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AB-538 Sexual assault: medical evidentiary examinations and reporting. (2019-2020)

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Assembly Bill No. 538

CHAPTER 714

An act to amend Section 1281 of the Health and Safety Code, and to amend Sections 1203.1h, 13823.5, 13823.7, 13823.9, 13823.93, 13823.95, 13823.11, and 13823.13 of the Penal Code, relating to medical evidentiary examinations.

[Approved by Governor October 10, 2019. Filed with Secretary of State October 10, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 538, Berman. Sexual assault: medical evidentiary examinations and reporting.

Existing law requires the Office of Emergency Services to establish a protocol for the examination and treatment of victims of sexual assault and attempted sexual assault and the collection and preservation of evidence therefrom. Existing law requires the office to adopt a standard and a complete form or forms for the recording of medical and physical evidence data disclosed by a victim of sexual assault or attempted sexual assault.

This bill would authorize the form to be issued as a paper version or as an electronic version, or as both the paper and electronic version.

Existing law requires a qualified health care professional who conducts an examination for evidence of a sexual assault or an attempted sexual assault to use the standard form and to make those observations and perform those tests required to record the data required by the form. Existing law defines qualified health care professional for this purpose to include a physician and surgeon and a currently licensed nurse who is working in consultation with a physician and surgeon who conducts examinations or provides treatment in a general acute care hospital or in a physician and surgeon's office.

This bill would include in the definition of "qualified health care professional" a currently licensed nurse practitioner or a physician assistant who is working in consultation with a physician and surgeon and who conducts examinations or provides treatment in a general acute care hospital or in a physician and surgeon's office.

Existing law requires a hospital-based training center to be established through a competitive bidding process, to train medical personnel on how to perform medical evidentiary examinations for victims of specified crimes, including, among other things, child abuse or neglect, domestic violence, and sexual assault.

This bill would require that center to be identified as the California Clinical Forensic Medical Training Center and would require the center to train qualified health care professionals, as defined above. The bill would require the training to additionally include specified training regarding victims of child sexual abuse, intimate partner violence, and sex trafficking. The bill would require the center to, among other things, develop and maintain updated standardized medical evidentiary examination forms and protocols for examinations of specified crimes, and to provide training and technical assistance for sexual assault forensic examination teams on the science of medical evidentiary examinations, emerging trends, and sound operational practices.

Existing law requires any victim of a sexual assault who seeks a medical evidentiary examination to be provided with one, as specified.

This bill would authorize data from a medical evidentiary examination, with the patient's identity removed, to be collected for health and forensic purposes in accordance with state and federal privacy laws.

Existing law prohibits costs incurred by a qualified health care professional, hospital, or other emergency medical facility for the medical evidentiary examination portion of the examination of the victim of a sexual assault, as described in a specified protocol, when the examination is performed as specified, from being charged directly or indirectly to the victim of the assault.

This bill would make that prohibition on charging a victim of sexual assault applicable to costs incurred by a clinic or sexual assault forensic examination team, and would include nurse practitioners and physician's assistants as qualified health care professionals.

Existing law requires the cost of a medical evidentiary examination performed by a qualified health care professional, hospital, or other emergency medical facility for a victim of a sexual assault to be treated as a local cost and charged to the local law enforcement agency in whose jurisdiction the alleged offense was committed. Existing law authorizes a local law enforcement agency to seek reimbursement from the Office of Emergency Services for the cost of conducting the medical evidentiary examination portion of a medical examination of a sexual assault victim who does not participate in the criminal justice system and limits the amount that may be charged and reimbursed for that portion of the exam to \$300.

This bill, instead, would authorize a local law enforcement agency to seek reimbursement for the cost of conducting the medical evidentiary examination of a sexual assault victim who is undecided at the time of an examination whether to report to law enforcement. The bill would repeal the provision limiting the amount that may be charged and reimbursed to \$300, and would instead require the Office of Emergency Services to determine the amount that may be reimbursed to offset the cost of a medical evidentiary exam once every 5 years, not to exceed 50% of the most recently determined reimbursement amount. The bill would authorize the Office of Emergency Services to redetermine the amount that may be reimbursed to offset the cost of a medical evidentiary exam, at any time, if the federal government reduces the amount of specified federal grants awarded to the office.

