Board Meeting Packet

Materials to the Board Meeting Agenda

BRN Board Meeting | June 29, 2023

BRN Board Meeting
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General instructions for the format of a teleconference call

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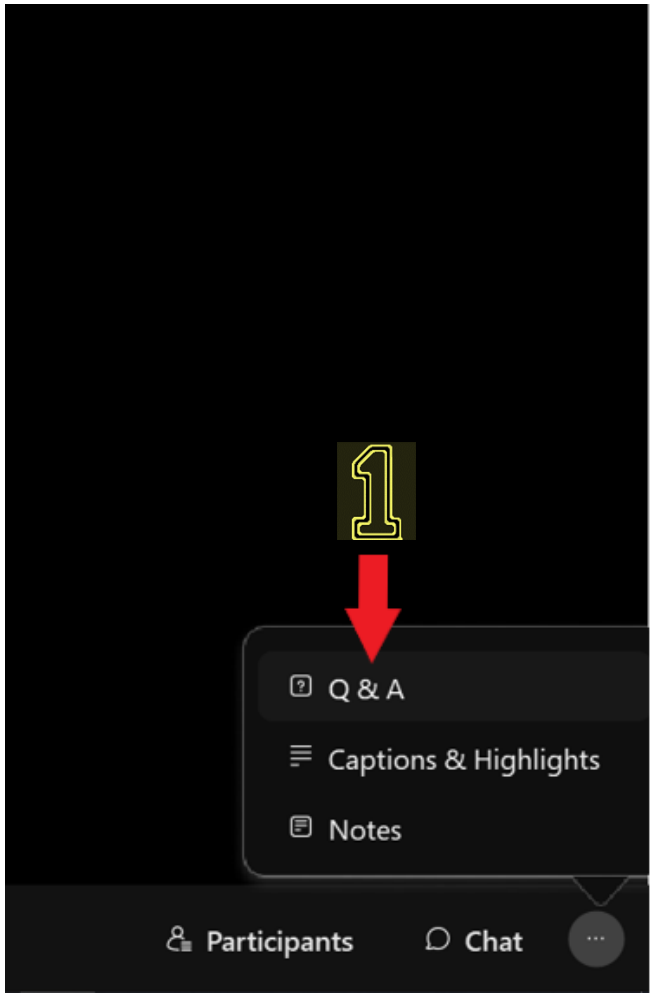
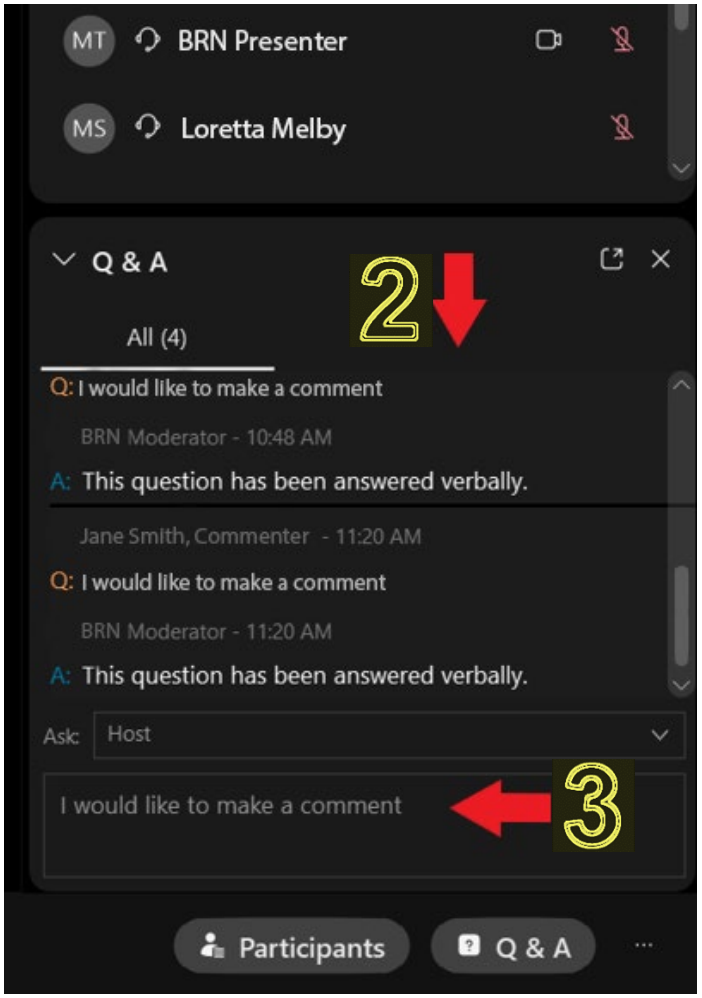
Participating During a Public Comment Period

If you would like to make a public comment:

1. Click on the 'Q & A' button at the lower right of your WebEx session (you may need to click the three dots (…) to find this option).



2. The 'Q & A' panel will appear.



3. In the 'Q & A' panel, type "I would like to make a comment". You will be identified by the name or moniker you used to join the WebEx session, your line will be opened (**click the 'Unmute me' button**), and you will have **2 minutes** to provide comment. Every effort is made to take comments in the order which they are requested.

NOTE: Please submit a new request for each agenda item on which you would like to comment.

Agenda Item 4.0

Discussion and Possible Action: Regarding appointment by the Board President of a chairperson for the Nursing Practice Committee, and approval by the Board

BRN Board Meeting | June 29, 2023

BOARD OF REGISTERED NURSING
Agenda Item Summary

AGENDA ITEM: 4.0
DATE: June 29, 2023

ACTION REQUESTED:	Discussion and possible action Regarding Appointment by Board President for the Chair of the Nursing Practice Committee and approval by the Board
REQUESTED BY:	Loretta Melby, Executive Officer
BACKGROUND:	Appointment of Chair of the Nursing Practice Committee as required to fill vacancy.
NEXT STEP:	Appoint committee members
FISCAL IMPACT IF ANY:	Staff estimates that there will be no fiscal impact to the Board
PERSON TO CONTACT:	Loretta Melby RN, MSN Executive Officer

Agenda Item 5.0

Report of the Legislative Committee

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BOARD OF REGISTERED NURSING
Agenda Item Summary

AGENDA ITEM: 5.0
DATE: June 29, 2023

ACTION REQUESTED:	Legislative Update
REQUESTED BY:	Dolores Trujillo, RN, Chairperson
BACKGROUND:	Presentation of recently amended bills in 2023-2024 Legislative Session. Opportunity for Board members to discuss and take a position through vote, if desired.
NEXT STEPS:	Continue tracking and analysis of BRN related bills during 2023-2024 Legislative Session.
FINANCIAL IMPLICATIONS, IF ANY:	Dependent on the proposed legislation and contained in the bill analysis, if applicable.
PERSON TO CONTACT:	Marissa Clark Chief of Legislative Affairs Marissa.Clark@dca.ca.gov 916-574-7438

BOARD OF REGISTERED NURSING
BILL ANALYSIS

BILL NUMBER: Assembly Bill 633
AUTHOR: Patterson
BILL DATE: June 14, 2023 - Amended
SUBJECT: Nursing: licensure: renewal fees: reduced fee
SPONSOR: Author

SUMMARY

This bill would require the Board of Registered Nursing (Board) to establish a retired license category for registered nurses (RN) who meet specified qualifications.

