
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: AB 2185 **Hearing Date:** June 21, 2022
Author: Akilah Weber
Version: May 19, 2022
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Forensic examinations: domestic violence*

HISTORY

Source: San Diego County District Attorney's Office

Prior Legislation: AB 145 (Comm. on Budget), Ch. 80, Stats. 2021
AB 925 (Dahle), not heard in Senate Appropriations 2021
AB 334 (Cooper), not heard in Senate Public Safety 2017
SB 40 (Roth), Ch. 331, Stats. 2017
SB 502 (Ortiz), Ch. 570, Stats. 2001

Support: Attorney General Rob Bonta; California District Attorneys Association; National Association of Social Workers, California Chapter; Peace Officers Research Association of California; Prosecutors Alliance of California

Opposition: None known

Assembly Floor Vote: 76 - 0

PURPOSE

The purpose of this bill is to provide domestic violence victims access to medical evidentiary exams, free of charge, by Local Sexual Assault Response Teams (SART) or other qualified medical evidentiary examiners.

Existing law 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.)

Existing law 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).)

Existing law requires the form to include a place for notation concerning each of the following:

- Notification of injuries and a report of suspected domestic violence or elder or dependent abuse to law enforcement authorities;

- Obtaining consent for the examination, the treatment of injuries, collection of evidence, and for the photographing of injuries;
- Taking a patient history of domestic violence or elder or dependent abuse and other relevant medical history;
- Performance of the physical examination for evidence of domestic violence or elder or dependent abuse;
- Collection of physical evidence of domestic violence or elder or dependent abuse;
- Collection of other medical and forensic specimens;
- Procedures for the preservation and disposition of physical evidence; and,
- Complete documentation of medical forensic exam findings. (Pen. Code, § 11161.2, subd. (b)(1).)

Existing law 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).)

Existing law 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).)

Existing law requires the forms to be made accessible for use on the Internet. (Pen. Code, § 11161.2, subd. (c).)

Existing law 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 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.

This bill makes specified changes to the examination forms, including requiring the forms to include information regarding history of strangulation.

This bill 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.

This bill provides instead that documentation of suspected strangulation may be included on a supplemental strangulation form as part of the medical evidentiary exam.

This bill requires that the forms be made available in an electronic format.

This bill provides that when strangulation is suspected, additional diagnostic testing may be necessary to prevent adverse health outcomes or morbidity.

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

This bill 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.

This bill 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.

This bill 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.

This bill 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.

This bill requires each county to designate their approved 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. 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.

This bill 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

COMMENTS

1. Need For This Bill

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 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.

3. 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.

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