
UNFINISHED BUSINESS

Bill No: SB 918
Author: Umberg (D), et al.
Amended: 8/22/24
Vote: 21

SENATE JUDICIARY COMMITTEE: 11-0, 4/30/24

AYES: Umberg, Wilk, Allen, Blakespear, Caballero, Dodd, Durazo, Laird, Min, Niello, Wiener

SENATE FLOOR: 39-0, 5/20/24

AYES: Allen, Alvarado-Gil, Archuleta, Ashby, Atkins, Becker, Blakespear, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hurtado, Jones, Laird, Limón, McGuire, Menjivar, Newman, Nguyen, Niello, Ochoa Bogh, Padilla, Portantino, Roth, Rubio, Seyarto, Skinner, Smallwood-Cuevas, Stern, Umberg, Wahab, Wiener, Wilk

NO VOTE RECORDED: Min

ASSEMBLY FLOOR: 75-0, 8/28/24 - See last page for vote

SUBJECT: Law enforcement contact process: search warrants

SOURCE: Author

DIGEST: This bill requires specified social media platforms to provide a staffed hotline to respond to law enforcement requests for information, and generally requires those platforms to comply with a search warrant within 72 hours if specified conditions are met.

Assembly Amendments specify the timeframe in which platforms must respond to warrants and create exceptions to the response requirement for existing warrant procedures.

ANALYSIS:

Existing law:

- 1) Provides, pursuant to the U.S. Constitution, 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., Fourth Amend; see also Cal. Const. art. 1, § 13.)
- 2) Defines “social media platform” as a public or semipublic internet-based service or application that has users in California and that meets both of the following criteria:
 - a) A substantial function of the service or application is to connect users in order to allow users to interact socially with each other within the service or application, as specified.
 - b) The service or application allows users to do all of the following:
 - i. Construct a public or semipublic profile for purposes of signing into and using the service.
 - ii. Populate a list of other users with whom an individual shares a social connection within the system.
 - iii. Create or post content viewable by others, including, but not limited to, on message boards, in chat rooms, or through a landing page or main feed that presents the users with content generated by others. (Bus. & Prof. Code § 22945(a)(3).)
- 3) Permits a person to seek an order requiring a social media platform to remove content that includes an offer to transport, import into the state, sell, furnish, administer, or give away a controlled substance in violation of specified state law, as specified. (Bus. & Prof. Code § 22945.5.)
- 4) Defines a “search warrant” as a written order in the name of the people, signed by a magistrate, 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. (Pen. Code § 1523.)

- 5) 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. (Pen. Code § 1524.)
- 6) Defines “adverse result” with respect to notification of the existence of a search warrant, as:
 - a) Danger to the life or physical safety of an individual.
 - b) A flight from prosecution.
 - c) The destruction of or tampering with evidence.
 - d) The intimidation of potential witnesses.
 - e) Serious jeopardy to an investigation or undue delay of a trial. (Pen. Code § 1524.2(a)(2).)
- 7) Provides that a foreign corporation may be required to produce records in response to a search warrant in five days if there is a showing that the failure to produce the records within that timeframe would cause an adverse result. Enables a court to reasonably extend that time period for good cause shown. (Pen. Code § 1524.2(b)(2).)
- 8) 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. (Pen. Code § 1525.)
- 9) Requires a magistrate to issue a search warrant if they are satisfied of the existence of the grounds of the application or that there is probable cause to believe their existence. (Pen. Code § 1529(a).)
- 10) Enacts the California Electronic Communications Privacy Act (CalECPA), which generally prohibits a government entity from compelling the production of or access to electronic communication information from a service provider or to electronic device information from any person or entity other than the authorized possessor of the device, absent a search warrant, wiretap order, order for electronic reader records, or subpoena issued pursuant to specified conditions, or pursuant to an order for a pen register or trap and trace device, as specified. (Pen. Code § 1546 et seq.)

