SUMMARY: Provides domestic violence victims access to medical evidentiary exams, free of charge, by Local Sexual Assault Response Teams (SART) or other qualified medical evidentiary examiners. Specifically, this bill:

1) Includes the California Sexual Assault Forensic Examiner Association in the entities which the Office of Emergency Services (OES) must collaborate with, to establish uniform forms and medical protocol for the examination of victims of domestic violence.

2) Makes specified changes to the examination forms, including requiring the forms to include information regarding history of neglect, including current or past strangulation history.

3) States instead that documentation of suspected strangulation may be included on a supplemental strangulation form as part of the medical evidentiary exam.

4) States that when strangulation is suspected, additional diagnostic testing may be necessary to prevent adverse health outcomes or morbidity.

5) Permits victims receiving forensic medical exams for domestic violence to have a qualified social worker, victim advocate, or support person present during the examination.

6) Specifies that, instead of agencies designated by OES, Local Sexual Assault Response Teams (SART), Sexual Assault Forensic Examiner (SAFE) teams, or other qualified medical evidentiary examiners performing medical evidentiary exams for domestic violence shall develop and implement written policies and procedures for maintaining the confidentiality of domestic violence forensic reports subject to the confidentiality laws pertaining to the release of medical forensic examination records.

7) Makes the costs associated with the medical evidentiary examination of a domestic violence victim separate from diagnostic treatment and procedure costs associated with medical treatment. Costs for the medical evidentiary portion of the examination shall not be charged directly or indirectly to the victim of the assault.

8) Provides that each county shall designate their approved SART, SAFE teams, or other qualified medical evidentiary examiners to receive reimbursement through Cal OES for the performance of medical evidentiary examinations for victims of domestic violence.

9) States that the costs associated with these medical evidentiary exams shall be funded by the state, subject to appropriation by the Legislature, and that Cal OES shall negotiate with each
county a maximum reimbursement rate to be reviewed every five years.

10) Requires reimbursement to be made within 60 days.

11) Prohibits the rate of reimbursement from being reduced based on patient history or other reasons.

12) Allows victims of domestic violence to receive a medical evidentiary exam outside of the jurisdiction where the crime occurred and provides that the county’s approved SART, SAFE teams, or qualified medical evidentiary examiners shall be reimbursed for the performance of these exams.

EXISTING LAW:

1) Establishes a uniform medical examination protocol for the purpose of collecting evidence for victims of domestic violence and elder and dependent abuse. (Pen. Code, § 11161.2.)

2) Requires the Office of Emergency Services (OES), in cooperation with specified state, local and law enforcement agencies, to establish uniform forms and medical protocol for the examination of victims of domestic violence and elder or dependent abuse and specifies the information to be included on the form. (Pen. Code, § 11161.2, subd. (b)(1).)

3) Requires that the protocol for the examination and treatment of victims domestic violence and elder and dependent abuse include the following:
   a) Notification of injuries and a report of suspected domestic violence or elder or dependent abuse to law enforcement authorities;
   b) Obtaining consent for the examination, the treatment of injuries, collection of evidence, and for the photographing of injuries;
   c) Taking a patient history of domestic violence or elder or dependent abuse and other relevant medical history;
   d) Performance of the physical examination for evidence of domestic violence or elder or dependent abuse;
   e) Collection of physical evidence of domestic violence or elder or dependent abuse;
   f) Collection of other medical and forensic specimens;
   g) Procedures for the preservation and disposition of physical evidence; and,
   h) Complete documentation of medical forensic exam findings. (Pen. Code, § 11161.2, subdivision (b)(1).)

4) Provides that OES, in cooperation with the specified agencies, shall determine whether it is appropriate and forensically sound to develop separate or joint forms for documentation of medical forensic findings for victims of domestic violence and elder and dependent adult
abuse. (Pen. Code, § 11161.2, subdivision (b)(2).)

5) Specifies that the reports shall become part of the patient’s medical record pursuant to guidelines established by the agency or agencies designated by the OES advisory committee and subject to the confidentiality laws pertaining to the release of medical forensic records. (Pen. Code, § 11161.2, subdivision (b)(3).)

6) Requires the forms to be made accessible for use on the Internet. (Pen. Code, § 11161.2, subdivision (c).)

7) Makes sexual assault forensic medical examinations reimbursable, effective July 1, 2021. (Pen. Code, § 13823.95.)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author’s Statement: According to the author, “AB 2185 standardizes best practices and increases access of medical evidentiary examinations for victims of domestic violence assault. This bill would also ensure survivors of domestic violence are connected to local social services or child advocacy centers for additional support.”

