
SUBSTITUTE HOUSE BILL 1001

State of Washington

62nd Legislature

2011 Regular Session

By House Judiciary (originally sponsored by Representatives Goodman, Kelley, Green, Kirby, Fitzgibbon, Stanford, Kagi, Ladenburg, Appleton, Hurst, Darneille, and Moeller)

READ FIRST TIME 01/24/11.

1 AN ACT Relating to pro se defendants in criminal cases questioning
2 victims of sex offenses; adding a new section 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. Under the Sixth Amendment,
8 a defendant generally has the right to demand the physical presence at
9 trial of accusatory witnesses. Courts have held that this right is not
10 absolute and where the reliability of the testimony is otherwise
11 ensured, the defendant's right may be outweighed if necessary to
12 further an important public policy. Courts have held that a state's
13 interest in the physical and psychological well-being of victims and
14 witnesses may be sufficiently important to outweigh, at least in some
15 cases, a defendant's right to face his or her accusers in court.

16 (2) A defendant also has a right to represent himself or herself in
17 criminal proceedings. The right to appear pro se exists to affirm the
18 dignity and autonomy of the accused and to allow the presentation of
19 what may be the accused's best possible defense. Courts have held that

1 the right to self-representation is not infringed when the defendant
2 has a fair chance to present the case in his or her own way and to make
3 his or her voice heard. However, the right to self-representation is
4 not an absolute right. Courts are entitled to control the mode of
5 witness interrogation so as to more effectively ascertain the truth and
6 to protect the witness from harassment or undue embarrassment to the
7 extent the defendant's rights are not violated.

8 (3) The legislature declares that the state has a compelling
9 interest in the physical and psychological well-being of victims of sex
10 offenses.

11 NEW SECTION. **Sec. 2.** A new section is added to chapter 9A.44 RCW
12 to read as follows:

13 (1) The legislature respectfully requests the supreme court to
14 adopt rules by July 31, 2011, that reduce the risk of trauma to victims
15 testifying as witnesses in criminal proceedings involving sex offenses
16 when the defendant is acting pro se.

17 (2) At a minimum the rules should:

18 (a) Provide that when a defendant has waived his or her right to
19 counsel and is representing himself or herself in a criminal trial, the
20 court may, upon a motion by the prosecuting attorney, by the request of
21 a victim, or by its own initiative, place restrictions on the manner
22 and means by which a defendant questions a victim;

23 (b) Apply when:

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

27 (ii) The victim's testimony will describe a sexual act or attempted
28 sexual act performed on the victim by the defendant or performed on the
29 victim by another person at the defendant's direction; and

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

35 (c) Require the court to enter its findings in writing;

36 (d) Permit the court or other individual approved by the court to

1 conduct the questioning of the victim on behalf of the defendant,
2 subject to court procedures and the rules of evidence;

3 (e) Require that if the court or other individual approved by the
4 court conducts the questioning of the victim, the court allow the
5 defendant to prepare the questions to be asked and prepare any follow-
6 up questions;

7 (f) Require the court to explain to the jury that although the
8 court or other individual approved by the court is conducting the
9 questioning of the victim, the defendant is continuing to represent
10 himself or herself and that the defendant composed the questions. The
11 court shall further instruct the jury not to consider the court
12 procedure for questioning the victim, nor to draw any inference from
13 the procedure, when evaluating the facts of the case and the charges
14 presented against the defendant; and

15 (g) Provide that if the defendant directly questions the victim,
16 the court may impose reasonable procedures upon the parties for
17 conducting the questioning to avoid trauma to the victim. Reasonable
18 procedures may include, but are not limited to:

19 (i) Prohibiting the defendant from approaching the victim during
20 the defendant's questioning; and

21 (ii) Permitting questioning by the defendant of the victim using
22 remote audio-video means.

23 (3) Nothing in this section limits the authority of the court to
24 exercise reasonable control over the mode and order of interrogating
25 witnesses and presenting evidence in any proceeding and to maintain
26 order in the court room.

27 NEW SECTION. **Sec. 3.** If any provision of this act or its
28 application to any person or circumstance is held invalid, the
29 remainder of the act or the application of the provision to other
30 persons or circumstances is not affected.

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