

Modernizing Mandatory Reporting Laws for Domestic Violence in California Health Settings

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History of Medical Mandatory Reporting for Domestic and Sexual Violence in California

California law currently mandates that health professionals treating patients with physical injuries known or suspected to have been a result of “assaultive or abusive conduct”, including domestic violence, must make a report to law enforcement.¹ This law was passed in 1994 by then-Assemblymember Jaqueline Speier, during a time when domestic violence was first starting to be recognized as a public health issue and that health providers could play a role in addressing it.² The law was also prompted by a letter from perinatal nurses in California, who expressed an interest in being able to help prevent domestic violence as health care professionals.³

Arguments in favor of medical mandated reporting for adult domestic and sexual violence (DSV) survivors have highlighted that it could lead to an increase in domestic violence training requirements for health professionals, help identify and treat survivors, provide accountability for the person using harm, increase patients’ safety through law enforcement intervention, and provide an opportunity for patient education about domestic violence.⁴ Law enforcement professionals have also argued in favor of medical mandatory reporting for adult survivors of DSV, stating that it has helped identify people using harm and increased prosecutions.⁵ Soon after the California law was passed however, there were efforts to amend the law from experts working in the domestic violence field and a number of professional health organizations, who argued that the mandatory reporting law was putting survivors in more danger, decreased patient autonomy by bringing in law enforcement without patients’ consent, and was also

¹https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=PEN&division=&title=1.&part=4.&chapter=2.&article=2

² Roan, Shari. “Law Against Domestic Abuse May Be Backfiring.” Los Angeles Times, Dec. 31, 1996.

³ Donna Mooney and Michael Rodriguez M.D., California Healthcare Workers and Mandatory Reporting of Intimate Violence, 7 Hastings Women's L.J. 85 (1996). Available at: <https://repository.uhastings.edu/hwlj/vol7/iss1/2>

⁴ Bauer, Heidi & Mooney, D & Larkin, Hillary & O'Malley, N & Schillinger, D & Hyman, A & Rodriguez, Michael. (1999). California's mandatory reporting of domestic violence injuries: does the law go too far or not far enough?. The Western journal of medicine. 171. 118-24.

⁵ Roan, Shari. “Law Against Domestic Abuse May Be Backfiring.” Los Angeles Times, Dec. 31, 1996.

resulting in health providers being more reluctant to address domestic violence with their patients.⁶

While reporting to law enforcement for certain injuries such as gunshot and knife wounds is common in most states (which may also include injuries resulting from domestic violence)⁷, California is one of only three states that currently mandates a law enforcement report for any wound or physical injury believed or known to be a result explicitly of domestic and sexual violence without the request of or consent from the patient.⁸ Around the time that the California law was enacted, several other states mandated reporting for domestic violence-related injuries: Colorado, Kentucky, New Hampshire, and Rhode Island.⁹ Since then, all four states have amended their laws to provide a more survivor-centered response to addressing intimate partner violence in health settings.

Impact of Medical Mandatory Reporting on Survivors

The law that requires health professionals in California to file reports to law enforcement when treating patients for a domestic violence-related injury, though well-intentioned, may discourage survivors from seeking health care, discourage providers from addressing domestic and sexual violence with patients for fear of having to report them against their will, impair trust between patients and their healthcare providers, and may actually increase danger for those experiencing domestic violence. **Efforts to limit medical mandated reporting in no way limit a health provider's ability to report to law enforcement at the request of their patient or if they fear for their patient's life.**

A barrier to healthcare seeking

Experiencing domestic and sexual violence is correlated with increased risk of both serious injury from physical assault and sexual violence as well as long-term chronic health conditions resulting from trauma and sustained toxic stress, such as hypertension, diabetes, substance

⁶ Roan, Shari. "Law Against Domestic Abuse May Be Backfiring." Los Angeles Times, Dec. 31, 1996.

⁷ Futures Without Violence, 2019. "Compendium of State and U.S. Territory Statutes and Policies on Domestic Violence and Health Care: Fourth Edition."

