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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** AB 1993                      **Hearing Date:** June 28, 2016  
**Author:** Irwin  
**Version:** June 14, 2016  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** JRD

**Subject:** *Corporate Law Enforcement Contacts*

### HISTORY

**Source:** Author

**Prior Legislation:** SB 178 (Leno) – Chapter 651, Statutes of 2015  
SB 467 (Leno) – 2013-2014, vetoed  
SB 1434 (Leno) – 2011-12, vetoed  
SB 914 (Leno) – 2011-2012, vetoed

**Support:** California District Attorneys Association; California Police Chiefs Association; California State Sheriffs' Association; Los Angeles County District Attorney's Office

**Opposition:** California Association of Collectors; California Bankers Association; California Chamber of Commerce; California Financial Services Association; CTIA- The Wireless Association; CompTIA; Internet Association; Personal Insurance Federation of California

**Assembly Floor Vote:** 54 - 19

### PURPOSE

***The purpose of this bill is to mandate that certain technology companies specify a law enforcement contact process to coordinate with law enforcement agency investigations.***

*Existing federal law* provides that the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized. (U.S. Const., 4th Amend.; Cal. Const., art. I, § 13.)

*Existing law* establishes rules and regulations for corporations to appoint agents for service of process. Additionally, specifies rules for when agents for service of process resign and the designation of a new agent for service of process. (Corporations Code §§ 1502, 1503 & 1504.)

*Existing law* prohibits exclusion of relevant evidence in a criminal proceeding on the ground that the evidence was obtained unlawfully, unless the relevant evidence must be excluded because it

was obtained in violation of the federal Constitution's Fourth Amendment. (Cal. Const., art. I, § 28(f)(2) (Right to Truth-in-Evidence provision).)

*Existing law* defines a "search warrant" as a written order in the name of the people, signed by a magistrate and directed to a peace officer, commanding him or her to search for a person or persons, a thing or things, or personal property, and in the case of a thing or things or personal property, bring the same before the magistrate. (Penal Code § 1523.)

*Existing law* provides the specific grounds upon which a search warrant may be issued, including when the property or things to be seized consist of any item or constitute any evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony. (Penal Code § 1524.)

*Existing law* provides that a search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person to be searched or searched for, and particularly describing the property, thing, or things and the place to be searched. (Penal Code § 1525.)

*Existing law* requires a magistrate to issue a search warrant if he or she is satisfied of the existence of the grounds of the application or that there is probable cause to believe their existence. (Penal Code § 1528(a).)

*Existing law* requires a provider of electronic communication service or remote computing service to disclose to a governmental prosecuting or investigating agency the name, address, local and long distance telephone toll billing records, telephone number or other subscriber number or identity, and length of service of a subscriber to or customer of that service, and the types of services the subscriber or customer utilized, when the governmental entity is granted a search warrant. (Penal Code § 1524.3(a).)

*Existing law* states that a governmental entity receiving subscriber records or information is not required to provide notice to a subscriber or customer of the warrant. (Penal Code § 1524.3(b).)

*Existing law* authorizes a court issuing a search warrant, on a motion made promptly by the service provider, to quash or modify the warrant if the information or records requested are unusually voluminous in nature or compliance with the warrant otherwise would cause an undue burden on the provider. (Penal Code § 1524.3(c).)

*Existing law* requires a provider of wire or electronic communication services or a remote computing service, upon the request of a peace officer, to take all necessary steps to preserve records and other evidence in its possession pending the issuance of a search warrant or a request in writing and an affidavit declaring an intent to file a warrant to the provider. Records shall be retained for a period of 90 days, which shall be extended for an additional 90 day period upon a renewed request by the peace officer. (Penal Code § 1524.3(d).)

*Existing law* specifies that no cause of action shall be brought against any provider, its officers, employees, or agents for providing information, facilities, or assistance in good faith compliance with a search warrant. (Penal Code § 1524.3(e).)

*Existing law* provides for a process for a search warrant for records that are in the actual or constructive possession of a foreign corporation that provides electronic communication services or remote computing services to the general public, where the records would reveal the identity of the customers using those services, data stored by, or on behalf of, the customer, the customer's usage of those services, the recipient or destination of communications sent or from those customers, or the content of those communications. (Penal Code § 1524.2.)

*Existing law* defines a "service provider" as "a person or entity offering an electronic communication service." (Penal Code § 15469(j).)

