BILL NO: AB 2185
AUTHOR: Akilah Weber
VERSION: May 19, 2022
HEARING DATE: June 29, 2022
CONSULTANT: Vincent D. Marchand

SUBJECT: Forensic examinations: domestic violence

SUMMARY: Requires the costs associated with medical evidentiary examinations of victims of domestic violence to be funded by the state through the Office of Emergency Services; requires a hospital, clinic, or other emergency medical facility where medical evidentiary examinations are conducted to develop and implement a system to maintain medical evidentiary examination reports in a manner that facilitates release of the reports as required or authorized by law, that maintains the confidentiality of the reports, and that preserves and prevents the destruction of the reports; and, makes other changes to medical forensic examination protocols for victims of domestic violence.

Existing law:
1) Establishes the Office of Emergency Services (OES) within the office of the Governor, under the supervise of the Director of Emergency Services, and requires OES to be responsible for the state’s emergency and disaster response services for natural, technological, or manmade disasters and emergencies, including responsibility for activities necessary to prevent, respond to, recover from, and mitigate the effect of emergencies and disasters to people and property. [GOV §8585]

2) Establishes, within OES, a Family Violence Prevention Program to provide financial and technical assistance to local domestic and family violence centers in implementing family violence prevention programs. [PEN §13823.4]

3) Requires OES to establish an advisory committee to develop a course of training for district attorneys in the investigation and prosecution of sexual assault cases, child sexual exploitation cases, child sexual abuse cases, and sexual abuse cases involving victims with developmental disabilities. [PEN §13836]

4) Requires OES, with the assistance of the advisory committee established pursuant to 3) above, to establish a protocol for the examination and treatment of victims of sexual assault and attempted sexual assault, including child sexual abuse, and the collection and preservation of evidence, and to also develop informational guidelines containing general reference information on evidence collection and examination of, and psychological and medical treatment for, victims of sexual assault. Requires OES, in cooperation with the California Department of Public Health (CDPH) and the Department of Justice, to adopt a standard form or forms for the recording of medical and physical evidence data disclosed by a victim of sexual assault. [PEN §13823.5]

5) Establishes minimum standards for the examination and treatment of victims of sexual assault or attempted sexual assault, including child sexual abuse, and the collection and preservation of evidence, including requiring the form adopted pursuant to 4) above to be following in conducting a medical evidentiary examination, and requiring consent for a
physical examination, treatment, and collection of evidence to be obtained prior to the examination. Requires consent to be obtained in accordance with the usual policy of the hospital, clinic, sexual assault forensic examination team, or other emergency medical facility. [PEN §13823.11]

6) Prohibits costs incurred by a qualified health care professional, hospital, clinic, sexual assault forensic team, or other emergency medical facility for a medical evidentiary examination of a victim of sexual assault from being charged directly or indirectly to the victim of the assault. Requires the cost of a medical evidentiary examination for a victim of sexual assault to be treated as a local cost and charged to and reimbursed within 60 days by the local law enforcement agency in whose jurisdiction the alleged offense was committed. Requires OES to use discretionary funds from federal grants awarded to OES pursuant to the federal Violence Against Women Act, specifically the STOP (Services, Training, Officers, and Prosecutors) Violence Against Women Formula Grant Program, to offset the cost of the medical evidentiary examination. Permits the local law enforcement agency to seek reimbursement to offset the cost of conducting the examination, requires OES to determine the amount to be reimbursed to offset the cost, and requires reimbursements to be provided from funds made available upon appropriation for this purpose. [PEN §13823.95]

7) Requires OES, in cooperation with CDPH, the Department of Aging, the Department of Social Services, law enforcement agencies, the Department of Justice, the California Association of Crime Lab Directors, the California District Attorneys Association, the California State Sheriffs’ Association, the California Medical Association, the California Police Chiefs’ Association, domestic violence advocates, the California Medical Training Centers, and other appropriate experts, to do the following:

a) Establish medical forensic forms, instructions, and examination protocol for victims of domestic violence and elder and dependent abuse, using as a model the form and guidelines developed for victims of sexual assault pursuant to 4) above;

b) 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 and neglect; and,

c) Requires the forms to become part of the patient’s medical record pursuant to guidelines established by the agency or agencies designated by OES advisory committee and subject to the confidentiality laws pertaining to release of medical forensic examinations records. [PEN §11161.2]

This bill:
1) 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 costs for the medical evidentiary portion of the examination from being charged directly or indirectly to the victim of the assault.

