

AMENDED IN ASSEMBLY MAY 17, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 1034

Introduced by Assembly Member Chau

February 16, 2017

An act to add Article 7 (commencing with Section 11470) to Chapter 3 of Title 1 of Part 4 of the Penal Code, and to repeal Sections 7907 and 7908 of the Public Utilities Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 1034, as amended, Chau. Government interruption of communications.

Existing law authorizes a supervising law enforcement official with probable cause to believe that a person is holding hostages and is committing a crime, or is barricaded and is resisting apprehension through the use or threatened use of force, to order a telephone corporation security employee to arrange to cut, reroute, or divert telephone lines for the purpose of preventing telephone communication by the suspected person with any person other than a peace officer or person authorized by a peace officer. Existing law, until January 1, 2020, prohibits a governmental entity and a provider of communications service acting at the request of a governmental ~~entity~~, *entity* from interrupting communications service for the purpose of protecting public safety or preventing the use of communications service for an illegal purpose, except pursuant to an order signed by a judicial officer, as specified. Existing law allows the order to authorize an interruption of communications service only for as long as is reasonably necessary, requires that the interruption cease once the danger that justified the interruption is abated, and requires the order to specify a process to

immediately serve notice on the communications service provider to cease the interruption. Existing law authorizes interruption of a communications service without first obtaining a court order under extreme emergency situations, as specified.

This bill would repeal all of those provisions. This bill would instead prohibit any government entity, or service provider acting at the request of a government entity, from interrupting a communication service either to prevent the communications service from being used for an illegal purpose or to protect public health, safety, or welfare. The bill would authorize a government entity to interrupt a communications service for either of those purposes in an extreme emergency situation, as specified, or if the interruption is authorized by a court order. The bill would require the application for a court order under its provisions to require specified information, and would authorize the court to grant the order if specified conditions are met, including, among other things, there is probable cause that the communication is being or will be used for an unlawful purpose and that absent immediate and summary action to interrupt the communication service, serious, direct, and immediate danger to public health, safety, or welfare will result. The bill would require the order to contain specified information, including a statement of the duration of the authorized interruption.

The bill would require a government entity interrupting a communications service due to an extreme emergency situation to apply for a court order without delay, and if possible, to file the application within 6 hours after commencement of interruption. The bill would require the government entity, if it does not apply for an application within 6 hours, to apply within 24 hours after commencement of the interruption and include a declaration under penalty of perjury stating the reason for the delay. By expanding the crime of perjury, this bill would create a state-mandated local program.

The bill would provide that good faith reliance by a service provider on a court order issued pursuant to these provisions is a defense for the service provider against any action brought as a result of the interruption of a communications service authorized by that order. The bill would allow a person whose communications service has been interrupted pursuant to these provisions to petition the superior court to contest the grounds for interruption and restore the interrupted service.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Article 7 (commencing with Section 11470) is
2 added to Chapter 3 of Title 1 of Part 4 of the Penal Code, to read:

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Article 7. Interruption of Communication

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6 11470. For the purposes of this article, the following terms
7 have the following meanings:

8 (a) "Communication service" means any communication service
9 that interconnects with the public switched telephone network and
10 is required by the Federal Communications Commission to provide
11 customers with 911 access to emergency services.

12 (b) "Government entity" means every local government,
13 including a city, county, city and county, a transit, joint powers,
14 special, or other district, the state, and every agency, department,
15 commission, board, bureau, or other political subdivision of the
16 state, or any authorized agent thereof.

17 (c) "Interrupt communication service" means to knowingly or
18 intentionally suspend, disconnect, interrupt, or disrupt a
19 communication service to one or more particular customers or all
20 customers in a geographical area.

21 (d) "Judicial officer" means a magistrate, judge, commissioner,
22 referee, or any person appointed by a court to serve in one of these
23 capacities, of a superior court.

24 (e) "Service provider" means a person or entity, including a
25 government entity, that offers a communication service.

26 11471. (a) Except as authorized by this article, no government
27 entity, and no service provider acting at the request of a government
28 entity, shall interrupt a communication service for either of the
29 following purposes:

30 (1) To prevent the communication service from being used for
31 an illegal purpose.

32 (2) To protect public health, safety, or welfare.

1 (b) A government entity may interrupt a communication service
2 for a purpose stated in subdivision (a) in any of the following
3 circumstances:

4 (1) The interruption is authorized by a court order pursuant to
5 Section 11473.

6 (2) The government entity reasonably determines that (A) the
7 interruption is required to address an extreme emergency situation
8 that involves immediate danger of death or great bodily injury,
9 (B) there is insufficient time, with due diligence, to first obtain a
10 court order under Section 11473, and (C) the interruption meets
11 the grounds for issuance of a court order under Section 11473. A
12 government entity acting pursuant to this paragraph shall comply
13 with Section 11475.

