SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair
2023 - 2024 Regular

Bill No:	AB 3127	**Hearing Date:**	June 11, 2024
Author:	McKinnor		
Version:	May 22, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	MK		

Subject: ***Reporting of crimes: mandated reporters***

HISTORY

Source: Futures Without Violence

Prior Legislation: AB 1028 (McKinnor) held in Senate Appropriations 2023
AB 2790 (Wicks) held in Senate Appropriations 2022

Support: ACLU California Action; American College of Obstetricians and Gynecologists District IX; American Nurses Association California; Asian Americans for Community Involvement; Asian Resources, Inc.; California Alliance of Academics and Communities for Public Health Equity (public Health Institute); California Attorneys for Criminal Justice; California Democratic Party; California Medical Assoc.; Coalition to Abolish Slavery and Trafficking; Collective Healing and Transformation Project; Community Solutions for Children, Families and Individuals; Dignity Health; East Los Angeles Women's Center; FreeFrom; Initiate Justice; Justice At Last; Lumina Alliance; Ohio Domestic Violence Network; Planned Parenthood Affiliates of California; Public Health Advocates; Smart Justice California, a Project of Tides Advocacy; STAND! For Families Free of Violence; Victims Empowerment Support Team; Western Center on Law & Poverty; Woman Inc.; Youth Forward

Opposition: Alliance for Hope International; California District Attorneys Association; California Emergency Nurses Association; California Sexual Assault Forensic Examiner Association; California Sexual Assault Investigators Association; Enloe Medical Center Sexual Assault Response Team; San Diego County District Attorney's Office; San Diego Emergency Physicians, INC; Training Institute on Strangulation Prevention

Assembly Floor Vote: 42 - 15

PURPOSE

The purpose of this bill is to eliminate the duty of a health care practitioner to report assaultive or abusive conduct to law enforcement except in specified circumstances.

Existing law 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. (Penal Code § 11160.)

Existing law 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. (Penal Code § 11162)

Existing law 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. (Penal Code § 11161.9 (a))

Existing law 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. (Penal Code § 11163.2)

This bill 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

This bill 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.

This bill 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.

This bill 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.

This bill 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.

This bill 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.

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

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

This bill 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.

This bill 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.

This bill 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.

This bill provides the patient may decline the "warm hand-off".

This bill 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.

This bill contains findings and declarations.

This bill provides that a health practitioner shall not be civilly or criminally liable for acting in compliance with this section for any report that is made in good faith compliance with state law.

This bill makes conforming cross-references.

COMMENTS

1. Need for This Bill

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.
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> 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.
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> 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.

2. Duty of Health Care Practitioners to Report Injuries

Penal Code section 11160 requires 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 self-inflicted or one cause 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.

According to the background provided by the author, "[i]n a 2020 survey done by the National Domestic Violence Hotline of survivors who had experienced mandated reporting, 83.3% of survivors stated mandatory reporting made the situation much worse, somewhat worse, or did nothing to improve the DV situation. 27% of callers reported that they did not seek healthcare because of mandatory reporting requirements". 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 https://www.futureswithoutviolence.org/wp-content/uploads/Compendium-4th-Edition-2019-Final.pdf.)

It should be noted 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 Penal 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 Welfare & Inst. Code,§ 15360.) This bill also does not eliminate the duty of health care practitioners under those provisions of law.

3. Prior Legislation

This bill is similar to AB 1028 (McKinnor) 2023 and AB 2790 (Wicks) both of which passed this Committee and were held in Senate Appropriations Committee. This bill is narrower than either of those bills by continuing to require reporting when a would or physical injury is life threatening and caused by the use of nonaccidental violence by another.

4. Argument in Support

In support the California Alliance of Academics and Communities for Public Health Equity support this bill stating, in part:

> Domestic and sexual violence have been shown to be associated with increased risk of many health issues, and so health care providers play a critical role in prevention, identification, and response to violence. When providers can have open, trauma-informed conversations with patients about abuse, survivors are four times more likely to access an intervention, such as domestic violence advocacy. Unfortunately, we have seen the ways in which strict medical mandated reporting requirements for all violent injuries have kept survivors from seeking necessary healthcare in the first place, made survivors feel like they could never return to healthcare after they learned of the requirement, or made them feel like they could not share the reason for or extent of certain injuries or health issues with their provider. Not only do these broad requirements create a barrier to healthcare, but medical mandated reporting to law enforcement can result in the escalation of abuse, undue child welfare involvement, survivors themselves being criminalized, exposure to immigration detention or deportation, and more.
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> According to a study of callers to National Domestic Violence Hotline, 51% of survivors who had experienced mandatory reporting stated that it made their situations much worse, and another 32% stated that it either made things worse or did not help them at all. Although a well-intentioned attempt to ensure domestic and sexual violence is taken seriously as a health issue, there is no research that suggests that medical mandated reporting for violent injuries results in positive safety outcomes for survivors. Survivors in California deserve to be able to access trauma-informed healthcare separately from law enforcement. Domestic and sexual

violence advocates are specifically trained to help survivors more safely access the criminal and civil legal systems should they want to.

Because AB 3127 will require health providers to offer a warm hand off and referral to an advocacy organization, advocates will be able to respond before violence escalates. A warm and informed connection to confidential advocacy services will allow survivors to address their various safety needs- from crisis intervention, emergency housing to legal support- in an on-going and trauma-informed way. 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, as well as require that providers in acute care settings offer assistance to violently injured patients in accessing a medical evidentiary exam or reporting to law enforcement, in addition to making offering a connection to anti-violence advocates.

5. Argument in Opposition

California Sexual Assault Forensic Examiner Association opposes this bill stating in part:

The authors describe this bill to replace "reporting with supporting". But the only requirement is brief counseling and a hotline phone number. The Bill **does not provide for IN-PERSON advocacy and given the planned cuts to VOCA funding fewer advocates will be available in the future.** In the model of the Sexual Assault Response Team (SART), health care providers work together with law enforcement and advocates to guide patients in crisis through their choices and legal options. Without this "support" patients will be left on their own to engage with systems that they may already feel too overwhelmed or unprepared to navigate without confidential, trauma-informed guidance.

DV health care mandatory reporting developed because of the growing number of domestic violence homicides. 47% of DV homicide victims are seen in a health care setting in the year before they are killed for injuries sustained by the same person that ultimately kills them, and for every 1 completed DV homicide there are 8 attempted homicides and those patients are being seen everyday in EDs across the state. Domestic Violence homicide risk assessment and harm reduction falls squarely in the realm of health care. We need more education and engagement from health care, not less. When the injuries are severe and DV fatality risk high, an advocate alone cannot be expected to provide safety, law enforcement is needed.

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