Existing law authorizes a minor to consent to hospital, medical, and surgical care related to a sexual assault without the consent of a parent or guardian.

This bill would also authorize a minor to consent to, or withhold consent for, a medical evidentiary examination without the consent of a parent or guardian.

Existing law requires the collection of physical evidence to conform to specified procedures, including, but not limited to, requiring that a baseline gonorrhea culture and syphilis serology be taken, if indicated by the history of contact, that specimens for a pregnancy test be taken, if indicated by the history of contact, and the taking of both swabs and slides, as specified.

This bill, instead, would authorize sexually transmitted infection testing and presumptive treatment to be provided, if indicated by the history of the contact. The bill would require that specimens for a pregnancy test be taken if indicated by the history of contact and age of the victim. The bill would require baseline testing for sexually transmitted infections to be done for a child, a person with a disability, or a person who is residing in a long-term care facility, if forensically indicated. The bill would also require, for victims of sexual assault with an assault history of strangulation, best practices to be followed for a complete physical examination and diagnostic testing to prevent adverse outcomes or morbidity and documentation on a supplemental medical evidentiary examination form. The bill would also delete the requirement to take slides as part of the procedure to collect physical evidence and would make a conforming change. The bill would further require, on or before January 1, 2021, 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 their release only as required or authorized by law.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1281 of the Health and Safety Code is amended to read:

1281. All public and private general acute care hospitals either shall comply with the standards 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 therefrom, specified in Section 13823.11 of the Penal Code, and the protocol and guidelines therefor established pursuant to Section 13823.5 of the Penal Code, or they shall adopt a protocol for the immediate referral of these victims to a local hospital that so complies, and shall notify local law enforcement agencies, the district attorney, and local victim assistance agencies of the adoption of the referral protocol.

SEC. 2. Section 1203.1h of the Penal Code is amended to read:

1203.1h. (a) In addition to any other costs which a court is authorized to require a defendant to pay, upon conviction of any offense involving child abuse or neglect, the court may require that the defendant pay to a law enforcement agency incurring the cost, the cost of any medical examinations conducted on the victim in order to determine the nature or extent of the abuse or neglect. If the court determines that the defendant has the ability to pay all or part of the medical examination costs, the court may set the amount to be reimbursed and order the defendant to pay that sum to the law enforcement agency in the manner in which the court believes reasonable and compatible with the defendant's financial ability. In making a determination of whether a defendant has the ability to pay, the court shall take into account the amount of any fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution.

(b) In addition to any other costs that a court is authorized to require a defendant to pay, upon conviction of any offense involving sexual assault or attempted sexual assault, including child sexual abuse, the court may require that the defendant pay, to the law enforcement agency, county, or local governmental agency incurring the cost, the cost of any medical examinations conducted on the victim for the collection and preservation of evidence. If the court determines that the defendant has the ability to pay all or part of the cost of the medical examination, the court may set the amount to be reimbursed and order the defendant to pay that sum to the law enforcement agency, county, or local governmental agency, in the manner in which the court believes reasonable and compatible with the defendant's financial ability. In making the determination of whether a defendant has the ability to pay, the court shall take into account the amount of any fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution. In no event shall a court penalize an indigent defendant by imposing an additional period of imprisonment in lieu of payment.

SEC. 3. Section 13823.5 of the Penal Code is amended to read:

13823.5. (a) The Office of Emergency Services, with the assistance of the advisory committee established pursuant to Section 13836, shall 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 therefrom. The protocol shall contain recommended methods for meeting the standards specified in Section 13823.11.

(b) (1) In addition to the protocol, the Office of Emergency Services shall develop informational guidelines, containing general reference information on evidence collection and examination of, and psychological and medical treatment for, victims of sexual assault and attempted sexual assault, including child sexual abuse.

(2) In developing the protocol and the informational guidelines, the Office of Emergency Services and the advisory committee shall seek the assistance and guidance of organizations assisting victims of sexual assault; qualified health care professionals, sexual assault forensic examiners, criminalists, and administrators who are familiar with emergency room procedures; victims of sexual assault; and law enforcement officials.

