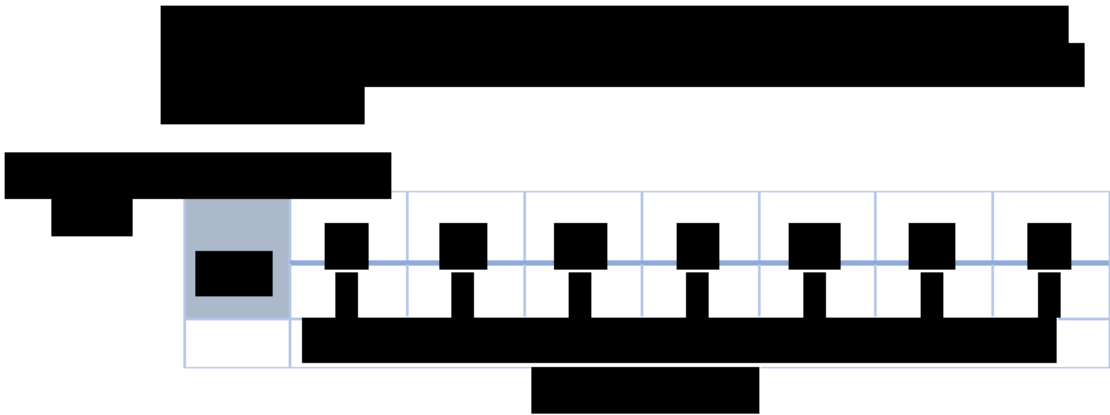




Supplemental Materials - Agenda Item 5.0

Excerpt of Meeting Minutes from 4/20/2023 discussing AB 1028

BRN Board Meeting | June 29, 2023



9:26 a.m.

6.0

Discussion and Possible Action on bills relevant to the Board from the 2023-2024 legislative session

The Sponsors of AB 1028 appeared at the meeting to present information and answer questions from the Board, so the bill was presented first.

Direct Impact

9:27 a.m.

Board Discussion:

4. **AB 1028** (McKinnor) Reporting of crimes: mandated reporters. Krista Colon, California Partnership to End Domestic Violence, co-sponsor of the bill – The goal is that every survivor is able to seek care they need, and many survivors may not want to engage with law enforcement and a mandated report is a barrier to them seeking the healthcare they need. They want to change it from a mandated report to law enforcement; to instead brief counseling provided within the Affordable Care Act as a structure and referral and warm hand-off to domestic violence services so they can engage in the broad range of services they need. They are not saying that survivors who want to contact law enforcement or want to engage law enforcement shouldn't be an option. If the survivor wants to call law enforcement and include their healthcare team as part of the process, they can. Survivors should have the ability to make the choice to contact law enforcement.

Dr. Danisha Jenkins – Is a nationally certified sexual assault nurse examiner and board member on the American Nurses Association Center for Ethics and Human Rights which is responsible for oversight of the nursing code of ethics. Her body of research is in the intersection of law enforcement and nursing and has a decade of experience in forensic nursing environments and trauma settings. She said the non-consensual compulsory reporting of survivors of intimate partner violence is not supported by the code and may be interpreted to be in direct violation. Reporting survivors against their will violates the primary commitment to patients and overrides the nurse's obligation to protect the patient's privacy. A survivor of domestic violence is at risk for, and may have evidence of abuse,

but they if they are competent and capacitated, they maintain their rights and the nurse needs to honor and advocate for this. There is harm for violating the trust in the nursing profession, potentially leading to further harm for future victims. Many nurses practice in areas that they may be asked to work with or make reports to or act as proxies for law enforcement and the code does not specifically address when cooperation with law enforcement is ethically obligated. It doesn't guide nurses on the exigencies of navigating situations where nursing ethics and values conflict with legal policies and priorities. The code outlines the nurse's primary obligation to patients and specifies that this foundational commitment is to the health and care of the patient. We must carefully consider all legislation which risks harming a nurse's ability to prioritize the health and care of their patient. Given that this provision is foundational, she asserts that it supersedes all other obligations and requires nurses to promote, advocate for, and protect the rights, health, and safety of patients. She said ANA California is in support of AB 1028.

Dr. Jessica Draughon Moret – Faculty at UC Davis Betty Irene Moore School of Nursing but is speaking on her own behalf. She has been working clinically and in research in the field of forensic nursing since 2008. Her body of research looks at provisions of evidence based post-sexual assault care and specifically improving access to that care and ensuring it is as comprehensive as possible and supported by research. She practiced in two jurisdictions that did not have mandated reporting for intimate partner violence or domestic violence assault. She said she has not seen the issues brought up by the board in nursing practice such as if the patient was truly in danger that a clinician would not involve law enforcement, or that patients do not have access to advocacy or other resources.

Elizabeth Woods asked when an assault is considered reported, based on the severity of it.

