

Date of Hearing: April 26, 2022

ASSEMBLY COMMITTEE ON JUDICIARY  
Mark Stone, Chair  
AB 1917 (Levine) – As Amended March 10, 2022

**SUBJECT:** PERSONAL INFORMATION: CONTACT TRACING

**KEY ISSUE:** IN ORDER TO ENCOURAGE THOROUGH PARTICIPATION IN PUBLIC HEALTH CONTACT TRACING EFFORTS FROM ALL CALIFORNIANS, SHOULD SPECIFIED LAW ENFORCEMENT AGENCIES BE PROHIBITED FROM ENGAGING IN CONTACT TRACING EFFORTS?

**SYNOPSIS**

*According to the Centers for Disease Control and Prevention (CDC), contact tracing is a fundamental public health activity that involves working with individuals diagnosed with an infectious disease who are either showing symptoms (symptomatic), or not showing symptoms (asymptomatic). It has become clear in the past two years that contact tracing is a necessary component of the fight against COVID-19. However, participation in contact tracing hinges on public trust. Effective contact tracing requires that participants share a wealth of intimate personal information with contact tracers: information about their location, private activities, health status, and associations. Unfortunately, growing distrust of law enforcement, particularly amongst the immigrant population, risks making contact tracing efforts ineffective.*

*In order to encourage maximum participation in contact tracing efforts, this bill would prevent specified law enforcement entities from conducting contact tracing, including local police and sheriff's departments, district attorneys, county probation departments, transit agency, school district, police departments of the University of California, California State University, and community colleges, as well as the Department of the California Highway Patrol, Department of Justice, and Department of Corrections and Rehabilitation. The bill provides reasonable exemptions to allow these agencies to conduct contact tracing of their own employees, as well as health care workers who are not correctional officers to conduct contact tracing in a jail or prison. Additionally, this bill authorizes a private right of action for violation of its provisions and authorizes a court to grant injunctive relief, as well as reasonable attorney fees, to a prevailing plaintiff.*

*This bill is author-sponsored and is supported by ACLU California Action, Electronic Frontier Foundation, Media Alliance, Oakland Privacy, and the Privacy Rights Clearinghouse. There is no opposition on file.*

*This bill was previously heard by the Assembly Committee on Privacy and Consumer Protection, which approved the bill by a vote of 7-1.*

**SUMMARY:** Prohibits specified law enforcement agencies from engaging in contact tracing efforts. Specifically, **this bill:**

- 1) Defines the following for the purpose of this bill:

- a) “Contact tracing” means 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;
- b) “Data” means measurements, transactions, determinations, locations, or other information, whether or not that information can be associated with a specific natural person;
- c) “Law enforcement agency” means any of the following:
  - i) A police department;
  - ii) A sheriff’s department;
  - iii) A district attorney;
  - iv) A county probation department;
  - v) A transit agency police department;
  - vi) The police department of any campus of any of the following: the University of California; The California State University; a community college;
  - vii) The department of the California Highway Patrol;
  - viii) The Department of Justice;
  - ix) The Department of Corrections and Rehabilitation.
- 2) Prohibits a correctional officer or an officer, deputy, employee, or agent of a law enforcement agency from conducting contact tracing. Allows for the following exceptions:
  - a) An employee of a law enforcement agency may conduct contact tracing of employees of the same law enforcement agency;
  - b) A health care worker who is not a correctional officer may 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.

**EXISTING LAW:**

- 1) Provides, pursuant to the California Constitution, that all people have inalienable rights, including the right to pursue and obtain privacy. (California Constitution, Article I, Section 1.)
- 2) 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. Section 164.500 *et seq.*)

- 3) 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. (Civil Code Section 56 *et seq.*)
- 4) 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. It regulates the handling of personal information in the hands of state agencies. The IPA states the following legislative findings:
  - 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) Provides in order to protect the privacy of individuals, it is necessary that the maintenance and dissemination of personal information be subject to strict limits. (Civil Code Section 1798 *et seq.*)

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

**COMMENTS:** On March 4, 2020, Governor Gavin Newsom declared a State of Emergency as a result of the COVID-19 pandemic. Since then, there have been over 8.5 million reported cases and over 89,054 deaths from COVID-19 in California alone. One of the strategies deployed to limit the transmission of COVID-19 is contact tracing, which identifies COVID-19 positive individuals and those with whom they may have been in close contact. Those individuals are then advised to quarantine to aid in limiting 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 is growing concern about this data potentially being used for non-healthcare-related purposes.