14 (3) Notwithstanding Section 591, 631, or 632, or Section 7906
15 of the Public Utilities Code, a supervising law enforcement official
16 with jurisdiction may require that a service provider interrupt a
17 communication service that is available to a person if (A) the law
18 enforcement official has probable cause to believe that the person
19 is holding hostages and is committing a crime, or is barricaded
20 and is resisting apprehension through the use or threatened use of
21 force, and (B) the purpose of the interruption is to prevent the
22 person from communicating with anyone other than a peace officer
23 or a person authorized by a peace officer. This paragraph does not
24 authorize the interruption of communication service to a wireless
25 device other than a wireless device used or available for use by
26 the person or persons involved in a hostage or barricade situation.

27 11472. (a) An application by a government entity for a court
28 order authorizing the interruption of a communication service shall
29 be made in writing upon the personal oath or affirmation of the
30 chief executive of the government entity or his or her designee, to
31 the presiding judge of the superior court or a judicial officer
32 designated by the presiding judge for that purpose.

33 (b) Each application shall include all of the following
34 information:

35 (1) The identity of the government entity making the application.

36 (2) A statement attesting to a review of the application and the
37 circumstances in support of the application by the chief executive
38 officer of the government entity making the application, or his or
39 her designee. This statement shall state the name and office of the
40 person who effected this review.

1 (3) A full and complete statement of the facts and circumstances
2 relied on by the government entity to justify a reasonable belief
3 that the order should be issued, including the facts and
4 circumstances that support the statements made in paragraphs (4)
5 to (7), inclusive.

6 (4) A statement that probable cause exists to believe that the
7 communication service to be interrupted is being used or will be
8 used for an unlawful purpose or to assist in a violation of the law.
9 The statement shall expressly identify the unlawful purpose or
10 violation of the law.

11 (5) A statement that immediate and summary action is needed
12 to avoid serious, direct, and immediate danger to public health,
13 safety, or welfare.

14 (6) A statement that the proposed interruption is narrowly
15 tailored to the specific circumstances under which the order is
16 made and would not interfere with more communication than is
17 necessary to achieve the purposes of the order.

18 (7) A statement that the proposed interruption would leave open
19 ample alternative means of communication.

20 (8) A statement that the government entity has considered the
21 practical disadvantages of the proposed interruption, including any
22 disruption of emergency communication service.

23 (9) A description of the scope and duration of the proposed
24 interruption. The application shall clearly describe the specific
25 communication service to be interrupted with sufficient detail as
26 to customer, cell sector, central office, or geographical area
27 affected.

28 (c) The judicial officer may require the applicant to furnish
29 additional testimony or documentary evidence in support of an
30 application for an order under this section.

31 (d) The judicial officer shall accept a facsimile copy of the
32 signature of any person required to give a personal oath or
33 affirmation pursuant to subdivision (a) as an original signature to
34 the application.

35 11473. Upon application made under Section 11472, the
36 judicial officer may enter an ex parte order, as requested or
37 modified, authorizing interruption of a communication service in
38 the territorial jurisdiction in which the judicial officer is sitting, if
39 the judicial officer determines, on the basis of the facts submitted
40 by the applicant, that all of the following requirements are satisfied:

1 (a) There is probable cause that the communication service is
2 being or will be used for an unlawful purpose or to assist in a
3 violation of the law.

4 (b) Absent immediate and summary action to interrupt the
5 communication service, serious, direct, and immediate danger to
6 public health, safety, or welfare will result.

7 (c) The interruption of communication service is narrowly
8 tailored to prevent unlawful infringement of speech that is protected
9 by the First Amendment to the United States Constitution or
10 Section 2 of Article I of the California Constitution, or a violation
11 of any other rights under federal or state law.

12 (d) The interruption of a communication service would leave
13 open ample alternative means of communication.

14 11474. An order authorizing an interruption of a
15 communication service shall include all of the following:

16 (a) A statement of the court's findings required by Section
17 11473.

18 (b) A clear description of the communication service to be
19 interrupted, with specific detail as to the affected service, service
20 provider, and customer or geographical area.

21 (c) A statement of the period of time during which the
22 interception is authorized. The order may provide for a fixed
23 duration or require that the government end the interruption when
24 it determines that the interruption is no longer reasonably necessary
25 because the danger that justified the interruption has abated. If the
26 judicial officer finds that probable cause exists that a particular
27 communication service is being used or will be used as part of a
28 continuing criminal enterprise, the court may order the permanent
29 termination of that service and require that the terminated service
30 not be referred to another communication service.

31 (d) A requirement that the government entity immediately serve
32 notice on the service provider when the interruption is to cease.

33 11475. A government entity that interrupts a communication
34 service pursuant to paragraph (2) of subdivision (b) of Section
35 11471 shall take all of the following steps:

36 (a) Apply for a court order under Section 11472 without delay.
37 If possible, the application shall be filed within six hours after
38 commencement of the interruption. If that is not possible, the
39 application shall be filed at the first reasonably available
40 opportunity, but in no event later than 24 hours after

1 commencement of an interruption of a communication service. If
2 an application is filed more than six hours after commencement
3 of an interruption of a communication service, the application shall
4 include a declaration, made under penalty of perjury, stating the
5 reason for the delay.

