

Date of Hearing: April 16, 2024

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Rebecca Bauer-Kahan, Chair

AB 1788 (Quirk-Silva) – As Amended March 4, 2024

AS PROPOSED TO BE AMENDED

SUBJECT: Mental health multidisciplinary personnel team

SYNOPSIS

According to a 2020 report on the prevalence of behavioral health issues among people being held in the state's county jails, on the last day of any given month in 2009 there were roughly 80,000 people in custody in a county jail and 15,500 of them had an open mental health case. By 2019 there were 72,000 people in custody in a jail, on average, and 22,000 of those people had an open mental health case. For decades, people struggling with behavioral health issues have made up a disproportionate share of the state's jail and prison populations.

In an effort to better address the needs of people who are cycling in and out of county jails due to significant behavioral health issues, this bill would allow counties that establish behavioral health multidisciplinary personnel teams (MPTs) to share confidential information in order to provide a continuity of services and care for people who need behavioral health care and are either being held in or released from a county jail.

The primary concern of this Committee is to ensure that the creation of behavioral health MPTs does not put the sensitive personal information of the people being connected with services at risk. The proposed Committee amendments require these MPTs to work across disciplines and departments while still maintaining all of the privacy protections currently in place related to the sharing of personal medical and behavioral health records.

This bill is supported by 20 local law enforcement organizations, while Oakland Privacy has taken an "oppose unless amended" position. The proposed Committee amendments address three of their seven concerns.

This bill passed the Public Safety Committee on an 8-0 vote with a recommendation to the consent calendar.

SUMMARY: Allows counties to establish behavioral health multidisciplinary personnel teams. Specifically, **this bill:**

- 1) Allows a county to establish a behavioral health MPT with the goal of facilitating the expedited identification, assessment, and linkage of justice-involved persons diagnosed with a behavioral illness to supportive services within that county upon their release from a county jail.
- 2) Defines the following terms:

- a) "Justice-involved person" as an individual who is currently incarcerated within a county jail or who has been incarcerated in a county jail.
 - b) "Behavioral health multidisciplinary personnel team" as any team of two or more persons trained in the identification and treatment of individuals with behavioral health problems, and who are qualified to provide a broad range of services related to behavioral health. The team shall include, but not be limited to, all of the following:
 - i) Behavioral health and substance abuse services personnel and practitioners or other trained counseling personnel.
 - ii) Medical personnel with sufficient training to provide health services.
 - iii) Social services workers with experience or training in the provision of services to adults with behavioral health issues and eligibility for services.
 - iv) Case managers or case coordinators responsible for referral, linkage, or coordination of care and services provided to adults.
 - c) "Provider agency" as any governmental or other agency that has, as one of its purposes, the identification, assessment, and linkage of housing or supportive services to individuals with behavioral health problems. The provider agencies serving adults that may share information under this section include, but are not limited to, all of the following entities or service agencies:
 - i) Social services.
 - ii) Health services.
 - iii) Behavioral health services.
 - iv) Substance abuse services.
 - v) Probation.
 - vi) Law enforcement.
 - vii) Legal counsel for the adult or family representing them in a criminal matter.
 - viii) Veterans' services and counseling.
 - ix) Homeless services.
- 3) Allows members of a behavioral health MPT to disclose and exchange information and writings with one another that relate to any information that may be designated as confidential under state law if the information is shared in compliance with existing privacy requirements and is directly related to the identification of behavioral health problems and the provision of services.