RECENT AMENDMENTS

- Requires the Board to issue a retired license to a licensed RN if the licensed RN meets both of the following qualifications:
    - Holds an unrestricted license on the date of application; and,
    - If not already on the record, furnishes to the Department of Justice (DOJ), as directed by the Board, fingerprints for the purposes of conducting a criminal history record check and for the purpose of undergoing a state and federal level criminal offender record information search conducted through the DOJ.
- Prohibits a retired RN from engaging in any activity that requires an active RN license.
- Authorizes a retired licensee to provide nursing services to the public, free of charge in any public health program created by federal, state, or local law or administered by a federal, state, county, or local government entity, if a licensed RN or RNs provides adequate medical and nursing supervision.
- Authorizes the Board to investigate potential violations or take action against a retired license for a violation.

BACKGROUND

The Board requires its licensees to renew their RN license every two years. As part of the renewal process, 16 CCR 1417(i) requires licensees to pay a $190 renewal fee, with $180 covering Board workload costs and $10 going towards the RN Education Fund administered by the Department of Health Care Access and Information.

There are three main statuses a license can be in: active, inactive, and delinquent. The Board does not currently have a status for a nurse who wishes to retire from the formal practice of nursing, but still maintain their RN identifier and have the option to voluntarily provide nursing services in certain situations.

In 2016, AB 2859 (Low, Chapter 473, Statutes of 2016) authorized any of the boards within the Department of Consumer Affairs (DCA) to establish, by regulation, a system for a retired category of licensure for persons not actively engaged in the practice of their profession. Since then, multiple boards within DCA have issued regulations that established a separate retired category for their licensees.

REASON FOR THE BILL

According to the author, while the Dental Board of California and the Medical Board of California both offer retirees an option to maintain an active license for a reduced fee if they intend to use their license in a volunteer capacity, the Board of Registered Nursing does not offer a similar option. This bill would extend the same option for a reduced fee to nurses.

ANALYSIS

This bill would require the Board to issue a retired license to a licensed RN who meets both of the following qualifications:

- Holds an unrestricted license on the date of application; and,
- If not already on the record, furnishes to the Department of Justice (DOJ), as directed by the Board, fingerprints for the purposes of conducting a criminal history record check and for the purpose of undergoing a state and federal level criminal offender record information search conducted through the DOJ.

The bill allows the Board, through regulation, to establish a fee for a retired license that is no less than one-half of the regular renewal fee. An applicant would be able to apply for a retired license upon their license renewal or upon submission of an application as required by the Board.

The bill would exempt a retired licensee from continuing education (CE) requirements and require them to utilize their professional title only with the unabbreviated word “retired” directly preceding or directly following the professional title.

The bill would prohibit a retired licensee from engaging in any activity that requires an active RN or advanced practice RN license. However, the bill would authorize a retired licensee to provide nursing services to the public, free of charge in any public health program created by federal, state, or local law or administered by a federal, state, county, or local government entity, if a licensed RN or RNs provides adequate medical and nursing supervision.

The bill authorizes the Board to investigate potential violations or take action against a retired license for a violation of the California Nursing Practice Act.

Lastly, the bill states that the Board can reinstate a retired license back to active status one time only, if the retired license fulfills the requirements for renewal of a license including furnishing fingerprints, paying renewal fees and provides evidence of the following:

- For a retired licensee who has been retired eight years or less, 30 hours of CE taken within the previous two-year period, or
- For retired licensee who has been retired for more than eight years, either a current valid active and clear RN license in another state, US territory, or Canada, or passing the current examination for licensure.

Additional Considerations
Board staff had just finished drafting proposed regulatory text for the establishment of a retired license category when AB 633 (Patterson) was introduced in February 2023.

At the Board's direction, Board staff reached out to the author's office to request amendments that would align the bill language with the proposed regulatory text that had already been developed. The author's office agreed, and the bill was amended on June 14th to incorporate the Board's requested provisions.

FISCAL IMPACT
Board staff anticipates absorbable workload and IT costs to update the BreEZe system, DCA License look up, and any other internal/external systems to reflect this a new licensing category. Board staff also anticipates absorbable workload costs related to investigating complaints that are filed against a licensee in this new category, along with enforcement/disciplinary related actions, if applicable.

SUPPORT
- California Association for Health Services At Home
- California Nurses Association
- County Health Executives Association of California
- Nursing Leadership Coalition Central San Joaquin

OPPOSITION
- None on File.

LEGISLATIVE COMMITTEE POSITION
Not Applicable.

BOARD POSITION
The Board took a SUPPORT, IF AMENDED position on the 2/9 version at the March meeting.

BOARD OF REGISTERED NURSING
BILL ANALYSIS

BILL NUMBER: Assembly Bill 1028
AUTHOR: McKinnor
BILL DATE: February 15, 2023 - Introduced
SUBJECT: Reporting of crimes: mandated reporters
SPONSOR: Futures Without Violence & California Partnership to End Domestic Violence and others.

SUMMARY

This bill would remove the requirement that a health practitioner make a report to law enforcement when they suspect a patient has suffered physical injury caused by assaultive or abusive conduct. This bill does not change the reporting laws for child abuse and elder and vulnerable adult abuse.

The bill would instead require a health practitioner who suspects that a patient has suffered physical injury that is caused by domestic violence to provide brief counseling, education, or other support, and a warm handoff or referral to local and national domestic violence or sexual violence advocacy services. The bill would also specify that a health practitioner is not civilly or criminally liable for any report that is made in good faith and in compliance the provisions of the bill.

RECENT AMENDMENTS

Not Applicable.

BACKGROUND

According to the California Penal Code, a health care practitioner who treats a person brought into a health care facility or clinic who is suffering from specified injuries must report that fact immediately, by telephone and in writing, to the local law enforcement authorities.

This duty to report extends to physicians and surgeons, psychiatrists, psychologists, dentists, medical residents, interns, podiatrists, chiropractors, licensed nurses, dental hygienists, optometrists, marriage and family therapists, clinical social workers, professional clinical counselors, emergency medical technicians, paramedics, and others.

The duty to report is triggered when a health practitioner knows or reasonably suspects that the patient is suffering from a wound or other physical injury that is the result of assaultive or abusive conduct caused by another person, or when there is a gunshot wound or injury regardless of whether it self-inflicted or one cause by another person. Health practitioners are required to report if these triggering conditions are met, regardless of patient consent. Failure to make the required report is a misdemeanor.

REASON FOR THE BILL

According to the author's office, while the current statute covers a broad range of physical injuries, survivors of domestic and sexual violence can be put in more danger with non-consensual reports to law enforcement. In a survey of survivors who had experienced mandated reporting, 83 percent stated mandatory reporting made the situation much worse, somewhat worse, or did nothing to improve the domestic violence situation. Other research demonstrates that mandatory reporting laws can discourage immigrant survivors from seeking health care. This is due to fear that law enforcement involvement could lead to detention or deportation for themselves or their family in cases where they lack protected status.

