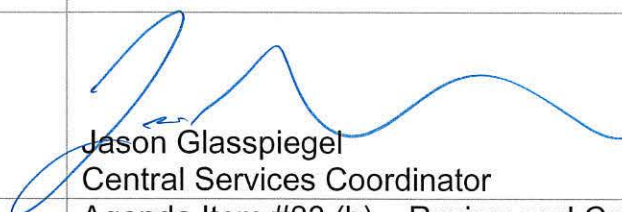


## MEMORANDUM

<b>DATE</b>	May 6, 2016
<b>TO</b>	Board of Psychology
<b>FROM</b>	 Jason Glasspiegel Central Services Coordinator
<b>SUBJECT</b>	Agenda Item #23 (b) – Review and Consideration of Proposed Legislation – SB 1334 (Stone) Crime Reporting: Health Practitioners: Reports

### **Background:**

Requires a health care practitioner who provides medical services to a patient who disclosures that he or she is seeking treatment due to being the victim of assaultive or abuse conduct, to additionally make a report to a law enforcement agency.

**Location:** Senate Appropriations Committee

**Status:** In Senate Committee on Appropriations: To Suspense File.

### **Action Requested:**

Staff has no recommended position at this time. The board may want to consider taking a position on this bill.

Attachment A is the analysis of SB 1334 (Stone)

Attachment B is the language of SB 1334 (Stone)

Attachment C is the Senate Appropriations Analysis of SB 1334 (Stone)

# CALIFORNIA STATE BOARD OF PSYCHOLOGY

## BILL ANALYSIS

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**BILL NUMBER:** SB 1334

**VERSION:** AMENDED: APRIL 19, 2016

**AUTHOR:** STONE

**SPONSOR:** CALIFORNIA CLINICAL FORENSIC  
MEDICAL TRAINING CENTER

**BOARD POSITION:** NONE

**SUBJECT:** HEALTH PRACTITIONERS: REPORTS

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**Summary:** This bill would require a health care practitioner providing medical services to a patient to make a mandated report if the patient informs him or her that they are seeking treatment due to being the victim of assaultive or abusive conduct.

### **Existing Law:**

- 1) Requires any health practitioner who is employed in a health facility, clinic, physician's office, or local or state public health department to make a report when he or she provides medical services for a physical condition to a patient as follows (Penal Code (PC) §11160(a)):
  - a) The patient is suffering from a wound or physical injury inflicted by his or her own act or inflicted by another, by means of a firearm; or
  - b) The patient is suffering from a wound or physical injury inflicted as a result of assaultive or abusive conduct.
- 2) Defines "assaultive or abusive conduct" as including battery, sexual battery, assault with a deadly weapon, rape, incest, child abuse, spousal abuse, and elder abuse, among others. (PC §11160(d))
- 3) Defines a "health practitioner" to include the Board's license types. (PC §§11162.5(a), 11165.7(a))

### **This Bill:**

- 1) Requires a health practitioner employed in a health facility, clinic, physician's office, or local or state public health department to make a report when he or she provides medical services to a patient who discloses that he or she is seeking treatment due to being the victim of assaultive or abusive conduct. (PC §11160(a)(2))

### **Comment:**

- 1) **Author's Intent.** The author states that there is a gap in the mandated reporting law that impacts reporting of sexual assault by health care providers. Currently, such a mandated report is only triggered if there is a wound or injury. However, the author

notes that there is not always a wound or physical injury resulting from a sexual assault.

- 2) Definition of "Medical Services."** This bill requires a health care practitioner (which by definition includes Board licensees) to make specified mandated report based on observations made while providing medical services to the patient. It is unclear if medical services include mental health services, as no definition is provided.
- 3) Effect on Psychotherapist-Patient Privilege.** The Board may want to discuss effects on the psychotherapist-patient privilege if a Board licensee is required to make a mandated report upon learning that a patient is seeking treatment due to being a victim of assaultive or abusive conduct.
- 4) Support and Opposition.**

Support

- California Clinical Forensic Medical Training Center (Sponsor)
- California District Attorneys Association
- California State Sheriffs' Association
- County Health Executives' Association of California

Opposition

- None at this time.

