

ASSEMBLY THIRD READING

AB 1917 (Levine)

As Amended March 10, 2022

Majority vote

SUMMARY

Prohibits law enforcement, as defined, from conducting contact tracing, as defined, and would authorize a person to bring a civil action to obtain injunctive relief for a violation of these provisions.

Major Provisions

- 1) Prohibits any officer, deputy, employee, or agent of a law enforcement agency from engaging in contact tracing, except that an employee of a law enforcement agency may conduct contact tracing of employees in the same agency.
- 2) Authorizes a healthcare worker who is not a correctional officer to conduct contact tracing in a jail or prison.
- 3) Authorizes a person to bring a civil action seeking injunctive relief and reasonable attorneys' fees for any violation of the provisions above.
- 4) Defines "contact tracing" to mean 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.
- 5) Defines "data" to mean measurements, transactions, determinations, locations, or other information, whether or not that information can be associated with a specific natural person.
- 6) Defines "law enforcement agency" to mean any of the 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 Department of Highway Patrol; the Department of Justice; or college or university police departments, as specified.

COMMENTS

Mass contact tracing during the COVID-19 pandemic highlighted concerns with the practice: Despite California's (and other states') investment in contact tracing, research shows that contact tracing efforts were largely frustrated because many members of the public lack the adequate trust required to share sensitive information with public health officials. A Pew Research Center report from a survey conducted July 13-19, 2020 found that 41% of adults say they would not be likely to speak with a public health official by phone or text message about COVID-19, and nearly 30 % of American adults are not comfortable sharing the names of people with whom they might have been in physical contact. Approximately half of US adults indicated that they were not comfortable sharing location data from their cellphone.¹

¹ McClain and Rainie, *The Challenges of Contact Tracing as U.S. Battles COVID-19* (Oct. 30, 2020) Pew Research Center <https://www.pewresearch.org/internet/2020/10/30/the-challenges-of-contact-tracing-as-u-s-battles-covid-19/> [as of Mar.26, 2021].

The discomfort many members of the public feel about contact tracing was further exacerbated by reports of contact tracing scams. According to a Los Angeles County Department of Consumer and Business Affairs *Scam Alert*, "[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."²

By clarifying which entities may conduct contact tracing, this bill seeks to build the public trust that is necessary for effective contact tracing.

Narrower version of two bills by the same author: AB 660 (Levine) of 2019, as introduced, dealt with building energy efficiency standards. It was subsequently amended in the Senate to regulate the practice of contact tracing. As amended on August 11, 2020, AB 660 would have prohibited any data collected, received, or prepared for purposes of contact tracing from being *used, maintained, or disclosed for any purpose other than contact tracing*, and would have required all data collected to be deleted within 60 days, as specified. The bill would have additionally prohibited a law enforcement official from engaging in contact tracing. That bill was placed on the Senate Appropriations Suspense file.

As introduced the following year, AB 814 (Levine) of 2021 was nearly identical to AB 660 in its final form. A coalition of organizations including the California Chamber of Commerce, the Civil Justice Association of California, and the California Grocers Association, among others, opposed AB 814 unless amended to address a number of concerns. The coalition argued that the bill was overly broad in that it would "prohibit the use of data that was not solely collected, received, or prepared for [contact tracing]. AB 814 applies to all forms of contact tracing, even if just a pen and paper are used. For example, if sign-in sheets were "collected" for purposes of building security, but were later "received, or prepared" for purposes of contact tracing, then AB 814 would end up banning the use of sign-in sheets, or any other information for that matter, which may not be collected exclusively for the purpose of contact tracing."

The coalition also argued that the requirement to delete data collected for contact tracing is in "direct conflict with existing law." In support of this contention, their letter described how data collected for contact tracing may be useful, by stating that there "are legitimate and important reasons why this information should not be deleted, including tracking the effectiveness of treatment; anticipating hot spots; or identifying whether specific communities are more impacted than others. With this definition, this information will be swept into what is considered contact tracing data and be required to be deleted within 60 days."

In contrast, AB 1917 does not include any limitation on the use of data collected for contact tracing and does not impose a deletion requirement, and thus avoids the concerns raised by the coalition to AB 814.

