

WASHINGTON
ASSOCIATION OF
PROSECUTING ATTORNEYS



OFFICERS - 2012

President
Steven Tucker
Spokane County

Vice President
Deborah Kelly
Clallam County

Secretary
Benjamin Nichols
Asotin County

Treasurer
Dan Satterberg
King County

Past President
Susan Baur
Cowlitz County

TRUSTEES

Mark Lindquist
Pierce County

James Hagarty
Yakima County

David Burke
Pacific County

Daniel Bigelow
Wahkiakum County

Senior Prosecutor
Gary Riesen
Chelan County

NDAA Representative
James Nagle
Walla Walla County

STAFF

Executive Secretary
Thomas A. McBride

Staff Attorney
Pamela B. Loginsky

Training Coordinator
Amber Haslett-Kern

**CHILD SUPPORT
ENFORCEMENT
PROJECT**

Director
Linda M. Langston

Senior Attorney
June Tomioka

Training Coordinator
Bernadette Workman

Systems Specialist
Sandy Brulotte
Debra Rottinghaus

February 1, 2012

Clerk of the Supreme Court Temple of Justice
Post Office Box 40929
Olympia, Washington
98504-0929

Re: Proposed Amendment to CrR 3.1

Dear Justices of the Supreme Court;

The Washington Association of Prosecuting Attorneys supports alternative language, submitted by victim advocates, amending CrR 3.1. The alternative language balances the needs of victims while upholding the rights of defendants. This alternative language allows the court to provide restrictions on questioning and allows third party questioning.

The current proposal from the Superior Court Judge's Association fails to provide adequate protection from defendants who utilize their time in court to harass and re-traumatize their victims. In these rare cases, it is necessary that the trial court have clear authority to order third party questioning so that victims can reasonably communicate at trial.

The alternative language includes defendant protections; having a trial court conduct an outside hearing, instructing jurors that the questions were prepared by the defendant, and informing the jury that the defendant continues to represent him or herself

Washington Prosecutors deal with the concerns of victims, and specifically assault victims, that criminal proceedings will be unnecessarily abusive. We reassure them that the trial court will control the proceedings and the defendant. Express and clear court rule authority to control the proceedings during pro se criminal cases will assist the trial court in ensuring that victims will be able to testify and meaningfully participate.

Alternative Language amending CrR 3.1:

(g) Pro Se Defendants

(1) When a defendant has waived his or her right to counsel, the court on a motion by the prosecuting attorney, on its own initiative, or at the request of a witness, and for good cause shown, may restrict the manner and means by which a defendant questions a witness.

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
12 FEB -6 AM 8:35
BY RONALD R. CARPENTER
CLERK

(2) The court shall state on the record the basis for good cause.

(3) When the court does not permit the pro se defendant to question a witness without restriction, the court may impose reasonable procedures including but not limited to:

(i) requiring questioning by the defendant of the witness using remote audio-visual means when authorized by law; and

(ii) allowing stand-by counsel to question the witness with the agreement of the defendant.

(4) If the court finds by substantial evidence, in a hearing conducted outside the presence of a jury, that an important state interest requires restricting the defendant's questioning of a witness, the court may permit another individual to conduct the questioning of the witness on behalf of the defendant, or the court may itself conduct the questioning of the witness on behalf of the defendant, subject to requirements that:

(i) the defendant prepares the questions to be asked and any follow-up questions;

(ii) the court inform the jury that although a third-party or the court is conducting the questioning of the witness, the defendant is continuing to represent himself or herself and that the defendant composed the questions; and

(iii) the court shall instruct the jury not to consider the court procedure for questioning the witness, nor draw any inference from the procedure, when evaluating the facts of the case and the charges presented against the defendant.

(5) Nothing herein precludes a court from using other means to control the courtroom including but not limited to prohibiting the defendant from approaching the witness during questioning, requiring the defendant to remain seated during questioning of the witness, and configuring the courtroom so that the victim does not have to look at the defendant.

Thank you for considering our comments.

Sincerely,



Thomas A. McBride
Executive Secretary