**5) History**

04/25/16 April 25 hearing: Placed on APPR. suspense file.  
04/19/16 From committee with author's amendments. Read second time and amended. Re-referred to Com. on APPR.  
04/15/16 Set for hearing April 25.  
04/13/16 April 18 set for first hearing canceled at the request of author.  
04/08/16 Set for hearing April 18.  
04/05/16 From committee: Do pass and re-refer to Com. on APPR. with recommendation: To consent calendar. (Ayes 7. Noes 0. Page 3395.) (April 5). Re-referred to Com. on APPR.  
03/28/16 From committee with author's amendments. Read second time and amended. Re-referred to Com. on PUB. S.  
03/15/16 Set for hearing April 5.  
03/03/16 Referred to Com. on PUB. S.  
02/22/16 Read first time.  
02/22/16 From printer. May be acted upon on or after March 23.  
02/19/16 Introduced. To Com. on RLS. for assignment. To print.



# California

## LEGISLATIVE INFORMATION

### SB-1334 Crime reporting: health practitioners: reports. (2015-2016)

AMENDED IN SENATE APRIL 19, 2016

AMENDED IN SENATE MARCH 28, 2016

CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

## SENATE BILL

**No. 1334**

**Introduced by Senator Stone**

**February 19, 2016**

An act to amend Section 11160 of the Penal Code, relating to crime reporting.

### LEGISLATIVE COUNSEL'S DIGEST

SB 1334, as amended, Stone. Crime reporting: health practitioners: ~~human trafficking~~. *reports*.

Existing law requires a health practitioner, as specified, who, in his or her professional capacity or within the scope of his or her employment, provides medical services to a patient who he or she knows, or reasonably suspects, has suffered from a wound or other physical injury where the injury is by means of a firearm or is the result of assaultive or abusive conduct, to make a report to a law enforcement agency, as specified. Existing law defines "assaultive or abusive conduct" for these purposes as a violation of specified crimes. Under existing law, a violation of this provision is a crime.

This bill would require a health care practitioner who provides medical services to a patient who discloses that he or she is seeking treatment due to being the victim of assaultive or abusive conduct, to additionally make a report to a law enforcement agency. ~~The bill would also add the crime of human trafficking to the list of crimes that constitute assaultive or abusive conduct for purposes of the above reporting requirements and the reporting requirements added by this bill.~~ By increasing the scope of an existing crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

**SECTION 1.** Section 11160 of the Penal Code is amended to read:

**11160.** (a) (1) A health practitioner employed in a health facility, clinic, physician's office, local or state public



health department, or a clinic or other type of facility operated by a local or state public health department who, in his or her professional capacity or within the scope of his or her employment, provides medical services for a physical condition to a patient who he or she knows, or reasonably suspects, is a person described as follows, shall immediately make a report in accordance with subdivision (b):

(A) A person suffering from a wound or other physical injury inflicted by his or her own act or inflicted by another where the injury is by means of a firearm.

(B) A person suffering from a wound or other physical injury inflicted upon the person where the injury is the result of assaultive or abusive conduct.

(2) A health practitioner employed in a health facility, clinic, physician's office, local or state public health department, or a clinic or other type of facility operated by a local or state public health department who, in his or her professional capacity or within the scope of his or her employment, provides medical services to a patient who discloses that he or she is seeking treatment due to being the victim of assaultive or abusive conduct, shall immediately make a report in accordance with subdivision (b).

(b) A health practitioner employed in a health facility, clinic, physician's office, local or state public health department, or a clinic or other type of facility operated by a local or state public health department shall make a report regarding persons described in subdivision (a) to a local law enforcement agency as follows:

(1) A report by telephone shall be made immediately or as soon as practically possible.

(2) A written report shall be prepared on the standard form developed in compliance with paragraph (4) of this subdivision adopted by the Office of Emergency Services, or on a form developed and adopted by another state agency that otherwise fulfills the requirements of the standard form. The completed form shall be sent to a local law enforcement agency within two working days of receiving the information regarding the person.

