

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 963 (Ashby)
Version: April 15, 2024
Hearing Date: April 23, 2024
Fiscal: Yes
Urgency: No
CK

SUBJECT

Health facilities: self-identifying human trafficking system

DIGEST

This bill requires general acute care hospitals with an emergency department to adopt policies and procedures to facilitate identification of victims of human trafficking or domestic violence, as provided, and to collect demographic data. The bill provides total immunity to these hospitals for any injuries inflicted by traffickers or abusers upon patients, as specified.

EXECUTIVE SUMMARY

Human trafficking and domestic violence are widespread scourges that are particularly difficult to address in large part because of the isolation of victims and the control imposed by their traffickers and abusers. A host of current laws attempt to make available services and resources for these victims in locations they are most likely to access. Given the nature of the violence inherent in many of these situations, medical facilities and particular emergency rooms are an access point for these victims that may serve as an effective point to provide victims options for escape or other resources.

This bill requires general acute care hospitals to implement policies and procedures to help facilitate the self-identification of victims of domestic violence and human trafficking. The bill requires this to be a discreet and trauma-informed process. The bill requires demographic data to be collected from those identifying as victims. The bill also provides total immunity from any liability for the hospitals for damages for subsequent injuries inflicted on those that self-identify as victims.

This bill is sponsored by the Coalition to Abolish Slavery and Trafficking (Cast), San Francisco Safe House, and the California Medical Association. This bill is supported by a variety of advocacy groups, including Sutter Health. No timely opposition was

received by the Committee. It previously passed out of the Senate Health Committee on an 11 to 0 vote.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Licenses and regulates health facilities, including general acute care hospitals, by the California Department of Public Health (CDPH). (Health & Saf. Code § 1250 et seq.)
- 2) Defines the following terms:
 - a) "Human trafficking" is defined, in part, as a person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services, or who causes, induces, or persuades a minor to engage in a commercial sex act. (Pen. Code § 236.1.)
 - b) "Domestic violence" is defined, in part, as abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. (Pen. Code § 13700(b).)
- 3) Requires specified businesses and establishments, including emergency rooms within general acute care hospitals to post notices in a conspicuous place near the public entrance of the establishment or in another conspicuous location in clear view of the public and employees where similar notices are customarily posted. Requires the notices to include specific language regarding a textline and various hotlines to contact if one is aware of or is a victim of human trafficking. (Civ. Code § 52.6.)
- 4) Provides that every person is responsible, not only for the result of their willful acts, but also for an injury occasioned to another by the person's want of ordinary care or skill in the management of their property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon themselves. (Civ. Code § 1714(a).)

This bill:

- 1) Requires general acute care hospitals with emergency departments to adopt and implement policies and procedures to facilitate the self-identification of an emergency department patient as a victim of human trafficking or domestic violence to hospital personnel that meet these minimum requirements:
 - a) Provide for patient confidentiality.

- b) Provide an emergency department patient with a safe and discreet means of informing hospital personnel that they are a victim of human trafficking or domestic violence.
 - c) Facilitate a reasonably prompt and private interview of the patient by medical personnel.
 - d) Refer patients to local services and resources for victims of human trafficking or domestic violence, if any.
 - e) Incorporate principles of trauma-informed care.
- 2) Authorizes general acute care hospitals subject thereto to track the use of the self-identification procedure, including the total number, ages, and racial demographics of patients who self-identify as a victim of human trafficking or domestic violence, to the extent that this information is provided by the patient.
 - 3) Provides that such hospitals are not required to report the identities of any patients who self-identify as a victim of human trafficking or domestic violence to the California Department of Public Health (CDPH) or to any law enforcement agency, except as may be required by law, such as in the case of child abuse or neglect.
 - 4) Provides complete immunity for general acute care hospitals subject to this section for damages for any subsequent injuries inflicted by a trafficker or abuser upon a patient who self-identified as a victim of human trafficking or domestic violence.

