

Date of Hearing: April 25, 2023

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Jesse Gabriel, Chair

AB 1276 (McKinnor) – As Introduced February 16, 2023

Proposed Consent (As Proposed to be Amended)

SUBJECT: Emergency response services: “911” call and dispatch data

SYNOPSIS

This bill is intended to do important work in determining whether or not there is disparate treatment of people when they reach out for emergency help through 911. Currently, the data is to study what happens when people call 911 and first responders are dispatched is not readily available. This bill intends to rectify that by doing two things:

- 1. It requests that the University of California Davis Medical Center create a web portal that allows them to collect and analyze de-identified 911 emergency call and dispatch data.*
- 2. If approved by the Medical Center, it then requires state and local 911 dispatchers to submit call and dispatch data to the web portal for analysis.*

The bill came about, in part, as a response to the Racial Identity and Profiling Act Board’s 2023 Annual Report, which includes a chapter entitled “Calls for Help and Bias by Proxy.” Among other issues, the chapter discussed the problem of bias in the dispatch decisions being made by some 911 operators, including whether the biases are the operators’ or are due to bias by proxy, meaning the caller is biased.

While the recent amendments address any privacy concerns related to sharing the data by clarifying the de-identification of personal information, what remains unclear in the bill as it is currently written is whether or not this is intended to be a one-time analysis or on-going data collection and analysis. The author may want to consider including clear expectations about how regularly data should be submitted, when she wants the first report completed, who the report should be made available to, whether she wants the analysis to include recommendations for improving the system, and, if the intent is for on-going analysis, how often she wants subsequent reports to be completed.

In addition, the background provided by the author’s office suggests that the intent is for the system to be one that local 911 dispatch centers can voluntarily opt in to, rather than a requirement. If that is the case, then the language in the bill should be clarified. Along with the clarification, the author may wish to consider who should be responsible for making the decision to opt in or opt out. It may be that a county-level analysis would be more useful than a city-by-city analysis.

This bill is sponsored by Public Health Advocates and is supported by a number of public health and youth advocacy organizations, including the John Burton Advocates for Youth and the Latino Coalition for a Healthy California.

This bill passed the Health Committee on a 15-0 vote with a recommendation to the consent calendar.

SUMMARY: This bill establishes a program at the University of California Medical Center, Department of Emergency Medicine, that will establish a system for collecting and analyzing statewide 911 emergency call and dispatch data. Specifically, **this bill:**

- 1) Requests that the University of California at Davis Health (UC Davis Health), in collaboration with the Emergency Medical Services Authority (EMSA), the Office of Emergency Services (Cal OES), the Department of Health Care Access and Information (HCAI), and the Department of Justice (DOJ), do the following:
 - a) Establish a program to collect “911” emergency call and dispatch data, in order to complete an analysis of the data for the purpose of improving emergency response services systems.
 - b) House the program in the Department of Emergency Medicine at UC Davis Health.
 - c) Adopt uniform statewide data standards for “911” call and dispatch data, including, but not limited to, de-identification protocols, standards for the categories, types, and format of data collected.
 - d) Create a data portal that catalogs the collected data, aggregated on a statewide level. The data portal shall contain only de-identified data, as defined.
- 2) Upon the establishment of the program by UC Davis Health, any applicable entity, whether state or local, public or private, that has available to it, as part of its official functions or systems, “911” call and dispatch data shall send the data to UC Davis Health. Those entities shall include, but not be limited to, local emergency medical services (EMS) agencies, EMS providers, EMSA, Cal OES, HCAI, and DOJ, if any applicable data are available.
- 3) Defines “de-identified data” as removing all the personal information included in 45 CFR § 164.514(b)(2)(i) with the exception of dates and geographical location information down to the street level. Location information, however, cannot contain an actual street address.
- 4) States that 1, 2, and 3 above shall be implemented:
 - a) Subject to an appropriation made by the Legislature for the purpose of implementing this section.
 - b) Subject to approval by the Regents of the University of California for the participation of UC Davis Health as described in this section.
- 5) States that nothing in this bill shall be construed to supersede or preempt the applicability of any existing state or federal privacy laws, including the following:
 - a) Health Insurance Portability and Accountability Act of 1996 (HIPAA).
 - b) Information Practices Act of 1977.
 - c) Confidentiality of Medical Information Act.