<https://ipvhealth.org/wp-content/uploads/2019/09/Compendium-4th-Edition-2019-Final-small-file.pdf>

⁸ Nebraska and North Dakota are the other states which has a similar mandated reporting law for physical injuries resulting from a criminal offense. See more here: <https://ipvhealth.org/wp-content/uploads/2019/09/Compendium-4th-Edition-2019-Final-small-file.pdf>

⁹ Bauer, Heidi & Mooney, D & Larkin, Hillary & O'Malley, N & Schillinger, D & Hyman, A & Rodriguez, Michael. (1999). California's mandatory reporting of domestic violence injuries: does the law go too far or not far enough?. The Western journal of medicine. 171. 118-24.

use disorder, and cancer, underscoring how important it is for survivors to receive immediate and ongoing healthcare.^{10,11,12}

Yet, data show that fear of mandatory reporting to law enforcement kept domestic violence survivors from seeking healthcare and sharing information with their healthcare providers.^{13,14} In a study of two California emergency departments, patients reported that fear of law enforcement kept victims of domestic violence from seeking healthcare.¹⁵ In focus groups with survivors of domestic and sexual violence, survivors were overwhelming against this practice: **“It’s a life-and-death situation if going to the hospital. If asked how injured, I lied. Because of consequences if you tell the truth.”**¹⁶

Antithetical to ethical healthcare best practice

The American Medical Association opposes mandatory reporting of adult intimate partner violence in healthcare settings because **“such laws violate basic tenets of medical ethics.”**¹⁷ Healthcare providers aim to establish trusting relationships with their patients in order to promote open communication.¹⁸ Mandatory reporting laws go against this by requiring law enforcement involvement despite what the patient and provider believe is best for the patient. Patients who experience non-consensual systems involvement through mandatory reporting of domestic and sexual violence in healthcare settings may be less likely to trust healthcare providers and systems in the future.¹⁹ Furthermore, mandatory reporting laws for adult domestic and sexual violence force healthcare providers to focus attention on their own *compliance and liability*, rather than on providing survivor-centered support and healthcare, which may explain why **59% of emergency department-based providers in California reported that they may not comply with the law if their patient did not want them to make a report.**²⁰

¹⁰ Stubbs A, Szoeki C. The Effect of Intimate Partner Violence on the Physical Health and Health-Related Behaviors of Women: A Systematic Review of the Literature. *Trauma Violence Abuse*. 2021 Feb 5;1524838020985541. doi: 10.1177/1524838020985541. Epub ahead of print. PMID: 33541243.

¹¹ Coker AL, Smith PH, Bethea L, King MR, McKeown RE. Physical health consequences of physical and psychological intimate partner violence. *Arch Fam Med* 2000;9:451–457

¹² Campbell JC. Health consequences of intimate partner violence. *Lancet* 2002;359:1331–1336

¹³ Lippy, C., Jumarali, S.N., Nnawulezi, N.A. et al. The Impact of Mandatory Reporting Laws on Survivors of Intimate Partner Violence: Intersectionality, Help-Seeking and the Need for Change. *J Fam Viol* 35, 255–267 (2020). <https://doi.org/10.1007/s10896-019-00103-w>

¹⁴ Jordan, C. E., & Pritchard, A. J. (2018). Mandatory reporting of domestic violence: What do abuse survivors think and what variables influence those opinions? *Journal of Interpersonal Violence*. <https://doi.org/10.1177/0886260518787206>.

¹⁵ Kimberg L, Vasquez JA, Sun J, Anderson E, Ferguson C, Arreguin M, Rodriguez RM. Fears of disclosure and misconceptions regarding domestic violence reporting amongst patients in two US emergency departments. *PLoS One*. 2021 Dec 2;16(12):e0260467. doi: 10.1371/journal.pone.0260467. PMID: 34855809; PMCID: PMC8638952.

¹⁶ Sullivan, Cris & Hagen, Leslie. (2005). Survivors’ Opinions About Mandatory Reporting of Domestic Violence and Sexual Assault by Medical Professionals. *Affilia-journal of Women and Social Work - AFFILIA J WOMEN SOC WORK*. 20. 346-361. 10.1177/0886109905277611.

