

---

## Judiciary Committee

---

### HB 1001

**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 Goodman, Kelley, Green, Kirby, Fitzgibbon, Stanford, Kagi, Ladenburg, Appleton, Hurst, Darneille and Moeller.

#### Brief Summary of Bill

- Requests the Washington Supreme Court to adopt a rule allowing judges to require that a defendant representing him or herself in a criminal prosecution for a sex offense question an alleged victim through a court-appointed attorney.

**Hearing Date:** 1/12/11

**Staff:** Kelly Pfundheller (786-7289).

#### **Background:**

##### The Right of Self-Representation

Under both the United States and Washington Constitutions, persons accused of crimes have a right to the assistance of counsel for their defense. The United States Supreme Court held that a defendant also has the right to waive representation by counsel and represent themselves regardless of the crime charged. This is referred to as proceeding pro se. As a general rule, courts cannot force counsel upon a pro se defendant. The courts have held that standby counsel can be appointed to aid a pro se defendant if the defendant requests help and to be available to represent the accused in the event that termination of the defendant's self-representation is necessary. If a court does appoint standby counsel over the defendant's objection, the defendant is entitled to preserve control over the case he or she presents to the jury. 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.*

## The Right to Confront One's Accuser

Defendants in criminal trials have a federal and state constitutional right to confront their accusers. This right encompasses a pro se defendant's act of questioning witnesses. However, courts have held that some considerations of public policy can limit the right to confrontation.

For example, there is a Washington statute allowing child-victims in sex abuse cases to testify by closed-circuit television rather than sit in the courtroom. 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. The Legislature respectfully requests the Washington Supreme Court to adopt a court rule that reduces the risk of trauma to victim-witnesses when the defendant is acting pro se.

At a minimum, the court rule should 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 rule should require that the court must:

- provide a court-appointed attorney;
- allow the defendant to prepare the questions and follow-up questions to be asked of the victim;
- allow the defendant to communicate with the court appointed attorney at all times during the questioning; and
- explain to the jury that the defendant is continuing to represent him or herself and that the defendant composed the questions asked by standby counsel.

If the court allows a pro se defendant to directly question a 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, ordering that the defendant remain seated while questioning the victim, and requiring the use of remote audio-video means during questioning.

**Appropriation:** None.

**Fiscal Note:** Available.

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