



Legislation Text

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A MOTION urging the Washington state Legislature and requesting the state Supreme Court to take actions to reduce the risk of trauma to victim-witnesses in court proceedings involving sex offenses.

WHEREAS, sexual abuse is one of the most difficult crimes to detect and prosecute, in large part because there often are no witnesses except the victim, and

WHEREAS, under the Sixth Amendment to the United States Constitution, a defendant generally has the right, to demand the physical presence, at trial, of accusatory witnesses, and

WHEREAS, courts have held that this right is not absolute and where the reliability of the testimony is otherwise ensured, the defendant's right may be outweighed if necessary to further an important public policy, and

WHEREAS, courts have held that a state's interest in the physical and psychological well-being of victims and witnesses may be sufficiently important to outweigh, at least in some cases, a defendant's right to face his or her accusers in court, and

WHEREAS, a defendant also has a right to represent himself or herself in criminal proceedings and the right to appear pro se exists to affirm the dignity and autonomy of the accused and to allow the presentation of what might be the accused's best possible defense, and

WHEREAS, courts have held that the right to self-representation is not infringed when the defendant has a fair chance to present the case in his or her own way and to make his or her voice heard, and

WHEREAS, the right to self-representation is also not an absolute right, and WHEREAS, Courts

are entitled to control the mode of witness interrogation so as to more effectively ascertain the truth and to protect the witness from harassment or undue embarrassment to the extent the defendant's rights are not violated, and

WHEREAS, the state has a compelling interest in the physical and psychological well-being of victims of sex offenses, and

WHEREAS, the 62nd state Legislature, in its 2011 session, is considering legislation that respectfully requests the state Supreme Court to adopt rules by July 31, 2011, that reduce the risk of trauma to victim-witnesses in criminal proceedings involving sex offenses when the defendant is acting pro se, and

WHEREAS, at a minimum the revised court rules should:

1. Provide that when a defendant has waived his or her right to counsel and is representing himself or herself in a criminal trial, the court may, on a motion by the prosecuting attorney, by the request of a victim, or by its own initiative, place restrictions on the manner and means by which a defendant questions a victim;
2. Apply when:
 - a. the proceeding is a criminal prosecution for a sex offense, which is an offense under chapter 9A.44 RCW, allegedly committed by the defendant or committed at the direction of the defendant against the victim;
 - b. the victim's testimony will describe an act or attempted act of sexual contact or sexual intercourse performed with or on the victim by the defendant or performed with or on the victim by another person at the defendant's direction; and
 - c. the court finds by substantial evidence, in a hearing conducted outside the presence of the jury, that requiring the victim to be questioned directly 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;
3. Require the court to enter its findings in writing;
4. Permit the court or other individual approved by the court to conduct the questioning of the victim on behalf of the defendant, subject to court procedures and the rules of evidence;

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

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

7. Provide that if the defendant directly questions the victim, the court may impose reasonable procedures upon the parties for conducting the questioning to avoid trauma to the victim. Reasonable procedures may include, but are not limited to:

- a. prohibiting the defendant from approaching the victim during the defendant's questioning; and
- b. permitting questioning by the defendant of the victim using remote audio-video means;

NOW, THEREFORE, BE IT MOVED by the Council of King County:

A. The metropolitan King County council urges the Washington state Legislature to pass House Bill 1001, which declares that the state has a compelling interest in the physical and psychological well-being of victims of sex offenses, especially related to direct questioning by pro se defendants.

B. The metropolitan King County council also respectfully requests that the Washington state Supreme Court adopt rules by July 31, 2011, that reduce the risk of trauma to victim-witnesses in criminal proceedings involving sex offenses when the defendant is acting pro se.