COMMENTS

1. The troubling prevalence of human trafficking and domestic violence

Human trafficking is the world's fastest growing criminal enterprise, bringing in annual profits in the tens of billions of dollars. Human trafficking is generally defined as the use of force, coercion, or fraud to obtain coerced labor or personal services. Existing law provides that any person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services is guilty of the crime of human trafficking.

The International Labour Organization estimates that approximately 40 million people were victims of some form of human slavery worldwide in 2016.¹ This includes 24.9 million in forced labor, meaning they were being "forced to work under threat or coercion as domestic workers, on construction sites, in clandestine factories, on farms and fishing boats, in other sectors, and in the sex industry." Over 70 percent of these

¹ *Global Estimates of Modern Slavery* (2017) International Labour Organization, http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575479.pdf. All internet citations are current as of April 17, 2024.

victims were women and girls and 1 in four victims were children. In their 2019 Data Report, the U.S. National Human Trafficking Hotline identified over 22,000 victims and survivors and over 4,300 traffickers.²

Traffickers look for people who are susceptible for a variety of reasons, including psychological or emotional vulnerability, economic hardship, lack of a social safety net, membership in a marginalized group, natural disasters, or political instability. Human trafficking is often described as a hidden crime as victims rarely come forward to seek help because of language barriers, the severe trauma resulting from these crimes, fear of the traffickers, and/or fear of law enforcement.

According to the National Domestic Violence Hotline, an average of 24 people per minute are victims of rape, physical violence, or stalking by an intimate partner in the United States, more than 12 million annually; about 15 percent of women have been injured as a result.³

2. Providing resources to victims where they are at

This bill attempts to meet these victims with resources where they are. As pointed out by Sutter Health:

Emergency departments and front-line healthcare workers have the opportunity to play a critical role in identifying victims of domestic violence and human trafficking. According to a 2010 study published in West Journal of Emergency Medicine, emergency room personnel have the highest likelihood of coming into contact with human trafficking victims⁴, and trafficking victims are more likely to talk to medical staff than to police.⁵ A 2016 survey from the Coalition to Abolish Slavery and Trafficking found that although 64% of survivors had accessed healthcare at least once during their trafficking situation, almost all (97%) were never provided information or resources about trafficking from healthcare providers.⁶

This bill requires general acute care hospitals with emergency departments to have procedures in place to allow for victims to self-identify and for hospital personnel to

² 2019 Data Report, U.S. National Human Trafficking Hotline, <https://humantraffickinghotline.org/sites/default/files/Polaris-2019-US-National-Human-Trafficking-Hotline-Data-Report.pdf>.

³ Domestic Violence Statistics, National Domestic Violence Hotline, <https://www.thehotline.org/stakeholders/domestic-violence-statistics/>.

⁴ Patel R.B., Ahn R., Burke T.F. "Human trafficking in the emergency department," Western Journal of Emergency Medicine. 2010;11(5):402-404.

⁵ Bepalova N., Morgan J., Coverdale J. "A pathway to freedom: An evaluation of screening tools for the identification of trafficking victims," Academic Psychiatry. 2014:1-5.

⁶ Carolyn Liu Lumpkin, LCSW, and Adriana Taboada, MPA, Identification and Referral for Human Trafficking Survivors in Health Care Settings: Survey Report (castla.org), January 2017.

refer for local services and resources. The relevant policies and procedures must meet these minimum requirements:

- Provide for patient confidentiality.
- Provide an emergency department patient with a safe and discreet means of informing hospital personnel that they are a victim of human trafficking or domestic violence.
- Facilitate a reasonably prompt and private interview of the patient by medical personnel.
- Refer patients to local services and resources for victims of human trafficking or domestic violence, if any.
- Incorporate principles of trauma-informed care.

According to the author:

SB 963 requires emergency room departments to implement self-identifying human trafficking and domestic violence prevention programs. Existing initiatives within emergency room departments have demonstrated their effectiveness in identifying victims, particularly impacting the lives of women and children in dangerous situations. These programs serve as a vital foundation for the proactive identification of trafficking victims, addressing a concerning trend where many victims, despite seeking emergency medical attention, often go unnoticed. SB 963 seeks to build on the successes of existing programs by further strengthening the capacity of all emergency rooms to detect and support victims of human trafficking and violence, further emphasizing the importance of equipping emergency rooms with the necessary resources to empower victims to self-identify safely, without fear of consequences from a suppressor.