¹⁷ American Medical Association Family and Intimate Partner Violence Policy H-515.965. 2019. <https://policysearch.ama-assn.org/policyfinder/detail/Violence%20and%20Abuse?uri=%2FAMADoc%2FHOD.xml-0-4664.xml>

¹⁸ American Medical Association Code of Medical Ethics 1.1.1. <https://www.ama-assn.org/delivering-care/ethics/patient-physician-relationships>

¹⁹ M A Rodriguez, E McLoughlin, H M Bauer, V Paredes, and K Grumbach, 1999: Mandatory reporting of intimate partner violence to police: views of physicians in California.

American Journal of Public Health 89, 575_578, <https://doi.org/10.2105/AJPH.89.4.575>

²⁰ Ibid.

Decreasing safety through non-consensual systems involvement

Likewise, these laws violate domestic violence survivor empowerment models that promote safety through self-determination for people who have had their choice and power taken away by abusive partners.²¹ According to one study of IPV survivors who called the National Domestic Violence Hotline, 50% who had experienced non-consensual law enforcement involvement through **mandatory reporting stated that it made their situations *much worse***.^{22,23}

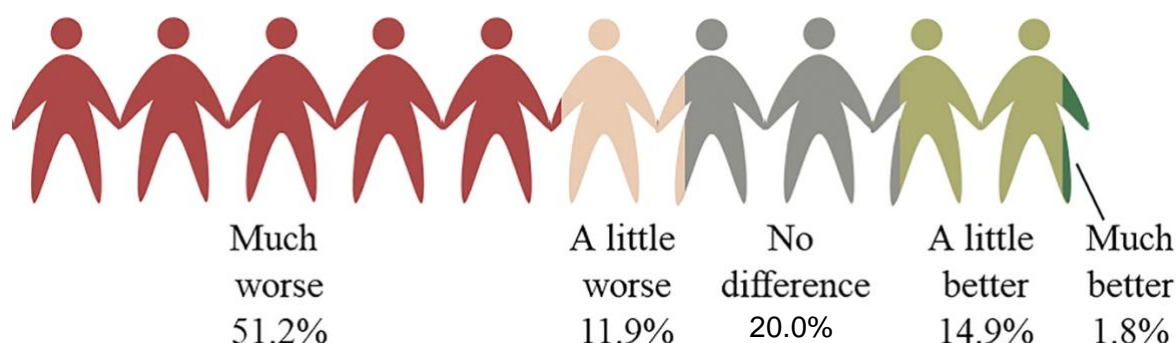


Figure 1: (Lippy, et al, 2019) *The Impact of Mandatory Reporting Laws on Survivors of Intimate Partner Violence: Intersectionality, Help-Seeking and the Need for Change*

The majority of domestic violence survivors choose not to engage police for many reasons, but even among survivors who had willingly engaged the police, 80% reported that it did not improve their safety, or made it worse.²⁴ Especially in California, where officers are required to make an arrest if they find that a domestic violence crime has occurred, survivors are at increased danger of being arrested themselves, experiencing retaliation from an abusive partner, and loss of support (childcare, income, transportation, housing, etc.) that was provided by an abusive partner. **There is no data that mandated reporting of domestic violence to law enforcement increases safety for survivors.**

Current California law presumes that reporting to the police produces safety and accountability, and it's important to recognize that mandated police involvement may not feel or be safe for survivors of color or immigrants who lack secure immigration status: with one finding that "white women's racial and gender privilege often allowed them to avoid police violence, while Black and Native women faced the dual burdens of crime and criminalization," including when

²¹ Cattaneo, Lauren & Goodman, Lisa. (2015). What Is Empowerment Anyway? A Model for Domestic Violence Practice, Research, and Evaluation. *Psychology of Violence*. 5. 84-94. 10.1037/a0035137.

²² National Domestic Violence Hotline, *Who Will Help Me? Domestic Violence Survivors Speak Out About Law Enforcement Responses*. Washington, DC (2015). <http://www.thehotline.org/resources/law-enforcement-responses>

²³ Lippy, C., Jumarali, S.N., Nnawulezi, N.A. et al. *The Impact of Mandatory Reporting Laws on Survivors of Intimate Partner Violence: Intersectionality, Help-Seeking and the Need for Change*. *J Fam Viol* 35, 255–267 (2020). <https://doi.org/10.1007/s10896-019-00103-w>

²⁴ National Domestic Violence Hotline, *Who Will Help Me? Domestic Violence Survivors Speak Out About Law Enforcement Responses*. Washington, DC (2015). <http://www.thehotline.org/resources/law-enforcement-responses>

seeking help from the police.^{25, 26, 27} A 2014 study found that **victims of domestic violence were 64% more likely to die if their partner was arrested for domestic violence, compared to those who only received a warning. For Black survivors, arrests increased mortality by 98%.⁵**"²⁸ This finding led many states to change their mandatory arrest laws for domestic violence.

