
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
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Bill No: SB 863 **Hearing Date:** March 8, 2022
Author: Min
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Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Domestic violence: death review teams*

HISTORY

Source: Author

Prior Legislation: SB 1230 (Solis), Ch. 710, Stats. 1995

Support: California Partnership to End Domestic Violence; Neighborhood Legal Services of Los Angeles County; Prosecutors Alliance of California

Opposition: California Attorneys for Criminal Justice

PURPOSE

The purpose of this bill is to authorize a county domestic violence death review team to assist local agencies in identifying and reviewing domestic violence near-death cases, as defined.

Existing law authorizes a county to establish an interagency domestic violence death review team to assist local agencies in identifying and reviewing domestic violence deaths, including homicides and suicides, and facilitating communication among the various agencies involved in domestic violence cases. (Pen. Code, § 11163.3, subd. (a).)

Existing law defines “abuse” to have the meaning set forth in Section 6203 of the Family Code and “domestic violence” to have the meaning set forth in Section 6211 of the Family Code. (Pen. Code, § 11163.3, subd. (b).)

Existing law defines “abuse” to mean any of the following:

- To intentionally or recklessly cause or attempt to cause bodily injury.
- Sexual assault.
- To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another.
- To engage in any behavior that has been or could be enjoined, as described. (Fam. Code, § 6203.)

Existing law defines “domestic violence” as abuse perpetrated against any of the following persons:

- A spouse or former spouse.
- A cohabitant or former cohabitant, as defined.

- A person with whom the respondent is having or has had a dating or engagement relationship.
- A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act.
- A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.
- Any other person related by consanguinity or affinity within the second degree. (Fam. Code, § 6211.)

Existing law authorizes a county to develop a protocol that may be used as a guideline to assist coroners and other persons who perform autopsies on domestic violence victims in the identification of domestic violence, in the determination of whether domestic violence contributed to death or whether domestic violence had occurred prior to death, but was not the actual cause of death, and in the proper written reporting procedures for domestic violence, including the designation of the cause and mode of death. (Pen. Code, § 11163.3, subd. (c).)

Existing law requires that a county domestic violence death review teams be comprised of, but not limited to, the following: experts in the field of forensic pathology; medical personnel with expertise in domestic violence abuse; coroners and medical examiners; criminologists; district attorneys and city attorneys; domestic violence shelter service staff and domestic violence advocates; law enforcement personnel; representatives of local agencies that are involved with domestic violence abuse reporting; county health department staff who deal with domestic violence victims' health issues; representatives of local child abuse agencies; and local professional associations of persons working in the aforementioned fields and occupations, inclusive. (Pen. Code, § 11163.3, subd. (d).)

Existing law provides that an oral or written communication or a document shared within or produced by a domestic violence death review team related to a domestic violence death review is confidential and not subject to disclosure or discoverable by a third party. Provides that an oral or written communication or a document provided by a third party to a domestic violence death review team, or between a third party and a domestic violence death review team, is confidential and not subject to disclosure or discoverable by a third party. Provides that recommendations of a domestic violence death review team upon the completion of a review may be disclosed at the discretion of a majority of the members of the domestic violence death review team. (Pen. Code, § 11163.3, subd. (e).)

Existing law authorizes each organization represented on a domestic violence death review team to share with other members of the team information in its possession concerning the victim who is the subject of the review or any person who was in contact with the victim and any other information deemed by the organization to be pertinent to the review. Provides that any information shared by an organization with other members of a team is confidential. Authorizes the disclosure to members of the team of any information deemed confidential, privileged, or prohibited from disclosure by any other statute. (Pen. Code, § 11163.3, subd. (f).)

Existing law provides that written and oral information may be disclosed to a domestic violence death review team. Provides that the team may make a request in writing for the information sought and any person with information, as described, may rely on the request in determining

whether information may be disclosed to the team notwithstanding other laws, as specified. Provides that an individual or agency that has information is not required to disclose information. Allows for the voluntary disclosure of specified information, including medical information, mental health information, information from elder abuse reports and investigations, information from child abuse reports and investigations, and criminal history information, among others. Provides that the disclosure of written or oral information authorized applies notwithstanding specified codified evidentiary privileges. (Pen. Code, § 11163.3, subd. (g).)

Existing law requires, subject to available funding, that the Attorney General develop a protocol for the development and implementation of interagency domestic violence death review teams for use by counties. Provides that the protocol be designed to facilitate communication among persons who perform autopsies and the various persons and agencies involved in domestic violence cases so that incidents of domestic violence and deaths related to domestic violence are recognized and surviving nonoffending family and household members and domestic partners receive the appropriate services. (Pen. Code, § 11163.4.)