- 4) Provides that any discussion between team members is confidential and, notwithstanding any other law, testimony concerning that discussion is not admissible in any criminal, civil, or juvenile court proceeding.
- 5) Provides that the disclosure and exchange of information of the MPT may occur electronically if all behavioral health multidisciplinary team members and their departments have established and maintain a secure and standardized system for sharing a person's confidential records.
- 6) Requires that the disclosure and exchange of information of the MPT not be made to anyone other than members of the behavioral health MPT, and designated persons qualified to receive information by the team.
- 7) Allows a person designated as a team member to receive and disclose relevant information and records, subject to confidentiality provisions, as specified.
- 8) Requires the sharing of information permitted, as specified, to be governed by protocols developed in each county describing how and what information may be shared by the behavioral health MPT to ensure that confidential information gathered by the team is not disclosed in violation of state or federal law.
- 9) Requires a copy of the protocols be distributed to each participating agency and to persons in those agencies who participate in the MPT, and be posted on the county's website within 30 days of adoption.
- 10) Requires each participating county to provide a copy of its protocols to the State Department of Health Care Services (DHCS).
- 11) States that the sharing of information by behavioral health MPT shall not be construed to require DHCS to review or approve any MPT county protocols it receives.
- 12) Requires a protocol developed in a county, as specified, to include, but not be limited to, all of the following:
 - a) The items of information or data elements that will be shared.
 - b) The participating agencies.
 - c) A description of how the information shared will be used by the behavioral health MPT only for the intended purposes as specified.
 - d) The information retention schedule that participating agencies shall follow.
 - e) A requirement that no confidential information or writings be disclosed to persons who are not members of the MPT except to the extent required or permitted under applicable law.
 - f) A requirement that participating agencies develop uniform written policies and procedures that include security and privacy awareness training for employees who will have access to information pursuant to this protocol.

- g) A requirement that all persons who have access to information shared by participating agencies sign a confidentiality statement that includes, at a minimum, general use, security safeguards, acceptable use, and enforcement policies.
 - h) A requirement that participating agencies employ security controls that meet applicable federal and state standards, including reasonable administrative, technical, and physical safeguards to ensure data confidentiality, integrity, and availability and to prevent unauthorized or inappropriate access, use, or disclosure.
 - i) A requirement that participating agencies take reasonable steps to ensure information is complete, accurate, and up to date to the extent necessary for the agency's intended purposes and that the information has not been altered or destroyed in an unauthorized manner.
- 13) Subjects every member of the MPT who receives information or records regarding a justice-involved person in that member's capacity as a member of the team to be under the same privacy and confidentiality obligations and subject to the same confidentiality penalties as the person disclosing or providing the information or records.
- 14) Requires the information obtained to be maintained in a manner that ensures the maximum protection of privacy and confidentiality rights.
- 15) States that nothing in this legislation supersedes or preempts any existing state or federal privacy laws, including but not limited to:
- a) The Health Insurance Portability and Accountability Act of 1996 (HIPAA).
 - b) The Information Practices Act of 1977.
 - c) The Confidentiality of Medical Information Act.
 - d) Welfare and Institutions Code § 5328.
- 16) Requires information and records communicated or provided to the team members by all providers and agencies to be deemed private and confidential and to be protected from discovery or disclosure by all applicable statutory and common law protections.
- 17) States that existing civil and criminal penalties shall apply to the inappropriate disclosure of information held by the team members.

EXISTING LAW:

- 1) Provides, pursuant to the California Constitution, that all people have inalienable rights, including the right to pursue and obtain privacy. (Cal. Const., art. I, § 1.)
- 2) States that the "right to privacy is a personal and fundamental right protected by Section 1 of Article I of the Constitution of California and by the United States Constitution and that all individuals have a right of privacy in information pertaining to them." Further states these findings of the Legislature:

- a) 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.
 - b) 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.
 - c) 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 § 1798.1.)
- 3) Prohibits, under the state Confidentiality of Medical Information Act (CMIA), a health care provider, a health care service plan, a contractor, a corporation and its subsidiaries and affiliates, or any business that offers software or hardware to consumers, including a mobile application or other related device, as defined, from intentionally sharing, selling, using for marketing, or otherwise using any medical information, as defined, for any purpose not necessary to provide health care services to a patient, except as expressly authorized by the patient, enrollee, or subscriber, as specified, or as otherwise required or authorized by law. States that a violation of these provisions that results in economic loss or personal injury to a patient is a crime. (Civ. Code § 56, et. seq.)
 - 4) Defines, for purposes of the CMIA, medical information to mean any individually identifiable information, in electronic or physical form, in possession of or derived from a provider of health care, health care service plan, pharmaceutical company, or contractor regarding a patient's medical history, behavioral health app information, behavioral or physical condition, or treatment. (Civ. Code § 56.05(i).)
 - 5) Prohibits health care providers, health care service plans, or contractors, as defined, from sharing medical information without the patient's written authorization, subject to certain exceptions. (Civ. Code § 56.10(a).)
 - 6) Prohibits behavioral health and developmental services providers, as defined, from sharing information and records about a patient, regardless of whether they are receiving voluntary or involuntary care, without the patient's authorization, subject to certain exceptions. (Welf. & Inst. Code § 5328.)
 - 7) Establishes under federal law, the Health Information Portability and Accountability Act of 1996 (HIPAA), which sets standards for the privacy of individually identifiable health information and security standards for the protection of electronic protected health information, including, through regulations, that a HIPAA-covered entity may not condition the provision of treatment, payment, enrollment in a health plan, or eligibility for benefits on the provision of an authorization, except under specified circumstances. Provides that if HIPAA's provisions conflict with state law, the provision that is most protective of patient privacy prevails. (42 U.S.C. § 1320d, et seq.; 45 Code Fed. Regs. Part 164.)
 - 8) Defines "multidisciplinary personnel" as any team of three or more persons who are trained in the prevention, identification, management, or treatment of child abuse or neglect cases, and who are qualified to provide a broad range of services related to child abuse or neglect, and may include but not be limited to psychiatrists, police officers, medical personnel, and social workers, among others. (Welf. & Inst. Code, § 18951 subd. (d).)

- 9) Provides that each county may use a children's advocacy center to implement a coordinated multidisciplinary response to investigate reports involving child physical or sexual abuse, exploitation, or maltreatment and sets forth standards that a children's advocacy center must meet. (Pen. Code, § 11166.4.)
- 10) Allows a city, county, city and county, or community-based nonprofit organization to establish a domestic violence MPT consisting of two or more persons who are trained in the prevention, identification, management, or treatment of domestic violence cases and who are qualified to provide a broad range of services related to domestic violence. (Pen. Code, § 13752 subd. (a).)
- 11) Allows a county to establish a homeless adult and family MPT with the goal of facilitating the expedited identification, assessment, and linkage of homeless individuals to housing and supportive services within that county and to allow provider agencies and members of the MPT to share confidential information for the purpose of coordinating housing and supportive services to ensure continuity of care. (Welf. & Inst. Code § 18999.8(a).)
- 12) Allows an area agency on aging or a county, or both, to establish an aging MPT with the goal of facilitating the expedited identification, assessment, and linkage of older adults to services and to allow provider agencies and members of the personnel team to share confidential information for the purpose of coordinating services. (Welf. & Inst. Code, § 9450 subd. (a)(1).)

FISCAL EFFECT: As currently in print, this bill is keyed fiscal.

COMMENTS:

1) **The multidisciplinary personnel team model.** Existing law authorizes MPTs to be formed and operated at the county level to allow for a coordinated interagency response to a number of issues where people may require support. MPTs provide their members the ability to share confidential information among team members for the specific purpose the MPT was established.

Under current law, collaboration through an MPT is permitted in the areas of elder abuse, aging services, intimate partner violence, homelessness, and child abuse. The MPT model is intended to allow multiple service providers and government agencies to act in a collaborative fashion to help meet the needs of the community as well as parties involved. The model has been used to expedite services for a number of vulnerable populations that need to interact with multiple agencies and services in order to have their needs met.