Prohibits law enforcement from contact tracing: Traditionally, contact tracing is conducted through interviews of infected individuals to collect information regarding with whom they have come into contact since infection, and the nature of those contacts. Contacts deemed to be at risk

² *Scam Alert: Avoid COVID-19 Contact Tracing Scams* (July 20, 2020) Los Angeles County Department of Consumer and Business Affairs, <https://dcba.lacounty.gov/newsroom/scam-alert-avoid-covid-19-contact-tracing-scams/> [as of Mar. 27, 2021].

of infection are then advised to take certain actions, such as testing and self-isolation, to avoid further transmission.

Contact tracing can be highly effective depending on the nature of the illness, particularly in situations in which an individual becomes contagious before they present symptoms. However, traditional contact tracing demands a robust workforce of trained personnel, and suffers from imperfect recollection and a long latency between initial reports of infection and action taken on the part of those at risk. To address these challenges during the height of the pandemic, some rural counties turned to law enforcement to assist in contact tracing efforts.

News of Madera County's use of the sheriff's department for contact tracing coincided with news of some local governments sharing the names and/or addresses of people who had tested positive for COVID-19, and other reports throughout the country of local governments looking into relatively untested ways of tracking the spread of COVID, such as facial recognition technology, geolocation tracking, and fever detection cameras.³ In January of 2021, a local newspaper reported that San Diego County had been releasing the addresses of COVID positive individuals to law enforcement for over nine months, while at the same time refusing to release public data that might provide insight into where the outbreaks in that county had happened.⁴

Reports such as these have seemingly undermined the public's trust in government and have blurred the lines between public health and law enforcement. Sharing the medical data and addresses of people who test positive likely created a chilling effect causing some people to avoid getting tested. Specifically, there is a concern that vulnerable populations such as homeless or undocumented individuals may not be willing to get tested if they fear their information will end up in the possession of law enforcement. Californians have a constitutionally protected right to privacy, and these practices arguably undermine a very basic tenant of privacy: when the government collects sensitive information about individuals for one purpose, it should not use that data for another purpose.

According to the Author

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

³ Guariglia, *Telling Police Where People With COVID-19 Live Erodes Public Health*, EFF (April 15, 2020) <https://www.eff.org/deeplinks/2020/04/telling-police-where-people-covid-19-live-erodes-public-health> [as of Mar. 27, 2021].

⁴ Marx, *County Distributes COVID Patients' Addresses to Police Agencies*, (Jan. 21, 2021) Voice of San Diego <https://www.voiceofsandiego.org/topics/government/county-distributes-covid-patients-addresses-to-police-agencies/> [as of Mar. 27, 2021].

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.

Arguments in Support

In support of this bill, Oakland Privacy writes: 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. The COVID-19 pandemic is ebbing, but not over, and it seems inevitable that other contagious viruses and bugs may cause us problems in the future, whether localized or across the entire world, as with COVID-19. Our inter-connected world is effective at turning a localized outbreak into an international one at lightening speed, and growing contacts between wildlife and humans as well as research laboratories across the world working with large amounts of specimens, suggest that our recent pandemic is just one that we may face in the coming decades. We should use what we have learned during COVID-19 to be better prepared for coming outbreaks. One thing we have learned is that mistrust extends and worsens pandemics. So it is vital that necessary functions for disease containment be performed by the most trusted actors that we have. Using law enforcement is a path to lack of success in contact tracing due to the significant mistrust factor for swaths of Californians.

Arguments in Opposition

None on file.

FISCAL COMMENTS

According to the Assembly Appropriations Committee, cost pressures (Trial Court Trust Fund) in the low hundreds of thousands of dollars in increased workload to the extent this bill creates a new civil action for injunctive relief. One hour of court time costs approximately \$1,000. If 20 petitions for injunctive relief are filed statewide requiring an average of 10 hours of court time each, the cost to the courts would be \$200,000. Although courts are not funded on the basis of workload, increased pressure on the courts and staff may create a need for increased funding from the GF or courts to perform existing duties.

VOTES

ASM PRIVACY AND CONSUMER PROTECTION: 7-1-3

YES: Gabriel, Bauer-Kahan, Berman, Cunningham, Mike Fong, Irwin, Wilson

NO: Kiley

ABS, ABST OR NV: Bennett, Valladares, Wicks

ASM JUDICIARY: 7-2-1

YES: Stone, Kalra, Maienschein, Reyes, Robert Rivas, Friedman, Bloom

NO: Davies, Kiley

ABS, ABST OR NV: Cunningham

ASM APPROPRIATIONS: 12-4-0

YES: Holden, Bryan, Calderon, Carrillo, Mike Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Wilson

NO: Bigelow, Megan Dahle, Davies, Fong

UPDATED

VERSION: March 10, 2022

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