- 11) Requires a provider of an electronic communication service subject to CalECPA to maintain a law enforcement contact process that must do all of the following, at a minimum:
 - a) Provide a specific contact mechanism for law enforcement personnel.
 - b) Provide continual availability of the law enforcement contact process.
 - c) Provide a method to provide status updates to a requesting law enforcement agency on a request for assistance. (Pen. Code § 1524.4(a), (b).)
- 12) Provides that a court may order the destruction of information gathered pursuant to a warrant under CalECPA and requires that information voluntarily provided under same must, within 90 days, be destroyed. (Pen. Code § 1546.1(e)(2), (g).)
- 13) Provides that a California corporation or a corporation whose principal executive offices are located in California that provides electronic communications services shall not, in California, provide records, information, facilities, or assistance in accordance with the terms of a specified legal order issued by, or pursuant to, the procedures of another state or a political subdivision thereof that relates to an investigation into or enforcement of a prohibited violation. (Pen. Code § 1546.5(a).)
- 14) Provides that a California corporation or a corporation whose principal executive offices are located in California, and its officers, employees, and agents, are not subject to any cause of action for providing records, information, facilities, or assistance in accordance with the terms of a specified legal order issued by, or pursuant to, the procedures of another state or a political subdivision thereof, except where the corporation knew or should have known that the legal order relates to an investigation into or enforcement of a prohibited violation. (Pen. Code § 1546.5(c).)
- 15) Establishes the Reproductive Rights Law Enforcement Act, which requires law enforcement agencies to report specified anti-reproductive rights crimes, as defined, to the DOJ, and requires every law enforcement agency to develop and implement written policies and standards for officers' responses to anti-reproductive rights calls. (Pen. Code §§13775, et. seq.)

This bill:

- 1) Includes the following definitions:
 - a) “Law enforcement agency” means a law enforcement agency in the state.
 - b) “Law enforcement liaison” means a natural person employed by a social media platform who serves as a point of contact with law enforcement agencies.
 - c) “Search warrant” means a search warrant duly executed pursuant to existing law.
 - d) “Social media platform” has the same meaning as in existing law (See (2) above).
- 2) Provides that a social media platform shall maintain a law enforcement contact process that does all of the following:
 - a) Makes available a staffed hotline for law enforcement personnel for purposes of receiving, and responding to, requests for information.
 - b) Provides continual availability of the law enforcement contact process.
 - c) Includes a method to provide status updates to a requesting law enforcement agency on a request for information or a warrant, as provided.
- 3) Except as provided by any other law, including the Reproductive Rights Law Enforcement Act and a specified provision of CalECPA, provides that a social media platform shall comply with a search warrant within 72 hours if both of the following apply:
 - a) The search warrant is provided to the social media platform by a law enforcement agency.
 - b) The subject of the search warrant is information associated with an account on the social media platform and that information is controlled by a user of the social media platform.
- 4) Provides that a court may reasonably extend the time required to comply with a search warrant pursuant to the above if the court makes a written

finding that the social media platform has shown good cause for that extension and that an extension would not cause an adverse result, as defined.

- 5) Provides that the provision of the bill do not apply to a social media platform with fewer than 1,000,000 discrete monthly users.
- 6) Provides that its provisions become operative July 1, 2025.

Comments

Background

According to the Author, “As a society, we bear a collective responsibility to care for the health and safety of our citizens. That responsibility extends to private companies. Social media companies find themselves in a unique position in terms of their monopolization of communication between people of all ages. With this in mind, companies and sites should be more proactive and aggressive in their enforcement of their terms of service, especially when it comes to prohibitions on drug sales.

SB 918 will help stop drug traffickers from using social media to distribute drugs and prevent unintentional overdoses. SB 918 will achieve this by requiring social media platforms to have a telephone hotline available at all times for law enforcement agencies to be able to timely request information. Social media sites must be more proactive and communicative in their enforcement of their terms of service, which should include being responsive to law enforcement agencies investigating crimes on their platforms. SB 918 also compels social media platforms to immediately comply with a search warrant provided by a law enforcement agency if the subject of the search warrant has an account on the social media platform.”

As social media in its many forms has become more ubiquitous, so too have unscrupulous and nefarious actors seeking to commit illegal acts through various social media platforms. Emerging research and reporting has documented how social media fuels gun violence, harassment, cyberbullying, stalking and other abuse among users, especially teens. Additionally, data collected by the Federal Trade Commission (FTC) shows that consumers have reporting losing \$2.7 billion to social media scams since 2021. And as identified by the Author, it is well documented that social media platforms are commonly used to facilitate the sale and purchase of illicit drugs, again, primarily among teenagers and young adults. The criminal behavior that occurs on social media platforms is facilitated, if not

exacerbated, by Section 230 of the federal Communications Decency Act of 1996, which insulates the platforms from legal liability for user posts.