The author's office goes on to state that when providers are able to have open, trauma-informed conversations with patients about abuse, survivors are four times more likely to access an intervention, such as domestic violence advocacy. Additionally, medical mandated reporting requirements may place women of color, particularly Black women, at risk of increased violence.

ANALYSIS

Beginning January 1, 2025, this bill would limit a health practitioner's duty to make a report of injuries to law enforcement to instances where the wound or injury is self-inflicted or caused by a firearm.

Rather, the bill would require a health care practitioner, who in their professional capacity or within the scope of their employment, knows or reasonably suspects that their patient is experiencing any form of domestic violence or sexual violence, to provide brief counseling and offer a referral to domestic violence or sexual violence advocacy services before the end of treatment, to the extent that it is medically possible.

A health practitioner will be considered to have met the above requirement when the brief counseling, education, or other support is provided and warm hand off or referral is offered by a member of the health care team.

A health practitioner may offer a warm handoff and referral to other available victim services, including, but not limited to, legal aid, community-based organizations, behavioral health, crime victim compensation, forensic evidentiary exams, trauma recovery centers, family justice centers, and law enforcement to patients who are suspected to have suffered any nonaccidental injury.

The bill states that the patient may decline the "warm hand-off", which is defined as the health practitioner establishing direct and live connection through a call with survivor advocate, in-person on site survivor advocate, in-person on-call survivor advocate, or some other form of tele advocacy.

The term "referral" is defined as the health practitioner sharing information about how a patient can get in touch with a local or national survivor advocacy organization, information about how the survivor advocacy organization information about how the

survivor organization could be helpful for the patient, what the patient could expect when contacting the survivor organization, the survivor advocacy organizations contact information.

The bill provides that nothing limits or overrides the ability of a health care practitioner to alert law enforcement to an imminent or serious threat to health or safety of an individual or the public, or at the patient's request.

Lastly, the bill states that a health practitioner shall not be civilly or criminally liable for any report that is made in good faith and in compliance with this section and all other applicable state and federal laws.

It should be noted that the laws related to the duty to report child abuse and neglect or the duty to report suspected abuse of an elder or a dependent adult are separate from the law regarding a health care practitioner's duty to report injuries generally. This bill does not eliminate the duty of health care practitioners under those other provisions of law.

This same bill was brought before the Board last year when it was being carried by Assemblymember Buffy Wicks as AB 2790. After a robust discussion, the Board voted to opposed it. AB 2790 (Wicks) was ultimately held in committee and did not make it to the Governor's desk. This year Assemblymember McKinnor introduced AB 1028, which has the same language as the final version of AB 2790 before it died.

When discussing implementation of this bill with internal and external stakeholder some expressed concerns with unintended consequences that could result in survivors slipping through the cracks or being placed back in harm's way. One concern was what happens if there aren't sufficient domestic violence or sexual violence advocacy services available in the geographical area for the nurse to refer the patient to. Another concern raised was that removing the legal reporting requirement could remove some amount of accountability for the nurse to report. Lastly, a concern was raised about the lack of data and ongoing tracking of domestic occurrences when they aren't formally reported.

One amendment suggested was to still require that an incident report be completed and maintained internally by the facility for a set timeframe where the survivors of domestic and sexual violence within that timeframe can request to have it shared with law enforcement. Another amendment suggested was to combine the current and proposed processes by still requiring a report be made to law enforcement, but also requiring that an advocate accompany the patient during any interactions or conversations with law enforcement to ensure they are being properly advocated for and their decisions are being respected. However, it is unclear where the additional staffing and resources needed for this scenario would come from.

FISCAL IMPACT

The Board estimates a minor fiscal impact to update the form used for abuse reporting.

STAFF CORRECTION

For the March Board meeting the bill had not yet been heard in committee, consequently, the only written record of support or opposition that could be cited for the analysis was the bill's fact sheet.

For the April Board meeting, Board staff made an accidental oversight and forgot to revisit the policy committee analysis to obtain an updated list of organizations that were in support of and opposition to the bill. Consequently, the support and opposition portion of the bill analysis contained in the April meeting materials was not accurate. Sincere apologies for the error.

Please see below for an updated list of organizations in support of and opposition to the bill as was published in the Assembly Public Safety Committee analysis on March 27th.

SUPPORT

- Academy on Violence and Abuse
- Alliance for Boys and Men of Color
- American College of Obstetricians and Gynecologists District Ix
- Asian Americans for Community Involvement
- Bay Area Legal Aid
- California LGBTQ Health and Human Services Network
- California Pan - Ethnic Health Network
- California Partnership to End Domestic Violence
- Citizens for Choice
- Communities United for Restorative Youth Justice (CURYJ)
- Community Solutions for Children, Families, and Individuals
- Culturally Responsive Domestic Violence Network (CRDVN)
- Deaf hope
- Ella Baker Center for Human Rights
- Family Violence Appellate Project
- Family Violence Law Center
- Freefrom
- Futures Without Violence
- Haven Women's Center of Stanislaus
- Initiate Justice
- Korean American Family Services, INC.
- La Defensa
- Los Angeles Dependency Lawyers, INC.
- Los Angeles LGBT Center
- Loyola Law School, the Sunita Jain Anti-trafficking Initiative
- Lumina Alliance
- National Association of Social Workers, California Chapter
- Ohio Domestic Violence Network
- San Francisco Public Defender
- Sheedy Consulting, LLC

- The Collective Healing and Transformation Project
- The Health Alliance for Violence Intervention
- The W. Haywood Burns Institute
- UC Irvine School of Law, Domestic Violence Clinic
- Woman INC
- Young Women's Freedom Center
- Youth Leadership Institute

OPPOSITION
- Alliance for Hope International
- California District Attorneys Association
- California Sexual Assault Forensic Examiner Association
- San Diegans Against Crime
- San Diego County District Attorney's Office
- San Diego Deputy District Attorneys Association
- Yolo County District Attorney

LEGISLATIVE COMMITTEE POSITION
Not Applicable.

BOARD POSITION
The Board took a SUPPORT, IF AMENDED position on the 2/15 version at the April meeting.

ALLIANCE for HOPE

Ms. Loretta Melby and Members
The Board of Registered Nursing
State of California

June 13, 2023

Re: AB 1028 (McKinnor)

Dear Board Members,

I write today on behalf of tens of thousands of survivors and professionals working in the domestic violence field in California in OPPOSITION to AB 1028, the proposed repeal of mandatory reporting of domestic violence under California law. This same bill was submitted last year (as AB 2790) and rejected by the Legislature (in the Senate Appropriations Committee). We certainly hope to see the Senate stop this terrible experiment with domestic violence victims again.

Our opposition coalition was deeply troubled to see BRN's Staff Analysis that listed no opposition to AB 1028. There is a large coalition of doctors, nurses, police officers, prosecutors, advocates, and survivors opposing AB 1028. Your staff analysis was not accurate. You also took a position without even hearing from the opposition during your last meeting. Thank you to those of you who voted NO.