Dr. Jessica Draughon Moret said that if the patient can make decisions for themselves about what they would like to happen then it would be their choice. However, if she as a nurse is concerned the person is in imminent danger of harm then she is still able to call the police on the patient's behalf due to that concern. Experience shows patients may seek healthcare multiple times before they are ready to take action like reporting to police or seeking a restraining order or any options, they have available to them by interacting with law enforcement.

Dolores Trujillo asked if this is not reported aren't we doing a disservice to the public.

Dr. Danisha Jenkins said California is only one of two states with mandated reporting for intimate partner violence. We must take an ethical look at what the nurse's role in acting as an arm of law enforcement is in this space. The nurse's primary obligation is to provide for care and safety of our patient and there are a lot of crimes that nurses are aware of or experience or see that are not legally mandated to report in that moment without risking criminalization, which is how the current legislation stands. The nurse's commitment is to the person in front of us and we want to make sure that we are supporting and cultivating a trusting relationship so that they can access the resources to make the report on their own behalf when it is the safest option for them to do so. Making a crime report does not automatically mean that justice is served or that this survivor is going to get access to justice and safety.

Vicki Granowitz asked if a nurse could be held liable if they do not report the crime and asked if this change would cause legal ramifications for a nurse.

Reza Pejuhesh said if someone had a duty to do something and they didn't do it, they can be held liable, which is the law currently. If this change is made, then he believes a nurse cannot be held liable.

Vicki Granowitz is concerned that the nurse be protected, and she isn't hearing anything to clarify that.

Loretta Melby stated the language in the bill says a health practitioner shall not be civilly or criminally liable for any report. She said there is a line that says if they don't or do make a report, they would not be liable. Loretta Melby asked about Penal Code section 11160.3 that includes specific crimes such as murder, mayhem, aggravated mayhem, torture, assault, etc. which is proposed to sunset January 1, 2025, and the new section would start January 1, 2025, where one through 23 were not carried over into the new section with the listings of battery and sexual battery not carried into the new section and wondered why that is.

Krista Colon said many of these code sections are still covered under other reporting requirements. Child abuse is mandated under code sections as is elder abuse. If a homicide has occurred and a patient has died there are reporting mechanisms in place. The focus on eliminating this definition of assaultive and abusive conduct could

make that change while not disrupting many of the other places where mandatory reporting in different context still lives for a healthcare practitioner.

Loretta Melby asked if this affects all healthcare practitioners so physicians could not mandate report either.

Krista Colon said that is correct.

Loretta Melby asked if intimate partner crime or domestic violence involved pediatric patients, or the elderly would that be an issue.

Krista Colon said they checked with legal counsel and if there is co-occurrence then healthcare providers would need to report the remaining mandatory reporting crimes.

Reza Pejuhesh asked to speak after doing some quick research and said Penal Code (PC) section 11165.9 says this bill does not affect off duty reporting.

Krista Colon said firearms and injury reporting in PC 11160 remains in effect. She said this affects healthcare practitioners in their professional on duty capacity and not off duty.

Mary Fagan asked if there is any objective data that speaks to the outcomes of domestic abuse in the other states that don't have mandated reporting and asked if victims suffered abuse again or were possibly murdered.

Krista Colon said she doesn't think she's ever seen any sort of comparative data like that.

Dr. Jessica Draughon Moret said outcomes of patients feeling empowered to make decisions for themselves would be something she would expect to be improved. One of the biggest concerns she has is that many intimate partner violence assaults involve strangulation that is very serious and can lead to tissue swelling, traumatic brain injury from lack of oxygen to the brain and terrified to get care because they aren't ready to interact with law enforcement. This is a significant concern with immigrant populations who do not want any kind of interaction with the legal system. She wants survivors to be able to get healthcare, images of soft tissue injuries and look for life-threatening injuries.

Krista Colon stated that she wants to make sure survivors are connected to the whole range of services they need and connecting

them through a warm referral and hand off to programs that can help them with their housing needs, can help facilitate a restraining order to keep the abusive person away from them and their children, and can help walk them through future legal proceedings. All the economic needs, the counseling and mental health needs that they may have can be powerful and under the current system it is hoped this happens and they partner with law enforcement to make sure they're providing information about resources to programs to survivors. They recognize the criminal system alone would never fully adjust the whole range of needs for survivors. It is hoped that survivors can seek care and be open and honest with healthcare providers about what's causing the injuries they're experiencing and connect them with the whole range of services they need, which can still include the criminal system when and if they choose.

Patricia Wynne thanked the experts for coming and speaking to the board. She opposed the bill last year and explained her connection to the original language 40 years ago. She has been listening to the experts saying it's not beneficial to victims and there's another approach. She is persuaded by the evidence to change her mind about this bill. She's spent way too much time thinking about this bill over the last year and is ready to support the bill.

Loretta Melby asked if any provisions could be added into the bill for rural areas that don't have a good supply of advocacy programs and asked what the thoughts on advocacies are in general. She asked about training mandates for advocates that get the referrals.

