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HOUSE BILL 1001

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State of Washington

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2011 Regular Session

By Representatives Goodman, Kelley, Green, Kirby, Fitzgibbon, Stanford, Kagi, Ladenburg, Appleton, Hurst, Darneille, and Moeller

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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. A defendant generally has  
8 the right, under the Sixth Amendment, to demand the physical presence,  
9 at trial, of accusatory witnesses. Courts have held that this right is  
10 not absolute and that in some cases, the defendant's right may be  
11 outweighed where necessary to further an important public policy and  
12 only where the reliability of the testimony is otherwise assured.  
13 Courts have held that a state's interest in the physical and  
14 psychological well-being of child abuse victims may be sufficiently  
15 important to outweigh, at least in some cases, a defendant's right to  
16 face his or her accusers in court.

17 (2) A defendant also has a right to represent himself or herself in  
18 criminal proceedings. The right to appear pro se exists to affirm the  
19 dignity and autonomy of the accused and to allow the presentation of

1 what may be the accused's best possible defense. Courts have held that  
2 the right to self-representation is not infringed when the defendant  
3 has a fair chance to present his or her case in the defendant's own way  
4 and to make his or her voice heard. The right to self-representation  
5 is also not an absolute right and courts have required the assistance  
6 of standby counsel in some situations. In addition, courts are  
7 entitled to control the mode of witness interrogation so as to more  
8 effectively ascertain the truth and to protect the witness from  
9 harassment or undue embarrassment to the extent the defendant's rights  
10 are not violated.

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

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

16 (1) The legislature respectfully requests the supreme court to  
17 adopt rules by July 1, 2011, that reduce the risk of trauma to victim-  
18 witnesses in criminal proceedings involving sex offenses when the  
19 defendant is acting pro se.

20 (2) At a minimum the rules should:

21 (a) Provide that when a defendant has waived his or her right to  
22 counsel and is representing himself or herself in a criminal trial, the  
23 court, on a motion by the prosecuting attorney, may restrict the  
24 defendant from directly questioning a victim and instead require that  
25 the defendant question the victim through a court-appointed attorney;

26 (b) Apply when:

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

30 (ii) The victim's testimony will describe an act or attempted act  
31 of sexual contact or sexual intercourse performed with or on the victim  
32 by the defendant or performed with or on the victim by another person  
33 at the defendant's direction; and

34 (iii) The court finds by substantial evidence, in a hearing  
35 conducted outside the presence of the jury, that requiring the victim  
36 to be questioned directly by the defendant will cause the victim to

1 suffer serious emotional or mental distress that will prevent the  
2 victim from reasonably communicating at the trial;

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

4 (d) Require the court to allow the defendant to prepare the  
5 questions to be asked and prepare any follow-up questions, and provide  
6 that, subject to court procedures and rules of evidence, the court-  
7 appointed attorney will ask the victim witness the questions as  
8 prepared by the defendant;

9 (e) Require the court to allow the defendant to communicate with  
10 the court-appointed attorney during the questioning of the victim and  
11 allow for follow up questions to be provided by the defendant to the  
12 court-appointed attorney;

13 (f) Provide that if a court-appointed attorney is used for the  
14 purpose of questioning the victim, the defendant is still considered  
15 acting pro se during that portion of the proceeding for the purposes of  
16 applying RCW 9A.44.150;

17 (g) Require that if a court-appointed attorney is used for the  
18 purpose of questioning the victim, the court must explain to the jury  
19 that the defendant is continuing to represent himself or herself and  
20 that the defendant composed the questions asked by the court-appointed  
21 attorney;

22 (h) Provide that if the court does not appoint an attorney for the  
23 purposes of questioning a victim witness, the court may impose  
24 reasonable procedures upon the parties for conducting the questioning  
25 to avoid trauma to the victim. Reasonable procedures may include, but  
26 are not limited to:

27 (i) Prohibiting the defendant from approaching the victim during  
28 the defendant's questioning or ordering that the defendant remain  
29 seated the entire time the defendant is questioning the victim; and

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

32 (3) Nothing in this section limits the authority of the court to  
33 exercise reasonable control over the mode and order of interrogating  
34 witnesses and presenting evidence in any proceeding and to maintain  
35 order in the court room.

36 NEW SECTION. **Sec. 3.** If any provision of this act or its

1 application to any person or circumstance is held invalid, the  
2 remainder of the act or the application of the provision to other  
3 persons or circumstances is not affected.

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