Date of Hearing: April 2, 2024
Chief Counsel: Sandy Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 3127 (McKinnor) – As Amended April 1, 2024

SUMMARY: Eliminates the duty of a health care practitioner to report assaultive or abusive conduct to law enforcement when they suspect a patient has suffered physical injury caused by such conduct, except in specified cases. Specifically, **this bill**:

1) Retains a health practitioner's duty to make a report of injuries to law enforcement to instances where a wound or injury is self-inflicted, caused by a firearm, is life threatening and caused by intentional violence, or involves child abuse, elder abuse, or the abuse of a dependent adult.

2) Allows reporting of other assaultive or abusive conduct when a patient requests, and in such cases, requires the medical documentation of injuries be made available to the patient.

3) Requires a health care practitioner, who in their professional capacity or within the scope of their employment, knows or reasonably suspects that their patient is experiencing any form of domestic violence or sexual violence, to provide brief counseling, education, or other support, and offer a "warm handoff" or referral to domestic violence or sexual violence advocacy services before the end of treatment, to the extent that it is medically possible.

4) Encourages health care practitioners to offer patients direct connection to an in-person domestic or sexual violence advocate or social worker whenever available.

5) Provides that the health practitioner can satisfy the above requirement when the brief counseling, education, or other support is provided by, and warm handoff or referral is offered by, a member of the health care team.

6) States that if the patient is being treated in the emergency department of a general acute care hospital, the health practitioner shall also offer assistance to the patient in accessing a medical evidentiary exam, reporting to law enforcement, and a 24-hour domestic or sexual violence advocacy program, if the patient wants to pursue these options.

7) Allows the health practitioner to offer a warm handoff and referral to other available victim services, including, but not limited to, legal aid, community-based organizations, behavioral health, crime victim compensation, forensic evidentiary exams, trauma recovery centers, family justice centers, and law enforcement to patients who are suspected to have suffered any non-accidental injury.

8) Defines "warm handoff" as including but not being limited to, the health practitioner establishing direct and live connection through a call with survivor advocate, in-person on site survivor advocate, in-person on-call survivor advocate, or some other form of

teleadvocacy.

9) Provides the patient may decline the "warm hand-off."

10) Provides that a "referral" may include, but is not limited to, the health practitioner sharing information about how a patient can get in touch with a local or national survivor advocacy organization, information about how the organization could be helpful for the patient, what the patient could expect when contacting the survivor organization, the survivor advocacy organizations contact information.

11) Provides that nothing limits or overrides the ability of a health care practitioner to alert law enforcement to an imminent or serious threat to health or safety of an individual or the public, pursuant to the privacy rules of the federal Health Insurance Portability and Accountability Act of 1996 (HIPPA).

12) Gives health care practitioners immunity from criminal or civil liability arising from any required or authorized report.

13) Contains legislative findings and declarations.

EXISTING LAW:

1) Requires a health practitioner, as defined, to make a report to law enforcement when they suspect a patient has suffered physical injury that is either self-inflicted, caused by a firearm, or caused by assaultive or abusive conduct, as specified. (Pen. Code, § 11160.)

2) Punishes the failure of a health care practitioner to submit a mandated report by imprisonment in a county jail not exceeding six months, or by a fine not exceeding $1,000, or by both. (Pen. Code, § 11162.)

3) Provides that a health practitioner who makes a report in accordance with these duties shall not incur civil or criminal liability as a result of any report. (Pen. Code, § 11161.9, subd. (a).)

4) States that neither the physician-patient privilege nor the psychotherapist patient privilege apply in any court or administrative proceeding with regards to the information required to be reported. (Pen. Code, § 11163.2)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 3127 will ensure survivors can access healthcare services by creating a survivor-centered, trauma-informed approach and limit non-consensual and potentially dangerous referrals to law enforcement. This change will increase access to healthcare and ensure that survivors are provided the agency and information they need to be safe and healthy."

2) **Duty of Health Care Practitioners to Report Injuries**: Penal Code section 11160 requires a health care practitioner who treats a person brought in to a health care facility or clinic who

is suffering from specified injuries to report that fact immediately, by telephone and in writing, to the local law enforcement authorities. The duty to report extends to physicians and surgeons, psychiatrists, psychologists, dentists, medical residents, interns, podiatrists, chiropractors, licensed nurses, dental hygienists, optometrists, marriage and family therapists, clinical social workers, professional clinical counselors, emergency medical technicians, paramedics, and others. The duty to report is triggered when a health practitioner knows or reasonably suspects that the patient is suffering from a wound or other physical injury that is the result of assaultive or abusive conduct caused by another person, or when there is a gunshot wound or injury regardless of whether it is self-inflicted or one caused by another person. Health practitioners are required to report if these triggering conditions are met, regardless of patient consent. Failure to make the required report is a misdemeanor.

