



National LGBTQ Institute on Intimate Partner Violence

A PROJECT OF THE LOS ANGELES LGBT CENTER

In partnership with the National Coalition of Anti-Violence Programs and In Our Own Voices, Inc.

Modernizing Medical Mandatory Reporting in California

Publication: January 2023

ABSTRACT

To effectively serve LGBTQ+ survivors of domestic violence so that they can obtain safety, stability, and support in navigating abusive relationships, states must change mandatory reporting laws for medical care providers. Currently, states such as California have laws in place that require health care practitioners to report to law enforcement if a patient who has suffered physical injury discloses that the injury was caused by domestic violence. These laws do not increase LGBTQ+ survivors' safety; in fact they jeopardize it. These laws put survivors at risk by mandating police intervention without a plan in place for the survivor to navigate and make decisions about what options are best for their safety. This is particularly dangerous for survivors who are planning to leave an abusive relationship, since leaving is often the most dangerous time in an abusive relationship and is safest when survivors are prepared and are connected to supportive resources. For LGBTQ+ survivors, particularly those who are Black, Indigenous, and people of color (BIPOC), mandatory reporting comes with added layers of fear of mistreatment or abuse from law enforcement. Modifying medical care providers responsibilities from having to non-consensually report domestic violence injuries to law enforcement to instead providing their patient with a warm referral to a domestic violence advocacy organization is necessary and critical. This change would ensure that survivors are able to access medical care safely and would allow survivors to have autonomy in decisions made around their safety and be linked to resources they may have never been referred to before.

ANALYSIS

Law Enforcement and the LGBTQ+ Community

LGBTQ+ survivors may be afraid to seek critical medical care for fear of mandatory reporting due to the prevalence of discrimination and harassment from law enforcement against the LGBTQ+ community. A national survey of LGBTQ+ people found that 21% of respondents who had contact with the police in the past five years reported encountering hostile attitudes from officers, with police abuse, neglect, and misconduct consistently reported at higher frequencies by respondents of color and transgender and gender nonconforming respondents.ⁱ Contacting law enforcement oftentimes does not feel like a safe option for LGBTQ+ people. Mandating that LGBTQ+ survivors must have a police report made when they are seeking healthcare if they disclose domestic violence creates an atmosphere where LGBTQ+ survivors do not feel safe accessing medical care. LGBTQ+ people may fear that reporting to the police will be met with bias, lack of support, false arrest, and more. A report done by the STOP Program at the Los Angeles LGBT Center found that many of the LGBTQ+ survivors whom they served were afraid of reporting to police.ⁱⁱ Even for those survivors who did report to police, there were frequent reports of dissatisfaction with the police officers' homophobic and/or sexist treatment, and many felt their cases were not taken seriously.ⁱⁱⁱ A recent study of gay and bisexual men found that 40% believed that contacting the police in response to a violent incident from an intimate partner would be unhelpful or very unhelpful, and 59% believed that the police would be less helpful to a gay or bisexual man than to a heterosexual woman in the

same situation.^{iv} Additionally, 46% of transgender people reported being uncomfortable seeking police assistance.^v Mandating that LGBTQ+ survivors who disclose domestic violence to their medical care providers must engage with a system that they overwhelmingly do not trust, do not feel safe with, and fear discrimination or bias from is dangerous and unfair. Having a negative experience when disclosing domestic violence can make LGBTQ+ survivors feel like they have no other option than to remain silent and can prevent them from seeking support in the future.

Domestic Violence and Medical Mandatory Reporting

Mandatory reporting overwhelming does not increase safety for LGBTQ+ survivors of domestic violence, in fact it can jeopardize it. In a survey of survivors who received support from the National Domestic Violence Hotline, 83% of those who had experienced mandatory reporting said such reporting made the situation significantly worse or did nothing to improve their situation.^{vi} This study found that mandatory reporting laws reduced help-seeking for over a third of survivors.^{vii} BIPOC and LGBTQ+ survivors who were surveyed were substantially less.^{viii} Mandatory reporting laws can enhance the fear that survivors have of talking about their abuse with their medical care provider and prevent survivors from sharing information that could be not only critical for their physical health and well-being but also an opportunity for the medical provider to provide support and linkage to resources. In fact, studies have shown that when survivors of domestic violence were able to have open and honest conversations with their medical care providers, it increased their likelihood of using domestic violence advocacy organizations and they were more likely to safely exit their abusive relationship.^{ix} Trust is an integral part of health care, and an LGBTQ+ survivor not being able to trust a provider to make the decisions about their safety that they know is right for themselves means that survivors will not share information about their abuse with their providers. Mandatory reporting laws are robbing us of a critical point of intervention and support for domestic violence survivors. This is particularly true for survivors from marginalized communities who have reason to have heightened fear of the police including LGBTQ+, BIPOC, and undocumented survivors.