2) **Purpose of this bill.** The purpose of this bill is to allow counties to establish behavioral health MPTs in order to share the confidential information necessary to provide a continuity of services and care for people who need behavioral health care and are either being held in or released from a county jail.

3) **Author's statement.** According to the author:

In the Orange County jail system alone, 45% of the justice-involved population grapples with mental health needs. This legislation empowers counties to establish MDTs, facilitating the exchange of confidential information to streamline mental health service assessments. By

prioritizing mental well-being and improving communication channels, we can create a foundation for targeted care, ensuring effective rehabilitation, adequate mental health treatment, and reducing the likelihood of recidivism within our justice-involved community in Orange County and beyond.

4) **County jails and people struggling with behavioral health problems.** According to a 2020 report on the prevalence of behavioral health issues among people being held in the state's county jails, on the last day of any given month in 2009 there were roughly 80,000 people in custody in a county jail and 15,500 of them had an open mental health case. By 2019 there were 72,000 people in custody in a jail, on average, and 22,000 of those people had an open mental health case.¹ For decades, people struggling with behavioral health issues have made up a disproportionate share of the state's jail and prison populations. In fact, the Los Angeles County jail system is the largest mental health system in the United States.²

5) **Analysis and proposed Committee amendments.** The primary concern of this Committee is to ensure that the creation of behavioral health MPTs does not put the sensitive personal information of the people being connected with services at risk. The proposed Committee amendments allow these MPTs to work across disciplines and departments while still minimizing data sharing and maintaining all of the privacy protections currently in place related to the sharing of someone's personal medical and behavioral health records. The proposed amendments are as follows:

1. **5990.** (a) ~~Notwithstanding any other law, a~~ A county may establish a behavioral health multidisciplinary personnel team with the goal of facilitating the expedited identification, assessment, and linkage of justice-involved persons diagnosed with a mental illness to supportive services within that county while incarcerated and upon release from county jail and to allow provider agencies and members of the personnel team to share confidential information for the purpose of coordinating supportive services to ensure continuity of care.

As currently in print, this bill uses the phrase "notwithstanding any other law" in order to allow counties to establish behavioral health MDTs for the purposes of sharing confidential information. The lack of precision in the phrase "notwithstanding any other law" is undesirable for several reasons. In general, state law cannot authorize an act that is prohibited by federal law. Moreover, the right to privacy is guaranteed under the state Constitution and cannot be waived merely by statutory decree; it is therefore imperative that statutes that depend on an exemption from the constitutional right to privacy rely on a recognized exemption from this guarantee.

Further, it is unclear that anything in current law prohibits the establishment of county MDTs for any purpose, as long as the applicable privacy laws are being followed; therefore, there do not appear to be laws that need withstanding.

¹ Franco, Konrad. *The Prevalence of Mental Illness in California Jails is Rising: An Analysis of Mental Health Cases & Psychotropic Medication Prescriptions, 2009-2019*, California Health Policy Strategies, LLC. (Feb. 2020) https://www.cdcr.ca.gov/ccjbh/wp-content/uploads/sites/172/2020/02/Jail_MentalHealth_JPSReport_02-03-2020.pdf.

² McCann, Sam. *For Decades, Los Angeles Jailed People with Mental Health Needs. Now, It's Finally Prioritizing Treatment*, Vera Institute of Justice (Dec. 22, 2022) <https://www.vera.org/news/for-decades-los-angeles-jailed-people-with-mental-health-needs-now-its-finally-prioritizing-treatment>.

2. (c) (1) Members of a mental health multidisciplinary personnel team engaged in the identification, assessment, and linkage of supportive services to justice-involved persons may disclose to, and exchange with, one another, information and writings that relate to any information that may be designated as confidential under state law if the member of the team reasonably believes it is ~~generally relevant to~~ **required for** the identification of mental illness and the provision of services. Any discussion relative to the disclosure or exchange of the information or writings during a team meeting is confidential and, notwithstanding any other law, testimony concerning that discussion is not admissible in any criminal, civil, or juvenile court proceeding.

