
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 1121 **Hearing Date:** April 19, 2016
Author: Leno
Version: March 29, 2016
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Privacy: Electronic Communications: Search Warrant*

HISTORY

Source: Author

Prior Legislation: SB 178 (Leno) – Ch. 651, Stats. 2015

Support: Unknown

Opposition: None known

PURPOSE

The purpose of this bill is to make technical and clean-up changes to the Electronic Communications Privacy Act.

Existing law provides that a government entity may access electronic device information by means of a physical interaction or electronic communication device only: pursuant to a warrant; wiretap; with authorization of the possessor of the device; with consent of the owner of the device; in an emergency; if seized from an inmate. (Penal Code § 1546.1(c))

This bill also allows access in response to a contact made by a member of the public using a 911 emergency communication system, but only to access information concerning the location of the electronic device that initiated the contact.

Existing law provides that if a government entity receives electronic communication voluntarily it shall destroy that information within 90 days except under specified circumstances. (Penal Code § 1546.1(g))

This bill adds an additional exception if the service provider or subscriber is a federal, state or local prison, jail or juvenile detention facility and all parties to the electronic communication were informed, prior to the communication, that the service provider may disclose information to the entity.

Existing law provides for notice to the target of a warrant or an emergency obtaining electronic information to be provided either contemporaneously with the service of the warrant or within three days in an emergency situation. (Penal Code § 1546.2(a))

This bill clarifies that it is three *court* days for the notice.

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 the Bill

According to the author:

Through the implementation process of CalECPA, several technical, clarifying changes have been identified that will improve compliance with the new law. This bill addresses those concerns and is a clean-up bill to SB 178.

2. Technical Changes to the CalECPA

This bill makes the following technical or clean-up changes to the CalECPA which was created by SB 178 (Leno) Chapter 651, Stats. 2015:

- Provides that emergency responders may access location information from a device making a 911 call without being subject to additional limitations or requirements;
- Provides that electronic communications information disclosed by prisons, jails, or juvenile detention facilities is not subject to mandatory deletion after 90 days if all parties to the communication were informed that the facility may disclose the information.
- Provides that notice in an emergency must be provided within three court days rather than three calendar days.

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