Bill No: AB 2185
Author: Akilah Weber (D)
Amended: 8/11/22 in Senate
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 4-0, 6/21/22
AYES: Bradford, Kamlager, Skinner, Wiener
NO VOTE RECORDED: Ochoa Bogh

SENATE HEALTH COMMITTEE: 10-0, 6/29/22
AYES: Pan, Melendez, Eggman, Grove, Hurtado, Leyva, Limón, Roth, Rubio, Wiener
NO VOTE RECORDED: Gonzalez

SENATE APPROPRIATIONS COMMITTEE: 7-0, 8/11/22
AYES: Portantino, Bates, Bradford, Jones, Laird, McGuire, Wieckowski

ASSEMBLY FLOOR: 76-0, 5/25/22 - See last page for vote

SUBJECT: Forensic examinations: domestic violence

SOURCE: San Diego County District Attorney’s Office

DIGEST: This bill 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.

ANALYSIS:

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 medical forensic forms, instructions, and examination protocol for the examination of victims of domestic violence and elder or dependent abuse. (Pen. Code, § 11161.2, subd. (b)(1).)

3) Requires the form to include a place for notation concerning each of 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, subd. (b)(1).)

4) Requires that OES, in cooperation with the specified agencies, 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, subd. (b)(2).)

5) Specifies that the reports 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, subd. (b)(3).)

6) Requires the forms to be made accessible for use on the Internet. (Pen. Code, § 11161.2, subd. (c).)
Prohibits costs incurred by a qualified health care professional, hospital, clinic, sexual assault forensic team, or other emergency medical facility for a medical evidentiary exam of a victim of sexual assault from being charged directly or indirectly to the victim. Makes sexual assault forensic medical examinations reimbursable, effective July 1, 2021. (Pen. Code, § 13823.95.)

This bill:

1) Includes the California Sexual Assault Forensic Examiner Association in the entities which 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 strangulation.

3) Provides that consent must be obtained for the written documentation of injuries and provides that a victim may withdraw consent for an examination for evidence of domestic violence or elder and dependent adult abuse and neglect.

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

5) Requires that the forms be made available in an electronic format.

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

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

8) Requires a hospital, clinic, or other emergency medical facility where medical evidentiary examinations are conducted develop and implement written policies and procedures for maintaining the confidentiality of medical evidentiary examination reports, including proper preservation and disposition of the reports if the examination program ceases operation, in order to prevent destruction of the medical evidentiary examination reports.
9) Requires, on or before July 1, 2023, a hospital, clinic, or other emergency medical facility at which medical evidentiary examinations are conducted to implement a system to maintain medical evidentiary examination reports in a manner that facilitates release of the reports as required or authorized by law.

10) Provides that a hospital, clinic, or other emergency medical facility is not required to review a patient’s medical records before January 1, 2023, in order to separate medical evidentiary examination reports from the rest of the patient’s medical records.

11) Requires the costs associated with the medical evidentiary examination of a domestic violence victim to be separate from diagnostic treatment and procedure costs associated with medical treatment. Prohibits the costs for the medical evidentiary portion of the examination from being charged directly or indirectly to the victim of the assault.

12) Requires each county’s board of supervisors to authorize a designnee to approve the SART, SAFE teams, or other qualified medical evidentiary examiners to receive reimbursement through OES for the performance of medical evidentiary examinations for victims of domestic violence and to notify OES of this designation. Requires the costs associated with these medical evidentiary exams to be funded by the state, subject to appropriation by the Legislature. Requires each county’s SART, SAFE, or otherwise qualified medical evidentiary examiners to submit invoices to OES. Provides that OES administers the program. Requires a flat reimbursement rate to be established. Requires OES to establish a 60-day reimbursement process within one year of the initial appropriation. Requires OES to assess and determine a fair and reasonable reimbursement rate to be reviewed every five years.

13) Prohibits reimbursement from being subject to reduced reimbursement rates based on patient history or other reasons. Provides that victims of domestic violence may receive a medical evidentiary exam outside of the jurisdiction where the crime occurred and that county’s approved SART, SAFE teams, or qualified medical evidentiary examiners shall be reimbursed for the performance of these exams.

**Background**

*Cost of Domestic Violence Medical Evidentiary Exams.* The Violence Against Women Act (VAWA) affords sexual assault victims the right to obtain a free
medical evidentiary examination after a sexual assault. Instead, 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. 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 determines the cost of the reimbursement under these circumstances and can reassess the reimbursement every 5 years. (Pen. Code, § 13823.95).

Currently, victims of domestic violence 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.

*Statewide Standards for 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” which includes physicians, surgeons, nurses, nurse practitioners, and physician assistants. Specified training is also required 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.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee:

Costs of approximately $790,000 annually to OES in additional staff (4.0 permanent positions) to create forms for and manage reimbursements to victims that receive domestic violence medical evidentiary exams (General Fund). Additional cost pressures on the General Fund to OES in the millions to tens of millions dollars annually because this bill requires
reimbursement in domestic violence cases that is not currently required (General Fund).

**SUPPORT:** (Verified 8/11/22)

San Diego County District Attorney’s Office (source)
Attorney General Rob Bonta
California District Attorneys Association
California Federation of Teachers
National Association of Social Workers, California Chapter
Peace Officers Research Association of California
Prosecutors Alliance of California

**OPPOSITION:** (Verified 8/11/22)

None received

**ASSEMBLY FLOOR:** 76-0, 5/25/22


NO VOTE RECORDED: Berman, O'Donnell


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