Existing law provides for the coordination and integration of state and local efforts to address fatal domestic violence as well as the creation of a body of information to prevent domestic violence deaths. Authorizes the Department of Justice (DOJ) to carry out those efforts in cooperation with the State Department of Social Services, State Department of Health Services, the California State Coroner's Association, the County Welfare Directors Association, and the state domestic violence coalition. Provides that in carrying out these efforts, the DOJ may collect, analyze, and interpret state and local data on domestic violence death in an annual report; develop a state and local data base on domestic violence deaths; and distribute a copy of the report to public officials in the state who deal with domestic violence issues and to those agencies responsible for domestic violence death review. (Pen. Code, § 11163.5.)

Existing law provides that data may be collected and summarized by the domestic violence death review teams to show the statistical occurrence of domestic violence deaths in the team's county that occur, as specified. (Pen. Code, § 11163.6.)

This bill defines "near death" to mean the victim suffered a substantial risk of serious bodily injury or death from domestic violence, or the circumstances of the domestic violence event indicate that the perpetrator more likely than not intended to kill or seriously injure the victim.

This bill requires representatives of domestic violence victim service to obtain an individual's informed consent in accordance with all applicable state and federal confidentiality laws organizations in near-death cases, before disclosing confidential information about that individual to another team member. Requires that in death review cases, representatives of domestic violence victim service organizations only provide client-specific information in accordance with both state and federal confidentiality requirements.

This bill provides immunity from civil liability for members of death review teams, as well as their agents and employees, for any act or omission made in connection with participation in a domestic violence death review, unless that act or omission was the result of gross negligence or willful misconduct. Provides immunity from civil liability for any organization, institution, or person furnishing information, data, testimony, reports, or records to review teams as part of the review for any act or omission in furnishing that information, unless that act or omission was the result of gross negligence or willful misconduct.

This bill provides that statements provided by a survivor in a near-death case review are protected from discovery in subsequent civil litigation.

This bill specifies that near-death case reviews are only to occur after any prosecution has concluded.

This bill prohibits near-death survivors from being compelled to participate in death review team investigations and clarifies that their participation is voluntary. Provides that in cases of death, the victim's family members may be invited to participate, but not be compelled to do so. Requires that members of the death review teams be prepared to provide referrals for services to address the unmet needs of survivors and their families when appropriate.

This bill amends the statute that delineates the type of data that may be collected and summarized by domestic violence death review teams to include near deaths that occur when the victim suffered a substantial risk of serious bodily injury or death from domestic violence and near deaths that occur when the circumstances of the domestic violence event indicate the perpetrator more likely than not intended to kill or seriously injure the victim.

This bill includes other technical and conforming changes.

COMMENTS

1. Need for This Bill

According to the author:

Domestic violence death review teams are a collaborative effort between legal, health service, advocacy, and judicial groups to provide a confidential forum to systematically review domestic violence-related deaths. The goal of these volunteer-based teams is to develop strategies, policies, and procedures to improve community responses to domestic violence and to reduce and prevent future incidents of domestic violence related homicides, homicide/suicides, and injuries.

While California currently limits domestic violence death review teams to only explore fatalities, other states are increasingly moving to expand their roles. Since 2004, 15 states have amended or passed statutes authorizing near-death case examinations.

Allowing death review teams to investigate near-fatalities will help create better policies to protect domestic violence survivors. Survivors offer information and insights from their experiences that are unlikely to appear in the fatal event medical records or legal reports. Death review teams can use the information to work toward change that will improve the lives of families experiencing domestic violence.

Additionally, conducting near-death reviews in a trauma-informed way provides a space for the survivor's emotional healing. Death review teams provide a unique setting where survivors are met by professionals ready to listen and who want to learn from the survivor's experiences, not simply collect information aimed

toward the violent perpetrator's prosecution. Near-death review may also permit the team to identify and offer services to address the unmet needs of survivors and their families.

To support the role domestic violence death review teams play in protecting survivors of domestic violence, SB 863 will authorize teams to investigate near-death incidents. By bringing California in alignment with numerous other states, the bill will both promote the crucial work of review teams and support their ongoing efforts to amplify the powerful voices of survivors.

2. Domestic Violence Review Teams

County-level domestic violence death review teams were first authorized in 1995 by SB 1320 (Solis, Chapter 710, Statutes of 1995). The language, codified in Penal Code section 11163.3, was modeled after statutory language authorizing counties to establish interagency child death review teams. A domestic violence death review team is a multi-disciplinary team that reviews domestic violence-related deaths. The purpose of domestic violence death review teams is to develop strategies, policies, and procedures to improve the system's response to domestic violence and to reduce or prevent future domestic violence incidents.