(c) (1) The Office of Emergency Services, in cooperation with the State Department of Public Health and the Department of Justice, shall adopt a standard and a complete form or forms for the recording of medical and physical evidence data disclosed by a victim of sexual assault or attempted sexual assault, including child sexual abuse. The form may be issued as a paper version, as an electronic version, or as both the paper and electronic versions. Electronic forms may include links to the California Victim Compensation Board to help patients apply for victim compensation.

(2) Each qualified health care professional who conducts an examination for evidence of a sexual assault or an attempted sexual assault, including child sexual abuse, shall use the standard form or forms adopted pursuant to this section, and shall make those observations and perform those tests as may be required for recording of the data required by the form. The forms shall be subject to the same principles of confidentiality applicable to other medical records.

(3) The Office of Emergency Services shall make the standard form or forms available to every public or private general acute care hospital, as requested.

(4) The standard form shall be used to satisfy the reporting requirements specified in Sections 11160 and 11161 in cases of sexual assault, and may be used in lieu of the form specified in Section 11168 for reports of child abuse.

(d) The Office of Emergency Services shall distribute copies of the protocol and the informational guidelines to every general acute care hospital, law enforcement agency, and prosecutor's office in the state.

(e) For the purposes of this chapter, the following definitions apply:

(1) "Qualified health care professional" means any of the following:

(A) A physician and surgeon currently licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

(B) A nurse or nurse practitioner currently licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code and working in consultation with a physician and surgeon who conducts examinations or provides treatment as described in Section 13823.9 in a general acute care hospital or in a physician and surgeon's office.

(C) A physician assistant currently licensed pursuant to Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code and working in consultation with a physician and surgeon who conducts examinations or provides treatment as described in Section 13823.9 in a general acute care hospital or in a physician and surgeon's office.

(2) "Sexual assault forensic examiner" or "SAFE" means a qualified health care professional who has been trained on the standardized sexual assault forensic medical curriculum specified in this section and Sections 13823.6 to 13823.11, inclusive.

SEC. 4. Section 13823.7 of the Penal Code is amended to read:

13823.7. The protocol adopted pursuant to Section 13823.5 for the medical treatment of victims of sexual assault, which includes the examination and treatment of victims of sexual assault or attempted sexual assault, including child sexual abuse, and the collection and preservation of evidence therefrom shall include provisions for all of the following:

(a) Notification of injuries and a report of suspected child sexual abuse to law enforcement authorities.

(b) Obtaining consent for the examination, for the treatment of injuries, for the collection of evidence, and for the photographing of injuries.

(c) Taking a patient history of sexual assault and other relevant medical history.

(d) Performance of the physical examination for evidence of sexual assault.

(e) Collection of physical evidence of assault.

(f) Collection of other medical specimens.

(g) Procedures for the preservation and disposition of physical evidence.

SEC. 5. Section 13823.9 of the Penal Code is amended to read:

13823.9. (a) Every public or private general acute care hospital, clinic, or other emergency medical facility that examines a victim of sexual assault or attempted sexual assault, including child sexual abuse, shall comply with the standards specified in Section 13823.11 and the protocol and guidelines adopted pursuant to Section 13823.5.

(b) Each county with a population of more than 100,000 shall arrange that professional personnel trained in the examination of victims of sexual assault, including child sexual abuse, shall be present or on call either in the county hospital which provides emergency medical services or in any general acute care hospital which has contracted with the county to provide emergency medical services. In counties with a population of 1,000,000 or more, the presence of these professional personnel shall be arranged in at least one general acute care hospital for each 1,000,000 persons in the county.

(c) Each county shall designate at least one general acute care hospital to perform examinations on victims of sexual assault, including child sexual abuse.

(d) (1) The protocol published by the Office of Emergency Services shall be used as a guide for the procedures to be used by every public or private general acute care hospital in the state 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 therefrom.

(2) The informational guide developed by the Office of Emergency Services shall be consulted where indicated in the protocol, as well as to gain knowledge about all aspects of examination and treatment of victims of sexual assault and child sexual abuse.

SEC. 6. Section 13823.93 of the Penal Code is amended to read:

13823.93. (a) For purposes of this section, to "perform a medical evidentiary examination" means to evaluate, collect, preserve, and document evidence, interpret findings, and document examination results as described in Sections 13823.5 to 13823.11, inclusive.