Recommended Best Practices for Medical Care Providers

Based on the literature and best practices from LGBTQ+-specific service providers, having statutory language reflecting a survivor-centered, trauma-informed model would prevent potentially dangerous mandatory reporting to law enforcement. Best practice would be a model where health care providers make a warm referral to a domestic violence advocacy organization by either calling a domestic violence hotline with the patient or providing a patient with the hotline information to call independently. This would allow survivors to make an informed decision about reporting to police and have the resources and advocacy they need to come up with a safety plan before contacting the police on their own terms. For LGBTQ+ survivors who do want to report to police, this would mean that survivors would be connected to a survivor advocate who may be able to accompany or support them throughout a police report and prevent or respond to any bias or discrimination they may experience. For survivors who do not want to report to police, this would allow them to have support to develop a safety plan that is specialized to their unique experience and connects them to resources such as shelter, financial support, and community support systems that would enhance their safety. Providing a warm referral to a domestic violence advocate would allow survivors to make the decisions that are right for them and have choice and autonomy over decisions that impact their and their families' safety.

RECOMMENDATION

To address these inequities, amendments need to be made to medical mandatory reporting laws. For example, existing statutes 11160, 11161, 11163.2, and 11163.3 of the California State Penal Code relating to the reporting of crimes would need to reflect the survivor-centered, trauma-informed model that would require a warm referral. The recommended amendment 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. The law would instead require a health care practitioner who suspects that a patient has suffered physical injury that is caused by domestic violence to provide a warm handoff or referral to a local or national domestic violence or sexual violence advocacy organization.^x

In addition to reforming mandatory reporting practices, it is essential to ensure that these warm referrals are made to organizations equipped to provide informed support to LGBTQ+ survivors. The continuing crisis of domestic violence in the LGBTQ+ community is matched by a severe shortage of tailored, appropriate, and trauma-informed LGBTQ+ survivor services nationwide. Many services for LGBTQ+ survivors are provided in the context of traditional heterosexual programs that are neither adapted nor modified to meet the needs of LGBTQ+ survivors, which can result in inadequate and ineffective services, and in some cases can make the situation worse. In order to address this gap, there is a critical need to deliver training and technical assistance to domestic violence service providers and medical practitioners in order to increase their capacity to provide culturally responsive support that addresses the unique and specific experiences of LGBTQ+ survivors.

ⁱ Mallory, Christy, et al. "Discrimination and Harassment by Law Enforcement Officers in the LGBT Community." *Williams Institute*, 2 May 2020, <https://williamsinstitute.law.ucla.edu/publications/lgbt-discrim-law-enforcement/>.

ⁱⁱ Holt, S., & Whirry, R. (2020). Finding Safety. Los Angeles LGBT Center. https://stopviolence.lalgbtcenter.org/wp-content/uploads/2022/08/Finding_Safety.pdf

ⁱⁱⁱ Holt, S., & Whirry, R. (2020). Finding Safety. Los Angeles LGBT Center. https://stopviolence.lalgbtcenter.org/wp-content/uploads/2022/08/Finding_Safety.pdf

^{iv} Mallory, Christy, et al. "Discrimination and Harassment by Law Enforcement Officers in the LGBT Community." *Williams Institute*, 2 May 2020, <https://williamsinstitute.law.ucla.edu/publications/lgbt-discrim-law-enforcement/>.

^v Mallory, C., Hasenbush, A., & Sears, B. (2015, March 15). *Discrimination and Harassment by Law Enforcement Officers in the LGBT Community*. Williams Institute. Retrieved December 21, 2022, from <https://williamsinstitute.law.ucla.edu/publications/lgbt-discrim-law-enforcement/>

^{vi} Lippy, C., Jumarali, S.N., Nnawulezi, N.A. *et al.* The Impact of Mandatory Reporting Laws on Survivors of Intimate Partner Violence: Intersectionality, Help-Seeking and the Need for Change. *J Fam Viol* **35**, 255–267 (2020).

^{vii} *Ibid.*

^{viii} *Ibid.*

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

^x *Bill Text - AB-2790 Reporting of crimes: mandated reporters*. California Legislative Information. (2022, June 30). Retrieved December 19, 2022, from https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2790