



THE MEADOWS MENTAL HEALTH POLICY INSTITUTE

**Information Sharing in Criminal Justice/Mental Health Collaborations:
Working with Privacy Laws**

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Let's Start With a Case Study:

How does information sharing
work in practice?

One word sums it up...





Elvis Is Alive and Raising HIPAA Questions...

Birthday parties in nursing homes in New York and Arizona have been canceled for fear that revealing a resident's date of birth could be a violation.

Patients were assigned code names in doctors' waiting rooms – say “Zebra” for a child in Newton, MA, or “Elvis” for an adult in Kansas City, MO – so they could be summoned without identification.

HIPAA Even Gets Blamed for Bad Football...

“There is some kind of HIPAA law,” Gase said, via Cameron Wolfe of ESPN.
“Go ask him. I’m tired of answering a question about this guy.”



Back in Real Life in Texas...

1. Texas law permits information sharing in every critical situation you will face.
2. HIPAA does not block information sharing in those situations.
3. This is not just my opinion.

HIPAA: What and Why?

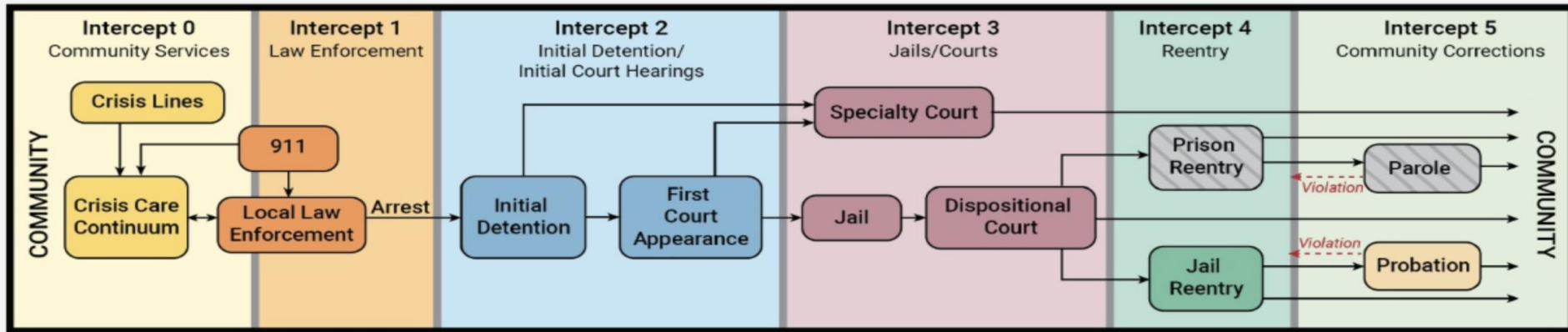
- Federal regulation, effective in 2001 with compliance in 2003;
- National standard for privacy and security of protected health information which sets a floor (states can set stricter standards);
- Misunderstanding of the law;
- Confusion over when law applies;
- Misplaced fear of liability.

But Let's Leave HIPAA Aside...

- Texas law is largely the same as HIPAA (Texas Medical Privacy Act, S.B. 11, 2001; amended H.B. 300, 2011).
- AND, Texas law not only *permits* information exchange for mental health treatment, but in fact *requires* it in the situations most important to this audience.

Framing Information Sharing: The Intercept Model

Linear depiction of the Sequential Intercept Model



Source: Abreu et al., 2017. Used by permission.

Key Texas Statutory Provisions

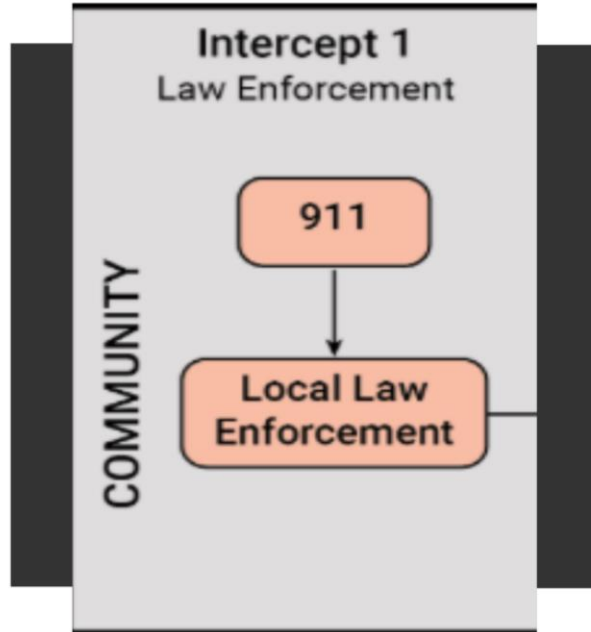
- Texas Medical Privacy Act (Health & Safety Code, Chapter 181, but HSC 614 is exempt)
- Mental Health Records (Health & Safety Code, Sec. 611.001 et seq)
- Exchange of Information (Health & Safety Code, Sec. 614.017)

Mental Health Records (611.004)

Permitted disclosures include:

- Governmental agency, if required or permitted;
- Medical or law enforcement in emergency;
- For audits and payments;
- For treatment purposes;
- To correctional personnel for care or treatment.

Intercept 1: At Point of Intervention



- **Texas Health & Safety Code 611.004(2):** To law enforcement if there is a risk of imminent physical or emotional harm.
- **HIPAA:** Yes, “to prevent or lessen a serious and imminent threat to health or safety” or under “care and control” of the officer.