Survivor centered responses require providing multiple pathways to safety, whether through health, advocacy, or legal responses. This is important because studies have found that criminal domestic violence interventions fail to deter abuse perpetrators from further victimization and actually increase domestic violence homicides. **One study found that mandatory arrest policies for domestic violence led to the perverse effect of increasing intimate partner homicides because of the abuser's likelihood of seeking retribution.**²⁹ Another finding states that prosecution has no effect on the probability of the batterer's re-arrest during a six-month period, and identifying that the victim's ability to exercise control over the decision to prosecute has been shown to correlate with the reduced risk for subsequent abuse.³⁰

Weakening criminal and immigration cases

For survivors who could be interested in pursuing criminal legal options, talking to law enforcement before they are physically and emotionally ready could negatively impact their case. For example, survivors who are seeking emergency medical care for strangulation or brain injury may not have the capacity to provide accurate information to law enforcement immediately after the injury. **Domestic violence advocates are specifically trained in supporting survivors on how to report to law enforcement and access the legal systems and can assist with this process in a timely way.** Furthermore, law enforcement resources may be unnecessarily spread thin by requiring them to follow up on instances of mandatory reporting where survivors do not want to access criminal legal options.

²⁵ Lippy, C., Jumarali, S.N., Nnawulezi, N.A. et al. The Impact of Mandatory Reporting Laws on Survivors of Intimate Partner Violence: Intersectionality, Help-Seeking and the Need for Change. *J Fam Viol* 35, 255–267 (2020). <https://doi.org/10.1007/s10896-019-00103-w>

²⁶ Michele R. Decker, Charvonne N. Holliday, Zaynab Hameeduddin, Roma Shah, Janice Miller, Joyce Dantzer & Leigh Goodmark, "You Do Not Think of Me as a Human Being": Race and Gender Inequities Intersect to Discourage Police Reporting of Violence Against Women, 96 *J. Urban Health* 772 (2019)

²⁷ Amber Joy Powell & Michelle S. Phelps, Gendered Racial Vulnerability: How Women Confront Crime and Criminalization, 55 *L. Soc. Rev.* 429 (2021)

²⁸ Lawrence W. Sherman & Heather M. Harris, *Increased Death Rates of Domestic Violence Victims from Arresting vs. Warning Suspects in the Milwaukee Domestic Violence Experiment (MILDVE)*, 11 *J. Experimental Criminology* 1 (2015)

²⁹ *Does the Certainty of Arrest Reduce Domestic Violence? Evidence from Mandatory and Recommended Arrest Laws*, 93 *J. Pub. Econ.* 85, 85 (2009)

³⁰ *Pub. Econ.* 85, 85 (2009) (); Linda G. Mills, *Killing Her Softly: Intimate Abuse and the Violence of State Intervention*, 113 *Harv. L. Rev.* 550, 567–68 (1999)

Conclusion

There is compelling evidence demonstrating that mandated medical reporting for adult survivors of domestic violence can have harmful impacts on survivors, including: being a barrier to healthcare seeking, decreasing safety through non-consensual systems involvement, eroding trust between healthcare providers and survivors, and more. **Fortunately, when survivors are able to have open transparent conversations with their healthcare provider about the abuse, they are 4x more likely to follow through on a safety intervention, such as domestic violence advocacy.**³¹ California should follow in other states' paths to require that instead of mandated reporting to law enforcement, there is mandated supporting from domestic and sexual violence advocates.

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³¹ McCloskey LA, Lichter E, Williams C, Gerber M, Wittenberg E, Ganz M. Assessing Intimate Partner Violence in Health Care Settings Leads to Women's Receipt of Interventions and Improved Health. *Public Health Reports*. 2006;121(4):435-444. doi:10.1177/003335490612100412