After more than 37 years of working in the domestic violence field in California, I urge you not to support a bill that will likely lead to increased violence, decreased safety, and increased lethality in domestic violence cases in the State of California. More women are likely to die if you support this untested and unprecedented bill. This bill would create terrible public policy. In the name of "victim autonomy" and "survivor self-determination", this bill would put ALL responsibility for law enforcement intervention on seriously injured, terrified survivors of domestic violence. What if the victim has been stabbed and too terrified to report? No reporting. No bedside advocacy. What if the victim has stroked, suffered a traumatic brain injury, and is non-verbal at the ER? No reporting. No bedside advocacy. Are you really taking that position? No funding for advocacy. No funding for training of doctors and nurses. In every busy trauma center in California, AB 1028 will become a piece of paper – nothing more. Is this really what you support?

I would like to share the view of one survivor who strongly opposes ending all mandatory reporting of domestic violence in California.

ALLIANCE for HOPE

"As a survivor of domestic violence, myself (who went to the hospital many times throughout my relationship as a result of being abused), I would have welcomed a healthcare provider making a report about what was happening to me to law enforcement.

I feel that if a report was made the very first time I went to the doctor, then maybe my abuser would have been arrested or held accountable for hurting me and for breaking the law. Making a report at the beginning could have prevented several additional years of on-going abuse which eventually led to my abuser shooting me with an AR 16 (in front of my children). If reported the first time seeking medical care, maybe the abuse would have been finally over for me and my children.

Since working with survivors for 40 years, I have never once encountered a victim not wanting to get the medical treatment she needed out of fear of a report being made to law enforcement. *Many times, by the time a victim has been to the doctor as a result of being abused, law enforcement or CPS has already been in their lives.*

As a survivor, when a health care provider told me they needed to report this offered relief. It took the burden/blame away from me. For example, when a victim is being beaten up by an abuser and the neighbor calls the police, the victims doesn't often feel the blame for the call/report. I can tell you that victims are not going to report. I never once told anyone about being strangled or abused out of fear of retaliation, the hope that things would get better, or just not trusting that anyone really cared.

When a healthcare provider reports to law enforcement it feels like they care, and that they are advocating for my safety and the safety of my children. It also sends the message that domestic violence is serious. Most victims tend to minimize the abuse, and most don't want to leave the relationship, they just want the abusive behavior to stop".

It is my moral obligation to note that the "Fact Sheet" being proffered by the sponsors of AB 1028 is not a balanced review of all the information available on mandatory reporting of domestic violence and other types of crimes. They say only two states have mandatory reporting of any type of domestic violence. This is patently false. **The majority of states** have mandated reporting for varying types and levels of domestic violence, child abuse, elder abuse, human trafficking, and other types of violence resulting in injury. The three most recent states to update their reporting statute – Tennessee, Colorado, and Ohio – have all kept mandatory reporting because of the high risk of lethality without intervention, particularly in strangulation assault cases.

ALLIANCE for HOPE

I would encourage you all to read the Aequitas document on mandated reporting from the End Violence Against Women International website. The link is below.

https://evawintl.org/wp-content/uploads/AEq-Reporting-Requirements-for-DV-Victims.pdf

The BRN should have heard from both sides. We should be talking about both the pros and cons of a complex issue such as mandated reporting. The Aequitas paper will show you the wide variety of states who have different types of mandated reporting that vary based on the types of injuries victims suffer and whether children are present in the home during the violence. Many states require mandatory reporting for cases with injuries from a violation of the law including domestic violence, some states require reporting when a person is stabbed or shot, and other states have other types of reporting requirements. The studies cited by Futures Without Violence are based on very old data sets and do not include any current research with survivors who have experienced well-designed, supportive systems when they engage with medical professionals such as the Domestic Violence Reporting and Referral System (DVRR) developed in Alameda County and now being developed nationally with a grant from the USDOJ Office for Victims of Crime. You can learn more about this evidence-based system at: https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjqy4GW1u72AhW9SzABHUXqD0cQFnoECAMQAQ&url=https%3A%2F%2Fmedreportguard.com%2Fdvrr%2F&usg=AOvVaw1voVWvKMVNWrCRCauhM8KM.

The California Legislature has declared in Penal Code Section 273.8: “The Legislature hereby finds that spousal abusers present a clear and present danger to the mental and physical well-being of the citizens of the state of the State of California.” How can we eliminate domestic violence reporting if this is still the law of our state? We also recently passed Penal Code Section 13701(I) that requires law enforcement officers to warn victims of the danger of strangulation assaults and the need to seek immediate medical attention and to contact an advocate. The Legislature last year authorized forensic examinations for domestic violence victims (AB2185) which we strongly supported. In 2022, we passed a coercive control law in California that allowed survivors to seek a protective order when they are experiencing abusers from controlling their lives including preventing them from seeking medical services. How ironic that we are now assuming that all victims have the freedom to make all their own choices about their health and medical treatment after violence and abuse. The logic behind AB 1028 is indefensible.

Interestingly, no supporters of AB 1028 can cite more than a few cases is where bad things have happened with our current law on medical mandated reporting. The last time this bill was proposed they had only a few anecdotes in 2022 about how reporting dissuades victims from seeking medical attention. They still have done no new research or focus groups with large

groups of domestic violence survivors in California. On the other hand, we have done focus groups in Family Justice Centers across California with MANY survivors who are thankful they did not have to be responsible for calling the police after high risk, serious injury domestic violence assaults. Now, we are again at the point where the implication is that only bad things happen with reporting. Joyce, the survivor I quote above, is one of thousands of survivors who would likely say just the opposite if asked in a balanced, unbiased survey. We should all think about what is likely to happen if AB 1028 is passed.

Let me give a few examples of bad (even terrible) things that will happen if AB 1028 is passed. **For example,** a high-risk victim walks into a hospital emergency room with a knife sticking out of her chest. She says her boyfriend stabbed her and she is terrified he will find her and kill her – so she does not to call the police. If AB 1028 passes, the hospital cannot call law enforcement to ensure accountability for the offender. **For example,** a victim is transported by ambulance after having a stroke. She has suffered major brain injury. At the hospital she discloses that she was strangled a day earlier by her husband when he told her that if she talked, he would kill her. She feels she cannot call the police based on his threats. If AB 1028 passes, the assault will not be reported. **For example**, a pregnant woman six months into her pregnancy is repeatedly kicked in the stomach and loses her baby. She goes to the hospital and discloses the identity of her abuser, but she is too terrified and confused to have to be responsible for calling the police or an advocate. If AB 1028 passes, there will be no intervention or safety services offered to her. **For example**, (an actual case) a victim seeks medical attention for her injuries from domestic violence. She reports she was in a car accident. Due to the type of injuries, the medical provider becomes suspicious and questions her about her car. The victim admits she doesn't have car and it was her abuser who told her to lie to the doctor. Although the doctor is concerned for her safety, if AB 1028 passes, the doctor will have no responsibility to do anything to increase her safety or the offender's accountability.