(b) (1) To ensure the delivery of standardized curriculum, essential for consistent examination procedures throughout the state, one hospital-based training center shall be identified as the California Clinical Forensic Medical Training Center and established through a competitive bidding process, to train qualified health care professionals on how to perform medical evidentiary examinations for victims of child abuse or neglect, child sexual abuse, intimate partner violence, sexual assault, sex trafficking, domestic violence, elder or dependent adult abuse, and abuse or assault perpetrated against persons with disabilities. The center also shall provide training for investigative and court personnel involved in dependency and criminal proceedings, on how to interpret the findings of medical evidentiary examinations.

(2) The training provided by the training center shall be made available to qualified health care professionals, law enforcement, and the courts throughout the state.

(c) The training center shall meet all of the following criteria:

(1) Recognized expertise and experience in providing medical evidentiary examinations for victims of child abuse or neglect, child sexual abuse, intimate partner violence, sexual assault, sex trafficking, domestic violence, elder or dependent adult abuse, and abuse or assault perpetrated against persons with disabilities.

(2) Recognized expertise and experience implementing the protocol established pursuant to Section 13823.5.

(3) History of providing training, including, but not limited to, the clinical supervision of trainees and the evaluation of clinical competency.

(4) Recognized expertise and experience in the use of advanced medical technology and training in the evaluation of victims of child abuse or neglect, child sexual abuse, intimate partner violence, sexual assault, sex trafficking, domestic violence, elder or dependent adult abuse, and abuse or assault perpetrated against persons with disabilities.

(5) Significant history in working with professionals in the field of criminalistics.

(6) Established relationships with local crime laboratories, clinical laboratories, law enforcement agencies, district attorneys' offices, child protective services, victim advocacy programs, and federal investigative agencies.

(7) The capacity for developing a telecommunication network between primary, secondary, and tertiary medical providers.

(8) History of leadership in working collaboratively with forensic medical experts, criminal justice experts, investigative social worker experts, state criminal justice, social services, health and mental health agencies, and statewide professional associations representing the various disciplines, especially those specified in paragraph (8) of subdivision (d).

(9) History of leadership of and capability for developing and providing training and technical assistance for sexual assault forensic examination teams, and recognition of the nexus between the sexual assault forensic examination teams and completion of the mandated medical evidentiary examination forms.

(10) History of working collaboratively with state and local victim advocacy organizations, especially those addressing sexual assault and domestic violence.

(11) History and experience in the development and delivery of standardized curriculum for forensic medical experts, criminal justice professionals, and investigative social workers.

(12) History of research, particularly involving databases, in the area of child abuse and neglect, child sexual abuse, intimate partner violence, sexual assault, sex trafficking, elder or dependent adult abuse, abuse or assault perpetrated against persons with disabilities, or domestic violence.

(d) The training center shall do all of the following:

(1) Develop and implement a standardized training program for qualified health care professionals that has been reviewed and approved by a multidisciplinary peer review committee.

(2) Develop and maintain updated standardized medical evidentiary examination forms, both paper and electronic, develop and maintain protocols for examination of child abuse and neglect, child sexual abuse, intimate partner violence, sexual assault, sex trafficking, domestic violence, elder or dependent adult abuse, or abuse or assault perpetrated against persons with disabilities, including supplemental forms and protocols for medical evaluation of strangulation injuries for all types of interpersonal violence.

(3) Advance the field with scientific evidence-based curriculum through standardized form development and data analysis for compliance, quality assurance, and curriculum development.

(4) Develop a telecommunication system network between the training center and other areas of the state, including rural and midsized counties. This service shall provide case consultation to qualified health care professionals, law enforcement, and the courts and provide continuing medical education.

(5) Provide ongoing basic, advanced, and specialized training programs for qualified health care professionals on child abuse and neglect, child sexual abuse, intimate partner violence, sexual assault, sex trafficking, domestic violence, elder or dependent adult abuse, and abuse or assault perpetrated against persons with disabilities, including training on best practices for all abused patients, including patients who suffer from strangulation injuries.

(6) Develop guidelines for the reporting and management of child abuse and neglect, child sexual abuse, intimate partner violence, domestic violence, sexual assault, sex trafficking, elder or dependent adult abuse, and abuse or assault perpetrated against persons with disabilities.

