
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 998 **Hearing Date:** June 19, 2018
Author: Grayson
Version: May 14, 2018
Urgency: No **Fiscal:** No
Consultant: EC

Subject: *Multidisciplinary Teams: Human Trafficking and Domestic Violence*

HISTORY

Source: Contra Costa Family Justice Center

Prior Legislation: AB 704 (Grayson), 2015, died in Senate Public Safety

Support: County Health Executives Association of California; Office of the District Attorney Contra Costa County

Opposition: American Civil Liberties Union of California; California Public Defenders Association

Assembly Floor Vote: 77 - 0

PURPOSE

The purpose of this bill is to authorize municipalities or community-based nonprofit organization to establish a domestic violence multidisciplinary personnel team and a human trafficking multidisciplinary personnel team.

Existing law defines “domestic violence” as abuse perpetrated against any of the following persons:

- 1) A spouse or former spouse;
- 2) A cohabitant or former cohabitant;
- 3) A person whom the respondent is having or has a dating or engagement relationship;
- 4) A person whom the respondent has had a child;
- 5) A child of a party or child who is the subject of an action under the Uniform Parentage Act;
or
- 6) Any other person related by consanguinity or affinity within the second degree, as specified.
(Pen. Code, § 243.)

Existing law makes a person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services, guilty of human trafficking and shall be punished by imprisonment in the state prison for 5, 8, or 12 years and a fine of not more than five hundred thousand dollars. (Pen. Code, § 236.1.)

Existing law authorizes city, city and county, or community-based nonprofit organization to establish a multiagency, multidisciplinary family justice center to assist victims of domestic violence, sexual assault, elder or dependent adult abuse, and human trafficking, to ensure that victims of abuse are able to access all needed services in one location in order to enhance victim safety, increase offender accountability, and improve access to services for victims of domestic violence, sexual assault, elder or dependent adult abuse, and human trafficking. (Pen. Code, § 13750, subd. (a).)

Existing law defines family justice centers as multiagency, multidisciplinary service centers where public and private agencies assign staff members on a full-time or part-time basis in order to provide services to victims of domestic violence, sexual assault, elder or dependent adult abuse, or human trafficking from one location in order to reduce the number of times victims must tell their story, reduce the number of places victims must go for help, and increase access to services and support for victims and their children. (Pen. Code, § 13750, subd. (c).)

Existing law declares that nothing in this section is intended to abrogate existing laws regarding privacy or information sharing. (Pen. Code, § 13750, subd. (e).)

Existing law states that members of a multidisciplinary personnel team engaged in the prevention, identification, management, or treatment of child abuse or neglect may disclose and exchange information and writings to and with one another relating to any incidents of child abuse that may also be a part of a juvenile court record or otherwise designated as confidential under state law if the member of the team having that information or writing reasonably believes it is generally relevant to the prevention, identification, management, or treatment of child abuse, or the provision of child welfare services. All discussions relative to the disclosure or exchange of any such information or writings during team meetings are confidential unless disclosure is required by law. Notwithstanding any other provision of law, testimony concerning any such discussion is not admissible in any criminal, civil, or juvenile court proceeding. (Welf. & Inst. Code, § 830.)

Existing law states that during a 30-day period, or longer if documented good cause exists, following a report of suspected child abuse or neglect, members of a child abuse multidisciplinary personnel team may disclose to and exchange with one another information and writings that relate to any incident of child abuse that may also be designated as confidential under state law if the member of the team having that information or writing reasonable believes it is general relevant to the prevention, identification, or treatment of child abuse. Any discussion relative to the disclosure or exchange of the information or writings during a team meeting is confidential and testimony concerning that discussion is not admissible in any criminal, civil, or juvenile court proceeding. (Welf. & Inst. Code, § 18961.7, subd. (c)(1).)