Intercept 2: Initial Detention

- Texas law permits disclosure “to designated persons or personnel of a correctional facility in which a person is detained if the disclosure is for the sole purpose of providing treatment and health care to the person in custody.”
- HIPAA permits this as well.

Exchange of Information (614.017)

An agency “**shall accept** any information relating to a special needs offender or a juvenile with a mental impairment...to serve the purposes of continuity of care and services regardless of whether other state law makes that information confidential; and

Disclose information relating to a special needs offender or a juvenile with a mental impairment, including information about the offender's or juvenile's identity, needs, treatment, social, criminal, and vocational history, supervision status and compliance with conditions of supervision, and medical and mental health history, if the disclosure serves the purposes of continuity of care and service”

Exchange of Information (614.017)

614.017: "Agency" includes any of the following entities and individuals, a person with an agency relationship with one of the following entities or individuals, and a person who contracts with one or more of the following entities or individuals.

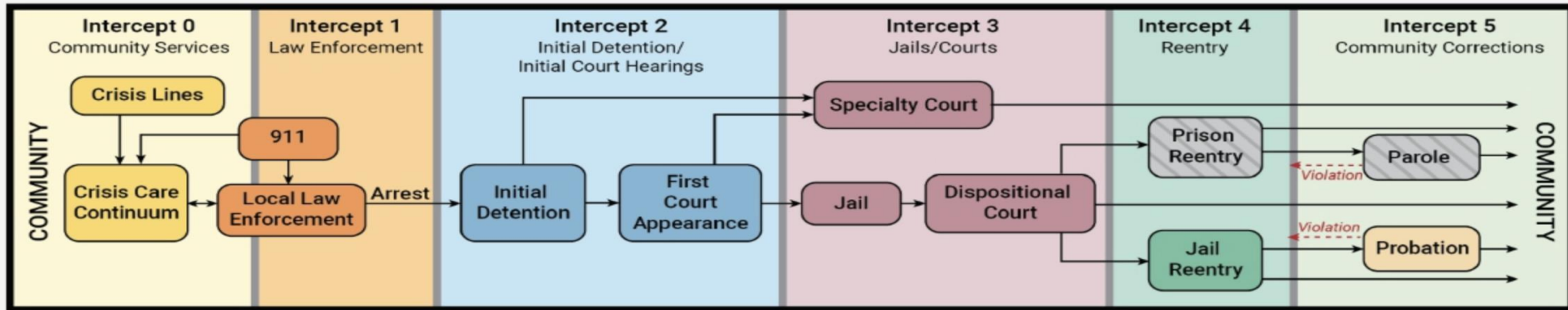
Criminal Justice		Health and Other	
Texas Department of Criminal Justice	Community supervision and local juvenile probation	Hospital district	Local health department
Board of Pardons and Paroles	Personal bond pretrial offices	Department of Assistive and Rehabilitative Services	HHSC and DFPS
Texas Juvenile Justice Department	Local jails	Texas Education Agency	Department of Public Safety
Commission on Jail Standards	Criminal/juvenile judge	Texas School for the Blind and Visually Impaired	

Continuity of Care for Offenders with Mental Impairments (614.013)

These agencies shall develop an MOU for “the exchange of information on offenders with mental impairments by local and state criminal justice agencies, the Department of State Health Services and the Department of Aging and Disability Services, local mental health or intellectual and developmental disability authorities, the Commission on Jail Standards, and local jails”

Framing Information Sharing: The Intercept Model – There Are (Almost) NO Barriers

Linear depiction of the Sequential Intercept Model



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Some Specific Issues for Judges

- It is useful to have defendants waive consent and/or make it part of a treatment order at the time of adjudication
- For more general disclosures to the court, be mindful of 45 CFR 164.514(d) involving notice
- Can be solved by jails simply providing routine notice at time of screening

What Do Others Think?

“To summarize, HHSC requires mental health providers regulated by or under contract with HHSC to exchange information in accordance with the provisions of HSC 614.017.”

– *April 24, 2018 letter from HHSC*

Some Other Considerations

- Substance use information is different (42 CFR Part 2) when a “federally assisted program holding itself out...” is involved.
- The *security* of information is the source of most vulnerabilities.
- Autonomy is still an important value.
- *But* Texas law and HIPAA both place a high value on continuity of care and the relevant statutes make that explicitly clear.

A Last Thought

Just because someone says, “HIPAA won’t let you do that,” does not mean that person actually knows what HIPAA says.

Some Links for Reference

- <https://www.hhs.gov/hipaa/for-professionals/faq> (good resource for questions on HIPAA, maintained by HHS/Office of Civil Rights)
- <http://www.statutes.legis.state.tx.us/Docs/HS/htm/HS.611.htm> (Texas mental health record law)
- <http://www.statutes.legis.state.tx.us/Docs/HS/htm/HS.181.htm> (Texas version of HIPAA)
- <https://www.texasattorneygeneral.gov/cpd/state-and-federal-health-privacy-laws> (Texas Attorney General site on health privacy)
- <https://www.hhs.gov/hipaa/for-professionals/faq/disclosures-for-law-enforcement-purposes> (HIPAA and law enforcement)
- https://www.bja.gov/Publications/CSG_CJMH_Info_Sharing.pdf (article by John Petrila and Hallie Fader-Towe on laws governing information sharing in CJ/MH collaborations)

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The truth is: mental illness affects more people than you may think, and we need to talk about it. It's Okay to say..." okaytosay.org