(7) Provide training and technical assistance for sexual assault forensic examination teams on the science of medical evidentiary examinations, emerging trends, and sound operational practices, and conduct annual training needs assessments for sexual assault forensic examination teams.

(8) Develop recommended guidelines for evaluating the results of training for qualified health care professionals performing examinations.

(9) Provide standardized training for law enforcement officers, district attorneys, public defenders, investigative social workers, and judges on medical evidentiary examination procedures and the interpretation of findings. This training shall be developed and implemented in collaboration with the Peace Officer Standards and Training Program, the California District Attorneys Association, the California Peace Officers Association, the California Police Chiefs Association, the California State Sheriffs' Association, the California Association of Crime Laboratory Directors, the California Sexual Assault Investigators Association, the California Alliance Against Domestic Violence, the Statewide California Coalition for Battered Women, the Family Violence Prevention Fund, child victim advocacy organizations, the California Welfare Directors Association, the California Coalition Against Sexual Assault, the Department of Justice, the agency, the Child Welfare Training Program, and the University of California extension programs.

(10) Promote an interdisciplinary approach in the assessment and management of child abuse and neglect, child sexual abuse, intimate partner violence, sexual assault, sex trafficking, domestic violence, elder or dependent adult abuse, and abuse or assault against persons with disabilities.

(11) Provide training in the dynamics of victimization, including, but not limited to, rape trauma syndrome, intimate partner battering and its effects, the effects of child abuse and neglect, the effects of child sexual abuse, and the various aspects of elder abuse. This training shall be provided by individuals who are recognized as experts within their respective disciplines.

(12) Provide training on the use of the standardized sexual assault forensic examination kit.

(13) Provide continuing education through publications, including, but not limited to, training videos, webinars, and telecommunications.

(e) Nothing in this section shall be construed to change the scope of practice for any health care provider, as defined in other provisions of law.

SEC. 7. Section 13823.95 of the Penal Code is amended to read:

13823.95. (a) No costs incurred by a qualified health care professional, hospital, clinic, sexual assault forensic examination team, or other emergency medical facility for a medical evidentiary examination of a victim of a sexual assault, as described in the protocol developed pursuant to Section 13823.5, when the examination is performed pursuant to Sections 13823.5 and 13823.7, shall be charged directly or indirectly to the victim of the assault.

(b) (1) Any victim of a sexual assault who seeks a medical evidentiary examination, as that term is used in Section 13823.93, shall be provided with a standardized medical evidentiary examination, using the medical evidentiary examination report forms and protocols for victims of sexual assault developed pursuant to Section 13823.5. A victim of a sexual assault shall not be required to participate or to agree to participate in the criminal justice system, either prior to the examination or at any other time. Pursuant to the requirements of the federal Violence Against Women and Department of Justice Reauthorization Act of 2005, and the federal Violence Against Women Reauthorization Act of 2013 through the federal Office of Violence Against Women, standardized medical evidentiary examinations consistent with Sections 13823.5 and 13823.7 shall be provided to sexual assault victims who are undecided at the time of an examination whether to report to law enforcement within the recommended timeframes for collection of evidence. Mandated reporting laws, pursuant to Section 11160, shall apply.

(2) Data from the medical evidentiary examination in paragraph (1), with the patient's identity removed, may be collected for health and forensic purposes in accordance with state and federal privacy laws.

(c) The cost of a medical evidentiary examination performed by a qualified health care professional, hospital, or other emergency medical facility for a victim of a sexual assault shall 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.

(1) All medical evidentiary examinations are to be reimbursed at the locally negotiated rate and shall not be subject to reduced reimbursement rates based on patient history or other reasons.

(2) The local law enforcement agency may seek reimbursement, as provided in subdivision (d), to offset the cost of conducting the medical evidentiary examination of a sexual assault victim who is undecided at the time of an examination whether to report to law enforcement.

(d) (1) The Office of Emergency Services shall use the discretionary funds from federal grants awarded to the agency pursuant to the federal Violence Against Women and Department of Justice Reauthorization Act of 2005 and the federal Violence Against Women Reauthorization Act of 2013 through the federal Office of Violence Against Women, specifically, the STOP (Services, Training, Officers, and Prosecutors) Violence Against Women Formula Grant Program, to offset the cost of the medical evidentiary examination.

