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AB-2185 Forensic examinations: domestic violence. (2021-2022)

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Assembly Bill No. 2185

CHAPTER 557

An act to amend Section 11161.2 of the Penal Code, relating to criminal investigation.

[Approved by Governor September 27, 2022. Filed with Secretary of State September 27, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2185, Akilah Weber. Forensic examinations: domestic violence.

Existing law requires the Office of Emergency Services to establish medical forensic forms, instructions, and examination protocols for victims of domestic violence and elder and dependent adult abuse and neglect based on the guidelines for those forms as they relate to sexual assault. Existing law requires the forms to have a place for notation of specified information, including a patient history of domestic violence or elder or dependent adult abuse and neglect.

This bill would require that victims of domestic violence have access to medical evidentiary examinations, free of charge, by Local Sexual Assault Response Teams (SART), Sexual Assault Forensic Examiner (SAFE) teams, or other qualified medical evidentiary examiners. This bill would make specified changes to the forms, including requiring the forms to include information regarding history and evidence of strangulation.

Under existing law, the forms for domestic violence forensic examination are part of the patient's medical record, subject to the confidentiality of patient medical records.

This bill, instead, would require 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. The bill would also require a hospital, clinic, or other emergency medical facility, on or before July 1, 2023, to implement a system to facilitate the release of those reports, as specified.

This bill would require each county's board of supervisors to authorize a designee to approve the SART, SAFE teams, or other qualified medical evidentiary examiners to receive reimbursement through the Office of Emergency Services for the performance of medical evidentiary examinations for victims of domestic violence and to notify the office of this designation. The bill would prohibit the costs incurred for the medical evidentiary portion of the examination from being charged directly or indirectly to the victim. The bill would also permit victims to have a qualified social worker, victim advocate, or a support person of the victim's choosing be present during the examination, when available. The bill would require that the costs associated with these medical evidentiary exams be funded by the state, subject to appropriation by the Legislature, and would require the Office of Emergency Services to establish a 60-day reimbursement process within one year upon initial appropriation.

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

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

SECTION 1. Section 11161.2 of the Penal Code is amended to read:

11161.2. (a) The Legislature finds and declares that adequate protection of victims of domestic violence and elder and dependent adult abuse has been hampered by lack of consistent and comprehensive medical examinations. Medical evidentiary examinations, offered to victims free of charge, and enhanced examination procedures, documentation, and evidence collection will improve patient outcomes, investigation, and prosecution efforts.

(b) The Office of Emergency Services shall, in cooperation with the State Department of Public Health, the Department of Aging and the ombudsman program, the State 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 Clinical Forensic Medical Training Center, the California Sexual Assault Forensic Examiner Association, Adult Protective Services, and other appropriate experts:

(1) Establish medical forensic forms, instructions, and examination protocol for victims of domestic violence and elder and dependent adult abuse and neglect, including strangulation, using as a model the form and guidelines developed pursuant to Section 13823.5. The form should include, but not be limited to, a place for a notation concerning each of the following:

(A) Notification of injuries and a report of suspected domestic violence or elder or dependent adult abuse and neglect to law enforcement authorities, Adult Protective Services, or the State Long-Term Care Ombudsmen, in accordance with existing reporting procedures.

(B) Obtaining consent for the forensic medical examination, treatment of injuries, collection of evidence, and written and photographic documentation of injuries. A victim shall be informed that they may refuse to consent to and may withdraw consent for an examination for evidence of domestic violence and elder and dependent adult abuse and neglect, including the collection of physical evidence, but that refusal is not a ground for denial of treatment of injuries and disease, if the person wishes to obtain treatment and consents thereto.

(C) Taking a patient's history of domestic violence or elder or dependent adult abuse and neglect, including any current or past strangulation history, and other relevant medical history.

(D) Performance of the physical examination for evidence of domestic violence or elder or dependent adult abuse and neglect.

(E) Collection of physical evidence of domestic violence or elder or dependent adult abuse.

(F) Collection of other medical and forensic specimens, as indicated.

(G) Procedures for the collection and preservation of evidence, and submission to a local crime laboratory when appropriate.

(H) Complete documentation of medical forensic exam findings.

(I) When strangulation is suspected, documentation may be included on a supplemental strangulation form as part of the medical evidentiary exam.

(2) The forms shall be made accessible for use in an electronic format.

(3) The forms shall become part of the patient's medical record.

(c) When strangulation is suspected, additional diagnostic testing may be necessary to prevent adverse health outcomes or morbidity.

(d) Victims receiving forensic medical exams for domestic violence 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.

(e) (1) 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.

(2) On or before July 1, 2023, 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 release of the reports as required or authorized by law.

(3) This subdivision does not require a hospital, clinic, or other 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.

(f) The costs associated with the medical evidentiary examination of a domestic violence victim shall be 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.

(g) Each county's board of supervisors shall authorize a designee to approve the Sexual Assault Response Teams (SART), Sexual Assault Forensic Examiner (SAFE) teams, or other qualified medical evidentiary examiners to receive reimbursement through the Office of Emergency Services (Cal OES) for the performance of medical evidentiary examinations for victims of domestic violence and shall notify Cal OES of this designation. The costs associated with these medical evidentiary exams shall be funded by the state, subject to appropriation by the Legislature. Each county's designated SART, SAFE, or other qualified medical evidentiary examiners shall submit invoices to Cal OES, who shall administer the program. A flat reimbursement rate shall be established. Within one year upon initial appropriation, Cal OES shall establish a 60-day reimbursement process. Cal OES shall assess and determine a fair and reasonable reimbursement rate to be reviewed every five years.

(h) Reimbursement shall not be subject to reduced reimbursement rates based on patient history or other reasons. 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.