(3) A local law enforcement agency shall be notified and a written report shall be prepared and sent pursuant to paragraphs (1) and (2) even if the person who suffered the wound, other injury, or assaultive or abusive conduct has expired, regardless of whether or not the wound, other injury, or assaultive or abusive conduct was a factor contributing to the death, and even if the evidence of the conduct of the perpetrator of the wound, other injury, or assaultive or abusive conduct was discovered during an autopsy.

(4) The report shall include, but shall not be limited to, the following:

(A) The name of the injured, assaulted, or abused person, if known.

(B) The injured, assaulted, or abused person's whereabouts.

(C) The character and extent of the person's injuries, if any.

(D) The identity of a person the injured, assaulted, or abused person alleges inflicted the wound, other injury, or assaultive or abusive conduct upon the injured person.

(c) For the purposes of this section, "injury" shall not include any psychological or physical condition brought about solely through the voluntary administration of a narcotic or restricted dangerous drug.

(d) For the purposes of this section, "assaultive or abusive conduct" includes any of the following offenses:

(1) Murder, in violation of Section 187.

(2) Manslaughter, in violation of Section 192 or 192.5.

(3) Mayhem, in violation of Section 203.

(4) Aggravated mayhem, in violation of Section 205.

(5) Torture, in violation of Section 206.

(6) Assault with intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220.

(7) Administering controlled substances or anesthetic to aid in commission of a felony, in violation of Section 222.

~~(8) Human trafficking, in violation of Section 236.1.~~

(9)

(8) Battery, in violation of Section 242.

~~(10)~~

(9) Sexual battery, in violation of Section 243.4.

~~(11)~~

(10) Incest, in violation of Section 285.

~~(12)~~

(11) Throwing any vitriol, corrosive acid, or caustic chemical with intent to injure or disfigure, in violation of Section 244.

~~(13)~~

(12) Assault with a stun gun or taser, in violation of Section 244.5.

~~(14)~~

(13) Assault with a deadly weapon, firearm, assault weapon, or machinegun, or by means likely to produce great bodily injury, in violation of Section 245.

~~(15)~~

(14) Rape, in violation of Section 261.

~~(16)~~

(15) Spousal rape, in violation of Section 262.

~~(17)~~

(16) Procuring a female to have sex with another man, in violation of Section 266, 266a, 266b, or 266c.

~~(18)~~

(17) Child abuse or endangerment, in violation of Section 273a or 273d.

~~(19)~~

(18) Abuse of spouse or cohabitant, in violation of Section 273.5.

~~(20)~~

(19) Sodomy, in violation of Section 286.

~~(21)~~

(20) Lewd and lascivious acts with a child, in violation of Section 288.

~~(22)~~

(21) Oral copulation, in violation of Section 288a.

~~(23)~~

(22) Sexual penetration, in violation of Section 289.

~~(24)~~

(23) Elder abuse, in violation of Section 368.

~~(25)~~

(24) An attempt to commit any crime specified in paragraphs (1) to ~~(24)~~ (23), inclusive.

(e) If two or more persons who are required to report are present and jointly have knowledge of a known or suspected instance of violence that is required to be reported pursuant to this section, and if there is an agreement among these persons to report as a team, the team may select by mutual agreement a member of

the team to make a report by telephone and a single written report, as required by subdivision (b). The written report shall be signed by the selected member of the reporting team. A member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(f) The reporting duties under this section are individual, except as provided in subdivision (e).

(g) A supervisor or administrator shall not impede or inhibit the reporting duties required under this section and a person making a report pursuant to this section shall not be subject to sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established, except that these procedures shall not be inconsistent with this article. The internal procedures shall not require an employee required to make a report under this article to disclose his or her identity to the employer.

(h) For the purposes of this section, it is the Legislature's intent to avoid duplication of information.