*This bill* mandates that service providers specify a law enforcement contact process to coordinate with law enforcement agency investigations.

*This bill* provides that every specified service provider corporation shall file a statement with the Attorney General identifying the corporate law enforcement contact or contacts. If a corporation designates any new corporate law enforcement contact or contacts, the corporation shall file a statement with the Attorney General identifying the new corporate law enforcement contact or contacts.

*The bill* requires by July 1, 2017, specified technology corporations shall, at minimum, provide the following through a specified law enforcement contact:

- A specific contact mechanism for law enforcement personnel.
- A continual availability of the law enforcement contact process.
- A method to provide status updates to a requesting law enforcement agency on a request for assistance and a direct means of communicating with the individual or group of individuals responsible for processing the request.

#### RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed

capacity, and has been under that benchmark since February 2015.” (Defendants’ December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State’s 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants’ December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

## COMMENTS

### 1. Need for This Legislation

According to the author:

Today most large tech companies, including telecommunications, internet search, and social media providers, receive hundreds of thousands of law enforcement requests for data each year nationally. These results can be broken down into these categories: subpoenas, orders, warrants, and emergency requests.

These requests are intended to produce evidence or aid in investigations related to violent crimes, credible threats, organized crime, terrorist activities, search and rescue situations— or when law enforcement is trying to find a missing person, among others.

Technology companies have begun publishing annual transparency reports about government data requests and the company's policies for providing notice when the government requests and accesses their data, and their process for screening warrants, orders, and emergency requests before handing over user content. The reports also provide statistics detailing how many total requests were received, how many resulted in data disclosure, and how many were rejected. While there appears to be some

consensus regarding industry best practices balancing privacy and civil liberties with stewardship of public safety, the lack of standardization and guidelines for such requests is apparent.

For example, both AT&T and Verizon reported receiving nearly 300,000 law enforcement requests each in 2015. According to Verizon's transparency report, 'We carefully review each demand we receive and, where appropriate, we require law enforcement agencies to narrow the scope of their demands or correct errors in those demands before we produce some or all of the information sought.' Each request goes through a screening process that can take varying amounts of time depending on the company's internal policies. Industry averages show that roughly 75% of requests result in some data being produced. Given the increasing volume of these requests, and varying company guidelines and internal policies, a level of standardization and expectation needs to be assured.

AB 1993 addresses this issue by requiring companies that generate large amounts of consumer data to standardize their process for receiving and responding to law enforcement requests for data to meet industry best practices. AB 1993 will ensure a process for submitting emergency disclosure requests that is continually available, exclusive to law enforcement personnel for emergency purposes, that data can be produced regardless of where it is physically stored, and that the service provider staff has first-hand decision-making authority for disclosure of data. AB 1993 will ensure that in emergency situations the interface between law enforcement and companies with data relevant to the situation meets minimum standards of effectiveness.

## **2. Effect of the Legislation**

According to the background submitted by the author, "With the passage of SB 178 (Leno), also known as CalECPA, privacy rights were extended to electronic data in a way that federal law does not: it bars any state law enforcement or investigative entity from compelling a business to turn over any data or digital communication—including emails, texts, documents stored in the cloud—without a warrant. It also requires a warrant to search or track the location of a business' electronic devices like mobile phones. Also, no business (or its officers, employees and agents) may be subject to any cause of action for providing information or assistance pursuant to a warrant or court order. CalECPA also permits a service provider to voluntarily disclose electronic communication information when disclosure is not otherwise prohibited by law, such as in emergency situations." This legislation is intended to provide law enforcement with a process to get this information.

## **4. Argument in Opposition and Proposed Amendments**

According to the Internet Association, who is opposed to this legislation, states:

Building in a requirement that companies must keep every single requestor directly in the loop with immediate access to our processing teams would dramatically slow down our turnaround times. As alluded to earlier, the volume of these requests has steadily grown and can number in the *tens of thousands* annually for a single company. If each of potentially thousands of requestors is

given direct access to our teams who are working tirelessly to receive, analyze, prioritize, and appropriately resolve these myriad requests, the company will end up pending exorbitant amounts of time providing status updates rather than actually processing requests.

To address this concern members may wish to consider recommending the following amendment to Penal Code section 1524.4(b)(2)(C):

~~Creates~~ *Includes* a method to provide status updates to a requesting law enforcement agency on a request for assistance ~~and a direct means of communicating with the individual or group of individuals responsible for processing the request.~~

-- END --