

Introduced by Senator Hueso

February 27, 2015

An act to add Section 686.3 to the Penal Code, relating to criminal proceedings.

LEGISLATIVE COUNSEL'S DIGEST

SB 603, as amended, Hueso. Defendant: acting as his or her own attorney (in pro per).

The California Constitution provides that a victim of crime is entitled to be treated with fairness and respect for his or her privacy and dignity throughout the criminal justice process. Existing law also provides that in a criminal action the defendant is entitled to appear and defend in person and with counsel, except as specified, and to confront the witnesses against him or her.

Existing law makes it a crime for a person to practice law in this state unless he or she is a member of the State Bar.

This bill would require a court to conduct a hearing to determine whether intermediary standby counsel *or another person* shall be appointed, at county expense, for the limited purpose of presenting the defendant's examination of the victim, upon a motion by the prosecutor, at the request of a victim, or upon the court's own motion, if a defendant is acting as his or her own attorney in the proceeding and if the victim's testimony will involve a recitation of the facts of one of specified alleged felony offenses committed against the victim, including ~~violent felonies~~ *and* felony offenses for which a convicted defendant is required to register as a sex offender. The bill would require the hearing on the motion to be conducted outside the presence of the jury and would

provide that the hearing shall not require the testimony of the victim. The bill would authorize the court to appoint intermediary standby counsel *or, if intermediary counsel is not available, to conduct the examination or to appoint any individual the court deems fit to conduct the examination*, if the court makes specified findings, including that the denial of the defendant's personal examination of the victim, and the use of ~~intermediary standby counsel~~ *another person or the court* to present the defendant's examination of the victim, is necessary to protect the victim from trauma, as specified. The bill would also exempt the appointed intermediary standby counsel from sanctions and from liability in an action for malpractice brought by the defendant against that counsel for his or her service in that capacity, as specified. *The bill would also exempt a person from criminal prosecution for the unlawful practice of law for engaging in activities he or she is authorized to perform pursuant to these provisions.* By imposing a higher level of service on counties, the bill would impose a state-mandated local program. The bill would also include legislative findings and declarations and a statement of legislative intent.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 686.3 is added to the Penal Code, to read:
2 686.3. (a) The Legislature hereby finds and declares all of the
3 following:
4 (1) Sexual abuse, child abuse, ~~stalking~~ *stalking*, and violent
5 crimes are some of the most difficult crimes to detect and
6 prosecute, in large part because there are often no witnesses except
7 the victim, and because of the extreme psychological harm to the
8 victims. Victims of sex crimes, child abuse, ~~stalking~~ *stalking*, and
9 other violent crimes have a right to be protected from further
10 victimization by the alleged perpetrator of the crime. These victims

1 have constitutional rights, as enumerated in Marsy’s Law, to be
2 treated with fairness and respect for their dignity, to be free from
3 intimidation, harassment, and abuse throughout the criminal justice
4 process, and to be reasonably protected from the defendant.

5 (2) A defendant generally has the right to represent himself or
6 herself in a criminal proceeding, and the right to confront his or
7 her accusers in court. However, courts have held that this right is
8 not absolute, and where the reliability of the testimony is otherwise
9 ensured, the defendant’s rights may be outweighed by important
10 public policy concerns.

11 (3) Courts are entitled to control the mode of witness
12 interrogation, so as to more effectively ascertain the truth and
13 protect the witness from harassment or further trauma. Courts have
14 held that a state’s interest in the physical and psychological
15 well-being of victims and witnesses may be sufficiently important
16 to outweigh, in some cases, a defendant’s right to face his or her
17 accuser or accusers in court.

18 (4) The state has a compelling interest in protecting the physical
19 and psychological well-being of victims of sex offenses, child
20 abuse, ~~stalking~~ *stalking*, and other violent crimes.

21 (b) It is the intent of the Legislature in enacting this section to
22 provide the court with authority to employ alternative court
23 procedures to protect the rights of victims of an alleged sexual
24 assault, child abuse, ~~stalking~~ *stalking*, and other crimes described
25 in subdivision (c), so the victims are able to participate truthfully
26 and effectively in criminal proceedings when the alleged
27 perpetrator is acting as his or her own attorney, which is also
28 referred to as acting in pro per. In exercising its authority, the court
29 shall balance the rights of the defendant against the need to protect
30 victims of those crimes and to preserve the integrity of the court’s
31 truthfinding function. This authority is intended to be used
32 selectively when the facts and circumstances in the individual case
33 present compelling evidence of the need to use these alternative
34 procedures.

35 (c) Notwithstanding any other law, if the defendant is acting as
36 his or her own attorney, the court, upon a motion by the prosecutor,
37 at the request of a victim, or upon the court’s own motion, shall
38 conduct a hearing to determine whether intermediary standby
39 counsel, shall be appointed, at county expense, for the limited
40 purpose of presenting the defendant’s examination of the victim.