Analyzing AB 1028, why is being injured by a firearm going to remain reportable (shot or pistol whipped) and no other type of lethal or near lethal violence? Let's not say it's about a victim's agency or choices – in the middle of shock, trauma, and terror the victim has been robbed of hope and agency. The agency and power belongs to her rage-filled abuser, not to the victim. When we "give the victim the choice" in these situations, we are handing all power back to the abuser.

The legislative process in the Senate in the coming weeks will be important. The BRN has done the truth no favors by its approach with AB 1028. Please don't automatically support the bill because advocates have misrepresented to you that this is what survivors want. It is not true.

ALLIANCE for HOPE

A statewide survey in California found the majority of advocates and survivors support the current suspicious injury reporting law and if it is amended they overwhelmingly support maintaining reporting for serious bodily injury cases including stabbings, strangulation, acid attacks, or other major injury cases. This is not about autonomy. Seriously injured victims at high risk for homicide will be too terrified to report themselves. The BRN will always be remembered as a group that ignored its moral obligation to save lives.

There may well be responsible amendments that will allow us to find more ground among good people with very diverse and strongly held views on this issue but Futures and the California Partnership to End Domestic Violence have rejected all our efforts at compromise. Please include us in this dialogue if the BRN is willing to discuss AB 1028 again.

Thank you for your consideration.

With Great HOPE,

Casey Gwinn, Esq.
President
(619) 980-2565 cell

ALLIANCE for HOPE INTERNATIONAL

Summary of Literature and Legislation on Domestic Violence Mandated Reporting Laws (1999-2023) (UPDATED 6/14/23)

The Fact Sheet produced by proponents in support of AB 1028 is misleading and incomplete. Alliance for HOPE International has reviewed studies cited by the proponents and the studies excluded by the proponents in this updated Summary. We have also included the latest research with California survivors and advocates.

The newest California Survey of survivors and advocates shows overwhelming support for the current medical mandated reporting law. 76.3% of California domestic violence survivors and advocates believe domestic violence injuries being treated by medical personnel should be reported law enforcement for the purposes of documenting the abuse and the identity of the abuser. 83.1% of California domestic violence survivors and advocates surveyed believe if the victim is at high-risk for homicide and has experienced serious bodily injury that medical personnel should be required to report to law enforcement even if victims are too scared or too injured to make the decision to report themselves. And 91.6% support funded, mandatory bedside advocacy for domestic violence victims if all medical mandated reporting is eliminated in California.

The three newest statutes in the United States on medical mandated reporting are in Tennessee (2021), Colorado (effective March 1, 2022), and Ohio (2023). Supporters of AB 1028 have not provided the California Legislature with any of these recent statutes. Tennessee mandates reporting when there are life-threatening injuries including strangulation in domestic violence. Colorado mandates reporting of domestic violence for serious bodily injury in domestic violence including strangulation (by recent case law in Colorado). Serious bodily injury in Colorado is defined as:

(p) "Serious bodily injury" means bodily injury which, either at the time of the actual injury or at a later time, involves a substantial risk of death, a substantial risk of serious permanent disfigurement, a substantial risk of protracted loss or impairment of the function of any part or organ of the body, or breaks, fractures, or burns of the second or third degree. (Strangulation is serious bodily injury. **People v. Bowers, 21 Colo.App.LEXIS 496 (2021).**

In 2023, a bi-partisan vote in the State of Ohio just expanded their reporting of domestic violence to include all injuries resulting from the commission of any felony. The Ohio legislative findings found that medical intervention must include accountability for domestic violence offenders.

But each study cited in the Fact Sheet by proponents should be read carefully. Studies not included in the "Fact Sheet" on AB 1028 by Futures Without Violence include published research that the MAJORITY of medical professionals support mandated reporting for

domestic violence and the MAJORITY of California domestic violence survivors support medical mandated reporting. In recent focus groups by Alliance for HOPE International, the majority of domestic violence survivors support mandated reporting OR bedside advocacy for seriously injured and high-risk victims.

New California Survivor and Advocate Survey from www.domesticshelters.org (2023)
See data in the back of this summary.

1999 Houry et al

Summary
9% of women said mandated reporting laws made them less likely to seek medical care.

9% of Women and 15% of men (12% total) would be less likely to seek medical care for an injury related to DV because of mandated reporting laws.

But there is another key quote: "Only rarely did mandatory reporting laws appear to adversely affect a patient's decisions to seek medical care in this study. The benefits of mandatory reporting must be measured to assure that they justify deterrence to a small minority of patients."

This study refutes the arguments of proponents of AB 1028. All they have are a few anecdotes. They have no actual recent research from current survivors of domestic violence that support eliminating 30 years of reporting of suspicious injury in domestic violence in California.

2005, Sullivan et al

Summary
This is a report on a focus group with 61 survivors. Most participants would support mandated reporting if changes were made to promote victim safety. **Many of these changes have occurred in California since this study.**

Most of the participants noted that they would not support mandatory reporting by health care providers **until a number of changes are made in the system to promote victims' safety.** The women had several ideas for improving the system's response, and most of their recommendations were related to enhancing the training of both health care providers and police officers, improving the criminal legal response to hold perpetrators accountable for their actions, and coordinating and enhancing services for survivors, as these comments illustrate. [The work of Family Justice Centers in California – being funded by the State Legislature]

2008 Sachs, Glass, Campbell et al – A Population-Based Survey Assessing Support for Mandatory Domestic Violence Reporting by Health Care Personnel

Summary

59% of domestic violence survivors in a national survey (11 cities) supported medical mandated reporting; 68% of all women supported medical mandated reporting of domestic violence. Reasons participants endorsed reporting included: victims would find it easier to get help (81%) and would like health care personnel to call the police (68%) instead of making victims decide to call.

Citation: https://www.tandfonline.com/doi/abs/10.1300/J013v35n02_08.

2020 Lippy et al - The Impact of Mandatory Reporting Laws on Survivors of Intimate Partner Violence: Intersectionality, Help-Seeking and the Need for Change

National DV Hotline Study

Summary:
"Survivors also reported not turning to medical and mental health care providers **(27.5%)**."
Study is focused on the negative outcomes of the law enforcement response, criminal justice system, and child protection services, not the positive outcomes.

Limitations:
Study does not distinguish medical from mental health.

The term "Medical Care" is only mentioned once in the entire article. It is not really about "Medical Care" or "Medical Mandated Reporting" and never even mentions the California Suspicious Injury Reporting Law currently the focus of AB 1028.

Study does not define what "turning to medical and mental health provider" means outside of the context of "did not ask for help." **Does it mean the survivor would not seek medical care, or does it mean they would still seek medical care but not disclose?** Study does not say what happened to the other 72.5% of survivors. What percentage of the 72.5% asked their medical provider for help, sought medical/mental health care, or made a disclosure to a medical/mental health provider? Interestingly, survivors reported not turning to police in only 8.6% of cases. Again, the study does not say what the other 91.4% answered. What percentage of the 91.4% turned to help from law enforcement? This is especially important considering the focus of this study is the negative outcomes from the criminal legal system.