(2) The Office of Emergency Services shall determine the amount that may be reimbursed to offset the cost of a medical evidentiary exam once every five years. Any increase to the amount that may be reimbursed to offset the cost of a medical evidentiary exam shall not exceed 50 percent of the reimbursement amount most recently determined by the Office of Emergency Services.

(3) Notwithstanding paragraph (2), the Office of Emergency Services may redetermine the amount that may be reimbursed to offset the cost of a medical evidentiary exam, at any time, if the federal government reduces the amount of the grants described in paragraph (1).

SEC. 8. Section 13823.11 of the Penal Code is amended to read:

13823.11. The 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 therefrom include all of the following:

(a) Law enforcement authorities shall be notified.

(b) In conducting the medical evidentiary examination, the outline indicated in the form adopted pursuant to subdivision (c) of Section 13823.5 shall be followed.

(c) Consent for a physical examination, treatment, and collection of evidence shall be obtained.

(1) Consent to an examination for evidence of sexual assault shall be obtained prior to the examination of a victim of sexual assault and shall include separate written documentation of consent to each of the following:

(A) Examination for the presence of injuries sustained as a result of the assault.

(B) Examination for evidence of sexual assault and collection of physical evidence.

(C) Photographs of injuries.

(2) Consent to treatment shall be obtained in accordance with the usual policy of the hospital, clinic, sexual assault forensic examination team, or other emergency medical facility.

(3) A victim of sexual assault shall be informed that the victim may refuse to consent to an examination for evidence of sexual assault, including the collection of physical evidence, but that a refusal is not a ground for denial of treatment of injuries and for possible pregnancy and sexually transmitted diseases, if the person wishes to obtain treatment and consents thereto.

(4) Pursuant to Chapter 3 (commencing with Section 6920) of Part 4 of Division 11 of the Family Code, a minor may consent to hospital, medical, and surgical care related to a sexual assault without the consent of a parent or guardian, and a minor may consent to, or withhold consent for, a medical evidentiary examination without the consent of a parent or guardian.

(5) In cases of known or suspected child abuse, the consent of the parents or legal guardian is not required. In the case of suspected child abuse and nonconsenting parents, the consent of the local agency providing child protective services or the local law enforcement agency shall be obtained. Local procedures regarding obtaining consent for the examination and treatment of, and the collection of evidence from, children from child protective authorities shall be followed.

(d) A history of sexual assault shall be taken. The history obtained in conjunction with the examination for evidence of sexual assault shall follow the outline of the form established pursuant to subdivision (c) of Section 13823.5 and shall include all of the following:

(1) A history of the circumstances of the assault.

(2) For a child, any previous history of child sexual abuse and an explanation of injuries, if different from that given by parent or person accompanying the child.

(3) Physical injuries reported.

(4) Sexual acts reported, whether or not ejaculation is suspected, and whether or not a condom or lubricant was used.

(5) Record of relevant medical history.

(e) (1) If indicated by the history of contact, a female victim of sexual assault shall be provided with the option of postcoital contraception by a physician or other health care provider.

(2) Postcoital contraception shall be dispensed by a physician or other health care provider upon the request of the victim at no cost to the victim.

(f) (1) Each adult and minor victim of sexual assault who consents to a medical evidentiary examination shall have a physical examination that includes, but is not limited to, all of the following:

(A) Inspection of the clothing, body, and external genitalia for injuries and foreign materials.

(B) Examination of the mouth, vagina, cervix, penis, anus, and rectum, as indicated.

(C) Documentation of injuries and evidence collected.

(2) Children shall not have internal vaginal or anal examinations unless absolutely necessary. This paragraph does not preclude careful collection of evidence using a swab.

(g) The collection of physical evidence shall conform to the following procedures:

(1) Each victim of sexual assault who consents to an examination for collection of evidence shall have the following items of evidence collected, except if the victim specifically objects:

(A) Clothing worn during the assault.

(B) Foreign materials revealed by an examination of the clothing, body, external genitalia, and pubic hair combings.

(C) Swabs from the mouth, vagina, rectum, and penis, as indicated, to determine the presence or absence of semen.