- d) The California Consumer Privacy Act of 2018 and the California Privacy Rights Act of 2020.

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) Establishes the Information Practices Act (IPA), which sets forth requirements that apply to state agencies that collect, maintain, and disclose personal information regarding California residents, including limitations on permissible disclosure, the rights of residents to know and access that personal information, and required accounting of disclosures of personal information. (Civ. Code § 1798, et seq.)
- 3) 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.)
- 4) Specifies that for de-identification purposes, the following identifiers must be removed:
 - a) Names.
 - b) All geographic subdivisions smaller than a State, including street address, city, county, precinct, zip code, and their equivalent geocodes, except for the initial three digits of a zip code if, according to the current publicly available data from the Bureau of the Census.
 - i) The geographic unit formed by combining all zip codes with the same three initial digits contains more than 20,000 people.
 - ii) The initial three digits of a zip code for all such geographic units containing 20,000 or fewer people is changed to 000.
 - c) All elements of dates (except year) for dates directly related to an individual, including birth date, admission date, discharge date, date of death; and all ages over 89 and all elements of dates (including year) indicative of such age, except that such ages and elements may be aggregated into a single category of age 90 or older.
 - d) Telephone numbers.
 - e) Fax numbers.
 - f) Electronic mail addresses.
 - g) Social security numbers.

- h) Medical record numbers.
 - i) Health plan beneficiary numbers.
 - j) Account numbers.
 - k) Certificate/license numbers.
 - l) Vehicle identifiers and serial numbers, including license plate numbers.
 - m) Device identifiers and serial numbers.
 - n) Web Universal Resource Locators (URLs).
 - o) Internet Protocol (IP) address numbers.
 - p) Biometric identifiers, including finger and voice prints.
 - q) Full face photographic images and any comparable images.
 - r) Any other unique identifying number, characteristic, or code, with exceptions. (45 CFR § 164.514(b)(2)(i).)
- 5) Establishes the Confidentiality of Medical Information Act (CMIA). (Civ. Code §§ 56 - 56.37)
 - 6) Establishes the California Consumer Privacy Act (CCPA). (Civ. Code §§ 1798.100-1798.199.100.)
 - 7) Establishes the Warren-911-Emergency Assistance Act, which requires every public agency to have in operation a telephone service, which automatically connects a person dialing the digits “911” to an established public safety answering point. Defines public agency to include the state, any city or county, or any public district that provides or has authority to provide firefighting, police, ambulance, or other emergency services. Prohibits these provisions of law from prohibiting or discouraging the formation of multijurisdictional or regional system. (Gov. Code § 53100, et seq.)
 - 8) Requires, no later than January 1, 2018, the Attorney General, in consultation with stakeholders, including the Racial and Identity Profiling Advisory Board (RIPA), federal, state, and local law enforcement agencies and community, professional, academic, research, and civil and human rights organizations, to issue regulations for the collection and reporting of data required under 4) above. (Gov. Code § 12525.5.)
 - 9) Requires the DOJ to make available to the public, through the department’s OpenJustice Web portal, information relating to criminal statistics, to be updated at least once per year, and to present at other times as the Attorney General may approve reports on special aspects of criminal statistics. A sufficient number of copies of a downloadable summary of this information shall be annually prepared to enable the Attorney General to send a copy to the Governor and to all public officials in the state dealing with criminals and to distribute them generally in channels where they will add to the public enlightenment. This subdivision shall

not be construed to require more frequent reporting by local agencies than what is required by any other law. (Pen. Code § 13010(g).)