Study says majority of survivors said reporting was unhelpful or harmful. Only 17% of survivors say the report made their situation better. However, the authors did not differentiate the

source of the reporting in cases where it was unhelpful/harmful vs. helpful. A mandated report made by a neighbor who has no contact with the patient and results in law enforcement showing up unannounced vs. a report made by a medical provider who provides wraparound services and works with an advocate or others from a multidisciplinary team will have vastly different outcomes.

"Research on the intersection of MR and IPV highlights negative consequences these laws can have for IPV survivors' help-seeking from formal sources of support. Survivors, for example, may not seek the medical care they need or withhold medically relevant information to avoid triggering a report against themselves or their abuser (Durborow et al. 2013; Jordan and Pritchard 2018)." "Qualitative analysis revealed that survivors most commonly did not ask for help from a family member or friend. Almost 29% of respondents said they did not ask a family member or friend for fear that person would be legally required to report them. Survivors also reported not turning to medical and mental health care providers (27.5%), police (8.6%), or community-based organizations (2.2%). Of the 718 survivors who responded to the qualitative questions, 19.4% stated they did not turn to anyone at all for fear of being reported."

Limitations:
Convenience sample of patients who were already calling the hotline for help.

2018 Jordan et al - Mandatory Reporting of Domestic Violence: What Do Abuse Survivors Think and What Variables Influence Those Opinions?

Summary: This study **DID NOT** evaluate whether or not mandated reporting had any effects on **seeking** medical care. The only thing they studied in terms of "seeking" was seeking services from a DV shelter. The study occurred in Kentucky with shelter residents. The study was not about medical reporting but about reporting by the shelter under Kentucky law.

The main finding in terms of medical was 63.6% of women said mandatory reporting would make them less likely to **talk** to their doctor or nurse about DV. The fact that women often don't speak to their medical provider about DV is well accepted and referenced in almost every other piece of literature on this subject.

Only 7.1% opposed mandatory reporting outright. 35.7% were supportive of mandated reporting and 36.2% favored consent of the victim with mandated reporting.

"Knowing about mandatory reporting requirements still had an **extremely chilling effect** on whether or not these women would **talk** to either health or mental health providers about their abuse (see Table 2). For 63.6% of the women surveyed, mandatory reporting requirements would make them less likely to disclose abuse to a doctor or nurse while only 28.8% said knowledge of a mandatory reporting requirement would make them more likely to disclose."

2021 Kimberg et al - Fears of disclosure and misconceptions regarding domestic violence reporting amongst patients in two US Emergency Departments

Summary

Most participants **UDLI (71%), LLRC (66%), NLRC (63%)** support mandated reporting. **Women had the slight majority** (68% women vs. 66% men).

UDL had the fewest misconceptions and the lowest fear with seeking medical care and the highest rate of seeking care despite that fear

Significant Bias and Limitations

Convenience Sampling (people waiting in the ED)
Asked participants to what they thought the person they knew who was experiencing DV was thinking i.e. what do you think they thought?

Didn't assess how participants actually knew the person was afraid to seek medical care for DV
Authors own bias towards eliminating mandated reporting is clear (quoted below).

Despite severe limitations, this article supports that most survivors want mandated reporting laws. This study also showed that the fewer misconceptions from survivors about mandated reporting, the stronger the support for mandated reporting laws.

46% were afraid, but 54% weren't afraid to seek help.

39% reported that the person experiencing DV victimization did not seek care due to fear, 61% still sought care. Little to no focus on the fear of the abuser which is the key element in ALL domestic violence incidents. Victims are not afraid of the police. They are afraid of their abusers.

UDL had the fewest misconceptions and the lowest fear with seeking medical care and the highest rate of seeking care despite that fear.

Most participants UDLI (71%), LLRC (66%), NLRC (63%) responded "Yes, strongly" or "Yes, somewhat" when asked whether doctors should report DV to police even if the person experiencing DV victimization does not want the police notified. When stratified by male and female gender, 66% of men and 68% of women responded "Yes, strongly" or "Yes, somewhat" to the same question.

BIAS

"What can be done to reduce fear, rectify misconceptions, and improve care? In one of our cities (SF), **after a history of unsuccessful advocacy to repeal or modify the California DV mandatory reporting law** to support patient confidentiality and autonomy [53, 54], we worked with local law enforcement to develop a supplemental form to the California mandatory healthcare report to allow people experiencing DV to provide input to law enforcement about their own assessment of how to minimize safety risks associated with mandatory reporting [55]."

Other Key Points: More than 45 states have mandatory reporting of some form for crimes connected to domestic violence contrary to the public claim of Futures Without Violence that it is only 3 states that have reporting; Telling survivors during crisis and trauma that they must call the police themselves is reckless and irresponsible; Many survivors in the studies cited above support having the medical professionals call law enforcement; Survivors can still choose to speak to them or not speak to them if they come to the hospital at all – this is survivor agency and autonomy.

See Aequitas Report: https://evawintl.org/wp-content/uploads/AEq-Reporting-Requirements-for-DV-Victims.pdf.

As noted above, the two latest updated mandatory reporting bills were in Colorado and Tennessee in 2021. Colorado still requires mandatory reporting for domestic violence assaults with "serious bodily injury". Advocacy referral is mandatory in Colorado. Tennessee requires mandated reporting for "life-threatening injuries" including strangulation. Futures Without Violence does not want to show the Colorado or Tennessee laws to the California Legislature because Futures Without Violence completely opposes reporting.

See Colorado Law: https://www.violencefreecolorado.org/medical-reporting-options/.
Colorado has medical mandated reporting for domestic violence where serious injury occurs.

2020, Jacob, Cullen et. al., *Assault by strangulation: sex differences in patient profile and subsequent readmissions*

Citation: *Canadian Journal of Public Health (2020) 111:492–501; https://link.springer.com/article/10.17269/s41997-019-00286-1*.
This Canadian study recently found that strangulation assault patients have high re-admission rates in a country with no medical mandated reporting. Without intervention, strangulation victims get re-assaulted at higher rates than other victims of domestic violence.

2023 Alliance for HOPE International Survivor Focus Group at One Safe Place Family Justice Center in Fort Worth, Texas (For more information, please contact advocate Michelle Morgan at mmorgan@onesafeplace.org).

100% of the survivors in the focus group at One Safe Place Family Justice Center in said they support medical personnel reporting domestic violence to police if they are too injured or too scared to make a report of the abuse themselves. Their reaction was visceral. One survivor who suffered a major brain injury said if medical had not reported, she would likely be dead today. She was strangled and suffered a major brain injury. She is an amazing woman — now learning to walk and speak again and is blind in her left eye from her brain injury. Texas does not have medical mandated reporting for domestic violence, but survivors want to see the law changed. Texas has a per capita domestic violence homicide rate nearly double that of California.

Felicia Collins, the brain injury survivor, asked that her name and phone number be shared with policymakers in California. (To contact Felicia Collins for testimony on AB 1028, please email Casey Gwinn at casey@allianceforhope.com.) It has been provided to the proponents of AB 1028, but they have not contacted her as of March 23, 2023.