This bill would eliminate the duty of a health care practitioner to report known or suspected assaultive or abusive conduct, subject to exceptions. This bill specifies that there is still a duty to report assaultive conduct caused by intentional violence and which results in life threatening injuries or death, as well child abuse, elder abuse, and abuse of a dependent adult. In addition, this bill specifies that nothing in its provisions limits or overrides the ability of a health care provider to report assaultive or abusive conduct at a patient's request, or to alert law enforcement to an imminent and serious threat to health or safety of an individual pursuant to HIPPA.

A report by Futures Without Violence, a co-sponsor of this bill, notes with regards to mandated reporting laws:

> Most U.S. states have enacted mandatory reporting laws, which require the reporting of specified injuries and wounds, and very few have mandated reporting laws specific to suspected abuse or domestic violence for individuals being treated by a health care professional. Mandatory reporting laws are distinct from elder abuse or vulnerable adult abuse and child abuse reporting laws, in that the individuals to be protected are not limited to a specific group, but pertain to all individuals to whom specific health care professionals provide treatment or medical care, or those who come before the health care facility. The laws vary from state-to-state, but generally fall into four categories: states that require reporting of injuries caused by weapons; states that mandate reporting for injuries caused in violation of criminal laws, as a result of violence, or through non-accidental means; states that specifically address reporting in domestic violence cases; and states that have no general mandatory reporting laws.

(*Compendium of State and U.S. Territory Statutes and Policies on Domestic Violence and Health Care*, Fourth Ed. 2019 at pp.2-3, available at: https://www.futureswithoutviolence.org/wp-content/uploads/Compendium-4th-Edition-2019-Final.pdf.)

A survey of state laws on reporting nationwide shows:

> [O]nly two states have laws that specifically require mandated reporting of DV specifically (not just injuries) to law enforcement and that five states have exceptions for reporting injuries due to domestic violence. New Hampshire's statute excuses a person from reporting if the victim is over 18, has been the

victim of a sexual assault offense or abuse (defined in RSA 173-B:1), and objects to the release of any information to law enforcement. However, this exception does not apply if the victim of sexual assault or abuse is also being treated for a gunshot wound or other serious bodily injury. Oklahoma's statute does not require reporting domestic abuse if the victim is over age 18 and is not incapacitated, unless the victim requests that the report be made orally or in writing. In all cases what is reported to be domestic abuse shall clearly and legibly be documented by the health care provider and any treatment provided. Pennsylvania's statute states that failure to report such injuries when the act caused bodily injury (defined in § 2301) is not an offense if the victim is an adult; the injury was inflicted by an individual who is the current or former spouse or sexual or intimate partner; has been living as a spouse or who shares biological parenthood; the victim has been informed of the physician's duty to report and that report cannot be made without the victim's consent; the victim does not consent to the report; and the victim has been provided with a referral to the appropriate victim service agency. Tennessee's statute excuses health care practitioners from reporting if the person is 18 years of age or older; objects to the release of any identifying information to law enforcement officials; and is a victim of a sexual assault offense or domestic abuse (defined in § 36-3-601). The exception does not apply and the injuries shall be reported if the injuries incurred by the sexual assault or domestic abuse victim are considered by the treating healthcare professional to be life threatening, or the victim is being treated for injuries inflicted by strangulation, a knife, pistol, gun, or other deadly weapon. Colorado's statute provides an exception for reporting if the injuries are resulting from domestic violence and if the victim is at least 18 and does not wish the injury to be reported. This exception does not apply if the injury is from a firearm, knife, ice pick, or other sharp object. Compendium of State and U.S. Territory Statutes and Policies on Domestic Violence and Health Care Futures Without Violence Kentucky, North Dakota, and Washington also require that victims of domestic violence be given educational information related to support services. Kentucky's statute states that professionals (including health professionals) must provide the victim with educational materials on domestic violence support services if the professional has cause to believe the patient has experienced domestic or dating violence. North Dakota's statute requires that health professionals provide victims with information on support services when a report on domestic or sexual violence has been made. Washington's statute requires that hospitals inform the patient of resources to ensure their safety if the patient has stated that their bullet, gunshot, or stab wound was the result of domestic violence. (*Compendium*, *supra*, at pp. 5-6.)