The annual report published by the Sacramento County Domestic Violence Coordinating Council provides insight into how one county conducts the selection and review of cases:

The process by which the DVDRT (Domestic Violence Death Review Team) selects cases for review has evolved over time. Currently, any member who has knowledge of a domestic violence related death in Sacramento County (that is not currently being prosecuted by the DA) may ask for the case to be reviewed. Most cases are referred by either law enforcement or the DA. The DVDRT chair selects which of the referred cases will be reviewed. If a case is being prosecuted by the DA's Office, the team waits until the case is sentenced, and the prosecution is completed.

Once a case is selected, the DA's Office provides identifying information to the other members of the team regarding the victim, the perpetrator, and any biological or custodial children that either party had prior to the homicide. Each committee member is responsible for reviewing the records of their agency to identify relevant information regarding the case and/or parties involved. At the time of review, the DA or law enforcement agency describes details of the homicide and each member agency provides any additional information they may have about the case.

In some cases, the DVDRT may extend an invitation to participate in the review to the prosecutor, law enforcement detective or victim advocate assigned to the case. When necessary, a member of the group may be assigned to contact members of the victim's or perpetrator's family to develop a better understanding of the underlying relationship. In some instances, family members and witnesses have been asked to attend DVDRT meetings to give direct input to the team.

With the limitations of the selection process, the time constraint placed on the team to ascertain records and the inability of the DVDRT to gather information from every possible source, the database of cases reviewed cannot be considered exhaustive or statistically representative. Nonetheless, the data collected can reveal significant concerns or insufficiencies which are evaluated by various experts, representatives from local agencies and members of the team, who then make recommendations. (https://www.sacda.org/wp-content/uploads/2022/01/2019_2020_2021-DVDRT-Annual-Report.pdf)

3. What This Bill Does

This bill authorizes a domestic violence death review team to assist local agencies in identifying and reviewing domestic violence near-death cases. This bill defines near-death to mean “the victim suffered a substantial risk of serious bodily injury or death from domestic violence, or the circumstances of the domestic violence event indicate that the perpetrator more likely than not intended to kill or seriously injure the victim.”

Because near-death reviews involve a surviving victim, this bill includes language designed to protect the victim’s privacy. Specifically, this bill requires representatives of domestic violence victim service organizations to obtain an individual’s informed consent in accordance with all applicable state and federal confidentiality laws, before disclosing confidential information about that individual to another team member in near-death cases. This bill additionally provides that statements provided by a survivor in a near-death case review are protected from discovery in subsequent civil litigation. Finally, this bill specifies that near-death survivors cannot be compelled to participate in death review team investigations.

This bill additionally provides that near-death case reviews only take place after any prosecution has concluded.

4. Argument in Support

The California Partnership to End Domestic Violence writes:

California currently limits domestic violence death review teams to only explore fatalities, while other states are increasingly moving to expand their roles. Since 2004, 15 states have amended or passed statutes authorizing near-death case examinations. It is time for California to follow this pattern to ensure that domestic violence death review teams can provide crucial information about domestic abuse.

To support the role domestic violence death review teams play in protecting survivors of domestic violence, SB 863 would permit teams to examine near-deaths and equip those teams to leverage the powerful voices of survivors against fatal domestic violence.

5. Argument in Opposition

According to California Attorneys for Criminal Justice:

This bill will invent an entire new class of “near death cases” that are over-inclusive, ill-advised and incompatible with the fair administration of justice. As shown herein, the post-conviction threshold for “near-death” information gathering virtually guarantees dangerous inaccuracies.

...

Blurring the distinctions between survivors and decedents with the amorphous concept of “near-death” review and investigation does no service to informed prevention. CACJ feels that the existing post-mortem narrow technical / clinical sphere of focus best serves the object of informative reasoning.

SB 863 selectively gathers post-conviction survivor information; it concurrently ignores post-acquittal survivors and those who the authorities determine not to charge. In this fashion, and without a single representative from the defense bar being included in the “team”, SB 863 inexorably leads to institutionalized ignorance about a significant number of “near-deaths” (and deaths) related to Battered Women’s Syndrome or “BWS”.

...

The goal of lowering the incidence of domestic violence near deaths is not advanced by ignoring the significant number of persons who have engaged in lawful self-defense. SB 863 ignores as a matter of law the views of an entire class of victims.

...

Finally, for those actual survivors of domestic violence whose defense is unsuccessful at the trial level, SB 863 enables complainants to later admit false accusations and testimony in virtual secrecy without providing transparency to those who seek appellate review. SB 863 systemically excludes wrongful convictions and claims of factual innocence that are subsequently deemed meritorious. This exclusion mechanism serves as an unwelcome barrier to the emergence of helpful information on the existence of “near-death” domestic violence and its root causes.

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