The basic privacy principles supported by state law and policymakers require data minimization, which is the idea that people's personal information and especially sensitive personal information should be retained and shared only when it is necessary for a purpose. This amendment maintains those data minimization requirement.

3. (c) (2) Disclosure and exchange of information pursuant to this section may occur ~~telephonically and~~ electronically if there is adequate verification of the identity of the mental health multidisciplinary personnel who are involved in that disclosure or exchange of information.

When it comes to the disclosure of sensitive personal information, telephone communications lack a records trail and potentially stifle accountability. Electronic transmission leaves records of what information was disclosed, when it was disclosed, who it was disclosed by, and who it was disclosed to. When we are dealing with the confidential medical information of vulnerable people that is protected by law, these records of transmission are important in order to ensure that protocols are followed and to address any breaches that might occur.

4. (c) (4) ***To comply with the requirements of this section, all behavioral health multidisciplinary team members and their departments shall establish and maintain a secure and standardized system for sharing a person's confidential records. This system shall ensure both of the following:***

(A) All records and information is kept confidential in a manner that complies with all privacy laws.

(B) All records are guarded against unauthorized access.

~~(2) The standardized system shall have clear protocols and procedures for sharing records that include the secure transmission of records.~~

There are significant risks related to the sharing of confidential information. This amendment, along with #6, below, require that the teams follow strict file sharing and storage protocols in order to minimize the risks of sensitive personal information being shared outside of the authorized team members.

5. (e) (1) The sharing of information permitted pursuant to subdivision (c) shall be governed by protocols developed in each county describing how and what information may be shared by the mental health multidisciplinary personnel team to ensure that confidential information gathered by the team is not disclosed in violation of state or federal law. A copy of the protocols shall be distributed to each participating agency and to persons in those agencies

who participate in the multidisciplinary personnel team, and shall be posted on the county's internet website within 30 days of adoption. Each county shall provide a copy of its protocols to the State Department of ~~Soeial~~ **Health Care Services**. This subdivision shall not be construed to require the department to review or approve any multidisciplinary personnel team county protocols that it receives.

The Department of Health Care Services is the appropriate entity to receive county protocols related to the sharing of medical information.

6. *(f) All transmissions made pursuant to this section shall comply with the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code), Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code, the Information Practices Act of 1977 Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code, the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Public Law 104-191), the federal Health Information Technology for Economic and Clinical Health Act (HITECH) (Public Law 111-005), and the corresponding implementing regulations relating to privacy and security in Parts 160 and 164 of Title 45 of the Code of Federal Regulations.*

See #4 above.

7. ~~(g) This section shall not be construed to restrict guarantees of confidentiality provided under state or federal law.~~ *Nothing in this section shall be construed to supersede or preempt the applicability of any existing state or federal privacy laws, including but not limited to:*

(1) The Health Insurance Portability and Accountability Act of 1996 (HIPAA).

(2) The Information Practices Act of 1977.

(3) The Confidentiality of Medical Information Act.

(4) Section 5328 of the Welfare and Institutions Code.

To ensure clarity, the Committee generally prefers that relevant privacy laws be explicitly stated, rather than relying on a generic statement related to state and federal privacy laws.

In addition to these amendments, at the request of the California State Association of Psychiatrists, references to "mental health" will be changed to "behavioral health," which is more inclusive and would allow for a more accurate and comprehensive representation of the individuals the bill is intending to help.

6) **Related legislation.** AB 1948 (Rendon, 2023), would remove the sunset date of a pilot program in the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Clara, and Ventura that allows homeless adult and family MPTs established in these counties to have the goal of facilitating expedited identification, assessment, and linkage of individuals at risk of homelessness to housing and supportive services, and the goal of facilitating the expedited prevention of homelessness for those individuals. That bill was not referred to this Committee and is currently pending on the Assembly floor.