Existing law requires that disclosure and exchange of information pursuant to this section may occur telephonically and electronically if there is adequate verification of the identity of child abuse multidisciplinary personnel who are involved in that disclosure or exchange of information. (Welf. & Inst. Code, § 18961.7, subd. (c)(2).)

Existing law allows disclosure and exchange of information shall not be made to anyone other than members of the child abuse multidisciplinary personnel team, and those qualified to receive information, as specified. (Welf. & Inst. Code, § 18961.7, subd. (c)(3).)

Existing law states that the child abuse multidisciplinary personnel team may designate persons qualified to be a member of the team for a particular case. A person designated as a team member may receive and disclose relevant information and records, subject to the confidentiality provisions of subdivision (f). (Welf. & Inst. Code, § 18961.7, subd. (d).)

Existing law states that the sharing of information shall be governed by protocols developed in each county describing how and what information may be shared by the child abuse multidisciplinary 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 child abuse multidisciplinary team. (Welf. & Inst. Code, § 18961.7, subd. (e).)

Existing law states every member of the child abuse multidisciplinary personnel team who receives information or records regarding children and families in his or her 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. (Welf. & Inst. Code, § 18961.7, subd. (f).)

Existing law requires that this section shall not be construed to restrict guarantees of confidentiality provided under state or federal law. (Welf. & Inst. Code, § 18961.7, subd. (g).)

Existing law states information and records communicated or provided to the team members by all providers and agencies, as well as information and records created in the course of a child abuse or neglect investigation, shall be 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 shall apply to the inappropriate disclosure of information held by the team members. (Welf. & Inst. Code, § 18961.7, subd. (h).)

This bill establishes a domestic violence multidisciplinary personnel team 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.

This bill states that that members of the team may disclose and exchange information and records to and with one another relating to incidents of domestic violence that may be confidential if the member of the team having that information or records reasonably believes it is generally relevant to the prevention, identification, management, or treatment of domestic violence or the provision of domestic violence services and support.

This bill requires that all discussions relating to the disclosure or exchange of that information or records during team meetings are confidential unless disclosure is required by law.

This bill states that, notwithstanding any other law, testimony concerning those discussions is not admissible in any criminal, civil, or juvenile court proceeding.

This bill states that a domestic violence multidisciplinary team may include, but not be limited to, any of the following:

- 1) Law enforcement personnel;

- 2) Medical personnel;
- 3) Psychiatrists, psychologists, marriage and family therapists, or other trained counseling personnel;
- 4) District attorneys and city attorneys;
- 5) Victim-witness program personnel;
- 6) Domestic violence shelter service staff;
- 7) Sexual assault counselors;
- 8) Domestic violence counselors;
- 9) Social service agency staff members;
- 10) Child welfare agency social workers;
- 11) County health department staff;
- 12) City or County welfare and public assistance workers;
- 13) Nonprofit agency counseling professionals;
- 14) Civil legal service providers; or
- 15) Human trafficking caseworkers.

COMMENTS

1. Need for This Bill

The author states:

Existing law allows Family Justice Center (FJC) personnel to share confidential information amongst themselves in order to implement collaborative remedies for individuals and families struggling with interpersonal violence. Unfortunately, not every county has an FJC or the resources to establish one: there are 58 counties and only 21 FJCs. Without an FJC there is no ability for advocates to share information about human trafficking victims or domestic violence victims. In addition, FJC-based MDTs have come across situations where they are unable to get advanced, informed, written, and time-limited consent but must address complex or high risk situations. In those cases the MDT must try to de-identify the case information, which restricts discussion and collaboration and ultimately frustrates their ability to provide services and support.

2. Domestic Violence and Human Trafficking

In the 1970s and 1980s, an abundance of domestic violence disputes were filed and spurred a growing awareness in the prevalence and severity of the intimate partner violence. The awareness was coupled with increased criticism of the police and how they were not adequately responding to victims of domestic violence.¹ The result of insufficient and uncompleted police action may be fatal. Based on the Bureau of Labor Statistics from 1998 to 2002, 73% of domestic violence victims were female. Three-fourths of the persons who committed family violence were male.