2) Cost of Sexual Assault versus Domestic Violence Medical Evidentiary Exams: The Violence Against Women Act (VAWA) affords sexual assault victims the right to obtain a medical evidentiary examination after a sexual assault. The victim may not be charged for the exam. The costs are charged to the local law enforcement agency. Law enforcement can seek reimbursement for cases where the victim is undecided whether to report to the assault to law enforcement. The OES uses discretionary funds from various federal grants to reimburse the costs of the examination, and makes a determination as to the amount of reimbursement. Law enforcement can also seek reimbursement to offset the costs of conducting an examination when the victim has decided to report the assault to law enforcement. OES makes a determination on how much the reimbursement shall be under these circumstances and can reassess the reimbursement every 5 years. (Pen. Code, § 13823.95).

Currently, victims of domestic violence assault have unequal access to care as they are not provided the same right to medical evidentiary exams as sexual assault victims. This bill would give domestic violence victims access to medical evidentiary exams free of charge. The costs of the exam would be funded by the state, subject to an appropriation by the Legislature.

3) Statewide Standards for Sexual Assault versus Domestic Violence Medical Evidentiary Exams: There are statewide standards defining the specialized training and qualifications necessary to conduct sexual assault medical evidentiary exams. This includes being conducted by a “qualified health care professional.” The definition of “qualified health care professional” includes physicians, surgeons, nurses, nurse practitioners, and physician assistants. There is also specified training for “qualified health care professionals” to conduct these exams. (Pen. Code, §§ 13823.5, 13823.93.) There are no statewide standards defining the specialized training and qualifications necessary to conduct medical evidentiary
examinations for victims of domestic violence assault including strangulation and other physical injuries, as exist for sexual assault forensic medical examinations.

This bill would require that the medical evidentiary exams be conducted by SART, SAFE teams, or other qualified medical evidentiary examiners.

4) **Argument in Support**: According to the *San Diego County District Attorney*, the sponsor of this bill, “This long overdue proposal will provide victims of domestic violence (DV) equal access to the same right to medical evidentiary exams as sexual assault victims. By law, sexual assault victims currently have access to medical forensic exams and treatment at no cost (Penal Code Section 13823.95), but not domestic violence victims even though both are at risk for the same life-threatening injuries. AB 2185 simply codifies this gold standard of forensic medical documentation and brings equal access and parity to all victims of DV in California.

“Early detection, assessment, and treatment of strangulation related injuries are critical to reduce health consequences of domestic violence assaults, and in many cases, to save lives. A DV medical evidentiary exam is the best way to do this. Forensic medical evidentiary examiners conduct a comprehensive examination to document serious injury, provide basic healthcare screening, examine the patient for immediate need for transport to the emergency room, and connect patients to critical victim and supportive services.

“These examinations are medically necessary, especially in serious assault cases such as those involving strangulation, which are potentially lethal for victims. Strangulation injuries are often internal with no external visible injuries; making life-threatening injuries easy to miss without proper training for examiners, and immediate assessment, accurate diagnosis, and treatment. Research tells us a victim strangled even one time is 750% more likely to be killed later by her abuser compared to a domestic victim who has never been strangled. The percentage goes higher if there are multiple strangulation assaults or altered consciousness.

“In 2016, experts from San Diego County recognized that DV examinations were not being utilized throughout California. In 2017, as part of Cal OES XC grant, our county piloted a program where specially trained forensic nurses were dispatched to law enforcement scenes to better document domestic violence strangulation cases. The purpose of the pilot was to enhance the collective coordinated community response to victims of abuse related assault, to provide those victims with evidentiary exams, and to document strangulation and other injuries free of charge to victims. These examinations increased access to victims and provided awareness about the medical dangers of strangulation incidents. For example, one victim of a serious assault suffered a fractured larynx but didn’t realize it until a forensic nurse performing a DV medical evidentiary exam, screened her and referred her to the Emergency Room. This victim could have died had it not been for this intervention. Specially trained forensic nurses examine the patient/victim, take additional photographs, encourage the victim to seek medical care at an ER when necessary, and connect the patient/victim to local advocacy resources and supportive victim services.

“Over 1,000 victims and survivors of abuse in our county have now benefitted from these DV assault exams, at no cost to the victims. And related outcomes have been significant:
• Since the San Diego County pilot program went into effect, domestic violence homicides dropped by 15% between 2017 and 2020. (San Diego Domestic Violence Fatality Review Team)

“Utilization of forensic medical examinations saves lives. Unfortunately, many victims in other areas of California are not receiving the same level of care. SART/SANR teams in other counties have indicated that they would perform DV evidentiary exams if funding was available. Some have indicated that they only receive partial reimbursement, which makes it difficult to offer this service leading to unfair social justice medical access. This is especially true in rural districts where funding access is more limited, leaving victims seeking these exams to travel up to several hours to a receive access to quality forensic medical exams. DV medical evidentiary exams not only provide victims with vital forensic documentation, but victims and their children are connected to critical local resources and safety planning that they might not otherwise receive. Domestic violence remains a constant public health issue and equal access to this specific medical care is imperative.

