



WCSAP
Washington Coalition of
Sexual Assault Programs

April 24, 2012

The Honorable Barbara Madsen
Chief Justice, Washington State Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

The Honorable Charles Johnson
Justice, Washington State Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

Re: *Proposed Changes of CrR 3.1 regarding pro se defendants*

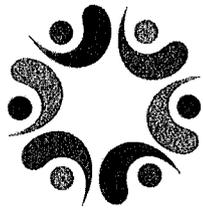
Dear Chief Justice Madsen and Justice Johnson,

This letter is written on behalf of the victim services community to express our appreciation for the examination of and proposed changes to CrR 3.1. It is essential that sexual assault victims are provided quality protection from alleged perpetrators in court room proceedings, and while the proposed rule is an important step in creating well-solidified protections for victims, it does not adequately meet the needs of or provide sound protections for victims.

As a highly concerned victim services community, we have proposed alternative language to best meet the needs of victims while upholding the rights of defendants. We believe this proposal, which allows the court to provide restrictions on questioning and allows third party questioning, will offer courts enhanced clarity in sexual assault pro se cases and provide a victim-centered approach which will enhance a victim's ability to participate in court proceedings.

The current proposal set forth by the Superior Court Judge's Association does afford the courts the ability to provide victim support considerations regarding questioning and courtroom practices that support enhanced victim participation; however, it fails to provide adequate protection from defendants who utilize their time in court to harass and re-traumatize their victims. It is essential that the courts allow for third party questioning in such instances so that victims can reasonably communicate at trial.

The modified proposal below supports court proceedings that enhance victim considerations while still upholding the rights of the accused. It clearly outlines that a balanced criminal justice approach that supports victims while upholding the rights of the defendant to question the witness (victim) in pro se cases can be met by utilizing third party questioning which the court may impose. There are several defendant protections including having a trial court conduct an outside hearing, instructing jurors that the questions were prepared by the defendant and that the



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defendant continues to represent him or herself; all of which further protect the defendant's right to self-representation.

We believe the need for the court to impose third party questioning will be rare because there are other aspects of the rule that support the courts in setting reasonable protections. However, it is essential for the courts to have the ability and option to allow third party questioning over objection of the defendant when it is apparent that the defendant's actions are to harass, intimidate, and prevent the witness from participating. For example, in the recent King County Superior Court case of *State v. Cruz*, it was very clear that the defendant was abusing the process by taking multiple days to question each witness, repeating questions, including those soliciting details about the assault that he perpetrated on the victims he was questioning, and interjecting his own comments on the evidence.

It is imperative that sexual assault victims be permitted to participate fully in criminal proceedings and not experience undue re-victimization. Comprehensive special consideration rules in pro se criminal cases will help victims participate while supporting their physical and psychological well-being.

Rule Modification Proposal from the Victim's Community:

(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.

(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:



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- (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.

We are available to further discuss our proposal with you and look forward to working together to ensure that a comprehensive rule is established.

Sincerely,

Andrea Piper-Wentland
Executive Director
Washington Coalition of Sexual Assault Programs

Mary Ellen Stone
Executive Director
King County Sexual Assault Resource Center

Karla Salp
Executive Director
Washington Coalition of Crime Victim Advocates



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Cc:
Tom McBride, Executive Director, WAPA
Daniel Satterberg, King County Prosecuting Attorney
Roger Goodman, State Representative