Nationwide, reports have detailed the benefits of contact tracing, but generally indicate that greater proportions of individual involvement lead to more effective results. However, immigrant communities and communities of color are less likely to interact with law enforcement authorities, regardless of context. These communities have been disproportionately affected by COVID-19 and are less likely to seek medical aid. This bill would prohibit employees of a law enforcement agency from engaging in contact tracing, and, by doing so, would arguably increase trust in contact tracing in the communities that are disproportionately affected by COVID-19 and facilitate greater participation to protect communities from the virus. In identifying a need for the bill the author states:

Measures must be taken to protect Californian's personal information and build trust that this information will not be used for law enforcement purposes. 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. 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.

***COVID-19 and contact tracing.*** According to the Centers for Disease Control and Prevention (CDC), contact tracing is a fundamental public health activity that involves working with individuals diagnosed with an infectious disease who are showing symptoms (symptomatic) or not showing symptoms (asymptomatic). This process prevents further transmission of disease by separating people who have (or may have) an infectious disease from people who do not. Contact tracing is a core disease control measure that has been employed by public health agency personnel for decades, and is most effective when used as part of a multifaceted response to an outbreak.

In the case of the COVID-19 pandemic, the prompt identification, voluntary quarantine, and monitoring of COVID-19 contacts can effectively break the chain of disease transmission and prevent further spread of the virus in a community. While contact tracing for COVID-19 itself may be relatively new, health departments and frontline public health professionals have long used contact tracing for the control of infectious diseases, such as tuberculosis, sexually transmitted infections, and HIV. Contact tracing typically entails interviewing people who are infected by the virus to identify everyone they had close contact with during the time they may have been infectious, notifying contacts of their potential exposure, and referring them for testing, monitoring for signs and symptoms of infection, and connecting contacts with services they might need during the self-quarantine period. (See Centers for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19): Contact Tracing*, <https://www.cdc.gov/coronavirus/2019-ncov/php/open-america/contact-tracing/index.html>.)

Despite the increase of vaccinations nationwide, COVID-19 continues to spread through communities and thus contact tracing remains a significant tool for governments to combat its spread. Moreover, even once COVID-19 is firmly in the rearview mirror, effective contact tracing policies will remain relevant for preempting its resurgence or identifying and responding to new potential epidemics.

***Privacy concerns surrounding COVID-19 contact tracing efforts.*** On May 22, 2020, Governor Newsom announced the launch of California Connected, “the state’s comprehensive contact tracing program and public awareness campaign.” (See Office of Governor Gavin Newsom, *Governor Newsom Launches California Connected – California’s Contact Tracing Program and Public Awareness Campaign* (May 22, 2020) Press Release, available at <https://www.gov.ca.gov/2020/05/22/governor-newsom-launches-california-connected-californias-contact-tracing-program-and-public-awareness-campaign/>.) California Connected asserts that the identity and health information collected for the purpose of contact tracing will be kept confidential and only collected and stored for use by local and state public health

departments. (*Ibid.*) Despite the stated desire to ensure confidentiality, no statutory protections or regulations were put in place regarding contact tracing. Specifically, there are no protections or regulations for how contact tracing is performed, or who can engage in contact tracing.

There are currently two forms of contact tracing: contact tracing through technology-assisted applications and manual contact tracing. Many privacy concerns were recently raised in response to the dramatic increase in technology-assisted contact tracing efforts. Officials using these methods have been forced to scramble to “address serious complaints that arose over extensive user data-mining or poor security practices.” (See Natasha Singer, *Virus-Tracing Apps Are Rife With Problems. Governments Are Rushing to Fix Them* (July 8, 2020) The New York Times, available at <https://www.nytimes.com/2020/07/08/technology/virus-tracing-apps-privacy.html>.) Warnings streamed in from human rights groups and technologists that “the design of many apps put hundreds of millions of people at risk for stalking, scams, identity theft or oppressive government tracking — and could undermine trust in public health efforts.” (See *Scam Alert: Avoid COVID-19 Contact Tracing Scams* (July 20, 2020) Los Angeles County Department of Consumer and Business Affairs, available at <https://dcba.lacounty.gov/newsroom/scam-alert-avoid-covid-19-contact-tracing-scams/>.)