Human trafficking involves compelling or coercing a person or group to provide labor or services, or engage in sex acts. The coercion can be subtle or overt, physical or psychological,

¹ Meg Townsend, "Law Enforcement Response to Domestic Violence Calls for Service," n.d., 109.

and may involve use of violence, threats, manipulation, or debt bondage.² California is one of the largest sites for human trafficking in the United States. In 2016, there were 1,331 cases of trafficking. Of these cases, 1,051 were sex trafficking cases, 147 were labor trafficking cases, 46 were both labor and sex trafficking, and 86 cases were unspecified.³

3. Family Justice Center

Family Justice Centers (FJCs) provides collaborated approaches for victims of their families to report a crime, provide a complete statement, receive assistance to obtain temporary restraining orders, find safe housing, meet with their prosecutors, and more.⁴ Currently, there are 21 counties in California that have FJCs taking this multidisciplinary and collaborative approach.

The author statement noted that not every county has an FJC or the resources to establish one: there are 58 counties and only 21 FJCs. If counties do not have the resources to establish a FJC, how will new MDTs be supported?

4. Brady Disclosure

In *Brady v. Maryland* the Supreme Court held that prosecutors must fully disclose to the accused all exculpatory evidence in their possession.⁵ Subsequent Supreme Court decisions have elaborated those Brady obligations to include the duty to disclose impeachment evidence, favorable evidence in the absence of a request by the accused, and evidence in the possession of persons or organizations.

This bill states that, notwithstanding any other law, testimony concerning those discussions is not admissible in any criminal, civil, or juvenile court proceeding. The opposition concern is whether or not testimony will be inadmissible in spite of Brady and subsequent case law requiring that the prosecution disclose evidence to the defendant.

5. Confidentiality

Because domestic violence and human trafficking affects minors and adults, privacy and confidentiality must be maintained. The MDT targeting child abuse prevention, intervention, and treatment projects in Welfare and Institutions Code 18961.7, subdivisions (c) through (h) includes specified privacy, disclosure, and information exchange stipulations. While this bill is modeled after existing MDTs, AB 998 contains no express provisions related to maintenance of privacy or confidentiality.

6. Argument in Support

AB 998 would establish a similar statutory authority for county departments and other service providers to share information related to domestic violence or human trafficking cases and would help facilitate the identification, assessment,

² “What Is Human Trafficking?,” State of California - Department of Justice - Office of the Attorney General, January 6, 2012, <https://oag.ca.gov/human-trafficking/what-is>.

³ “What Is Human Trafficking?”

⁴ “Sacramento DA :: Family Justice Center,” accessed June 12, 2018, <http://www.sacda.org/helpingvictims/family-justice-center/>.

⁵ Laural L Hooper, Jennifer E Marsh, and Brian Yeh, “Treatment of Brady v. Maryland Material in United States District and State Courts’ Rules, Orders, and Policies,” n.d., 30.

and linkage of victims of domestic violence or human trafficking to the most appropriate care and supportive service. The ability to share this data will allow agencies to better coordinate services for our communities' most vulnerable populations in a more efficient and effective manner.

7. Argument in Opposition

According to the California Public Defenders Association:

Subsection (b)(3) would function to prevent the impeachment at trial of a victim who had recanted thus violating the United States Constitution's explicit guarantee of the right to cross-examine and confront one's accuser. If a victim told his medical doctor or therapist that he had lied about being beaten by his spouse and that information was discussed at a multidisciplinary team meeting, the district attorney would have a clear obligation under *Brady v. Maryland* to disclose the information to the defense. However, subsection (b)(3) which bars testimony would violate the Constitutional right to cross-examine since the defense lawyer would neither be able to question the victim about his assertion that he lied about the incident, nor call the team member as a witness to impeach the victim.

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