2) Requires each county to designate their approved Sexual Assault Response Team (SART), Sexual Assault Forensic Examiner (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. Requires the costs associated with these medical evidentiary exams to be funded by the state, subject to appropriation by the Legislature, and administered by OES. Requires a flat reimbursement rate to be established
and reimbursement to be made within 60 days. Requires OES to assess and determine a fair and reasonable reimbursement rate to be reviewed every five years.

3) Requires a hospital, clinic, or other emergency medical facility where medical evidentiary examinations are conducted to 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.

4) Requires a hospital, clinic, or other emergency medical facility at which medical evidentiary examinations are conducted, on or before July 1, 2023, 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.

5) Specifies that the provisions in 1) and 2) above do not require a hospital, clinic, or emergency medical facility 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.

6) Prohibits reimbursement for medical evidentiary examinations from being subject to reduced reimbursement rates based on patient history or other reasons.

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

8) Revises a provision of existing law requiring OES to establish medical forensic forms, instructions, and examination protocols for victims of domestic violence and elder and dependent adult abuse and neglect, by doing the following:

   a) Adding the California Sexual Assault Forensic Examiner Association to the list of entities with whom OES is required to cooperate with in the establishment of the medical forensic forms, instructions and protocols;
   b) Clarifying that consent be obtained for a forensic medical examination and the documentation of injuries, and that consent may be withdrawn;
   c) Specifying that when taking a patient’s history of domestic violence, that any current or past strangulation history is included;
   d) Specifying procedures include the submission of evidence to a local crime laboratory when appropriate;
   e) Specifying that when strangulation is suspected, documentation may be included on a supplemental strangulation form as part of the medical evidentiary examination; and,
   f) Requiring forms to be made accessible for use in an electronic format.

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

10) Requires victims receiving forensic medical exams for domestic violence to have the right to a qualified social worker, victim advocate, or a support person of the victim’s choosing to be present during the examination, when available.
**FISCAL EFFECT:** According to the Assembly Appropriations Committee, costs (General Fund (GF)) of approximately $790,000 annually to OES in additional staff to create forms for and manage reimbursements to victims that receive domestic violence medical evidentiary exams. Additional cost pressures (GF) to OES in the millions to tens of millions dollars annually in that this bill requires reimbursement in domestic violence cases that is not currently required. AB 145 (Committee on Budget, Chapter 80, Statutes of 2021) authorized OES to provide full reimbursement to counties for the cost of sexual assault evidentiary exams. OES reimburses $911 for each sexual assault evidence exam and kit. Assuming the cost of a domestic violence evidentiary exam is similar, OES will likely require significant GF allocations to reimburse counties for medical evidentiary exams in domestic violence cases. If there are approximately 15,000 domestic violence medical evidentiary exams annually at a reimbursement rate of $900, GF pressure may be as high as $13.5 million.

**PRIOR VOTES:**
- Assembly Floor: 76 - 0
- Assembly Appropriations Committee: 12 - 0
- Assembly Public Safety Committee: 7 - 0

**COMMENTS:**
1) **Author’s statement.** According to the author, this bill expands access to medical evidentiary exams for survivors of domestic violence which will bring early detection, and intervention, which ultimately can save lives and lead to improved family safety and wellness. Domestic violence is a crime that often escalates without intervention. Research also demonstrates that even one incident of domestic violence is a predictor of future attempted murder—one of the most lethal forms of intimate partner violence. 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. Currently, no funding stream exists for domestic violence medical examinations, which have been deemed a best practice in the field. This is contrasted with sexual assault forensic medical examinations which recently were deemed reimbursable by statute. There are also 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.