Search Warrants and CalECPA

Both the United States and the California constitution's guarantee the right of all persons to be secure from unreasonable searches and seizures. This protection applies to all unreasonable government intrusions into legitimate expectations of privacy. In general, a search is not valid unless it is conducted pursuant to a warrant. A search warrant may not be issued without probable cause, which exists if a man of ordinary care and prudence would be led to conscientiously entertain an honest and strong suspicion that the accused is guilty." The mere reasonableness of a search, assessed in light of the surrounding circumstances, is not a substitute for the warrant required by the Constitution. There are exceptions to the warrant requirement, but the burden of establishing an exception is on the party seeking one.

With regard to social media searches, most federal courts to rule on the issue have agreed that Facebook and other social media users have a reasonable expectation of privacy in content that they exclude from public access, such as private messages. According to one federal court, whether someone can assert a subjective expectation of privacy in their social media accounts depends on the privacy settings they had in place at the time the intrusion occurred. Thus, the more secure the privacy settings on a social media account, the greater likelihood that the account's content is constitutionally protected. In a recent opinion regarding the constitutionality of search warrants for accounts of individuals affiliated with a transnational criminal organization, the Fourth Circuit Court of Appeals reasoned that:

We cannot read the Fourth Amendment to allow the indiscriminate search of many years of intimate communications. And because of the inherent interconnectedness of social media, permitting unbridled rummaging through any one user's account can reveal an extraordinary amount of personal information about individuals uninvolved in any criminal activity. It is not only courts that are struggling to strike a balance between privacy and security in the rapidly changing digital domain, but society as a whole. When criminal offenders use social media to organize their enterprises and evade detection, it would seem unreasonable to disable law enforcement from using those same media to apprehend and prosecute them. To hold otherwise would arbitrarily tip the scales away from law and justice for the benefit of increasingly

sophisticated criminal schemes. But at the same time, there comes a point when the Fourth Amendment must emphatically yell STOP, lest we render obsolete the hallowed notion of a secure enclave for personal affairs. (*United States v. Zelaya-Veliz* (4th Cir. 2024) 94 F.4th 321, 342-343).

In California, Penal Code section 1523 defines a “search warrant” as an order, in writing, signed by a magistrate, commanding a peace officer to search for personal property and bring it before a magistrate. Penal Code section 1524 provides the statutory grounds for the issuance of warrants. Under these provisions, a search warrant may be issued “[w]hen property or things were used as the means to commit a felony.” There are other enumerated circumstances that authorize a search warrant regardless of whether the crime was a felony or misdemeanor, such as “[w]hen the property subject to search was stolen or embezzled.” Additionally, Penal Code section 1524 provides that a search warrant may be issued “[w]hen the property or things are in the possession of any person with the intent to use them as a means of committing a public offense.” A “public offense” is defined as crimes which include felonies, misdemeanors, and infractions.

California law contains additional protections for citizens’ digital information. Namely, in 2015, the Governor signed SB 178 (Leno, Chapter 651, Statutes of 2015), which enacted the California Electronic Communications Privacy Act (CalECPA), a comprehensive digital privacy law which took effect on January 1, 2016. Centrally, CalECPA requires law enforcement agencies to obtain a warrant or wiretap order before they can access any “electronic communication information,” which the law defines in broad terms to include emails, digital documents, text messages, location information, and other digital information stored in the cloud. The law protects all aspects of electronic communication information, not just its contents, but also metadata information relating to the sender, recipient, format, time, date, and location of the communications, including IP addresses. CalECPA also limits the ability of California law enforcement to obtain information directly from a smartphone or similar device, or to track them.

Effect of This Bill

This bill, commencing July 1, 2025, requires social media platforms with at least 1 million discrete monthly users to maintain a law enforcement contact process that includes a staffed hotline for law enforcement personnel for the purposes of receiving and responding to requests for information and a method to provide status updates to a requesting law enforcement agency on a request for information or a warrant. Under the bill, this contact process must be continually available.

