
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 419 **Hearing Date:** June 22, 2021
Author: Davies
Version: March 25, 2021
Urgency: No **Fiscal:** No
Consultant: SC

Subject: *Criminal procedure: victim and witness privacy*

HISTORY

Source: California Conference of Bar Associations

Prior Legislation: AB 2820 (Oberholte), 2020
AB 207 (Frusetta), Ch. 498, Stats. 1997
AB 1226 (Martinez), Ch. 184, Stats. 1995

Support: Unknown

Opposition: California Attorneys for Criminal Justice

Assembly Floor Vote: 74 - 0

PURPOSE

The purpose of this bill is to expand the prohibition of an attorney disclosing identifying information to a defendant, members of the defendant's family, or anyone else, to include any personal identifying information, as defined, of the victim or witness.

Existing law requires the prosecuting attorney to disclose to the defendant or his or her attorney all of the following materials and information, if it is in the possession of the prosecuting attorney or if the prosecuting attorney knows it to be in the possession of the investigating agencies:

- The names and addresses of persons the prosecutor intends to call as witnesses at trial;
- Statements of all defendants;
- All relevant real evidence seized or obtained as part of the investigation of the offenses charged;
- The existence of a felony conviction of any material witnesses whose credibility is likely to be critical to the outcome of the trial;
- Any exculpatory evidence; and,

- Relevant written or recorded statements of witnesses or reports of the statements of witnesses whom the prosecutor intends to call at the trial, including any reports or statements of experts made in conjunction with the case, including the results of physical or mental examinations, scientific test, experiments, or comparisons which the prosecutor intends to offer in evidence at trial. (Pen. Code, § 1054.1.)

Existing law states, except as provided, that no attorney may disclose or permit to be disclosed to a defendant, members of the defendant's family, or anyone else, the address or telephone number of a victim or witness whose name is disclosed to the attorney by the prosecution, unless specifically permitted to do so by the court after a hearing a showing of good cause. A willful violation of this section is a misdemeanor. (Pen. Code, § 1054.2, subd. (a)(1) and (3).)

Existing law states, notwithstanding the above prohibition, an attorney may disclose or permit to be disclosed the address or telephone number of a victim or witness to persons employed by the attorney or to persons appointed by the court to assist in the preparation of a defendant's case if that disclosure is required for that preparation. Persons provided this information by an attorney shall be informed by the attorney that further dissemination of the information, except as provided, is prohibited. (Pen. Code, § 1054.2, subd. (a)(2).)

This bill prohibits an attorney from disclosing all personal identifying information of a victim or witness, instead of merely prohibiting the disclosure of their address and telephone number.

This bill eliminates the existing misdemeanor penalty for willfully disclosing such information.

This bill defines "personal identifying information," by cross reference to Penal Code section 530.55, as "any address, telephone number, health insurance number, taxpayer identification number, school identification number, state or federal driver's license, or identification number, social security number, employee identification number, professional or occupational number, mother's maiden name, demand deposit account number, savings account number, checking account number, PIN (personal identification number) or password, alien registration number, government passport number, date of birth, unique biometric data including fingerprint, facial scan identifiers, voiceprint, retina or iris image, or other unique physical representation, unique electronic data including information identification number assigned to the person, address or routing code, telecommunication identifying information or access device, information contained in a birth or death certificate, or credit card number of an individual person," but does not include name, place of employment or an equivalent form of identification.

COMMENTS

1. Need for This Bill

According to the author of this bill:

Penal Code section 1054.2 currently prohibits the disclosure of a victim or witness's address or telephone number to a defendant, a member of the defendant's family, or anyone else unless specifically permitted by the court. The same section prohibits disclosure to staff of the defense unless it is required to prepare for the case. Finally, if a defendant is self-represented, the defendant may only contact the witness or victim through a private investigator licensed by the

Department of Consumer Affairs and appointed by the court, unless good cause otherwise dictates. This protects victims and witnesses from the risk of threats or harassment by defendants. However, under current law, a victim or witness's social security number, birthdate, and biometric information, are not similarly protected; a defendant or their family could request and receive that information without a court order.

2. Criminal Discovery and Protection of Identifying Information Victims and Witnesses

Existing law, as enacted by Proposition 115, approved by California voters on June 6, 1990, established a system of reciprocal discovery whereby both the prosecution and defense are required to turn over specified materials such as the names and addresses of witnesses that will be called to testify at trial. (Pen. Code, § 1054 et seq.)

Existing law prohibits a defense attorney from disclosing a victim or witness's address or telephone number to a defendant, a member of the defendant's family, or anyone else unless specifically permitted by the court. It also prohibits disclosure to all members of the defense team, unless it is required to prepare for the defense case. In situations where a defendant is self-represented, the defendant may only contact the witness or victim through a private investigator licensed by the Department of Consumer Affairs and appointed by the court, unless good cause otherwise dictates. A willful violation of this prohibition on disclosure is punishable as a misdemeanor. (Pen. Code, § 1054.2.) Notwithstanding this prohibition, a defense attorney may disclose this information to persons employed by the attorney or to persons appointed by the court to assist in the preparation of a defendant's case if that disclosure is required for that preparation. (Pen. Code, § 1054.2, subd. (a)(3).)

This bill expands the information that is prohibited from disclosure by cross referencing the definition of "personal identifying information" in section 530.33 of the Penal Code, but does not prohibit disclosure of name, place of employment or an equivalent form of identification. The additional information that is prohibited from disclosure include such information as the health insurance number, taxpayer identification number, or social security number of the victim or witness. This bill also eliminates the misdemeanor penalty for willfully violating the prohibition on disclosure.

3. Argument in Support

According to the Conference of California Bar Associations, the sponsor of this bill:

In criminal discovery, defense attorneys are entitled to receive the names and addresses of the prosecution's witnesses and their relevant statements. (See Pen. Code, § 1054.1.) To guard against harassment or retaliation by a defendant or the defendant's family, existing law prohibits defense attorneys from disclosing or permitting the disclosure of a victim or witness' address and telephone number to a third party without a court order. (See Pen. Code, § 1054.2.)

AB 419 would allow the protected information of victims and witnesses to include most forms of personal identifying information listed under Penal Code section 530.55, including dates of birth, social security numbers, financial account numbers, and driver's license information. In addition to protecting the privacy rights of victims and witnesses, this measure would provide a legal basis for a

defense attorney to resist a demand made by client or family for police reports containing a victim or witness' personal identifying information, other than their address or telephone number.

4. Argument in Opposition

According to the California Attorneys for Criminal Justice:

This bill would greatly expand the amount and types of information that an attorney is prohibited from disclosing to a defendant or their family.

Currently, attorneys are prohibited from disclosing the address or telephone number of a victim or witness to a defendant. AB 419 takes this prohibition to an extreme by prohibiting the disclosure of a wide swath of personally identifiable information, damaging a defendant's ability to review their own discovery. . . . This bill would put a large burden on attorneys not to accidentally disclose a vastly expanded array of information. This bill could also hurt defendants by prohibiting their attorney from disclosing information to them that may be necessary for building their defense.

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