

ASSEMBLY THIRD READING

AB 3127 (McKinnor)

As Amended April 1, 2024

Majority vote

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.

Major Provisions

- 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.

COMMENTS

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."

Arguments 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."

Arguments 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."

FISCAL COMMENTS

According to the Assembly Appropriations Committee, "Likely no state costs. Possible minor cost savings to the court and counties to the extent this bill narrows an existing misdemeanor and results in fewer convictions and jail terms.

Unknown, potentially absorbable costs to local public health agencies and clinics to provide brief counseling and offer referrals to patients suspected of experiencing domestic or sexual violence. Costs to the General Fund will depend on whether the duties imposed by this bill constitute a reimbursable state mandate, as determined by the Commission on State Mandates."

VOTES

ASM PUBLIC SAFETY: 5-0-3

YES: McCarty, Reyes, Ting, Wilson, Zbur

ABS, ABST OR NV: Alanis, Lackey, Stephanie Nguyen

ASM APPROPRIATIONS: 10-4-1

YES: Wicks, Arambula, Bryan, Calderon, Mike Fong, Grayson, Haney, Hart, Pellerin, Villapudua

NO: Sanchez, Dixon, Jim Patterson, Ta

ABS, ABST OR NV: Wendy Carrillo

UPDATED

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