
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 2730 **Hearing Date:** June 11, 2024
Author: Lackey
Version: March 13, 2024
Urgency: No **Fiscal:** No
Consultant: MK

Subject: *Sexual assault: medical evidentiary examinations*

HISTORY

Source: California Sexual Assault Forensic Examiner Association

Prior Legislation: AB 538 (Berman), Chapter 714, Statutes of 2019
AB 334 (Cooper) Not heard Senate Public Safety 2017
AB 107 (Corbett) Chapter 148, Stats. 2013

Support: Board of Registered Nursing; California Chapter of The American College of
Emergency Physicians

Opposition: None known

Assembly Floor Vote: 75 - 0

PURPOSE

The purpose of this bill is to clarify that in order for a nurse midwife or physician's assistant to perform a sexual assault exam, they must be certified.

Existing law requires OES, along with the advisory committee above, to establish a protocol for the examination and treatment of victims of sexual assault and attempted sexual assault, including child molestation, and the collection and preservation of evidence therefrom, which includes recommended methods for meeting the standards, as specified. (Pen. Code, § 13823.5 (a).)

Existing law requires OES to develop guidelines containing general reference information on evidence collection and examination of, and psychological and medical treatment for, victims of sexual assault and attempted sexual assault, including child abuse. (Pen. Code, § 13823.5 (b)(1).)

Existing law states that OES when developing protocols and informational guidelines, shall seek the assistance and guidance of organizations assisting victims of sexual assault, qualified health care professionals, sexual assault forensic examiners, criminalists, and administrators who are familiar with emergency room procedures; victims of sexual assault; and law enforcement officials. (Pen. Code, § 13823.5 (b)(2).)

Existing law permits only a “qualified health care professional,” as specified, to conduct an examination for evidence of a sexual assault or an attempted sexual assault, including child molestation, use the standard form or forms adopted as specified. (Pen. Code, § 13823.5 (c)(2).)

Existing law defines a “qualified health care professional” to mean any of the following:

- a) A physician and surgeon currently licensed, as specified in the Business and Professions Code;
- b) A nurse, nurse practitioner, or nurse-midwife currently licensed, as specified in the Business and Professions Code, and working in consultation with a physician and surgeon; or,
- c) A physician assistant currently licensed, as specified in the Business and Professions Code, and working in consultation with a physician and surgeon who conducts examinations or provides treatment in a general acute care hospital or in a physician and surgeon’s office. (Pen. Code, § 13823.5 (e)(1).)

Existing law states that “Sexual assault forensic examiner” or “SAFE” means a qualified health care professional who has been trained on the standardized sexual assault forensic medical curriculum, as specified. (Pen. Code, § 13823.5 (e)(2).)

This bill adds “certified” to the criteria a nurse midwife must have in order to perform a sexual assault exam in consultation with a physician or surgeon currently licensed, as specified.

This bill makes technical changes for physicians and surgeons working with a physician assistant who performs sexual assault exams.

COMMENTS

1. Need for This Bill

According to the author:

For years in California, the majority of sexual assault forensic exam teams have been performing exams using local resources, including experienced non-physician forensic examiners (nurses) and a variety of physicians with varied forensic experience. High-level forensic expertise has always been available to law enforcement and the criminal justice system from experts who are RNs, PAs, NPs, and physicians who have been qualified by courts throughout California. The degree of physician involvement must be a local decision based on available resources. To continue to provide access for victims to receive local expert care, this code needs to be clarified to limit confusion on the qualified healthcare provider language and ensure programs remain open.

2. Qualified Health Care Professionals

Under existing law, OES is responsible for establishing protocol for the sexual assault forensic medical examination (SAFME) and treatment for the victims of sexual assault and attempted sexual assault. OES was required to establish an advisory committee, which OES works with to establish a protocol for the examination and treatment of victims of sexual assault and attempted sexual assault, including child molestation, and the collection and preservation of evidence therefrom. (Pen. Code, § 13823.5(a).) As part of these protocols, existing law provides that only a “qualified health care professional,” may conduct a SAFME. (Pen. Code, § 13823.5(e).) The health care professionals who are qualified to perform sexual assault exams has been expanded over the last two decades to include a nurse, nurse practitioner, nurse-midwife, and a physician assistant.

According to the California Medical Board, “The profession of midwifery also has another designation, that of ‘certified nurse-midwife’ (CNM). CNMs are licensed by the California Board of Registered Nursing. CNMs are registered nurses who acquired additional training in the field of obstetrics and are certified by the American College of Nurse Midwives (ACNM). They commonly work in hospitals and birthing centers that are also licensed by the state.” (<https://www.mbc.ca.gov/Licensing/Licensed-Midwives/> [as of Mar. 26, 2024].)

This bill would make changes to who is considered a “qualified health care professional”, by requiring a nurse-midwife be *certified*. This bill would also make a technical revision with regards to who is considered a licensed physician and surgeon to be in parity with other sections of the code.

3. Argument in Support

In support of this bill the California Sexual Assault Forensic Examiner Association supports this bill stating in part:

We have received troubling information from our members regarding attempts to discredit nurse examiner testimony in court and the closure of programs, both stemming from the ambiguous language in the current law. Our goal is to rectify this language, providing clarity and backing sexual assault forensic examination teams across California to ensure they can continue operating effectively and offering essential care to victims of sexual assault.

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