

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 1788 (Quirk-Silva)
Version: June 5, 2024
Hearing Date: June 18, 2024
Fiscal: Yes
Urgency: No
CK

SUBJECT

Mental health multidisciplinary personnel team

DIGEST

This bill authorizes the formation of multidisciplinary personnel teams with the goal of connecting justice-involved persons with mental health issues to appropriate services as they are released from county jails and to allow for the sharing of confidential information, as provided.

EXECUTIVE SUMMARY

California has looked to the benefits of multidisciplinary personnel teams (MDTs) to address complex societal problems in multiple spheres, including to combat domestic violence, child abuse, and homelessness. MDTs are multiple people and entities who come together to share information, including confidential information, for the purpose of coordinating resources and services to address the needs of an identified population. The members must generally be trained in the relevant field and come from a diverse array of organizations, generally focused on the public and nonprofit sectors. The laws authorizing the formation of these MDTs allow for the sharing of otherwise confidential information. However, given the serious privacy concerns that are at play, these laws should include clear and thorough privacy protections and use limitations on the information shared, and to the extent feasible, allow for the population being served to opt out of having their information shared. These protections include application of existing privacy laws and restrictions on disclosing the relevant information in civil or administrative proceedings.

This bill looks to utilize this method to serve those persons with mental illness as they complete their incarceration and reenter the outside world. This bill is supported by various organizations, including the California Faculty Association and the California

State Sheriffs' Association. No timely opposition has been received by the Committee.¹ The Senate Public Safety Committee passed this bill with a vote of 5 to 0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Authorizes a county to establish a homeless adult and family MDT 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 personnel team to share confidential information for the purpose of coordinating housing and supportive services to ensure continuity of care. (Welf. & Inst. Code § 18999.8.)
- 2) Defines "homeless adult and family MDT" to mean any team of two or more persons who are trained in the identification and treatment of homeless adults and families, and who are qualified to provide a broad range of services related to homelessness. Specifies the types of professionals who may be on the team. (Welf. & Inst. Code § 18999.8.)
- 3) Authorizes local entities to establish MDTs for addressing child abuse, domestic violence, human trafficking, elder or dependent abuse, and aging. The MDTs are authorized to share confidential information for the purposes of serving the target population, subject to specified privacy protections and use and disclosure limitations. (Welf. & Inst. Code §§ 18961.7, 15610.55; Pen. Code §§ 13752, 13753.)
- 4) Prohibits, under the state Confidentiality of Medical Information Act (CMIA), a health care provider, a health care service plan, and a contractor, 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.)
- 5) 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).)

¹ Oakland Privacy removed previous opposition in response to the author's commitment to amendments discussed below.

- 6) 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).)
- 7) 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.)
- 8) 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 C.F.R. Part 164.)

This bill:

- 1) Authorizes a county to establish a mental health MDT 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.
- 2) Requires members to be trained in the identification and treatment of individuals with mental illness, and who are qualified to provide a broad range of services related to mental health from a non-exclusive list of fields and provider agencies.
- 3) Authorizes members of a mental health MDT to 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 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.

- 4) Allows disclosure and exchange of information to occur electronically if there is adequate verification of the identity of members involved but it shall not be made to anyone other than members of the mental health MDT, except as provided.
- 5) Requires all MDT members and their departments to 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.
- 6) Requires counties to develop protocol for the sharing of information describing how and what information may be shared, which shall be distributed as provided. Protocol should include:
 - 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 MDT only for the intended purposes 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 MDT, 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 the 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.
- 7) Subjects all transmissions of information to CMIA, the Information Practices Act (IPA), HIPAA, the federal Health Information Technology for Economic and

Clinical Health Act (HITECH) (Public Law 111-5), and the corresponding implementing regulations relating to privacy and security in Parts 160 and 164 of Title 45 of the Code of Federal Regulations.

- 8) Provides that every member of the MDT who receives information or records regarding a justice-involved person in that member's capacity as a member of the team shall 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. The information or records obtained shall be maintained in a manner that ensures the maximum protection of privacy and confidentiality rights. It makes clear that it shall not be construed to supersede or preempt the applicability of any existing state or federal privacy laws.
- 9) Deems all information and records communicated or provided to the team members by all providers and agencies private and confidential and requires it to be protected from discovery and disclosure by all applicable statutory and common law protections. Existing civil and criminal penalties shall apply to the inappropriate disclosure of information held by the team members.

COMMENTS

1. Author's comment

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 multidisciplinary teams, 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.

2. Benefits of MDTs

As stated, the Legislature has looked to MDTs to respond to an array of complex social issues, including child abuse, domestic violence, human trafficking, and homelessness. At their best, MDTs represent a holistic, community approach to better understanding issues, identifying resources and services, and ultimately serving the target populations. This comes from the combined expertise of a multitude of agencies and professionals and the benefit of better communication and coordination.

The implementing laws generally facilitate this efficiency and effectiveness by authorizing the sharing of otherwise confidential information among MDT team members. Given the privacy implications and the importance of trust to the process, the laws institute clear guidelines and protections for the information shared.

3. Authorizing the establishment of mental health MDTs

This bill seeks to address the overwhelming incidence of persons with mental illness getting caught up in the justice system; one example:

Los Angeles County's reliance on incarceration instead of treatment for people with mental health needs represents a colossal failure: 39 percent of the nearly 15,000 people held in Los Angeles County jails on December 15, 2022 have mental health needs, and researchers have found that 61 percent of people taking psychotropic medications or housed in specialized mental health units could be safely diverted into existing alternatives to incarceration.

