
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Jesse Arreguin, Chair
2025 - 2026 Regular

Bill No: AB 2631 **Hearing Date:** June 23, 2026
Author: Bauer-Kahan
Version: April 6, 2026
Urgency: No **Fiscal:** Yes
Consultant: ML

Subject: *Criminal procedure: prohibited violations*

HISTORY

Source: Author

Prior Legislation: AB 1242 (Bauer-Kahan), Ch. 627, Stats. of 2022
AB 1356 (Bauer-Kahan), Chap. 191, Stats. of 2021
SB 54 (De Leon), Ch. 495, Stats. of 2017

Support: Electronic Frontier Foundation; Oakland Privacy

Opposition: None known

Assembly Floor Vote: 59 - 17

PURPOSE

The purpose of this bill is to add exercising any rights protected by the First Amendment of the United States Constitution to the prohibited violations for which an order for a warrant for the interception of a wire may not be issued.

Existing law provides that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. (U.S. Const., 1st Amend.)

Existing law defines “legally protected health care activity” as any of the following:

- The exercise and enjoyment, or attempted exercise and enjoyment, by a person of rights to reproductive health care services, gender-affirming health care services, or gender-affirming mental health care services secured by the Constitution or laws of California or the provision by a health care service plan contract or a policy, or a certificate of health insurance, that provides for such services.
- An act or omission undertaken to aid or encourage, or attempt to aid or encourage, a person in the exercise and enjoyment or attempted exercise and enjoyment of rights to reproductive health care services, gender-affirming health care services, or gender-affirming mental health care services secured by the Constitution or laws of California.

- The provision of reproductive health care services, gender-affirming health care services, or gender-affirming mental health care services by a person duly licensed under the laws of California or the coverage of, and reimbursement for, those services or care by a health care service plan or a health insurer, if the service or care is lawful under the laws of California, regardless of the patient's location. (Pen. Code, § 1549.15, subd. (b)(1)(A)-(C).)

Existing law authorizes the Attorney General, chief deputy attorney general, chief assistant attorney general, district attorney, or the district attorney's designee to apply to the presiding judge of the superior court for an order authorizing the interception of wire or electronic communications under specified circumstances. (Pen. Code, § 629.50, et seq.)

Existing law defines, for the purposes of wiretapping, "prohibited violation" to mean any violation of law that creates liability arising for, or arising out of, either of the following:

- Providing, facilitating, or obtaining a legally protected health care activity that is lawful under California law; or,
- Intending or attempting to provide, facilitate, or obtain a legally protected health care activity that is lawful under California law. (Pen. Code, § 629.51)

Existing law authorizes that the court may grant oral approval for an emergency interception of wire, electronic pager, or electronic cellular telephone communications without an order as specified. Requires that approval for an oral interception be conditioned upon filing with the court, within 48 hours of the oral approval, a written application for an order. States that approval of the ex parte order shall be conditioned upon filing with the judge within 48 hours of the oral approval. (Pen. Code, § 629.56.)

Existing law states that no order entered under this chapter shall authorize the interception of any wire, electronic pager, or electronic cellular telephone or electronic communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than 30 days. (Pen. Code, § 629.58.)

Existing law requires that written reports showing what progress has been made toward the achievement of the authorized objective, including the number of intercepted communications, be submitted at least every 10 days to the judge who issued the order allowing the interception. (Pen. Code, § 629.60.)

Existing law requires the Attorney General to prepare and submit an annual report to the Legislature, the Judicial Council, and the Director of the Administrative Office of the United States Court on interceptions conducted under the authority of the wiretap provisions and specifies what the report shall include. (Pen. Code, § 629.62.)

Existing law prohibits a California corporation that provides electronic communication services or remote computing services from complying with a warrant issued by another state if it is related to a prohibited violation. (Pen. Code, § 1524.2.)

Existing law prohibits a California corporation or a corporation whose principal offices are located in California that provides electronic communications services from, in California, providing information or assistance with the terms of a warrant, court order, subpoena, or

wiretap order that relates to the investigation or enforcement of a prohibited violation. (Pen. Code, § 1546.5.)

This bill expands the definition of a prohibited violation, for which an order for a warrant for the interception of a wire may not be issued, to include any violation of law that creates liability arising from, or arising out of, exercising any rights protected by the First Amendment of the United States Constitution.

This bill clarifies that a California corporation that provides electronic communication services or remote computing services shall not produce records when served with a warrant seeking a prohibited violation by a federal court as well as a state court.

COMMENTS

1. Need for This Bill

The author writes:

The First Amendment's protection of free speech and anonymous political expression is not merely an abstract legal principle, it is the foundation of a functioning democracy. The Department of Homeland Security has issued hundreds of administrative subpoenas to major tech companies, including Google, Meta, Reddit, and Discord demanding names, email addresses, phone numbers, and other identifying data tied to social media accounts that track or criticize ICE. The ACLU has argued that the ability to criticize the government anonymously is "baked into" First Amendment rights, and yet people have reportedly faced real-world consequences, including having immigration agents appear at their homes, simply for speaking out online. When users believe their identity may be exposed for criticizing government agencies, they may self-censor, and this chilling effect does not require arrests or prosecutions to take hold. If the government can unmask and retaliate against those who document or criticize its actions, it effectively silences the public watchdogs that democracy depends on. AB 2631 protects First Amendment rights by preventing California corporations from being compelled to hand over records related to first amendment protected activities.

2. Federal Wiretapping Related to ICE Protest

Recently, federal administrative subpoenas have been sent to technology companies in an attempt to obtain the content of communications as well as subscriber information and other user information regarding people who have accounts tracking Immigration Customs and Enforcement (ICE) agents or criticizing their activities.¹ Administrative subpoenas do not require a court order review, and they do not need to be complied with, but some companies have responded or are unsure of how to act because there is no clear statutory basis on which they can rely. This bill clarifies that they should not release information relating to a prohibited violation.