1 *If intermediary standby counsel is not available, the court may*
2 *appoint any individual the court deems fit to conduct the*
3 *examination, or the court may conduct the examination.* The court
4 may order intermediary standby counsel *or the appointed individual*
5 *to conduct the examination, or the court may conduct the*
6 *examination, if the court makes all of the following findings:*

7 (1) The victim's testimony will involve a recitation of the facts
8 of any of the following alleged offenses committed against the
9 victim:

10 (A) A felony offense that is subject to sex offender registration
11 pursuant to Section 290.

12 ~~(B) A violent felony, as defined in subdivision (c) of Section~~
13 ~~667.5.~~

14 ~~(C)~~

15 (B) Felony stalking pursuant to Section 646.9.

16 ~~(D)~~

17 (C) Felony elder abuse pursuant to Section 368.

18 ~~(E)~~

19 (D) Felony domestic violence pursuant to Section 273.5.

20 ~~(F)~~

21 (E) Felony child abuse pursuant to Section 273a, ~~273ab~~ 273ab,
22 or 273d.

23 (2) The prospect of the defendant personally presenting the
24 examination of the victim creates an emotionally traumatic situation
25 for the victim that is more than de minimis.

26 (3) The denial of the defendant's personal examination, and the
27 use of intermediary standby counsel to present the defendant's
28 examination of the victim, is necessary to protect the victim from
29 that trauma.

30 (d) The hearing on the motion pursuant to subdivision (c) shall
31 be conducted outside the presence of the jury and shall not require
32 the testimony of the victim. The court's findings pursuant to
33 subdivision (c) may be established by evidence of the facts of the
34 underlying incident, the defendant's subsequent behavior, and
35 through witnesses including, but not limited to, the victim, victim
36 advocate, therapist, counselor, parent, or family member.

37 (e) If the victim testifies at the hearing brought pursuant to
38 subdivision (c), the questioning of the victim shall be conducted
39 by the court. The prosecutor and defendant shall be permitted to
40 submit proposed questions to the court prior to the hearing.

1 (f) When the court orders intermediary standby counsel *or the*
2 *appointed individual* to present the examination of the victim
3 pursuant to this section, *or when the court presents the*
4 *examination*, the court shall do all of the following:

5 (1) Make a brief statement on the record, outside the presence
6 of the jury, of the reasons in support of its order. The reasons shall
7 be set forth with sufficient specificity to permit meaningful review
8 and to demonstrate that discretion was exercised in a careful,
9 reasonable, and equitable manner.

10 (2) Instruct the jury that although ~~intermediary standby counsel~~
11 *another person, or the court*, is presenting the defendant's
12 questions of that witness, the defendant is continuing to represent
13 himself or herself, and that the jury is to draw no negative
14 inferences against the defendant from the use of ~~intermediary~~
15 ~~standby counsel~~ *another person or the court* to facilitate the
16 examination of that particular witness or to speculate as to the
17 reasons for ~~intermediary standby counsel's~~ *another person's or*
18 *the court's* participation.

19 (g) When the court orders the examination of the victim be
20 presented by ~~intermediary standby counsel~~, *another person, or*
21 *when the court conducts the examination*, the defendant shall
22 submit the entire line of questioning to ~~intermediary standby~~
23 ~~counsel~~, *the other person or the court*, including any followup
24 questions, and have the right to contemporaneously direct
25 ~~intermediary standby counsel~~ *the other person or the court* during
26 the examination to ensure the defendant maintains control of his
27 or her defense. The defendant shall remain personally subject to
28 court procedures and the rules of evidence.

29 (h) The appointed intermediary standby counsel who performs
30 merely as the presenter of the defendant's proposed examination
31 of the victim pursuant to this section shall not be subject to
32 sanctions *imposed by a court or by the State Bar* for presenting
33 the defendant's proposed examination. The appointed intermediary
34 standby counsel shall not be subject to liability for malpractice for
35 presenting the defendant's proposed examination in an action
36 brought by the defendant against that counsel for his or her service
37 in that capacity. *A person who is appointed pursuant to this section*
38 *shall not be subject to criminal prosecution pursuant to Section*
39 *6126 of the Business and Professions Code for engaging in*

1 *activities he or she is authorized to perform pursuant to this*
2 *section.*

3 SEC. 2. If the Commission on State Mandates determines that
4 this act contains costs mandated by the state, reimbursement to
5 local agencies and school districts for those costs shall be made
6 pursuant to Part 7 (commencing with Section 17500) of Division
7 4 of Title 2 of the Government Code.

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