Community-based care is essential because jails are simply not treatment environments, and quality of care in county jails is counterproductive to meeting the needs of those with mental health conditions. Intake facilities are dangerously crowded; the county fails to provide required services; and mistreatment abounds with horrors like incarcerated people being forced to urinate and defecate on the ground, cells overflowing with garbage, and people in need of treatment being chained to chairs for days on end. For people with mental health care needs, being subject to these injustices can exacerbate conditions and fuel a cycle of incarceration that can be difficult to escape.²

This bill expands the use of MDTs by authorizing counties to establish mental health MDTs with the goal of facilitating the expedited identification, assessment, and linkage of these justice-involved persons diagnosed with a mental illness to supportive services within that county while incarcerated and upon release from county jail. "Justice-involved person" means an individual who is currently incarcerated within a county jail or who has been incarcerated in a county jail.

The bill further authorizes provider agencies and MDT members to share confidential information for the purpose of coordinating supportive services to ensure continuity of care, but only if they reasonably believe it is necessary to effectuate that goal. The bill implements a number of requirements for protecting these communications and

² Sam McCann, *For Decades, Los Angeles Jailed People with Mental Health Needs. Now, It's Finally Prioritizing Treatment* (December 22, 2022) Vera Institute of Justice, <https://www.vera.org/news/for-decades-los-angeles-jailed-people-with-mental-health-needs-now-its-finally-prioritizing-treatment> [as of June 9, 2024].

requires MDT members and agencies to take precautions and subjects them to a host of privacy laws.

First, 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. No disclosures should be made outside of the team, except as narrowly provided.

MDT members and agencies are required to establish and maintain a secure and standardized system for sharing a person's confidential records. Counties are required to develop and distribute protocol to govern information sharing among MDTs. A county's protocol must identify the items of information or data elements that will be shared, the participating agencies, and a description of how the information will be used only for the intended purposes. Retention schedules must be established and a series of requirements must be imposed, including that:

- no confidential information or writings be disclosed to persons who are not members;
- participating agencies develop uniform written policies and procedures that include security and privacy awareness training for employees;
- 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;
- 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;
- 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.

Importantly, not only is every member of the mental health MDT who receives information or records regarding a justice-involved person in that member's capacity as a member of the team under the same privacy and confidentiality obligations and subject to the same confidentiality penalties as the person disclosing or providing it, but all transmissions made in connection with the MDT must comply with CMIA, HIPAA, the IPA, HITECH, and attendant regulations.

Information and records communicated or provided to the team members by providers and agencies are deemed private and confidential and shall be protected from discovery and disclosure by all applicable statutory and common law protections. Existing civil

and criminal penalties apply to the inappropriate disclosure of information held by the team members.

4. Stakeholder positions

The California Faculty Association writes in support:

The establishment of mental health multidisciplinary personnel teams as proposed in AB 1788 represents a progressive step towards addressing the critical needs of justice-involved persons with mental health issues. By enabling the sharing of confidential information among provider agencies and members of the personnel team, this bill aims to coordinate supportive services effectively and ensure continuity of care for individuals both while incarcerated and upon their release from county jail.

This initiative is particularly important for the educational community, including students, faculty, and staff within the California State University system, who may be justice-involved or have family members or acquaintances who are. The provision of comprehensive mental health services and the facilitation of reintegration into the community are vital for reducing recidivism, enhancing public safety, and improving the overall well-being of affected individuals.

Furthermore, AB 1788's approach to establishing clear protocols for the sharing and protection of confidential information is commendable. This ensures that privacy and confidentiality rights are respected while promoting an integrated and collaborative approach to mental health care.

Oakland Privacy asserts concerns with the open-ended nature of the provisions detailing the members of these teams:

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 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.

We have two last suggestions to improve the privacy safeguards in the bill.

1. Removal of the “not limited to” clause in the definition of qualified members of the mental health multi-disciplinary teams. We know that it can be difficult to proactively identify all appropriate job titles, but the listed categories are fairly broad and we cannot support a general catch-all phrase that incorporates basically *anyone else*. We would encourage the authors, sponsors and committees to reflect on what, if any, appropriate members of a mental health multi-disciplinary team are not encompassed by the existing terminology. If there are any, they should be added, and if there is no ability to identify any, the catch-all term should simply be removed. **We understand the desire to provide flexibility, but such flexibility can be the mortal enemy of protective safeguards. We are not comfortable with this much flexibility with the confidential records of vulnerable people.**

2. Removal of the “not limited to” clause in the listing of qualified agencies to participate in mental health multidisciplinary teams. The reasons are the same as those detailed above. The list of agencies that can participate should be specific and limited and not contain a broad catch-all.

In response to these concerns, the author has agreed to amendments that remove this nonexclusive language.

SUPPORT

California Academy of Child and Adolescent Psychiatry
California Correctional Supervisors Organization, Inc.
California Faculty Association
California State Sheriffs' Association
City of Long Beach

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: AB 1948 (Rendon, 2024) deletes the sunset on the homeless adult and family MDT pilot program and adds the County of San Mateo to the list of authorized counties. AB 1948 is currently in this Committee.

Prior Legislation:

AB 728 (Santiago, Ch. 337, Stats. 2019) established, 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 multidisciplinary teams 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 210 (Santiago, Ch. 544, Stats. 2017) allowed counties to develop homeless adult and family multidisciplinary teams 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.

PRIOR VOTES:

Senate Public Safety Committee (Ayes 5, Noes 0)

Assembly Floor (Ayes 65, Noes 0)

Assembly Appropriations Committee (Ayes 14, Noes 0)

Assembly Privacy and Consumer Protection Committee (Ayes 11, Noes 0)

Assembly Public Safety Committee (Ayes 8, Noes 0)
