
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: AB 2790 **Hearing Date:** June 28, 2022
Author: Wicks
Version: June 20, 2022
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Reporting of crimes: mandated reporters*

HISTORY

Source: Futures Without Violence
Alliance for Boys and Men of Color
UC Irvine Domestic Violence Law Clinic

Prior Legislation: None

Support: ACLU California Action; Asian Americans for Community Involvement
Bay Area Legal Aid; California Consortium for Urban Indian Health; California
Nurses Association; California Partnership to End Domestic Violence; City and
County of San Francisco; Coalition to Abolish Slavery & Trafficking (CAST)
Coalition to Abolish Slavery and Trafficking; Community United Against
Violence; Culturally Responsive Domestic Violence Network (CRDVN); Dignity
Health; East Los Angeles Women's Center; Ella Baker Center for Human Rights;
Empower Yolo; Futures Without Violence (UNREG); Heal Trafficking;
International Association of Forensic Nurses; Jenesse Center, INC.; Korean
American Family Services, INC.; LA Clinica De LA Raza, INC.; Los Angeles
Center for Law and Justice; Los Angeles Dependency Lawyers, INC.; Los
Angeles Lgbt Center; National Association of Social Workers, California
Chapter; Next Door Solutions to Domestic Violence; Ohio Domestic Violence
Network; San Francisco Department of Public Health; The Health Alliance for
Violence Intervention; Valorcalifornia / Valorus; Women's Foundation California;
YWCA Greater Los Angeles; YWCA of San Gabriel Valley

Opposition: Academy of Forensic Nursing; Alameda County District Attorney's Office;
Alliance for Hope International; California District Attorneys Association;
California Police Chiefs Association; Riverside County District Attorney;
Riverside County Sheriff's Office; San Diegans Against Crime; San Diego
County District Attorney's Office; Shasta Community Health Center; Stanislaus
Family Justice Center; Domestic Abuse Center (Oppose Unless Amended);
Training Institute on Strangulation Prevention (Oppose Unless Amended)

Assembly Floor Vote:

42 - 23

PURPOSE

The purpose of this bill eliminates the duty of a health care practitioner to report assaultive or abusive conduct to law enforcement and instead requires the provider to refer the patient to supportive services.

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 limits a health practitioner's duty to make a report of injuries to law enforcement to instances where the wound or injury is self-inflicted or caused by a firearm.

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 and offer a 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 a health practitioner may offer a warm hand off and referral to other available services.

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 teleadvocacy.

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 makes conforming cross-references.

COMMENTS

1. Need for This Bill

According to the author:

The current statute requires health care workers to make a report to law enforcement when treating adult violent injuries, even when the injured patient does not want to make a report. This keeps victims of domestic and sexual violence from seeking health care and limits their safety, autonomy, and privacy. As a result, health care workers are less likely to address violence as a health care issue and many survivors choose not to seek health care services.

83 percent of domestic and sexual violence survivors who had experienced mandatory reporting stated that it made their situation much worse, somewhat worse, or did nothing to improve the situation. ([Lippy, 2020](#))

Many domestic violence survivors choose not to seek health care services, or talk with their provider about domestic violence, because of mandatory reporting laws. ([Kimberg, 2021](#)) ([Lippy, 2020](#))

59 percent of emergency department-based providers in California reported that they may not comply with the law if their patient did not want them to make a report. ([Rodriguez, 2011](#))

When health providers are able to talk with survivors about abuse, survivors are four times more likely to use an intervention, such as using domestic violence advocacy services. ([McCloskey, 2006](#))

Current law requiring health professionals in California to file reports to law enforcement when treating patients for a domestic violence-related injury has had the chilling effect of preventing survivors from seeking medical care, decreasing patient autonomy and trust, and resulting in health providers being reluctant to address domestic violence with their patients. ([Kimberg, 2021](#)), ([Lippy, 2020](#)), ([Rodriguez, 2009](#))

National research confirms that medical mandatory reporting of adult domestic and sexual violence increases patient danger and insecurity, whereas being able to openly discuss abuse without fear of police reporting produces greater health and safety outcomes. ([Kimberg, 2021](#)) ([Lippy, 2020](#)) ([McCloskey, 2006](#))

To have consistent, trusting, patient-centered health care responses, the law should center survivor safety and health by ensuring that survivors are provided with the

agency and information that they need. AB 2790 provides a survivor-centered and trauma-informed approach in modernizing the mandatory reporting law by requiring health providers to offer a referral to a local domestic violence or sexual violence advocacy programs or services.

2. Health Care worker: mandate reporters

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 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 and instead provide that they should, whenever medically possible, refer the person to provide the person with counseling, a warm handoff, or a referral to local domestic violence services.

According to the background provided by the author, in cases of domestic violence, this duty to report “keeps victims of domestic and sexual violence from seeking health care and limits their safety, autonomy, and privacy. As a result, health care workers are less likely to address violence as a health care issue and many survivors choose not to seek health care services.”

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. Suggested amendment

The Public Defenders Association raise a concern that the language would conflict with Penal Code provisions giving defense attorneys access to information about the victim. The bill should be amended to make it clear that nothing is intended to conflict with those provisions.

4. Argument in Support

The California Nurses Association supports this bill stating:

AB 2790 will ensure that survivors can seek health care without fear of non-consensual law enforcement involvement and with the assurance that their health provider will be able to prioritize their wellness, healing, safety, and self-determination. Health providers will be able to address domestic and sexual violence in a confidential and trusting manner, and ensure access to advocacy services. This bill promotes *mandatory supporting, rather than mandatory reporting*. Survivors will be offered 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.

5. Argument in Opposition

The California District Attorneys Association opposes this bill stating:

Mandated reporting provides a valuable level of safety to a large class of individuals who might be fearful to report, or unable to report, their abuse.

This bill would only require reporting of gunshot wounds and would eliminate the reporting other forms of assaultive conduct.

Take, for example, a domestic violence victim who has been strangled by their assaultive partner. Strangulation leaves visible external injury in fewer than 59% of the cases, yet a victim of strangulation is 700% more likely to become a victim of homicide. There have been links between those who strangle and those who kill law enforcement as well as those who commit mass violence. Victims may not realize the seriousness of this level of violence. Under AB 2790, this form of assaultive conduct would not require mandatory reporting.

Victims of human trafficking who find themselves in front of health practitioners will often try and divert attention away from being trafficked by blaming their injuries on their “boyfriend.”

Under AB 2790, they would receive domestic violence counseling and resource materials, but their injuries would go unreported.

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