
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 1917 **Hearing Date:** June 28, 2022
Author: Levine
Version: March 10, 2022
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Personal information: contact tracing*

HISTORY

Source: Author

Prior Legislation: AB 814 (Levine), held in Senate Appropriations in 2021
AB 660 (Levine), held in Senate Appropriations in 2020
AB 1782 (Chau), held in Senate Appropriations in 2019

Support: California Public Defenders Association; Oakland Privacy

Opposition: None known

Assembly Floor Vote: 53 - 16

PURPOSE

The purpose of this bill is to prohibit a correctional officer or other law enforcement officers, as defined, from conducting contact tracing, except as specified.

Existing law provides that all people have inalienable rights, including the right to pursue and obtain privacy. (Cal. Const., art. I, § 1.)

Existing law establishes, pursuant to the federal Health Insurance Portability and Accountability Act (HIPAA), privacy protections for patients' protected health information and generally provides that a covered entity, as defined (health plan, health care provider, and health care clearing house), may not use or disclose protected health information except as specified or as authorized by the patient in writing. (45 C.F.R. § 164.500 et seq.)

Existing law prohibits, under the State Confidentiality of Medical Information Act (CMIA), providers of health care, health care service plans, or contractors, as defined, from sharing medical information without the patient's written authorization, subject to certain exceptions. (Civ. Code, § 56 et seq.)

Existing law establishes the Information Practices Act of 1977 (IPA), which declares that the right to privacy is a personal and fundamental right and that all individuals have a right of privacy in information pertaining to them. Regulates the handling of personal information in the hands of state agencies. States the following legislative findings:

- The right to privacy is being threatened by the indiscriminate collection, maintenance, and dissemination of personal information and the lack of effective laws and legal remedies.
- The increasing use of computers and other sophisticated information technology has greatly magnified the potential risk to individual privacy that can occur from the maintenance of personal information.
- In order to protect the privacy of individuals, it is necessary that the maintenance and dissemination of personal information be subject to strict limits. (Civ. Code, § 1798 et seq.)

Existing law provides consumers the right to request that a business delete any personal information about the consumer, which the business has collected from the consumer. (Civ. Code § 1798.105(a).)

This bill prohibits a correctional officer or an officer, deputy, employee, or agent of a law enforcement agency from conducting contact tracing, with two exceptions:

- an employee of a law enforcement agency may conduct contact tracing of employees of the same law enforcement agency; and
- a health care worker who is not a correctional officer may conduct contact tracing in a jail or prison.

This bill defines “contact tracing” as identifying and monitoring individuals, through data collection and analysis, who may have had contact with an infectious person, as a means of controlling the spread of a communicable disease.

This bill defines “data” as measurements, transactions, determinations, locations, or other information, whether or not that information can be associated with a specific natural person.

This bill provides that “law enforcement agency” means any of the following: a police department; a sheriff’s department; a district attorney; a county probation department; a transit agency police department; a school district police department; the police department of any campus of the University of California, the California State University, or a community college; the Department of the California Highway Patrol; the Department of Justice; and the Department of Corrections and Rehabilitation.

This bill authorizes a person to bring a civil action seeking injunctive relief and reasonable attorneys’ fees for any violations.

COMMENTS

1. Need For This Bill

According to the author:

The problems this bill seeks to address are the effects of mistrust of law enforcement within immigrant communities and communities of color on contact tracing efforts and the misuse of data collected through contact tracing for purposes other than public health, such as federal immigration enforcement. On March 4, 2020, Governor Gavin Newsom declared a State of Emergency as a result of the COVID-19 virus. According to COVID-19.ca.gov’s state dashboard,

as of March 17, 2022, there have been nearly 9 million cases of COVID-19 and 92,000 people have died from COVID-19 since the start of the pandemic in California. One of the strategies being deployed to limit the transmission of COVID-19, is the use of contact tracing, which identifies COVID-19 positive individuals and those they may have been in close contact with, so they can follow health guidelines and get tested, to limit the spread of the virus.

Successful contact tracing requires the sharing of significant personal information, including a person's name, address, phone number and other personal identifying data. While this information is required to successfully stop the spread of the coronavirus, there are significant concerns about this data potentially being used for non-healthcare related purposes.

COVID-19 has spread rapidly and fatally in California's prisons and jails. There have been concerns from advocates about correctional officers contact tracing people who are incarcerated, and ensuring that the information provided will only be used for contact tracing purposes, and about people who are incarcerated being interviewed for contact tracing without a lawyer present. That is why AB 1917 only allows for health workers in prisons to conduct contact tracing, not correctional officers.

California is home to over 11 million immigrants including an estimated 2 million undocumented immigrants. These individuals have been disproportionately impacted by COVID-19 and are less likely to seek medical aid because of their immigration status. COVID-19 has disproportionately affected communities of color. The death rate for Latino people is 15% higher than the statewide; the case rate for Pacific Islanders is 77% higher than statewide; and the death rate for Black people is 18% higher than statewide. Immigrant communities and communities of color are also less likely to willingly interact with law enforcement officials, regardless of context due to distrust and fear of law enforcement. Successfully limiting the spread of the coronavirus will require all COVID-19 positive Californians to participate in contact tracing programs, and those conducting contact tracing must have the trust of the person they are collecting information from. AB 1917 will ensure that law enforcement will not be conducting contact tracing in communities, to ensure that people feel safe sharing their and their close contacts' personal information to stop the spread of this virus and in potential future pandemics. AB 1917 would prohibit employees of a law enforcement agency from conducting contact tracing except when contact tracing their own employees or if they are a health worker, not a correctional officer, contact tracing in jails or prisons.

