
Judiciary Committee

HB 2457

Title: An act relating to pro se defendants in criminal cases questioning victims of sex offenses.

Brief Description: Placing restrictions on pro se defendants when questioning witnesses.

Sponsors: Representatives Williams, Campbell, Chase, Simpson, Ormsby and Moeller.

Brief Summary of Bill

- Allows a court to require that a *pro se* defendant in a criminal prosecution for a sex offense question the victim through a court-appointed attorney.
- Allows a court to impose reasonable procedures upon the parties to avoid trauma to the victim.

Hearing Date: 1/25/10

Staff: Brian Kilgore (786-7119) and Trudes Tango (786-7384).

Background:

The Right of Self-Representation.

Defendants in criminal trials have a constitutional right to represent themselves in court. Although the Sixth Amendment does not expressly grant the right of self-representation, the U.S. Supreme Court (Court) found that such a right is necessarily implied by the amendment's structure. However, the Court has acknowledged limits to the right of self-representation: "The right of self-representation is not a license to abuse the dignity of the courtroom. Neither is it a license not to comply with relevant rules of procedural and substantive law." To these ends, a court may appoint standby counsel to assist a *pro se* defendant in presenting his or her case. The Court has articulated two limits to unsolicited participation by stand-by counsel during trial. First, the defendant is entitled to preserve control over the case he or she presents to the jury. Second, stand-by counsel must not destroy the jury's perception that the defendant is presenting a *pro se* defense.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

No case has yet considered if, or to what degree, a court can force a defendant acting *pro se* to accept the assistance of counsel when questioning a victim-witness.

Victim Protection and the Right to Confront One's Accuser.

Defendants in criminal trials have a right to confront their accusers under both the Sixth Amendment to the United States Constitution and Section 22 of the Washington Constitution. The right to confront one's accuser, while a fundamental right, is not absolute. The right must occasionally give way to considerations of public policy and the necessities of the case.

Washington's statute on testimony by closed-circuit television seeks to protect child-victims from emotional harm and allow child-victims to testify honestly and effectively. This law was challenged as an unconstitutional infringement of the right to confront one's accuser face-to-face. The Washington Supreme Court held that preventing further emotional trauma to a victim and ensuring the effective communication of a victim at trial are compelling state interests which override a defendant's right to face-to-face confrontation.

Summary of Bill:

The Legislature declares that the state has a compelling interest in the physical and psychological well-being of victims of sex offenses. Additionally, courts are entitled to control the mode of witness interrogation so as to more effectively ascertain the truth.

The court may restrict a *pro se* defendant from directly questioning the victim if:

- the proceeding is a criminal prosecution for a sex offense allegedly committed by the defendant;
- the victim's testimony will describe a sexual act or attempted act performed with or on the victim by the defendant; and
- the court finds by substantial evidence that allowing the victim to be directly questioned by the defendant will cause the victim to suffer serious emotional or mental distress which will prevent the victim from reasonably communicating at the trial.

If the court restricts a *pro se* defendant from directly questioning the victim, the court must:

- provide a court-appointed attorney;
- allow the defendant to prepare the questions to be asked of the victim, including follow-up questions; and
- allow the defendant to communicate with the court appointed attorney at all times during the questioning.

If the court allows a *pro se* defendant to directly question the victim, the court may impose reasonable procedures upon the parties conducting the questioning. Reasonable procedures may include, but are not limited to: prohibiting the defendant from approaching the victim during questioning or ordering that the defendant remain seated while questioning the victim.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.