SENATE COMMITTEE ON APPROPRIATIONS
Senator Anna Caballero, Chair
2023 - 2024 Regular Session

AB 3127 (McKinnor) - Reporting of crimes: mandated reporters

Version: May 22, 2024
Urgency: No
Hearing Date: June 24, 2024
Policy Vote: PUB. S. 4 - 1
Mandate: Yes
Consultant: Liah Burnley

Bill Summary: AB 3127 would narrows the circumstances in which a health practitioner must make a report to law enforcement because they suspect a patient has suffered physical injury that was caused by assaultive or abusive conduct.

Fiscal Impact: Unknown, potentially reimbursable costs (local funds, General Fund), possibly in the hundreds of thousands, to local public health departments local government agencies, and clinics or other types of facilities operated by a local health department to provide brief counseling and education, and offer a warm handoff or referral to local and national domestic violence or sexual violence advocacy services. Additional training and policy updates may also be required. General Fund costs will depend on whether this bill imposes a state-mandated local program as determined by the Commission on State Mandates. (See Staff Comments)

Background: According to the author:

> California currently requires health care providers to report injuries sustained to their patients that are either suspected to be, or are the direct result of domestic and sexual violence. This requirement for mandatory reporting in medicine does not require that patients consent to the report, and 83.3% of domestic violence (DV) survivors stated that mandatory reporting made their experience worse or did not improve their situation at all.
>
> Not only does medical mandated reporting put victims at higher risk of their abuse escalating, it also violates basic tenets of medical ethics according to the American Medical Association. Naturally, it is unfair to exclude patients from decisions that affect their health when they have the cognitive ability to advocate for themselves, yet physicians will face liability if they do not report to law enforcement. This may result in providers actively avoiding any discussion of domestic violence or sexual assault, and data show that 59% of emergency department providers in California may not comply with the law if their patient did not want them to make a report.
>
> Although well intended, requiring healthcare providers to report adult patients experiencing violence to law enforcement is not an evidence-based practice: there are no

data suggesting that it results in positive outcomes for patient health or safety. Research does demonstrate that mandatory reporting may worsen a survivor's situation and also deter survivors from disclosing abuse to their provider, or even seeking medical attention for injuries sustained from abuse out of fear of being reported.

Proposed Law:

- Eliminates 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

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

- Provides that in the circumstance of an adult seeking care for injuries related to domestic, sexual, or any nonaccidental violent injury, if the patient requests a report be sent to law enforcement health practitioners shall follow the reporting process and document the injuries.

- 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.

- Provides that the health practitioner shall have met the requirement when the brief counseling, education, or other support is provided and warm hand off or referral is offered by a member of the health care team.

- Provides that if the health practitioner is providing medical services to the patient in the emergency department of a hospital, they shall also offer assistance to the patient in accessing a forensic evidentiary exam, reporting to law enforcement, and a 24-hour domestic or sexual violence advocacy program, if the patient wants to pursue these options.

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

- Provided that to the extent possible, health practitioners shall document all nonaccidental violent injuries and incidents of abuse in the medical record.

- 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.

- 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 HIPAA.

- Defines “warm handoff” may include but is not 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 tele-advocacy.

- Provides the patient may decline the “warm hand-off”.

- Provides that “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 survivor advocacy organization information about how the survivor organization could be helpful for the patient, what the patient could expect when contacting the survivor organization, the survivor advocacy organizations contact information.

- Contains findings and declarations.

- Provides that a health practitioner shall not be civilly or criminally liable for acting in compliance with these requirements for any report that is made in good faith compliance with state law.

- Makes conforming cross-references.

Related Legislation:

- AB 1028 (McKinnor), of this legislative session, would have eliminated the duty of a health practitioner to report assaultive or abusive conduct to law enforcement. AB 1028 was held in the Senate Appropriations Committee.

- AB 2790 (Wicks), of the 2021-2022 Legislative Session, would have limited the duty of a health practitioner to report assaultive or abusive conduct to law enforcement to injuries that are self-inflicted or caused by a firearm. AB 2790 was held in the Senate Appropriations Committee.

Staff Comments: Advocates of this bill contend that this bill could result in some long-term costs savings associated with streamlining health care providers and law enforcement responses. Currently health practitioners are required to spend time filing reports for all violent injuries both to file reports for all violence, in addition to following their health setting protocols for screening, documentation, and referral outlined by their healthcare setting. This bill could allow health practitioners will be able to spend more time on tailored care for the individual patient, and less time engaged in the two-step reporting process in cases where law enforcement may not be warranted.

-- END --