However, there have been privacy concerns with manual contact tracing, as well. According to a press release by former Attorney General Xavier Becerra, “[s]cam artists pretend to be contact tracers to trick Californians into divulging their private personal information such as Social Security numbers, financial information, or health insurance information.” (See Attorney General Xavier Becerra, *Attorney General Becerra Issues Consumer Alert on COVID-19 Contact Tracing Scams*, (June 8, 2020), available at <https://oag.ca.gov/news/press-releases/attorney-general-becerra-issues-consumer-alert-covid-19-contact-tracing-scams>.) Given the failure of current contact tracing methods to protect confidential information, establishing oversight and regulation is necessary to not only address the identified privacy concerns, but also to build the public trust that is necessary for effective contact tracing.

***Distrust in law enforcement could hinder contact tracing efforts amongst the hardest hit populations.*** In the United States, COVID-19 has disproportionately affected racial/ethnic minority and underserved groups, especially African American, Latine, and Native American communities. While numbers of COVID-19 infections have slightly decreased in the past two years, with recent numbers reflecting that 12.3 percent of cases are Black individuals and nearly 25 percent are Latine, non-White individuals are disproportionately represented in COVID cases. (See Centers for Disease Control and Prevention, *Demographic Trends of COVID-19 cases and deaths in the US reported to CDC* accessed April 20, 2020, available at [https://covid.cdc.gov/covid-data-tracker/?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-updates%2Fcases-in-us.html#demographics](https://covid.cdc.gov/covid-data-tracker/?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-updates%2Fcases-in-us.html#demographics).) It has become clear that contact tracing is a necessary component of the fight against COVID-19. However, if individuals fear that participating in contact tracing will expose them or their loved ones to deportation or criminalization, they will simply choose not to participate.

Unfortunately, a growing distrust in law enforcement is evident amongst the immigrant population. After increased deportations and news of deceptive raids by U.S. Immigration Customs and Enforcement (ICE) agents disguised as law enforcement, police officers reported a dramatic drop in outreach from, and cooperation with, immigrant and limited English proficiency (LEP) communities. Since police are often the first point of contact for survivors of crime within

the justice system, the decline in trust and cooperation has had a significant impact on their work and on the rest of the justice system. A report by the ACLU found that approximately 22 percent of police officers reported that immigrants were less likely to make police reports; 21 percent said immigrant crime survivors were less likely to help in investigations when police arrived at the scene of a crime; 20 percent reported that these survivors were less likely to help in post-crime scene investigations; and 18 percent said survivors were less willing to work with prosecutors. (See American Civil Liberties Union, *Freezing Out Justice: How immigration arrests at courthouses are undermining the justice system* (2018), available at [https://www.aclu.org/sites/default/files/field\\_document/rep18-icecourthouse-combined-rel01.pdf](https://www.aclu.org/sites/default/files/field_document/rep18-icecourthouse-combined-rel01.pdf).)

Beyond immigrant communities, growing distrust of law enforcement is evident in communities of color. A study by Pew Research found that about “half of Hispanics and just 33% of black adults” say police officers treat racial and ethnic groups equally at least some of the time. (See Claire Gecewicz and Lee Rainie, *Why Americans Don’t Fully Trust Many Who Hold Positions of Power and Responsibility* (September 19, 2019) Pew Research Center, available at <https://www.pewresearch.org/politics/2019/09/19/why-americans-dont-fully-trust-many-who-hold-positions-of-power-and-responsibility/>.) Compounding matters, advocates worry that as a result of overall skepticism of authority, exacerbated by law enforcement response to demonstrations following the killings of Black men and women in recent years by law enforcement officers, people are less willing to line up and trust a public agency, public health included. Unfortunately, this distrust is warranted as evidenced by the example of the Minnesota public safety commissioner who stated that the government was “contact tracing” protesters, but instead was found to be spying on protesters under the guise of a vital public health effort. (See Sara Morrison, *Minnesota law enforcement isn’t “contact tracing” protesters, despite an official’s comment*, (June 1, 2020), Vox available at <https://www.vox.com/recode/2020/6/1/21277393/minnesota-protesters-contact-tracing-covid-19>.) In another example out of San Diego County, public health officials were found to be providing local law enforcement with the home addresses of all individuals who had tested positive for COVID-19, but refused to release public data that might have provided insight into where the outbreaks in that county had happened. (See Jesse Marx, *County Distributes COVID Patients’ Addresses to Police Agencies*, (Jan. 21, 2021) Voice of San Diego, available at <https://www.voiceofsandiego.org/topics/government/county-distributes-covid-patients-addresses-to-police-agencies/>.) These instances not only hinder essential public health efforts, but also further exacerbate the growing distrust amongst the hardest hit communities to share their private information.