Focus group survivors made the following statements about the requirement that they should decide whether police are called while being treated for injuries:

- *"Please don't make us call the police"*
- *"We are safer if the hospital calls"*
- *"Calling for us gives us separation and protection"*
- *"When doctors and nurses report, it gives us a way out"*
- *"There is no 'autonomy' at the time you are in the hospital. You are under his control and influence."*
- *"You are not in the right frame of mind to make decisions like this."*
- *"Even if we go back to the situation, we are protected because we didn't call. Someone else was required to call."*
- *"It may take that confrontation with the police to help him realize what he did was wrong."*
- *"If the police are involved, then you know it's bad, it's wrong and it's illegal."*
- *"If he knows there is reporting, it might even keep him from putting me back in the hospital."*
- *"I agree we should be able to make choices but if I'm in the hospital, I can't think clearly."*

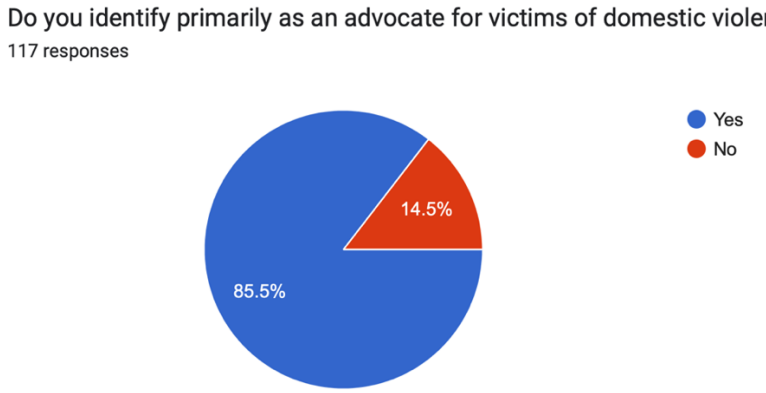
- *"It's like if I'm sick…would you take me to the pharmacy and then tell me to pick my own medicine? How would I know what to choose?"*
- *"What about "do no harm"?"*
- *"You will be sending us back to our death."*

2022 Alliance for HOPE International Survivor Focus Group in Monterey, CA

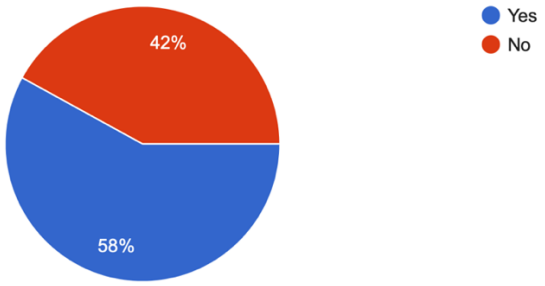
Survivors supported mandated reporting by medical professionals because they were too terrified to report the violence themselves. One immigrant woman sought medical attention after being raped. She said the doctor reported and she was too afraid to report being raped. She said if it wasn't for medical mandated reporting, she would not have received the medical, legal and advocacy support she received and is currently receiving. She said because medical professionals reported, her rapist was arrested and prosecuted. (Contact Alliance CEO, Gael Strack for more information at gael@allianceforhope.com).

The majority of all California advocates and survivors recently surveyed support the current mandated reporting law. Most of survivors served in Family Justice Centers also support the current mandated reporting law. And the majority of those served in Family Justice Centers are women of color. They overwhelmingly support current law and support keeping medical mandated reporting for high risk and serious injury domestic violence cases if any other types of reporting are eliminated.

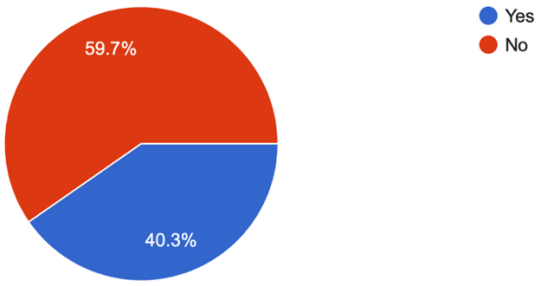
New California Survey of Domestic Violence Survivors and Advocates on Medical Mandated Reporting Documenting the Abuser and the Injuries Caused to the Victim (2023) – www.domesticshelters.org survey of California survivors and advocates



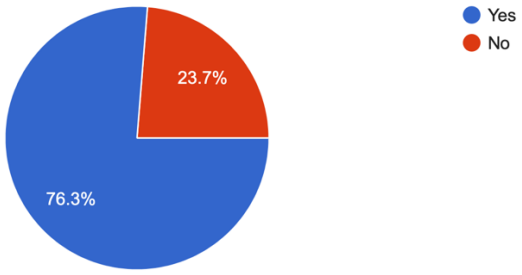
Do you identify as an advocate AND a survivor of domestic violence?
119 responses



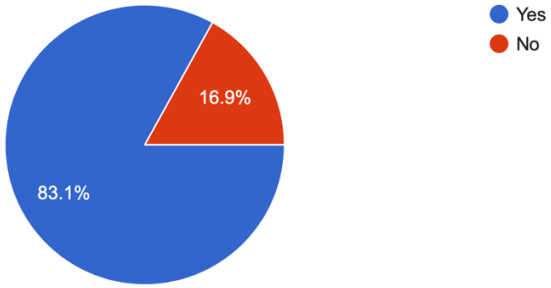
Do you identify as a person of color?
119 responses



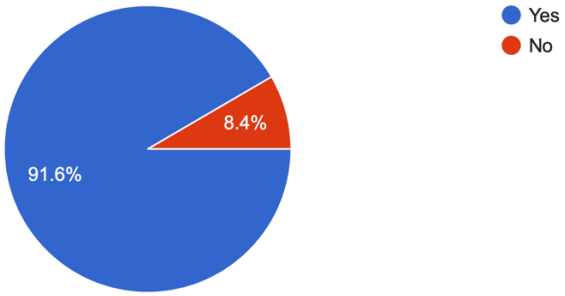
Do you believe domestic violence injuries being treated by medical personnel should be reported to law enforcement for the purposes of documenting the abuse and the identity of the abuser?
118 responses



Do you believe if the victim is at high-risk of homicide and has experienced serious bodily injury (shot, stabbed, badly beaten, or strangled including injuries such as traumatic brain injury, internal injuries such as traumatic brain injury, internal injuries, disfigurement, or broken bones), medical personnel should be required to report to law enforcement even if victims are too scared or too injured to make the decision to report themselves?
(118 responses)



If all reporting of domestic violence to law enforcement, without victim consent, were to be eliminated in California, do you support providing funding and requiring advocates to come to the hospital to meet with survivors (bedside advocacy) about their options?
(119 responses)



Alliance for HOPE International opposes AB 1028 without amendments. Proposed amendments have been submitted to the author, Assemblymember Tina McKinnor. No amendments have been accepted as of March 23, 2023.

Compiled by Casey Gwinn, President, Alliance for HOPE International & Dr. Sean Dugan, Former Director, California Clinical Forensic Medical Training Center; Director, Shasta Community Forensic Care Team; Director, Strangulation Medical Clinic, One Safe Place Shasta Shelter and Family Justice Center.

