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Assembly approves bill to limit examinations of alleged abuse victims in civil cases

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SACRAMENTO — The state Assembly has unanimously passed a bill to limit psychological examinations of alleged child sexual abuse victims in civil cases.

SB 755 would apply to children under 15 in cases where there is “credible evidence” of sexual abuse, as defined under the penal code. It would limit such exams to three hours, unless a judge ruled there was a reason to go longer. The bill would mandate they be conducted by a licensed therapist with experience in child abuse and trauma.

Civil law allows the defense to request a mental or physical examination in such cases. A judge may set a time limit but none is mandated under current law.

The goal, supporters of the bill say, is to prevent children from being traumatized by mental health examinations that take place in civil lawsuits.

“You would think that children who had been sexually abused would be exempt from scorched earth litigation,” said B. Robert Allard, a partner with Corsiglia, McMahon & Allard LLP in San Jose. “But the exact opposite is the case in my experience.”

SB 755 has yet to receive a single no vote or formal opposition. After making a procedural stop back in the Senate to ratify minor amendments, it will land on Gov. Jerry Brown’s desk. The bill is part of the Consumer Attorneys of California’s 2017 bill package.

Mark E. Davis, a partner with Davis & Young, a San Jose defense firm that has opposed Allard’s firm in several cases, said “as a practical matter” the law won’t make much of a difference.

He typically seeks four to six hours for exams, Davis said, though the plaintiff’s side will now have the lower limit “embedded in statute.”

The rules will just “add another layer” to a long list of limits on defense firms fighting an uphill battle in defending school districts or other entities against multimillion-dollar claims, Davis added.

“I’ve never had a situation where the defense expert was extending for no good reason,” Davis said. “I understand the motivation of protecting children, but from a litigation perspective it’s frustrating.”

Allard countered by sharing court orders in which he was able to have the defense examiner partially thrown off of a high-profile case for extended, inappropriate questioning that further traumatized the alleged victim. Davis’ firm was not involved in that litigation.

Micha Star Liberty with Liberty Law in Oakland testified in favor of the bill in the Assembly Judiciary Committee in June. She said the exams help serve the purpose of determining how much psychological damage was done by the alleged abuse. This is important in arguing damages, because one purpose is to pay for ongoing therapy and recovery.

Problems arise, she said, when a psychologist or psychiatrist starts acting like a defense attorney running a deposition. In most cases, the defense insists that the therapist be alone in the room with the child, with parents and plaintiffs counsel outside.

In one particularly egregious case, she said, a therapist denied a 6-year-old boy a bathroom break for over an hour until he wet his pants, then got angry and accused the child of lying about the alleged abuse.

Liberty said she stopped the exam once she heard yelling through the door, then obtained a settlement the next week.

“It has been an area where there was so much abuse and bad behavior, I really don’t think anyone could with good conscience oppose these long overdue adjustments to the law,” Liberty said.

The California Psychiatric Association supported the bill after obtaining early amendments calling for minimum standards for therapists who conduct exams.

Malcolm Maclachlan