Krista Colon thanked Patricia Wynne for her thoughts. She said the language includes handoff to local services or to national advocacy services such as the national domestic violence hotline recognizing that local programs are few and far between especially in rural communities which can be small and close knit. She said they may add language to clarify the referral can be made via email if services are not immediately available.

Vicki Granowitz again said she wanted to see language added about protecting people who don't make reports and a way to keep track of what isn't reported if they come back later.

Krista Colon said she would bring this to the co-sponsor group. She said if the board would like any language changes, they are open to it. They would talk with the author's office and the co-sponsors. She thinks the data tracking piece is interesting but is mindful of how much data people are asked to keep track of and how that would be done.

Elizabeth Woods still has concerns about this, as a physical and sexual assault examiner for several years, knows abuse doesn't stop after one time, it can go on and on unless there is some intervention. She's very concerned about this. She doesn't think most women go and find all the things in the community that can help them and personally thinks there needs to be an intervention that opens the possibility of something happening where the violence is less. She knows that reporting to the police does not mean the abuse stops. At least there's an input there where the abuser is now faced with something that may happen to them now. She knows it can cause more abuse to the person that made the report. She's concerned about the patient that's being beat up is going to continue.

Dr. Jessica Draughon Moret asked Member Woods if a mandated report to law enforcement helps the patient in front of the nurse move forward in a way that enhances their safety.

Elizabeth Woods said it's not the only way and explained that she was on a sexual assault team, and they had people who would come in to talk with the patient to make whatever intervention they could with some in the criminal justice system and she had to appear in court and talk about it. She's completely against eliminating any type of good documentation of what happens to the patient because there is a lot more that has happened to the patient and maybe there is a chance to deal with it when they come in if the nurse can talk to the patient separately. She said there needs to be some legal way to document this.

Dr. Jessica Draughon Moret said abuse doesn't stop without a change. She said the documentation required to make a mandatory report is minimal whereas the documentation a clinician would make in the chart about the injuries and conversations had with somebody, the electronic health record, is a legal document that could include all the information Member Woods describes. She would do a comprehensive assessment of the experiences the person had related to intimate partner violence from the family perspective and if a child under 18 was involved in any of these things, then she would make a mandated report. If the person is of age and competent to make decisions for themselves, she provides the documentation and connecting them to advocacy and encouraging a report to law enforcement. But it is the patient's choice to decide which route to take. She said the literature shows it could take more than one event to make a report. If she thinks the

patient is in imminent harm, then she can make a report regardless of what the patient has chosen.

Elizabeth Woods asked who makes the determination of the severity of abuse that is reported.

Reza Pejuhesh said the bill does not have a trigger to require reporting. The language says assaultive, or abuse conduct and the reporter makes the subjective determination. He continued that it qualified that public comment would be made on this specific bill before the other bills would be addressed.

Dolores Trujillo asked to have separate public comment for this bill.

Additional Discussion After public comment:

Krista Colon said they changed the implementation date to 2025 to allow one more year for implementation.

Vicki Granowitz asked if the motion could be to Watch the bill since there is still some information that needs to come back to the board. She doesn't necessarily say she doesn't support the bill but if that position is taken then the board will have the ability to give more input.

Patricia Wynne agreed.

Reza Pejuhesh asked what the amendments are.

Dolores Trujillo said to clarify liability if a report is not made.

Vicki Granowitz mentioned the discussion of exploring documentation and tracking of incidents.

Motion: Dolores Trujillo: Motion to Support if Amended to clarify whether providers will face liability for not making the report if the bill is passed and to explore documentation and tracking of incidents

Second: Patricia Wynne

Public Comment for

AB 1028: Sierra Shepard, from Asm. McKinnor's office: Appreciated the robust conversation about this. They are happy to consider any changes to the bill that might elevate the intent as well as clarify there's no repercussions for nurses. They will circle back and confirm this.

Kathy Hughes, Executive Director of Nurse Alliance of SEIU, CA: Her organization has not taken a position on this bill because they were waiting to hear this conversation. She is going to make a recommendation to her union that represents 700,000 members in California. There are many members and patients who do not seek healthcare in an abusive situation because of law enforcement involvement.

Laura Starrh, NP: She strongly supports this bill, and the current law puts nurses in a difficult spot between violating ethical principles of patient autonomy and the law that puts nurses at risk of disciplinary action.

Kita Lastra, PMHNP, CSU-LB faculty: She works at UCLA in the sexual assault department and has 11 students with her watching the meeting.

Theresa Neal made a written comment and is unable to unmute. The comment speaks about sex trafficking, mandatory reporting and may cause confusion.

Valerie Albano, Dean of Allied Health, Merced College: Asked if removal of reporting would cause equity issues regarding disadvantaged groups. Somebody who would normally have representation and whether that could that be a problem.

Vote:

	DT	MF	EW	JD	PW	VG	DL
Vote:	Y	Y	N	Y	Y	N	Y
<u>Key:</u> Yes: Y No: N Abstain: A Absent for Vote: AB							

Motion Passed

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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