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

COMMENTS:

1) **Purpose of the bill.** The author notes that data suggests that most 911 calls are for issues that fall outside the standard definition of emergencies and may require a response outside of the scope of traditional first response. There are currently no common standards for data collection and reporting, making it hard to identify the appropriate response to a 911 call. This issue has resulted in state and local governments having difficulties in allocating resources that meet the needs of community members requesting 911 services. This bill is intended to solve this problem by standardizing, collecting, and analyzing statewide 911 data.

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

AB 1276 will create the infrastructure for cities to opt into storing 911 call data and begin the process of ensuring that emergency response systems keep pace with advancing technology while respecting the privacy of callers to uphold ethical and transparent data collection.

3) **What this bill does.** If the University of California Regents approve and the Legislature provides funding, this bill will do the following:

1. Require the Department of Emergency Medicine at UC Davis Health to create a system to receive and analyze information related to the nature of 911 emergency calls and the services dispatched. UC Davis Health, in collaboration with EMSA, Cal OES, HCAI, and DOJ, will be responsible for determining the type of data needed to conduct the analysis and adopting statewide standards in order to insure the data submitted is uniform.

2. Once the system is built, all 911 call centers will be required to de-identify and submit data related to the types of calls received, the locations of those calls, the first responders dispatched to provide assistance, or any other information that UC Davis Health determines is needed in order to analyze emergency response services.

3. The amendments to the bill ensure that the data that is shared with UC Davis does not include any personal information. In addition, the bill makes it clear that it will only be implemented if the UC Regents agree and if funding is included in the state budget.

4) **Racial and Identity Profile Advisory (RIPA) Board.** The Racial and Identity Profiling Act of 2015 established the Racial and Identity Profiling Advisory (RIPA) board within the DOJ (AB 953 (Weber), Chap. 466, Stats. 2015) in an effort to eliminate racial and identity profiling and to improve diversity and racial and identity sensitivity in law enforcement. The board is required to investigate and analyze state and local law enforcement agencies' racial and identity profiling policies and practices across geographic areas in California and to annually publicize its findings and policy recommendations. State and local agencies that employ peace officers are required to annually report to the Attorney General data on all stops conducted by the agency's peace officers with specific information regarding the nature of the stop. Citizen complaints of racial and identity profiling also must be collected and reported, including the status of the complaint. The DOJ is responsible for receiving, analyzing and reporting the information.

5) **2023 RIPA recommendations.** The 2023 RIPA report includes a chapter entitled “Calls for Help and Bias by Proxy.” Among other issues, the chapter discusses the problem of bias in the dispatch decisions being made by some 911 operators, whether the biases are the operators’ or bias by proxy, meaning the caller is biased. The report uses the well-known example of a caller who became known as “BBQ Becky” who called the police twice on Black men at Lake Merritt in Oakland, California, for using charcoal grills in an area she claimed was not designated for barbecuing. The two dispatchers were critical in ensuring that the women’s calls, which appeared to involve bias by proxy, led to a non-violent outcome for the two men.

A dispatcher interacts directly with the 911 caller – hearing the voice and tone of the caller and any background noises – and can ask questions as necessary. The dispatcher then makes the choice to: i) send law enforcement; ii) send a crisis intervention team in jurisdictions that have them; iii) send out a medical or fire team; or, iv) not send out a team at all. Thus, the ability to discern whether a call is about a non-violent crisis, such as a mental health or substance abuse episode, or improperly fueled by the caller’s bias, is an important skill. Additionally, the response team relies on the information gathered by a dispatcher. That information may influence how a team responds to a particular incident and may set the stage for or prevent a volatile interaction.

The report provides numerous recommendations and best practices for law enforcement agencies, the Legislature, and local policymakers, among others. Those recommendations include, among many others, that public health officials and policymakers should treat racial and identity profiling and adverse policing as significant public health issues and recognize that police interactions can negatively impact the mental and physical health of individuals who are Black, Hispanic/Latine(x), Indigenous, and people of color; and, that law enforcement agencies and local district attorneys should create data-driven policies to improve public safety and develop innovative ways to address racial and identity profiling by eliminating pretextual stops. (*Racial and Identity Profile Advisory Board 2023 Annual Report*, Office of the Attorney General (Jan 1, 2023), available at <https://oag.ca.gov/ab953/board/reports#current>.)