***This bill*** would prevent specified law enforcement entities from engaging in contact tracing, including local police and sheriff’s departments, district attorneys, county probation departments, transit agency, school district, police departments of the University of California, California State University, and community colleges, as well as the Department of the California Highway Patrol, Department of Justice, and Department of Corrections and Rehabilitation. The bill provides reasonable exemptions to allow these agencies to conduct contact tracing of their own employees, as well as health care workers who are not correctional officers to conduct contact tracing in a jail or prison.

Additionally, this bill authorizes a private right of action for a violation of its provisions and authorizes a court to grant injunctive relief, as well as reasonable attorney fees, to a prevailing plaintiff. Typically, laws without adequate enforcement mechanisms do little to ensure

individuals are protected, and therefore providing a statutory mechanism by which to seek relief is essential. Injunctive relief, which would direct an agency to cease improperly engaging in contact tracing via court issued order, seems an appropriate remedy that would ensure the provisions of this bill are complied with on an ongoing basis. Allowing for recovery of attorneys fees makes private enforcement of the bill's provisions accessible, and far more likely. This in turn makes the state's contact tracing efforts more likely to succeed. It is also worth noting that this bill does not provide for civil monetary penalties, significantly limiting law enforcement agencies' potential financial risks.

**ARGUMENTS IN SUPPORT:** ACLU California Action, the Electronic Frontier Foundation, Media Alliance, Oakland Privacy, and the Privacy Rights Clearinghouse have all voiced support for the measure. They state:

Contact tracing data is inherently sensitive, personally identifying information. Location and travel pattern data information, both of which are collected as part of contact tracing, are easily tied to an individual. For example, one study of 15 months of location information for 1.5 million people found that “human mobility traces are highly unique. In fact, in a dataset where the location of an individual is specified hourly, and with a spatial resolution equal to that given by the carrier's antennas, four spatio-temporal points are enough to uniquely identify 95% of the individuals.” Contact tracing also records who an individual interacts with, which makes it all that much easier to identify an individual at a particular location at a particular time as well as provides its own highly identifiable information. This information can indicate a person's associates and activities.

Not only is contact tracing an inappropriate function for police, this bar on the entanglement of police with public health is necessary to ensure that people cooperate with contact tracing. When COVID-related data is collected by police, it negatively impacts public health goals because people may share less of their personal information if they fear the government might use it against them. Yet in some California communities, law enforcement officials themselves have been conducting contact tracing. Much like use of DNA from sexual assault survivors to investigate unrelated crimes may erode trust and deter victims from coming forward, law enforcement access to contact tracing data about who a person was with and where a person was may impact people's willingness to share important contact tracing data needed for public health purposes if it might implicate them in a crime or risk labeling them as an associate of a supposed gang member. Location information and contacts with others are important to collect for public health purposes in the context of contact tracing and should not be repurposed for other uses.

**Comparison of this bill to AB 814 (2021).** The author introduced a similar version of this bill in 2021, which, in addition to imposing limitations on which agencies could engage in contact tracing efforts, included guidelines on how data collected for purposes of contact tracing were managed and disposed of. This bill does not include those provisions, opting instead to focus on *who* should be prevented from conducting contact tracing, rather than how to manage the information. That bill was held in the Senate Appropriations Committee.

**Recent similar or related legislation.** AB 660 (Levine, 2020) 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 facilitating contact tracing efforts, and would require the data to be deleted within 60 days, unless it is in the possession of a state or local health

department. The bill would additionally prohibit law enforcement, as defined, from engaging in contact tracing. Died on the Senate Appropriations Suspense file.

AB 1782 (Chau, 2020) would have comprehensively regulated technology assisted contact tracing, or TACT. Died on the Senate Appropriations Suspense file.

**REGISTERED SUPPORT / OPPOSITION:****Support**

ACLU California Action  
Electronic Frontier Foundation  
Media Alliance  
Oakland Privacy  
Privacy Rights Clearinghouse

**Opposition**

None on file

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