BOARD OF REGISTERED NURSING
BILL ANALYSIS

BILL NUMBER: Senate Bill 372
AUTHOR: Menjivar
BILL DATE: June 12, 2023 - Amended
SUBJECT: DCA: licensee and registrant records: name and gender changes
SPONSOR: CA Association of Marriage and Family Therapists and others.

SUMMARY

This bill would require a board under the Department of Consumer Affairs (DCA) to, upon request, replace references to a licensee's former name or gender on their license and on publicly viewable information displayed on the internet about the licensee when the licensee's name has been changed due to a court-ordered change in gender or under circumstances that resulted in participation in the state's address confidentiality program.

RECENT AMENDMENTS

- Requires a board that operates an online license verification system to replace references to a licensee's former name or gender with the individual's current name or gender on publicly viewable information that is displayed on the internet about the licensee and prohibits the licensee's former name or gender from being published online.

- Provides that a licensee qualifies for the above actions by a board if the licensee provides government-issued documentation demonstrating that they legally changed their name either as part of a court-ordered change in gender or under circumstances that resulted in their participation in the Secretary of State's Safe at Home address confidentiality program.

- Prohibits a board from publishing enforcement records for an individual whose name was changed under the above circumstances but requires that the board post a statement directing the public to contact the board for more information about the licensee's enforcement history.

- Requires boards to ensure compliance with the California Public Records Act in implementing the above bullet point, including that they respond to a request within 10 days of receipt.

BACKGROUND

DCA License Search

The DCA License Search provides consumers with around-the-clock access to information about 3.9 million licensees. Consumers can access the DCA License Search to verify if a professional is licensed by a DCA board or bureau.

In furtherance of DCA's mission of public protection, each license record reflects if a license is current, expired, or has been subject to disciplinary action such as a suspension or revocation. This allows consumers to make informed decisions about who they choose to seek services from.

Deadnaming

Deadnaming occurs when someone refers to a transgender or non-binary person by a name they no longer use—typically a birth name given to them before their transition. When transgender or non-binary people transition or come out, they may choose a new name to affirm their identity. This new name, in a way, marks the "death" of their old identity and the person they once were. Like misgendering, deadnaming is a harmful practice because it fails to recognize a person's identity. Both accidental and intentional deadnaming can both undermine a person's gender identity. Whereas intentional deadnaming is often seen as a form of verbal harassment, even accidental deadnaming can upset or hurt others because it conveys a lack of awareness of the trans or non-binary person's life. Studies have concluded that use of a transgender individual's chosen name reduces mental health risks such as depression, suicidal ideation, and suicidal behavior.

Furthermore, public deadnaming can force an individual to disclose that they are transgender before they wish to. Transgender people experience high rates of discrimination, especially if they are known or believed to be trans. The National Center for Transgender Equality found in their 2015 US Trans Survey that 46% of people surveyed had been verbally harassed and 9% had been physically assaulted for their trans identity. Additionally, 30% reported experiencing discrimination in the workplace or with prospective employers. The UCLA Williams Institute found that trans adults have a suicidal ideation rate 12 times higher and a suicide attempt rate 18 times higher than the general population.

REASON FOR THE BILL

According to the author, DCA licenses professionals ranging from accountants to mental health professionals to nurses, who are all catalogued under their BreEZe online license verification system. Currently, however, transgender, and non-binary licensees who have gone through the process of legally changing their names still have their original or "dead" names listed on the DCA's online site. When trans or non-binary people transition or come out, they may choose a new name to affirm their identity. Research has shown that referring to someone using their chosen name can reduce depressive symptoms and even suicidal ideation for trans people.

The author goes on to state that DCA's current practice can both negatively impact the mental health as well as the physical safety of all DCA licensees who are identified by their deadname online. SB 372 takes a simple and much-needed step to protect the safety and privacy of transgender and non-binary people licensed under DCA by requiring DCA to update its site to only identify its licensees by their current legal name, upon request.

ANALYSIS

This bill would require each board under the DCA, upon request and receipt of specified documentation, to replace references to a licensee's former name and/or gender on any license that has been issued when the licensee's name has been changed due to a court-ordered change in gender.

For a board that operates an online license verification system (e.g. DCA License Look Up), any references to the licensee's former name or gender would also be required to be replaced with the individual's current name or gender.

The licensee can provide either of the following documents to demonstrate a legal name change:

- A certified court order issued pursuant to a proceeding authorized by the Code of Civil Procedure Section 1277.5 or Health and Safety Code Sections 103425-103445 reflecting the licensee's or registrant's updated name.

- A certified court order issued pursuant to a proceeding authorized by the Code of Civil Procedure Section 1277 and a copy of the certificate issued under the Secretary of State's Safe at Home program authorized by Government Code Sections 6205-6210.

The licensee can provide any of the following documents to demonstrate a gender change:

- State-issued driver's license or identification card.
- Birth certificate.
- Passport.
- Social security card.
- Court order indicating a gender change.

If a licensee was previously subjected to an enforcement action, the board would be prohibited from posting those records online. The board would instead be required to post a statement directing the public to contact the board for more information about the licensee's or registrant's prior enforcement action. The board would then be expected to respond to these requests within ten days, in accordance with the California Public Records Act.

The bill also requires a board to, upon request, reissue a license created by the board and conferred upon the licensee and prohibits a board from charging a higher fee for reissuing that document than it ordinarily charges for reissuing documents with other updated information.

Additional Considerations

DCA staff and staff from several different boards met with the author's office and bill sponsors to provide technical assistance on the bill language. The current amendments reflect those discussions by attempting to maintain the public's access to pertinent licensee information while also eliminating use of deadnames for transgender licensees.

FISCAL IMPACT
While it is impossible to know the exact number of licensees that would utilize the provisions of this bill, Board staff do not anticipate a significant number. Therefore, the estimated cost of the bill would be minor and absorbable.

SUPPORT
- California Association for Licensed Professional Clinical Counselors (Co-Sponsor)
- California Association of Marriage and Family Therapists (Co-Sponsor)
- California Association of Social Rehabilitation Agencies (Co-Sponsor)
- California Council of Community Behavioral Health Agencies (Co-Sponsor)
- California Psychological Association (Co-Sponsor)
- California State Association of Psychiatrists (Co-Sponsor)
- National Association of Social Workers, California Chapter (Co-Sponsor)
- Psychiatric Physicians Alliance of California (Co-Sponsor)
- American Federation of State, County and Municipal Employees
- Asian Americans for Community Involvement
- Board of Behavioral Sciences
- California Academy of Family Physicians
- California Access Coalition
- California Consortium of Addiction Programs and Professionals
- California Dental Association
- County Behavioral Health Directors Association of California
- Equality California
- The Kennedy Forum
- Pathpoint
- Steinberg Institute
- Sycamores

OPPOSITION
None on File.

LEGISLATIVE COMMITTEE POSITION
Not Applicable.

BOARD POSITION
The Board took a SUPPORT, IF AMENDED position on the 2/9 version at the March meeting.