6) **Open data and the OpenJustice portal.** An open data portal is an online repository of downloadable data in raw form that is available to the public. This tool enables researchers, civic coders, and journalists to access and study data that has generally not been publicly available.

In 2015, Attorney General Kamala Harris launched the OpenJustice initiative, an open data Web portal designed to make information available to the public through an interactive, easy-to-use web interface. This tool consists of two components. First, a data exploration section that spotlights key criminal justice indicators such as crime statistics, arrests, domestic violence incidents, and criminal justice personnel. This section allows users to look at changes over time, county specific or statewide data, and many other iterations of the data collected through the portal. The second section is an open data portal that publishes complete raw datasets that can be downloaded. (It is important to note in June of 2022 there was potential data exposure that may have caused confidential personal data to unintentionally be disclosed in connection with the firearms dashboard on the OpenJustice website.)

In March 2019, the California Department of Technology issued a technology letter to all state departments announcing a statewide open data policy. In that letter, the department describes the importance of open data:

This Open Data Policy promotes more accessible, discoverable, and usable data that impacts economic development and improves government services. In addition, open data encourages informed policy decisions, performance planning, research and scientific discoveries, and increased public participation in democratic dialogue. *Open data is public data collected by the state through its routine business activities and published in a format that is easy to search, easy to download and easy to combine with other data sets from other sources; it does not include private or confidential data about individuals.*[Emphasis added]. (Letter available at <https://cdt.ca.gov/wp-content/uploads/2019/03/TL-19-01.pdf>.)

7) **Analysis of the bill.** This bill is clearly intended to do important work in determining whether or not there is disparate treatment of people when they reach out for emergency help through 911. Do some neighborhoods receive different types of first responders than other neighborhoods? Are the outcomes of those calls different for some people than for others? Are response times different and why might that be? There are a myriad of questions that remain unanswered because of the inability to conduct a thorough analysis of the state's emergency response system.

However, as the bill moves forward, the author should consider adding clarity and detail to the bill. One of the things that is unclear in the bill as it is currently written is whether or not this is intended to be a one-time analysis or on-going data collection and analysis. The author may want to consider including clear expectations about when they want the first reports completed, who those reports should be made available to, whether they want the analysis to include recommendations for improving the system, and, if the intent is for on-going analysis, how often they want reports to be completed.

In addition, the background provided by the author's office suggests that the intent is for the system to be one that local 911 dispatch centers can voluntarily opt in to, rather than a requirement. If that is the case, then the language in the bill should clearly state that participating in the program is optional for local 911 dispatch centers. Along with the clarification, the author may wish to consider who should be responsible for making the decision to opt in or opt out. It may be that a county-level analysis would be more useful than a city by city analysis. In which case, the decision might rest with either the county board of supervisors. Alternatively, it maybe be that city-level participation is sufficient, in which case the author may want to make city councils responsible for deciding whether or not to participate.

Finally, the author may find that the best solution for getting on-going robust research from a wide range of experts, is to not only require UC Davis Health to analyze the data collected but also require the creation and maintenance of an open data system, similar to the DOJ's OpenJustice portal, discussed previously.

8) **Committee amendments.** Committee amendments to the bill, reflected in the analysis above, are set forth below:

130300. (a) (2), (3) and (4) will be amended as follows:

(2) Adopt uniform statewide data standards for "911" call and dispatch data, including, but not limited to, de-identification protocols, standards for the categories, types, and format of data collected.

(3) Create a data portal that catalogs the collected data, aggregated on a statewide level. ~~The data portal shall exclude any personally identifiable information. The data portal shall contain only de-identified data, as defined.~~

(4) “De-identified data” means data with all information included in 45 CFR § 164.514(b)(2) removed, with the exception of allowing dates and geographical location information down to the street level to remain in the data. Street level information does not include an actual street address.

