

HOUSE BILL REPORT

HB 1001

As Reported by House Committee On:
Judiciary

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 History:

Committee Activity:

Judiciary: 1/12/11, 1/20/11 [DPS].

Brief Summary of Substitute Bill

- Requests the Washington Supreme Court to adopt rules requiring courts to place restrictions on the manner and means by which a defendant representing himself or herself questions a victim-witness during a criminal prosecution for a sex offense.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Chandler, Eddy, Frockt, Kirby, Klippert, Nealey, Orwall, Rivers and Roberts.

Staff: Kelly Pfundheller (786-7289).

Background:

The Right of Self-Representation.

Persons accused of crimes have a federal and state constitutional right to the assistance of counsel for their defense. The Supreme Court of the United States held that a defendant also has the right to waive representation by counsel and represent themselves regardless of the

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crime charged. This is referred to as proceeding pro se. The defendant is entitled to preserve control over the case he or she presents to the jury. If a court places restrictions on a pro se defendant, the jury's perception that the defendant is presenting a pro se defense must not be destroyed.

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 that override a defendant's right to face-to-face confrontation.

Summary of Substitute 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 court rules that reduce the risk of trauma to victim-witnesses when the defendant is acting pro se.

The court rule should restrict the manner and means by which a pro se defendant questions the victim-witness 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 that will prevent the victim from reasonably communicating at the trial.

In placing restrictions on a pro se defendant, the court or an individual approved by the court may question the victim-witness on behalf of the defendant, provided that the court:

- allows the defendant to prepare the questions to be asked of the victim, including follow-up questions;
- explains to the jury that the defendant is continuing to represent himself or herself and that the defendant composed the questions asked by standby counsel; and
- instructs the jury not to consider the manner of the questioning when evaluating the facts of the case.

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 prohibiting the defendant from approaching the victim during questioning and requiring the use of remote audio video during questioning.

Substitute Bill Compared to Original Bill:

The court rule should allow the court or an individual approved by the court to question the victim-witness on behalf of the pro se defendant. The original bill suggested requiring that the court appoint an attorney to conduct the questioning as long as the defendant is able to communicate with the attorney at all times.

The suggested requirement that the court order the defendant to remain seated while questioning a victim-witness is removed.

The court is required to provide a limiting instruction to the jury not to consider the manner of the questioning when evaluating the facts of the case.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill is the result of a cooperative effort with the Washington courts. It is respectful of the separation of powers because it only requests the court to make a rule. While court rules cannot anticipate all of the circumstances that will arise in the courtroom, the adoption of this rule will assist the prevention of further trauma to victims when they choose to testify. The bill carefully balances the right to self-representation and confrontation with the policy of protecting victims.

The right to self-representation should not be used by defendants to revictimize witnesses in the courtroom. It is appalling what some victims have experienced when defendants choose to represent themselves. It is terrifying to face a rapist in court, especially when the defendant will ask the questions. Testifying at trial is already one of the most difficult things that a victim will do. Testifying should be a healing process, but in the case that a defendant represents himself or herself, testifying results in trauma and hinders the healing process. This bill will help protect victims.

The requirement that standby counsel be appointed should be removed from the bill.

(Opposed) While there is great sympathy for victim-witnesses in these difficult cases, this issue is the providence of the judiciary. The Washington Supreme Court is already moving

forward in the rule-making process, and the Legislature should not interfere by passing this legislation. If the Legislature feels it must pass legislation, it should consider a bill that is less prescriptive in nature. The proposed rule might result in more appeals because it has not been carefully crafted.

The proposed rule is a severe violation of the United States Constitution and the Washington Constitution. The Supreme Court of the United States has held that filtering questions through a third party violates the right to confrontation, which is protected by the Bill of Rights. Furthermore, courts can already place reasonable restrictions on pro se defendants.

Persons Testifying: (In support) Representative Goodman, prime sponsor; Andrea Piper, Washington Coalition of Sexual Assault Programs; Mary Ellen Stone, Rebecca Linde, Marilyn Finnila, Joseph Cook, and Betsy Green, King County Sexual Assault Resource Center; Dan Satterberg, King County Prosecutor's Office; Val Richey, King County Deputy Prosecuting Attorney; Seth Dawson, Washington Association of Child Advocacy Center; and Stephen Warning, Superior Court Judges Association.

(Opposed) Bob Cooper, Washington Association of Criminal Defense Lawyers and Washington Defender Association; and Shankar Narayan, American Civil Liberties Union of Washington.

Persons Signed In To Testify But Not Testifying: None.