6 (b) Prepare a signed statement of intent to apply for a court
7 order. The statement of intent shall clearly describe the extreme
8 emergency situation and the specific communication service to be
9 interrupted. If a government entity does not apply for a court order
10 within six hours, the government entity shall submit a copy of the
11 signed statement of intent to the court within six hours.

12 (c) Provide conspicuous notice of the application for a court
13 order on the government entity's Internet Web site without delay,
14 unless the circumstances that justify an interruption of a
15 communication service without first obtaining a court order also
16 justify not providing the notice.

17 11476. (a) If an order issued pursuant to Section 11473 or a
18 signed statement of intent prepared pursuant to Section 11475
19 would authorize the interruption of a communication service for
20 all customers of the interrupted communication service within a
21 geographical area, the government entity shall serve the order or
22 statement on the Governor's Office of Emergency Services.

23 (b) The Governor's Office of Emergency Services shall have
24 policy discretion on whether to ~~proceed with the proposed~~
25 ~~interruption.~~ *request that the federal government authorize and*
26 *effect the proposed interruption.*

27 11477. If an order issued pursuant to Section 11473 or a signed
28 statement of intent prepared pursuant to Section 11475 is not
29 governed by Section 11476, the government entity shall serve the
30 order or statement on both of the following persons:

31 (a) The appropriate service provider's contact for receiving
32 requests from law enforcement, including receipt of state or federal
33 warrants, orders, or subpoenas.

34 (b) The affected customer, if the identity of the customer is
35 known. When serving an affected customer, the government entity
36 shall provide notice of the opportunity for judicial review under
37 Section 11479.

38 11478. (a) Good faith reliance by a service provider on a court
39 order issued pursuant to Section 11473, a signed statement of intent
40 prepared pursuant to Section 11475, or the instruction of a

1 supervising law enforcement officer acting pursuant to paragraph
2 (3) of subdivision (b) of Section 11471 shall constitute a complete
3 defense for the service provider against any action brought as a
4 result of the interruption of a communication service authorized
5 by that court order, statement of intent, or instruction.

6 (b) A service provider shall designate a security employee and
7 an alternate security employee, to provide all required assistance
8 to law enforcement officials to carry out the purposes of this article.

9 (c) A service provider that intentionally interrupts
10 communication service pursuant to this article shall comply with
11 any rule or notification requirement of the Public Utilities
12 Commission or Federal Communications Commission, or both,
13 and any other applicable provision or requirement of state or federal
14 law.

15 11479. (a) A person whose communication service has been
16 interrupted pursuant to this article may petition the superior court
17 to contest the grounds for the interruption and restore the
18 interrupted service.

19 (b) The remedy provided in this section is not exclusive. Other
20 law may provide a remedy for a person who is aggrieved by an
21 interruption of a communication service authorized by this chapter.

22 11480. The Legislature finds and declares that ensuring that
23 California users of any communication service not have that service
24 interrupted, and thereby be deprived of 911 access to emergency
25 services or a means to engage in constitutionally protected
26 expression, is a matter of statewide concern and not a municipal
27 affair, as that term is used in Section 5 of Article XI of the
28 California Constitution.

29 11481. (a) This article does not apply to any of the following
30 actions:

31 (1) The interruption of a communication service with the consent
32 of the affected customer.

33 (2) The interruption of a communication service pursuant to a
34 customer service agreement, contract, or tariff.

35 (3) The interruption of a communication service to protect the
36 security of the communication network or other computing
37 resources of a government entity or service provider.

38 (4) The interruption of a communication service to prevent
39 unauthorized wireless communication by a prisoner in a state or
40 local correctional facility, including a juvenile facility.

1 (5) The interruption of a communication service to transmit an
2 emergency notice that includes, but is not limited to, an Amber
3 Alert, a message transmitted through the federal Emergency Alert
4 System, or a message transmitted through the federal Wireless
5 Emergency Alert System.

6 (6) An interruption of a communication service pursuant to a
7 statute that expressly authorizes an interruption of a communication
8 service, including Sections 149 and 7099.10 of the Business and
9 Professions Code and Sections 2876, 5322, and 5371.6 of the
10 Public Utilities Code.

11 (7) An interruption of communication that results from the
12 execution of a search warrant.

13 (b) Nothing in this section provides authority for an action of a
14 type listed in subdivision (a) or limits any remedy that may be
15 available under law if an action of a type listed in subdivision (a)
16 is taken unlawfully.

17 SEC. 2. Section 7907 of the Public Utilities Code is repealed.

18 SEC. 3. Section 7908 of the Public Utilities Code is repealed.

19 SEC. 4. No reimbursement is required by this act pursuant to
20 Section 6 of Article XIII B of the California Constitution because
21 the only costs that may be incurred by a local agency or school
22 district will be incurred because this act creates a new crime or
23 infraction, eliminates a crime or infraction, or changes the penalty
24 for a crime or infraction, within the meaning of Section 17556 of
25 the Government Code, or changes the definition of a crime within
26 the meaning of Section 6 of Article XIII B of the California
27 Constitution.

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