This set of amendments are intended to clarify exactly what personally identifiable information needs to be de-identified. That information includes all of the information included in the section of HIPAA (see **EXISTING LAW #4**), with the exception of allowing dates to remain in the data, and allowing for location information that will allow researchers to aggregate the data to analyze 911 responses based on specific neighborhoods.

130300. (c) and (d) will be amended as follows:

(c) 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) The California Consumer Privacy Act of 2018 and the California Privacy Rights Act of 2020.

~~(ed)~~ (1) This section shall be implemented subject to an appropriation made by the Legislature for the purpose of implementing this section.

~~(2) This section shall be implemented only to the extent not in conflict with any applicable federal or state privacy laws.~~

~~(3)~~ This section shall be implemented subject to approval by the Regents of the University of California for the participation of UC Davis Health as described in this section.

This amendment clarifies which state and federal privacy laws cannot be superseded or preempted by this bill.

9) **Related legislation.** AB 953 (Weber, Chap. 466, Stats. 2015) modifies the definition of racial profiling; requires local law enforcement agencies to report specified information on stops to the AG's office; and establishes the RIPA.

AB 2425 (Irwin, Chap.418, Stats 2016) the OpenJustice Data Act, supported by former Attorney General Kamala Harris, codified the OpenJustice portal by requiring the DOJ make available to the public its mandatory criminal justice statistical reports in an open data format through the OpenJustice Web Portal.

AB 988 (Bauer-Kahan, Chap. 747, Stats. 2022) requires the California Health and Human Services Agency (CHHS) to appoint and convene a state 988 policy advisory group to advise CHHS on the implementation and administration of the five-year implementation plan for the 988 Suicide Prevention System. Requires the Office of Emergency Services to appoint a 988 system director and convene an advisory board to guide how 988 is implemented and made interoperable with 911, including the creation of a new surcharge for 988 to fund the crisis services. Requires health plan and insurer coverage of 988 center services when medically necessary and without prior authorization.

AB 2773 (Holden, Chap. 805, Stats. 2022) requires, beginning January 1, 2024, a peace officer making a traffic or pedestrian stop to state the reason for the stop before asking any questions related to a criminal investigation or traffic violation, unless the officer reasonably believes that withholding the reason for the stop is necessary to protect life or property from imminent threat.

ARGUMENTS IN SUPPORT: John Burton Advocates for Youth (JBAY) states in support of the bill:

In California, approximately 28 million calls are placed to 911 each year. However, most local jurisdictions lack the resources to routinely compile and analyze their 911 data. Where data are collected and reported, the absence of common standards makes it difficult for program administrators to assess the complex types of support requested and the appropriateness of responses provided. To address these issues, AB 1276 requires state agencies to collaborate with UC Davis Health to create uniform statewide standards for 911 call and dispatch data, create a data portal cataloging collected data, and aggregate these data statewide.

Making 911 data consistent and accessible will allow decision-makers to understand service needs and appropriately allocate resources to ensure the right response at the right time.

The sponsors of the bill, Public Health Advocates, echo the sentiment of JBAY. In addition, they state:

As an organization, Public Health Advocates is driven by its core values – of those values are the commitment to using science as our guide and being bold in achieving sustainable solutions to our states most pressing issues. Currently, the 911 call data that is available isn't enough to make strategic and sustainable decisions to improve our emergency systems in California.

REGISTERED SUPPORT / OPPOSITION:

Support

Asian Pacific Partners for Empowerment, Advocacy and Leadership (APPEAL)
Bay Area Regional Health Inequities Initiative
California Homeless Union Statewide Organizing Council
Dr. Corrine McIntosh Sako, Psy.d.. Lmft
Jemmott Rollins Group INC.
John Burton Advocates for Youth
Justice2jobs Coalition
Latino Coalition for A Healthy California

Public Health Advocates
Sacramento Native American Health Center
Sacramento Regional Coalition to End Homelessness
Tabimoms
The Children's Partnership
Young Invincibles
Youth Forward
Youth Leadership Institute

Opposition

None on file

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