“Domestic violence murders occur in women of all ages and among all races and ethnicities, but disparities by race are present. As a 2017 Centers for Disease Control and Prevention study found, young women, particularly women in racial/ethnic minority groups, have been disproportionately affected. Locally, we found from 24 years of tracking intimate partner homicides that while black individuals make up 5.5% of our population, they constitute 15% of the domestic violence homicide victims. By setting standards for quality, documentation, and funding for DV medical evidentiary examinations, the bar is raised for equal access across all DV survivors in the state and could potentially prevent a later more dangerous assault by connecting the victim to important trauma recovery resources and victim supportive services.

“Other states have realized the importance of this medical model. Colorado and Washington have already implemented DV evidentiary exam statutes that also provide a solid funding stream so that the victim need not pay, and so that these examinations can be utilized in a whole-patient approach to public health.

“This bill promotes access and enhances positive health outcomes for domestic violence survivors. We are grateful for your medical expertise in this area and your willingness to author this needed legislation. AB 2185 will give California a social justice medical model that provides equal forensic care access to domestic violence victims of all races and ethnicities.”

5) **Argument in Opposition:** According to the *California Hospital Association*, “The health care professionals who perform these exams must be highly trained and skilled. It is important that they take sufficient time to perform each step of the examination extremely carefully, and they deserve to be paid appropriately for their services. Therefore, the California Hospital Association (CHA) requests an amendment to Assembly Bill 2185 to clarify that government reimbursement for these services must be adequate to cover the costs of providing them.”
6) Related Legislation:

a) AB 547 (McCarty) provides that a county probation department shall, upon request, notify a victim of domestic violence or stalking, of the perpetrator’s current address when the perpetrator is placed on, or being released on probation. AB 547 is pending referral in the Senate Rules Committee.

b) AB 2040 (Maienschein) makes the violation of certain domestic violence-related protective orders, which involve forcible entry into, or unlawful presence within, the protected person’s “residential dwelling,” punishable by a minimum of 30 days in the county jail, except as specified. AB 2040 is being heard in this committee today.

c) AB 2138 (Muratsuchi) requires a person granted probation for a conviction of domestic violence to submit to alcohol and drug testing on a continuous basis. AB 2138 is being heard in this committee today.

d) AB 2790 (Wicks) removes the requirement that a health practitioner make a report to law enforcement when they suspect a patient has suffered physical injury caused by assaultive or abusive conduct, and requires a health care practitioner who suspects that a patient has suffered physical injury that is caused by domestic violence, as defined, to provide brief counseling and a referral to local and national domestic violence or sexual violence advocacy services. AB 2790 is pending hearing in this committee.

e) SB 935 (Min) provides that a party may request certain domestic violence-related protective orders be renewed, subject to termination, modification, or subsequent renewal, as specified. SB 935 is set to be heard in the Senate Judiciary Committee on March 29, 2022.

f) SB 1493 (Senate Public Safety Omnibus), makes technical or non-controversial changes to the Penal Code, including redesignating “battered women’s shelters” as “domestic violence shelter-based programs.” SB 1493 is pending in the Senate Public Safety Committee.

7) Prior Legislation:

a) AB 145 (Budget Committee), Statutes of 2021, Chapter 80, authorized reimbursements from OES for the costs of conducting medical evidentiary examinations of sexual assault survivors regardless of whether they have decided to report the assault to law enforcement.

b) AB 925 (Dahle), of the 2021-2022 Legislative Session, would have authorized a law enforcement agency to seek reimbursement from OES, to offset the costs of a medical evidentiary exam of a sexual assault victim who at the time of the examination has decided not to report to law enforcement, and reimburses the law enforcement agency at the same established rate for victims who have decided to report an assault at the time of the examination. AB 925 was not heard in the Senate Appropriations Committee.

c) AB 334 (Cooper), of the 2017-2018 Legislative Session, would have made a number of changes to existing law regarding sexual assault forensic medical examinations, including
the reimbursement rate for exams of survivors who do not aid or otherwise participate with law enforcement. AB 334 was not heard in the Senate Public Safety Committee at the request of the author.

d) SB 40 (Roth) Chapter 331, Statutes of 2017, required written notice to be furnished to victims at the scene of a domestic violence incident informing the victim that strangulation may cause internal injuries and encouraging the victim to seek medical attention.

e) SB 502 (Ortiz), Statutes of 2001, Chapter 579, established a uniform medical examination protocol for the purpose of collecting evidence for victims of domestic violence and elder abuse.

REGISTERED SUPPORT / OPPOSITION:

Support
San Diego County District Attorney's Office (Sponsor)
National Association of Social Workers, California Chapter
Peace Officers Research Association of California (PORAC)

Opposition
California Hospital Association
California Public Defenders Association

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