2. Contact Tracing

According to the Centers for Disease Control and Prevention (CDC):

Case investigation and contract tracing are fundamental activities that involve working with a patient (symptomatic and asymptomatic) who has been diagnosed with an infectious disease to identify and provide support to people (contacts) who may have been infected through exposure to the patient. This process prevents further transmission of disease by separating people who have (or may

have) an infectious disease from people who do not. It is a core disease control measure that has been employed by public health agency personnel for decades. Case investigation and contact tracing are most effective when part of a multifaceted response to an outbreak. (<https://www.cdc.gov/coronavirus/2019-ncov/php/contact-tracing/contact-tracing-plan/overview.html#inv>)

This process typically entails the following elements: interviewing people with the disease to identify everyone they had close contact with during the time they may have been infectious; notifying contacts of their potential exposure; referring contacts for testing; monitoring contacts for signs and symptoms of the disease; and/or connecting contacts with services they might need during the self-quarantine period.

On May 22, 2020, Governor Newsom announced the launch of California Connected, which he hailed as “the state’s comprehensive contact tracing program and public awareness campaign.” (Office of Governor Gavin Newsom, *Governor Newsom Launches California Connected – California’s Contact Tracing Program and Public Awareness Campaign* (May 22, 2020) Press Release, <https://www.gov.ca.gov/2020/05/22/governor-newsom-launches-california-connected-californias-contact-tracing-program-and-public-awareness-campaign/>.) The program was detailed as follows:

As part of California Connected, public health workers from communities across the state will connect with individuals who test positive for COVID-19 and work with them, and people they have been in close contact with, to ensure they have access to confidential testing, as well as medical care and other services to help prevent the spread of the virus.

The state’s program is led by the Administration in collaboration with the California Department of Public Health, local public health departments and the University of California, San Francisco (UCSF) and Los Angeles (UCLA), which have launched a robust online training academy to develop a culturally competent and skilled contact tracing workforce.

3. Privacy Concerns Stemming From the Use of Contact Tracing

The Governor’s Office assured the public that the data is only collected and stored for use by local and state public health departments for public health purposes and that public health authorities would not share information collected as part of these contact tracing efforts with any outside entities. (*Ibid.*; California Connected, *Contact Tracing* (August 3, 2020) <https://covid19.ca.gov/contact-tracing/>.)

Despite these commitments to protecting privacy, there is arguably a void of regulations and protections for how contact tracing can be carried out, who can engage in contact tracing, and what can be done with the information collected. These concerns were amplified when entities outside of public health departments, including law enforcement and private entities, were conducting the tracing. (Alice Miranda Ollstein & Mohana Ravindranath, *Getting it right: States struggle with contact tracing push* (May 17, 2020)

<<https://www.politico.com/news/2020/05/17/privacy-coronavirus-tracing-261369>>; Natasha Singer, *Virus-Tracing Apps Are Rife With Problems. Governments Are Rushing to Fix Them* (July 8, 2020) <<https://www.nytimes.com/2020/07/08/technology/virus-tracing-apps-privacy.html>>; Enriquet Dans, *We need to sort out the privacy issues with contact tracing apps if we are going to bring the pandemic under control* (June 17, 2020)

<<https://www.forbes.com/sites/enriquedans/2020/06/17/we-need-to-sort-out-the-privacy-issues-with-contact-tracing-apps-if-we-are-going-to-bring-the-pandemic-undercontrol/#54ea91b955e6>>.) Many concerns arose in response to the dramatic rise in technology-assisted contact tracing, which commonly use digital applications.

These concerns have also manifested in response to manual contract tracing. In one jurisdiction, families were weary to give strangers on the phone information about themselves or their children, hampering contact tracing efforts. (Jeanie Lindsay, *McCormick: Privacy Concerns From Parents Make Contact Tracing In Schools Difficult* (August 7, 2020)

<<https://www.wbaa.org/post/mccormick-privacy-concerns-parents-make-contact-tracing-schools-difficult#stream/0>>.) The fears of members of the public are only further exacerbated with reports of contact tracing scams. According to a Los Angeles County Department of Consumer and Business Affairs *Scam Alert* during the height of the pandemic, “[s]cammers are impersonating legitimate COVID-19 contact tracers. Their purpose is to profit from the current public health emergency and they try to trick you into giving private personal or financial information.” (*Scam Alert: Avoid COVID-19 Contact Tracing Scams* (July 20, 2020) Los Angeles County Department of Consumer and Business Affairs, <https://doba.lacounty.gov/newsroom/scam-alert-avoid-covid-19-contact-tracing-scams/>.)

This bill prohibits law enforcement agencies from engaging in contact-tracing efforts except when the contract tracing involves employees of that agency. Proponents of this bill contend that establishing oversight addresses the identified privacy and security risks while also building the public trust that is necessary for effective contact tracing.

4. Argument in Support

Oakland Privacy writes:

In some California communities, law enforcement officials are conducting contact tracing. In other communities, police are requesting access to public health data about the residences of people who have been infected. And the federal government has proposed the deployment of the National Guard to hospitals to process our COVID-related personal data.

The many diverse communities across California do not have the same perceptions or experiences with the law enforcement agencies of the state. In many cases, law enforcement is perceived as a benign force that keeps people safe from danger. In others, due to previous abuses, that is not at all the case and contact with law enforcement is seen as dangerous and to be avoided.

One of the things we have learned during the now-ebbing COVID-19 pandemic is the price of mistrust. Mistrust of large pharmaceutical corporations (i.e. “Big Pharma), some of it well-earned, has played a large role in disappointing vaccination rates. We don’t have an alternative to large pharmaceutical corporations in the development and distribution of vaccinations. But we do have the choice to firmly place contact tracing functions in the hands of our trained public health workers who have experience with the management of contagious disease outbreaks and the handling of sensitive personal information.