2) **Background on San Diego County pilot program.** According to information provided by the San Diego County District Attorney’s Office, which is sponsoring this bill, in February of 2017, San Diego County implemented a granted funded pilot program for domestic violence evidentiary examinations using their existing SART/SAFE team to conduct mobile response to enforcement agencies, hospitals, family justice centers, and other designated locations where victims were in need of these specialized examinations. This team now averages about 230 examinations a year, including non-fatal strangulation cases with serious risks for future injury and potentially homicide. Over 1,000 initial exams and over 300 follow-up exams have been conducted to date. Since the implementation of the pilot program utilizing medical evidentiary examinations, San Diego County has seen a 15% decrease in all known domestic violence homicides and an 11% reduction in strangulation being the method used in domestic homicides generally.
3) **Hidden injuries from nonfatal strangulation (NFS).** In the provisions of this bill requiring OES to revise the forms, instructions, and examination protocols for medical examinations of domestic violence, there are specific requirements related to strangulation, including: requiring any current or past strangulation history be included when taking a patient’s history; permitting documentation of suspected strangulation on a supplemental strangulation form as part of the medical evidentiary examination; and, specifying that when strangulation is suspected, additional diagnostic testing may be necessary to prevent adverse health outcomes or morbidity. According to a review article in Emergency Medicine Australasia published in February 2019, NFS can be a cause of severe injury, however the prevalence and rates of injury are unknown, as few victims present to medical attention after strangulation. Up to 40% of fatal strangulations have no external signs, and the majority of surviving victims have few or minor injuries. The majority of the evidence regarding NFS is largely based on case reports, and the injuries that are reported make clear that strangulation is a potentially lethal form of injury that should not be ignored in those presenting having been strangled, or in those presenting with neurological symptoms, including strokes, seizures, and vascular abnormalities.

4) **Double referral.** This bill was heard in the Senate Public Safety Committee on June 21, 2022, and passed with a 4-0 vote.

5) **Prior legislation.** AB 145 (Committee on Budget, Chapter 80, Statutes of 2021) was the public safety budget trailer bill. Among other provisions, AB 145 authorized reimbursements from OES for the costs of conducting medical evidentiary examinations of sexual assault survivors.

6) **Support.** This bill is sponsored by the San Diego County District Attorney’s Office (sponsor), which states that this bill brings access to medical evidentiary exams for victims of domestic violence assault on equal footing with those of sexual assault victims. While medical evidentiary examinations for sexual assault are currently funded by the state, this is not the case for domestic violence evidentiary examinations. According to the sponsor, no victim should ever be charged directly or indirectly for the costs associated with these medical evidentiary exams, and all victims of domestic violence assault should be able to receive a medical evidentiary exam. The sponsor states that domestic violence assault cases need specialized intervention, and medical evidentiary examiners have a special skill set. The Attorney General states in support that according to the California Women’s Health Survey, approximately 40% of California women experience physical intimate partner violence in their lifetimes, and this bill would help address the lack of consistent and comprehensive medical exams that have hindered safety and justice for survivors of domestic violence. The National Association of Social Workers, California Chapter, states that increased access to medical evidentiary exams, thorough documentation of injuries, and well-protected confidentiality can improve patient outcomes and prosecution efforts. With the addition of a qualified support person, survivors of domestic violence can feel more comfortable during these important examinations.

7) **Suggested technical amendment.** A prior version of this bill contained a provision where the Sexual Assault Response Teams (SARTs) and Sexual Assault Forensic Examiner teams (SAFEs) were spelled out. However, that provision was amended out of the bill, though SART and SAFE teams are still referenced. For clarity, the bill should be amended to spell out these acronyms.
SUPPORT AND OPPOSITION:

Support:  
San Diego County District Attorney’s Office (sponsor)  
Attorney General Rob Bonta  
California College and University Police Chiefs Association  
California District Attorneys Association  
California Federation of Teachers  
Los Angeles County District Attorney’s Office  
National Association of Social Workers, California Chapter  
Peace Officers’ Research Association of California  
Prosecutors Alliance of California

Oppose:  None received

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