It should be stressed that the duty to report known or suspected child abuse and neglect under the Child Abuse and Neglect Reporting Act, is separate from a health care practitioner's duty to report injuries generally. (See Pen. Code, § 11164 et. seq.) This bill does not eliminate the duty of health care practitioners under that Act. Similarly, the duty to report known or suspected abuse of an elder or a dependent adult is also separate from a health care provider's general duty to report injury. (See Welf. & Inst. Code, § 15360.) This bill also does not eliminate the duty of health care practitioners under those provisions of law. In fact, as noted above, this bill specifies that there is still a duty to report those types of abuse.

3) **Argument in Support**: According to Futures Without Violence, a co-sponsor of this bill, "California law currently mandates that health professionals, when treating patients who have a physical injury that is known or suspected to have been a result of violence make an immediate report to law enforcement. While medical mandated reporting to law enforcement for firearm wounds or other very serious injuries is common in many states, California is one of only three states that still have such broad and harmful requirements to report explicitly for domestic and sexual violence-related injuries without patient consent. Although this law was a well-intentioned attempt to ensure health care providers take violence and abuse seriously, no research has shown that medical mandatory reporting to law enforcement has positive safety or health outcomes for survivors.

   "Domestic and sexual violence can have long term negative health outcomes, so it is crucial that survivors are able to access health care. Though health providers have an important role in addressing violence, some actively avoid discussing domestic and sexual violence out of fear of having to make a report to law enforcement. Mandatory reporting laws have also been shown to keep survivors from seeking care, and when survivors do see a health provider, they often don't feel comfortable bringing up their experiences of violence. This results in unaddressed health issues and missed opportunities to connect survivors to crucial advocacy services.

   "Fear of involving law enforcement is a main reason survivors decide not to tell their health provider about domestic violence, or even seek care in the first place. According to a survey by the National Domestic Violence Hotline that documented survivors' experiences with law enforcement, of survivors who chose to involve law enforcement by calling 911, only 20% said they felt safer - 80% said they had no change in safety or felt even less safe. There are many reasons why survivors do not want to involve police: fear of angering their partner and increasing severity of violence, not wanting their partner to be arrested, being arrested for defending themselves, exposing themselves and their families to involvement with child welfare systems, and more. Mandatory reporting laws may also discourage immigrant survivors from seeking health care; research has shown that contact with law enforcement produces a chilling effect in asking for help or fear of reprisal from federal immigration authorities.

   "Extensive research has been done on what survivors of domestic and sexual violence want from health care professionals: self determination and autonomy, validation and compassion, confidentiality and trust, and informed providers who are able to offer resources and health promotion strategies.

   "In a more measured approach than previous versions of this bill, AB 3127 will limit injuries that require a medical mandated report to life threatening violent injuries and firearm injuries, in addition to child abuse and elder abuse. With this bill, health providers will be required to offer survivors a warm connection to a trained, confidential advocate who will work with them to address their different safety needs such as emergency safety planning, housing, legal support, counseling, restraining orders, and safer access to the legal system. Health providers will be able to address domestic and sexual violence in a confidential and trusting manner, and ensure access to advocacy services."

4) **Argument in Opposition**: According to the *California Sexual Assault Forensic Examiners Association* (Cal SAFE), "We agree that PC 11160-1163.6 needs to be amended; however,

the proposed language is an over-reach that creates significant unintended consequences. The bill language was developed without consultation or considerations for PC 13823.5-13823.11 which defines the standard of care for the medical treatment of victims of Sexual Assault and gives authority to the California Clinical Forensic Medical Training Center to establish best practices for the care of Sexual Assault patients. Cal SAFE has met with the authors and sponsors in an effort to educate, explain unintended consequences, and propose amended language. We have been unable to come to a timely agreement with the sponsors that will address the health and safety concerns for patients who are victims of Sexual Assault and Domestic Violence together referred to as Interpersonal Violence (IPV). …

"AB1028 was initiated to address the needs of IPV victims who DO NOT WANT to report to law enforcement, however it does not protect victims that DO WANT to make a report to law enforcement. Often the most injured victims, brought to emergency departments WANT and NEED the support of health care and advocacy to make or complete a report to law enforcement. AB 1028, if passed, will eliminate any requirement for health care to assist a victim to report to law enforcement, and instead will require only that health care provider give a victim of IPV a phone number to a DV advocacy agency. In Alameda County, only 4% of domestic violence victims who only received Family Justice Center (FJC) contact information in the emergency room setting ever made contact with the FJC.. In contrast, IN-PERSON advocacy will quantitatively and qualitatively improve survivor outcomes. Direct-to-advocacy (warm-handoff) referrals, unlike traditional referrals, improve survivor's chances of reaching advocacy services (increase to 48% in Alameda County) and also alleviated racial/ethnic disparities in care.