**SEC. 2.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Ricardo Lara, Chair  
2015 - 2016 Regular Session

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### SB 1334 (Stone) - Crime reporting: health practitioners: mandated reporting

Version: April 19, 2016

Policy Vote: PUB. S. 7 - 0

Urgency: No

Mandate: Yes

Hearing Date: April 25, 2016

Consultant: Jolie Onodera

**This bill meets the criteria for referral to the Suspense File.**

**Bill Summary:** SB 1334 would expand the existing mandatory reporting law applicable to health practitioners to include making reports for patients who disclose they are seeking treatment due to being the victims of assaultive or abusive conduct, as specified.

#### **Fiscal Impact:**

- Local health practitioners: Non-reimbursable local costs (Local Funds) to the extent the bill results in additional reports of abuse made to law enforcement.
- Local law enforcement agencies: Non-reimbursable local enforcement costs (Local Funds) resulting from additional mandated reports received and investigated.
- State prisons/county jails: Potential future increase in state and local costs (Local/General Fund) to the extent additional mandatory reports of assaultive or abusive conduct that otherwise would have remained unreported lead to subsequent convictions for the offenses enumerated under the mandatory reporting law. To the extent practitioners are largely reporting on these types of cases would reduce the potential for such costs.
- Office of Emergency Services (Cal OES): Negligible fiscal impact to Cal OES for costs associated with the administration of victims' services programs. Potential increase in utilization of victims' services grants (Federal Funds/General Fund) to the extent additional mandated reports result in more referrals to local domestic violence services, as is recommended for all persons for whom a mandated report is submitted (PC § 11161).
- VCGCB: Potential increases or decreases in claims paid (General Fund) for health practitioners for reasonable attorney's fees incurred, to the extent a greater or lesser number of legal actions are filed against health practitioners under the expanded reporting requirements. Despite the provision of liability immunity, PC § 11163 authorizes up to \$50,000 per claim in cases dismissed or prevailed.

**Background:** Under existing law, a health practitioner employed in a health facility, clinic, physician's office, local or state public health department or clinic, and who, in his or her professional capacity or within the scope of his or her employment, provides medical services for a physical condition to a patient who he or she knows, or reasonably suspects, is a person described as follows, is required to immediately make a report to a local law enforcement agency:

- A person suffering from a wound or other physical injury inflicted by his or her own act or inflicted by another where the injury is by means of a firearm.



- A person suffering from a wound or other physical injury inflicted upon the person where the injury is the result of assaultive or abusive conduct. (Penal Code (PC) § 11160(a).)

Existing law requires a report to be made by telephone immediately or as soon as practically possible, and for a written report to be completed and sent to a local law enforcement agency within two working days of receiving the information from the person. (PC § 11160(b).)

Failure to report under the mandatory reporting law is a misdemeanor, punishable by imprisonment in a county jail for up to six months, by a fine of up to \$1,000, or both the imprisonment and fine. (PC § 11162.)

Existing law provides health practitioners with immunity from civil and criminal liability for the mandated reporting of assaultive or abusive conduct, however, Legislative findings and declarations provide that "even though the Legislature has provided for immunity from liability,...that immunity does not eliminate the possibility that actions may be brought against those persons based upon required reports of abuse pursuant to other laws."

As a result, existing law authorizes a health practitioner to present a claim to the Victim Compensation and Government Claims Board (VCGCB) for reasonable attorney's fees incurred in any action against that person on the basis of that person reporting in accordance with existing law if the court dismisses the action or if that person prevails in the action. The VCGCB is to submit the claim to be paid from an appropriation to be made for that purpose of up to the maximum amount of \$50,000 per claim.

**Proposed Law:** This bill would expand the existing mandatory reporting law applicable to health practitioners to include making reports for patients who disclose they are seeking treatment due to being the victims of assaultive or abusive conduct, as specified.

**Prior Legislation:** AB 1652 (Speier) Chapter 992/1993 required a health practitioner with knowledge of or who observed a patient whom he or she knows or reasonably suspects is suffering from a wound inflicted by means of a knife, gun, or other deadly weapon, to report to a law enforcement agency. AB 1652 increased the maximum fine for failure to report from \$500 to \$1,000, and provided for criminal and civil immunity for health practitioners making the mandated reports.

-- END --