Additionally, if a search warrant is provided to a social media platform by a law enforcement agency and the subject of the warrant is information 1) associated with an account on the platform and 2) controlled by a user of the platform, the platform must comply with the search warrant within 72 hours, unless a limited exception related to other existing search warrant requirements applies. The bill permits a court to reasonably extend the time requested to comply with a search warrant if the court makes a written finding that the social media platform has shown good cause for the extension, and that an extension would not cause an adverse result.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 8/28/24)

California Narcotic Officers' Association
California Reserve Peace Officers Association
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association
Los Angeles School Police Management Association
Los Angeles School Police Officers Association
Murrieta Police Officers' Association
Newport Beach Police Association
Novato Police Officers Association
Orange County Sheriff's Department
Palos Verdes Police Officers Association
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Upland Police Officers Association

OPPOSITION: (Verified 8/28/24)

ACLU California Action
Electronic Frontier Foundation
Technet
TransLatin@ Coalition

ARGUMENTS IN SUPPORT:

According to a group of peace officer associations, writing jointly:

“The drug overdose epidemic has continued to worsen in the United States over the last several years as synthetic opioids, particularly illicit fentanyl, enter the market. Of specific concern is the primary method through which many individuals, especially teenagers, unlawfully purchase illicit fentanyl and other controlled substances—social media. Drug traffickers solicit customers via social media platforms such as Snapchat, Facebook, Instagram, Twitter, TikTok, and YouTube. In many cases, traffickers and buyers alike use social media features such as temporary or disappearing posts that help conceal their activities. News outlets have reported that there are known drug dealers using social media to sell drugs. However, even after law enforcement and concerned users make the platform aware, platforms are slow to respond in removing accounts.”

ARGUMENTS IN OPPOSITION:

Groups writing in opposition have underscored several perceived deficiencies in the bill – centrally, the 72 hour timeline. According to ACLU California Action:

“We are concerned that SB 918 would undermine these protections, and potentially violate foundational constitutional privacy safeguards. Most concerning is SB 918’s requirement that social media platforms “comply within 72 hours” when they receive a search warrant relating to an account held by a user of the platform. Put simply, ensuring that people’s rights are protected takes time. When a platform receives a search warrant, they must carefully review the warrant, perform a reasonable search for responsive material, and understand the scope of those records in order to determine whether the warrant is tailored as the law requires. The platform should also notify the target of the search, to allow the person to take action to protect their rights. The platform might also communicate with law enforcement about the scope and breadth of the warrant and seek and obtain legal advice from counsel regarding the breadth of the search warrant. It might also be necessary for the platform or the target of the warrant to seek relief in court to void or modify the warrant. There is no way for platforms to comply with a search warrant within 72 hours without undermining people’s statutory and constitutional rights.”

Technet further argues that the bill's requirements are duplicative in light of CalECPA:

Finally, we believe social media platforms are already required to provide a law enforcement contact process as required by Penal Code section 1546.4, making this bill's requirements to provide telephone access to a representative redundant and burdensome. This section applies to service providers that are subject to CalECPA (Penal Code section 1546), which includes social media platforms. As required by this section, platforms must, at a minimum, maintain a process that provides a specific contact mechanism for law enforcement personnel, provides continual availability, and provides a method to provide status updates to the requesting law enforcement agency. In practice, many platforms exceed these requirements by providing an online portal for law enforcement liaisons to have their questions answered by social media platforms and to allow them to serve legal process electronically. Platforms typically provide law enforcement entities with special log in information specific to their agency to access this information and process.”

ASSEMBLY FLOOR: 75-0, 8/28/24

AYES: Addis, Aguiar-Curry, Alanis, Alvarez, Arambula, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Calderon, Juan Carrillo, Wendy Carrillo, Chen, Connolly, Megan Dahle, Davies, Dixon, Essayli, Flora, Mike Fong, Friedman, Gabriel, Gallagher, Garcia, Gipson, Grayson, Haney, Hart, Holden, Hoover, Irwin, Jackson, Jones-Sawyer, Lackey, Lee, Low, Lowenthal, Maienschein, Mathis, McCarty, McKinnor, Muratsuchi, Stephanie Nguyen, Pacheco, Papan, Jim Patterson, Joe Patterson, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Rendon, Reyes, Luz Rivas, Rodriguez, Blanca Rubio, Sanchez, Santiago, Schiavo, Soria, Ta, Ting, Valencia, Villapudua, Waldron, Wallis, Ward, Weber, Wicks, Wilson, Wood, Zbur, Robert Rivas

NO VOTE RECORDED: Bryan, Cervantes, Kalra, Ortega

Prepared by: Alex Barnett / PUB. S. /
8/29/2024 1:34:21

**** END ****