"The OPT IN approach to mandatory reporting that is proposed in this bill asserts that it will guarantee autonomy for victims, but without mandating IN-PERSON advocacy to guide these patients in crisis through their choices and legal options, it will more likely be perceived by the patients as further abandonment, particularly for the patients with the most challenges to navigating systems. Cal SAFE proposes to amend the language to 1) Require IN-PERSON advocacy for those victims at highest risk for DV homicide. 2) Maintain health care mandatory reporting to law enforcement for victims that present for care, in urgent or emergency health care settings seeking care for IPV injury including all forms of serious life threatening injuries, not just gun related injuries.

"Since 2017, sexual assault (SA) victims have had the option of the Non Investigative Report (NIR) created for SA victims who are undecided about making a statement to law enforcement. This allows the victim to have in-person advocacy and medical forensic exam to capture time sensitive evidence, and to postpone making the law enforcement report until which time the patient is ready. The OPT-OUT NIR protocol has been used by 6% of SA victims annually across the state. The NIR solution has been effectively utilized and allows patients time to make a considered decision. A similar NIR report protocol for DV would be an option that will maintain much needed medical/forensic documentation while giving the patient the option to consider reporting to law enforcement.

"50% of all DV homicides are committed with guns. Limiting mandated reporting to gun related injuries, as proposed in AB 1028, will eliminate the mandate for health care to report all other forms of DV regardless of severity. DV health care mandatory reporting was an effort to impact the growing number of domestic violence homicides. Homicide is the leading cause of death for pregnant women in the U.S. and black women are at substantially

higher risk of being killed. Kentucky eliminated health care mandatory reporting 5 years ago, and since has seen a 63% increase in DV homicides. A multidisciplinary approach to DV that includes health care, advocacy and law enforcement is homicide prevention. Removing the health care mandated report without providing direct to advocacy (warm hand-off) referrals will result in more DV homicides."

5) **Prior Legislation**:

a) AB 1028 (McKinnor) of the 2023-2024 Legislative Session, was similar to this bill. AB 1028 was held in the Senate Appropriations Committee.

b) AB 2790 (Wicks) of the 2021-2022 Legislative Session, also would have limited the duty of a health care practitioner to report assaultive or abusive conduct to law enforcement to instances in which the wound or injury is self-inflicted or caused by a firearm. AB 2790 was held in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Access Reproductive Justice
ACLU California Action
Alliance for Boys and Men of Color
American Nurses Association/California
Asian Americans for Community Involvement
Black Lives Matter - Los Angeles
California Black Women's Collective Empowerment Institute
California Consortium for Urban Indian Health
California for Safety and Justice
California Partnership to End Domestic Violence
Coalition to Abolish Slavery & Trafficking (CAST)
Communities United for Restorative Youth Justice (CURYJ)
Community Solutions
Culturally Responsive Domestic Violence Network
Downtown Women's Center
East Los Angeles Women's Center
Family Violence Appellate Project
Freefrom
Futures Without Violence (UNREG)
Gray's Trauma-informed Care Services Corp
Heal Trafficking
Healthy Alternatives to Violent Environments
Initiate Justice
Jenesse Center, INC.
Los Angeles Dependency Lawyers, INC.
Los Angeles LGBT Center
Lumina Alliance
Miracles Counseling Center

Project Sanctuary, INC.
Psychiatric Physicians Alliance of California
Public Counsel
Resilience Orange County
San Francisco Public Defender
Sheedy Consulting, LLC
Sunita Jain Anti-trafficking Initiative
The Collective Healing and Transformation Project
UC Irvine School of Law, Domestic Violence Clinic
Victims Empowerment Support Team
Western Center on Law & Poverty
Woman INC
Youth Forward
Youth Leadership Institute
YWCA Golden Gate Silicon Valley

Opposition

Arcadia Police Officers' Association
Burbank Police Officers' Association
California District Attorneys Association
California Narcotic Officers' Association
California Reserve Peace Officers Association
California Sexual Assault Forensic Examiner Association
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association
Los Angeles County Professional Peace Officers Association
Los Angeles School Police Management Association
Los Angeles School Police Officers Association
Murrieta Police Officers' Association
Newport Beach Police Association
Novato Police Officers Association
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Assocation
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
San Diego County District Attorney's Office
Santa Ana Police Officers Association
Upland Police Officers Association

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