AB 785 (Rivas, 2023) would have established Mental Health Response and Treatment Challenge Grant Pilot Program, which would have provided grants to cities, counties, cities and counties, and other local government agencies, for the purpose of providing mental health treatment to people in the justice system, among other services. AB 785 was never heard in committee.

AB 728 (Santiago, Chap. 337, Stats. 2019) establishes, until January 1, 2025, a pilot program in the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Clara, and Ventura that allows homeless adult and family MPTs established in these counties to have the goal of facilitating expedited identification, assessment, and linkage of individuals at risk of homelessness to housing and supportive services, and the goal of facilitating the expedited prevention of homelessness for those individuals.

AB 998 (Grayson, Chap.802, Stats. 2018) authorized a city, county, city and county, or a nonprofit organization to establish domestic violence and human trafficking MPTs trained in the prevention, identification, management, or treatment of those cases

AB 210 (Santiago, Chap. 514, Stats. 2017) allowed counties to develop a homeless adult, child, and family MPTs in order to facilitate identification and assessment of homeless individuals, and link homeless individuals to housing and supportive services, and to allow service providers to share confidential information to ensure continuity of care.

SB 1342 (Bates, Chap. 621, Stats. 2022) allowed a county or Area Agency on Aging (AAA) to establish an aging MPT with the goal of facilitating the expedited identification, assessment, and linkage of older adults to services, and allows provider agencies and members of the MPT to share confidential information for the purposes of coordinating services. This bill requires a county or AAA that establishes an aging MPT to adhere to a number of protocols surrounding the privacy, security, and confidentiality of the information and records shared.

ARGUMENTS IN SUPPORT: Writing in support of the bill, the California State Sheriffs' Association states:

Over the last decade, California's correctional facilities have been gripped with a substantial increase in the number of individuals within their populations in need of mental health care. Despite a notable decrease in the state's overall incarcerated population over the last decade, the prevalence of mental health needs among justice-involved individuals has risen.

Unfortunately, many facilities face substantial challenges in developing information sharing agreements, cross-system coordination, and technology to gather and share information from their systems.

Information sharing across behavioral health and criminal justice systems is critical to reducing the number of people with mental health issues and substance use disorders in jails. At the point of service, the availability of information related to the person's treatment history and condition can improve the individual's health, reduce recidivism, and enhance public safety.

ARGUMENTS IN OPPOSITION: Writing in an "oppose unless amendment" position, Oakland Privacy notes:

The goals of Assembly Bill 1788 are goals that we share. Coordination to establish continuity of care for justice-involved people experiencing mental health challenges is laudable and clearly much-needed.

However, people experiencing mental health issues who are justice-involved are some of the Californians whose privacy rights are most frequently infringed and have one of the highest vulnerability levels for privacy abuses. They are one of the canaries in the veritable coal mine. Therefore, we believe that caution and strong guard rails are necessary when reducing the confidentiality protections of their medical records and personal information, even for the beneficial reason of increasing access to services.

The initial language of the bill makes clear that the authors and sponsors have some awareness of potential problems and are making an effort to proactively address them, and we appreciate that effort.

The proposed Committee amendments address three of the seven concerns raised in this letter.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Academy of Child and Adolescent Psychiatry
California Catholic Conference
California Faculty Association
California Reserve Peace Officers Association
California State Association of Psychiatrists (CSAP)
California State Sheriffs' Association
City of Long Beach
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association
Murrieta Police Officers' Association
Newport Beach Police Association
Novato Police Officers Association
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
San Bernardino County Sheriff's Department
Santa Ana Police Officers Association
Upland Police Officers Association

Opposition

None on file.

Oppose Unless Amended

Oakland Privacy

Analysis Prepared by: Julie Salley / P. & C.P. / (916) 319-2200