the questions to
2 be asked and prepare any follow-up questions. Subject to court
3 procedures and rules of evidence, the court-appointed attorney shall
4 ask the victim witness the questions as prepared by the defendant.

5 (5) The court shall allow the defendant to communicate with the
6 court-appointed attorney during the questioning of the victim and allow
7 for follow up questions to be provided by the defendant to the court-
8 appointed attorney.

9 (6) If a court-appointed attorney is used for the purpose of
10 questioning the victim under this section, the defendant is still
11 deemed to be acting pro se during that portion of the proceeding for
12 the purposes of applying RCW 9A.44.150.

13 (7) If a court-appointed attorney is used for the purpose of
14 questioning the victim under this section, the court shall explain to
15 the jury that the defendant is continuing to represent himself or
16 herself and that the defendant composed the questions asked by the
17 court-appointed attorney.

18 NEW SECTION. **Sec. 3.** (1) If the court does not appoint an
19 attorney for the purposes of questioning a victim witness because
20 section 2(2)(c) of this act has not been met, the court may impose
21 reasonable procedures upon the parties for conducting the questioning
22 to avoid trauma to the victim.

23 (2) Reasonable procedures may include, but are not limited to,
24 prohibiting the defendant from approaching the victim during the
25 defendant's questioning or ordering that the defendant remain seated
26 the entire time the defendant is questioning the victim.

27 (3) Nothing in this section or section 2 of this act limits the
28 authority of the court to exercise reasonable control over the mode and
29 order of interrogating witnesses and presenting evidence in any
30 proceeding and to maintain order in the court room.

31 NEW SECTION. **Sec. 4.** If any provision of this act or its
32 application to any person or circumstance is held invalid, the
33 remainder of the act or the application of the provision to other
34 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 5.** Sections 2 and 3 of this act are each added
2 to chapter 9A.44 RCW.

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