(D) If indicated by the history of contact, the victim's urine and blood sample, for toxicology purposes, to determine if drugs or alcohol were used in connection with the assault. Toxicology results obtained pursuant to this paragraph shall not be admissible in any criminal or civil action or proceeding against a victim who consents to the collection of physical evidence pursuant to this paragraph. Except for purposes of prosecuting or defending the crime or crimes necessitating the examination specified by this section, any toxicology results obtained pursuant to this paragraph shall be kept confidential, may not be further disclosed, and shall not be required to be disclosed by the victim for any purpose not specified in this paragraph. The victim shall specifically be informed of the immunity and confidentiality safeguards provided by this subparagraph.

(2) Each victim of sexual assault who consents to an examination for the collection of evidence shall have reference specimens taken, except if the victim specifically objects thereto. A reference specimen is a standard from which to obtain baseline information and may be retained for DNA comparison and analysis. Reference specimens may also be collected at a later time if they are needed. These specimens shall be taken in accordance with the standards of the local criminalistics laboratory.

(3) Sexually transmitted infection testing and presumptive treatment based on current guidelines of the federal Centers for Disease Control and Prevention may be provided, if indicated by the history of contact. Specimens for a pregnancy test shall be taken, if indicated by the history of contact and the age of the victim. Baseline testing for sexually transmitted infections shall be done for a child, a person with a disability, or a person who is residing in a long-term care facility, if forensically indicated.

(4) (A) If indicated by the history of contact, a female victim of sexual assault shall be provided with the option of postcoital contraception by a physician or other health care provider.

(B) Postcoital contraception shall be dispensed by a physician or other health care provider upon the request of the victim at no cost to the victim.

(5) For a victim of sexual assault with an assault history of strangulation, best practices shall be followed for a complete physical examination and diagnostic testing to prevent adverse outcomes or morbidity and documentation on a supplemental medical evidentiary examination form.

(h) Preservation and disposition of physical evidence shall conform to the following procedures:

(1) All swabs shall be air-dried before packaging.

(2) All items of evidence including laboratory specimens shall be clearly labeled as to the identity of the source and the identity of the person collecting them.

(3) The evidence shall have a form attached which documents its chain of custody and shall be properly sealed.

(4) The evidence shall be turned over to the proper law enforcement agency.

(5) A hospital, clinic, or other emergency medical facility where medical evidentiary examinations are conducted shall 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.

(i) On or before January 1, 2021, a hospital, clinic, or other emergency medical facility at which medical evidentiary examinations are conducted shall implement a system to maintain medical evidentiary examination reports in a manner that facilitates their release only as required or authorized by law. This subdivision does not require a hospital, clinic, or other emergency medical facility to review a patient's medical records prior to January 1, 2021, in order to separate medical evidentiary examination reports from the rest of the patient's medical records.

SEC. 9. Section 13823.13 of the Penal Code is amended to read:

13823.13. (a) The Office of Emergency Services shall develop a course of training for qualified health care professionals relating to the examination and treatment of victims of sexual assault. In developing the curriculum for the course, the Office of Emergency Services shall consult with health care professionals and appropriate law enforcement agencies. The Office of Emergency Services shall also obtain recommendations from the same health care professionals and appropriate law enforcement agencies on the best means to disseminate the course of training on a statewide basis. The Office of Emergency Services is encouraged to designate a course of training for qualified health care professionals, as described in this section, and shall partner with other allied professionals training courses, such as sexual assault investigator training administered by the Peace Officer Standards and Training (POST), sexual assault prosecutor training as administered by the California District Attorneys Association (CDA), or sexual assault advocate training as administered by the California Coalition Against Sexual Assault (CalCASA).

(b) The training course developed pursuant to subdivision (a) shall be designed to train qualified health care professionals to do all of the following:

(1) Perform a health assessment of victims of sexual assault in accordance with any applicable minimum standards set forth in Section 13823.11.

(2) Collect and document physical and laboratory evidence in accordance with any applicable minimum standards set forth in Section 13823.11.

(3) Provide information and referrals to victims of sexual assault to enhance the continuity of care of victims.

(4) Present testimony in court.

(c) As used in this section, "qualified health care professional" has the same meaning as defined in Section 13823.5.

(d) As used in this section, "appropriate law enforcement agencies" may include, but shall not be limited to, the Attorney General of the State of California, any district attorney, and any agency of the State of California expressly authorized by statute to investigate or prosecute law violators.