

THIRD READING

Bill No: AB 2631
Author: Bauer-Kahan (D), et al.
Amended: 8/20/26 in Senate
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 5-1, 6/23/26
AYES: Arreguín, Caballero, Cortese, Pérez, Wiener
NOES: Seyarto

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/13/26
AYES: Cervantes, Cabaldon, Grayson, Richardson, Wahab
NOES: Seyarto, Dahle

ASSEMBLY FLOOR: 59-17, 5/26/26 - See last page for vote

SUBJECT: Criminal procedure: prohibited violations

SOURCE: Author

DIGEST: This bill adds exercising any rights protected by the First Amendment of the United States Constitution to the list of prohibited violations for which an order for a warrant for the interception of a wire may not be issued.

Floor Amendments of 8/20/26 clarify that this bill's provisions do not prevent the interception of wire or electronic communications related to specified criminal offenses solely because the communications may also involve expression protected by the First Amendment to the United States Constitution.

ANALYSIS:

Existing Law:

- 1) 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.)

- 2) Defines “legally protected health care activity” as any of the following:
 - a) 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.
 - b) 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.
 - c) 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. (Penal (Pen.) Code, § 1549.15, subd. (b)(1)(A)-(C).)
- 3) 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.)
- 4) 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:
 - a) Providing, facilitating, or obtaining a legally protected health care activity that is lawful under California law; or,
 - b) Intending or attempting to provide, facilitate, or obtain a legally protected health care activity that is lawful under California law. (Pen. Code, § 629.51)

- 5) 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.)
- 6) 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.)
- 7) 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.)
- 8) 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.)
- 9) 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.)
- 10) 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:

- 1) 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 for, or arising out of, exercising any rights protected by the First Amendment of the United States Constitution.

- 2) 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.

Background

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. 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.

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).)

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.

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

The Senate Appropriations Committee writes:

Minor, absorbable costs to the Department of Justice to apply the expanded “prohibited violation” definition in wiretap order applications. Cases are expected to be few. (General Fund). Minor to modest cost pressure to the courts to adjudicate matters under the bill.

SUPPORT: (Verified 8/12/26)

Electronic Frontier Foundation
Oakland Privacy

OPPOSITION: (Verified 8/12/26)

None received

ARGUMENTS 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.

ASSEMBLY FLOOR: 59-17, 5/26/26

AYES: Addis, Aguiar-Curry, Ahrens, Alvarez, Arambula, Ávila Farías, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Caloza, Carrillo, Connolly, Elhawary, Fong, Gabriel, Garcia, Gipson, Mark González, Haney, Harabedian, Hart, Irwin, Jackson, Kalra, Krell, Lee, Lowenthal, McKinnor, Nguyen, Ortega, Pacheco, Papan, Patel, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Ransom, Michelle Rodriguez, Rogers, Blanca Rubio, Schiavo, Schultz, Sharp-Collins, Solache, Soria, Stefani, Valencia, Wallis, Ward, Wicks, Wilson, Zbur, Rivas

NOES: Castillo, Chen, DeMaio, Dixon, Ellis, Flora, Gallagher, Jeff Gonzalez, Hadwick, Hoover, Johnson, Lackey, Macedo, Patterson, Sanchez, Ta, Tangipa

NO VOTE RECORDED: Alanis, Davies, Muratsuchi, Celeste Rodriguez

Prepared by: Marshal Lawler / PUB. S. /
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