Writing in support, the co-sponsors of this bill, the California Medical Association, San Francisco SafeHouse, and Cast, assert that “[s]urvivors of domestic violence, human trafficking, and other crimes deserve consistent, reliable access to help” and argue that this bill “would require the system to meet certain minimum requirements, including, providing patient confidentiality, facilitating immediate interviews with medical personnel, and providing referrals to human trafficking and domestic violence services.”

3. Broad immunity for hospitals

As a general rule, California law provides that persons are responsible, not only for the result of their willful acts, but also for an injury occasioned to another by their want of ordinary care or skill in the management of their property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon themselves.

(Civ. Code § 1714(a).) Liability has the primary effect of ensuring that some measure of recourse exists for those persons injured by the negligent or willful acts of others; the risk of that liability has the primary effect of ensuring parties act reasonably to avoid harm to those to whom they owe a duty.

Conversely, immunity from liability disincentivizes careful planning and acting on the part of individuals and entities. When one enjoys immunity from civil liability, it is relieved of the responsibility to act with due regard and an appropriate level of care in the conduct of its activities. Immunity provisions are also disfavored because they, by their nature, preclude parties from recovering when they are injured, and force injured parties to absorb losses for which they are not responsible. Liability acts not only to allow a victim to be made whole, but to encourage appropriate compliance with legal requirements.

Although immunity provisions are rarely preferable, the Legislature has in limited scenarios approved measured immunity from liability (as opposed to blanket immunities) to promote other policy goals that could benefit the public. Immunities are generally afforded when needed to ensure the willingness of individuals to continue taking on certain roles that may involve some risk and to incentivize certain conduct, such as the provision of life-saving or other critical services. However, as indicated, rarely is immunity absolute, and these immunities generally do not cover grossly negligent conduct or intentional misconduct.

This bill provides that a general acute care hospital subject to this section shall not be liable for damages for **any** subsequent injuries inflicted by a trafficker or abuser upon a patient who self-identified as a victim of human trafficking or domestic violence. This is a total immunity for those injuries; this could be interpreted to cover situations where the hospital shares the self-identified victim's report with the abuser.

Clearly the goal of the provision is to ensure hospitals are not held liable for carrying out their duties under this law. To more appropriately tailor this provision, the author has agreed to amend this provision to read:

(2) (A) A general acute care hospital acting in compliance with this section shall not be liable for damages for any subsequent injuries inflicted by a trafficker or abuser upon a patient who self-identified as a victim of human trafficking or domestic violence for good faith conduct taken under the policies and procedures established pursuant to this section.

(B) The liability limitations described in subparagraph (A) shall not be construed to limit a person's liability for any act or omission that constitutes gross negligence or willful or wanton misconduct

SUPPORT

California Medical Association (sponsor)
Coalition to Abolish Slavery and Trafficking (sponsor)
San Francisco Safehouse (sponsor)
California Association of Nurse Anesthetists
Findhelp, a Public Benefit Corporation
Sutter Health

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: AB 1966 (Davies, 2024) requires primary ticket sellers to add notices relating to commercial sex and labor trafficking to electronic confirmations when a mobile or electronic ticket to an event at an entertainment facility is purchased. AB 1966 is currently pending referral in the Senate Rules Committee.

Prior Legislation:

SB 376 (Rubio, Ch. 109, Stats. 2023) provided that a victim of human trafficking or abuse has the right to have a human trafficking advocate and a support person, of the victim's choosing at an interview by a law enforcement authority.

AB 1740 (Sanchez, Ch. 104, Stats. 2023) added pediatric care facilities to the list of establishments that must post a notice regarding human trafficking.

AB 2130 (Cunningham, Ch. 256, Stats. 2022) required every emergency medical technician, upon initial licensure, to complete at least 20 minutes of training on issues relating to human trafficking.

PRIOR VOTES:

Senate Health Committee (Ayes 11, Noes 0)