¹ See Frenckel et al., *Homeland Security Wants Social Media Sites to Expose Anti-ICE Accounts*, N.Y. Times (Feb. 13, 2026) <<https://www.nytimes.com/2026/02/13/technology/dhs-anti-ice-social-media.html>> [as of June 14, 2026].

3. Existing Law Governing Wiretapping

The United States Supreme Court ruled in *Katz v. United States* (1967) 389 U.S. 347, that telephone conversations were protected by the Fourth Amendment to the United States Constitution. Intercepting a conversation is a search and seizure similar to the search of a citizen's home. Thus, law enforcement is constitutionally required to obtain a warrant based on probable cause and to give notice and inventory of the search.

In 1968, Congress authorized wiretapping by enacting Title III of the Omnibus Crime Control and Safe Streets Act. (See 18 U.S.C. § 2510 et seq.) Out of concern that telephonic interceptions do not limit the search and seizure to only the party named in the warrant, federal law prohibits electronic surveillance except under carefully defined circumstances. The procedural steps provided in the Act require "strict adherence" and "utmost scrutiny must be exercised to determine whether wiretap orders conform to Title III." (*United States v. Kalustian* (9th Cir. 1976) 529 F.2d 585, 588.) Several of the relevant statutory requirements may be summarized as follows:

- Unlawfully intercepted communications or non-conformity with the order of authorization may result in the suppression of evidence.
- There are civil and criminal penalties for statutory violations.
- Wiretapping is limited to enumerated serious felonies.
- Only the highest-ranking prosecutor may apply for a wiretap order.
- Notice and inventory of a wiretap shall be served on specified persons within a reasonable time but not later than 90 days after the expiration of the order or denial of the application.
- Judges are required to report each individual interception. Prosecutors are required to report interceptions and statistics to allow public monitoring of government wiretapping.

Under existing California law, the Attorney General or a district attorney may make an application to a judge of the superior court for an order authorizing the interception of a wire, electronic pager, or electronic cellular telephone. (Pen. Code, § 629.50, et. seq.) The law regulates the issuance, duration, and monitoring of these orders and imposes safeguards to protect the public from unreasonable interceptions. The law also limits the crimes for which an interception may be sought to the following:

- Importation, possession for sale, transportation or sale of controlled substances;
- Murder or solicitation of murder or commission of a felony involving a destructive device;
- A felony in violation of prohibitions on criminal street gangs;
- Possession or use of a weapon of mass destruction;
- A violation of human trafficking;
- Sexual exploitation of a minor under Penal Code Sec. 311.4; or
- An attempt or conspiracy to commit any of the above.

Existing law states that no magistrate shall enter an order authorizing interception of wire or electronic communications for the purpose of investigating or recovering evidence of a "prohibited violation." The law also prohibits a corporation from complying with a warrant that

seeks information relating to a prohibited violation. “Prohibited violation” is currently defined to mean any violation of law that creates liability for providing, facilitating, or obtaining—or attempting or intending to provide, facilitate or obtain—a legally protected health care activity.

Existing law defines “legally protected health care activity” as any of the following:

- The exercise and enjoyment, or attempted exercise and enjoyment, by a person of rights to reproductive health care services, gender-affirming health care services, or gender-affirming mental health care services secured by the Constitution or laws of California or the provision by a health care service plan contract or a policy, or a certificate of health insurance, that provides for such services.
- An act or omission undertaken to aid or encourage, or attempt to aid or encourage, a person in the exercise and enjoyment or attempted exercise and enjoyment of rights to reproductive health care services, gender-affirming health care services, or gender-affirming mental health care services secured by the Constitution or laws of California.
- The provision of reproductive health care services, gender-affirming health care services, or gender-affirming mental health care services by a person duly licensed under the laws of California or the coverage of, and reimbursement for, those services or care by a health care service plan or a health insurer, if the service or care is lawful under the laws of California, regardless of the patient’s location. (Pen. Code, § 1549.15, subd. (b)(1)(A)-(C).)

4. Effect of This Bill

This bill expands the definition of a prohibited violation, for which an order for a warrant for the interception of a wire may not be issued, to include any violation of law that creates liability for, or arising out of, exercising any rights protected by the First Amendment of the United States Constitution. This bill additionally clarifies that a California corporation that provides electronic communication services or remote computing services shall not produce records when served with a warrant seeking a prohibited violation by a federal court as well as a state court.

5. Argument in Support

Oakland Privacy writes:

While nominally First Amendment activities are protected by the federal constitution for all Americans, and no state should be attempting to criminalize fundamental rights protected by the federal constitution, in practice we have seen some erosion in those rights around certain controversial issues, in particular immigration. Such efforts have been incited by disturbing language from the executive branch seeking to redefine protected activities, like protesting the way the federal government is carrying out immigration enforcement, into “terrorism” or other dangerous and illegal activities.

In particular, executive order NSPM-7 equates a litany of beliefs with political violence and domestic terrorism including:

Anti-Americanism, anti-capitalism, and anti-Christianity,” “support for the overthrow of” the federal government, “extremism on migration, race, and gender,” and opposition to “traditional American views on family, religion, and morality.”

This profound muddying of the waters of basic Constitutional freedoms that Americans have taken for granted for centuries, as well as the implicit encouragement in the memo to go after any civil society institutions perceived to embrace any of these beliefs creates a dangerous situation for public dissent and First-Amendment protected acts of protest. It is basically a red flag for more conservative states to act to enforce limitations on the First Amendment.

Assembly Bill 2631 seeks to ensure that California will not be complicit with any attempts to criminalize First Amendment protections for freedom of speech and assembly.

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