

**ASSEMBLY BILL**

**No. 1034**

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**Introduced by Assembly Member Chau**

February 16, 2017

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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 introduced, 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, 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:

3

4

Article 7. Interruption of Communication

5

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.

26 11477. If an order issued pursuant to Section 11473 or a signed  
27 statement of intent prepared pursuant to Section 11475 is not  
28 governed by Section 11476, the government entity shall serve the  
29 order or statement on both of the following persons:

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

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

37 11478. (a) Good faith reliance by a service provider on a court  
38 order issued pursuant to Section 11473, a signed statement of intent  
39 prepared pursuant to Section 11475, or the instruction of a  
40 supervising law enforcement officer acting pursuant to paragraph

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

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

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

14 11479. (a) A person whose communication service has been  
15 interrupted pursuant to this article may petition the superior court  
16 to contest the grounds for the interruption and restore the  
17 interrupted service.

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

21 11480. The Legislature finds and declares that ensuring that  
22 California users of any communication service not have that service  
23 interrupted, and thereby be deprived of 911 access to emergency  
24 services or a means to engage in constitutionally protected  
25 expression, is a matter of statewide concern and not a municipal  
26 affair, as that term is used in Section 5 of Article XI of the  
27 California Constitution.

28 11481. (a) This article does not apply to any of the following  
29 actions:

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

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

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

37 (4) The interruption of a communication service to prevent  
38 unauthorized wireless communication by a prisoner in a state or  
39 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 ~~7907. Notwithstanding Section 591, 631, or 632 of the Penal~~  
19 ~~Code or Section 7906 of this code, whenever the supervising law~~  
20 ~~enforcement official having jurisdiction has probable cause to~~  
21 ~~believe that a person is holding hostages and is committing a crime,~~  
22 ~~or is barricaded and is resisting apprehension through the use or~~  
23 ~~threatened use of force, such official may order a previously~~  
24 ~~designated telephone corporation security employee to arrange to~~  
25 ~~cut, reroute, or divert telephone lines for the purpose of preventing~~  
26 ~~telephone communication by such suspected person with any~~  
27 ~~person other than a peace officer or a person authorized by the~~  
28 ~~peace officer.~~

29 ~~The telephone corporation shall designate a person as its security~~  
30 ~~employee and an alternate to provide all required assistance to law~~  
31 ~~enforcement officials to carry out the purposes of this section.~~

32 ~~Good faith reliance on an order by a supervising law enforcement~~  
33 ~~official shall constitute a complete defense to any action brought~~  
34 ~~under this section.~~

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

36 ~~7908. (a) For purposes of this section, the following terms~~  
37 ~~have the following meanings:~~

38 ~~(1) "Communications service" means any communications~~  
39 ~~service that interconnects with the public switched telephone~~  
40 ~~network and is required by the Federal Communications~~

1 Commission to provide customers with 911 access to emergency  
2 services:

3 (2) ~~“Governmental entity” means every local government,~~  
4 ~~including a city, county, city and county, a transit, joint powers,~~  
5 ~~special, or other district, the state, and every agency, department,~~  
6 ~~commission, board, bureau, or other political subdivision of the~~  
7 ~~state, or any authorized agent thereof.~~

8 (3) (A) ~~“Interrupt communications service” means to knowingly~~  
9 ~~or intentionally suspend, disconnect, interrupt, or disrupt~~  
10 ~~communications service to one or more particular customers or~~  
11 ~~all customers in a geographical area.~~

12 (B) ~~“Interrupt communications service” does not include any~~  
13 ~~interruption of communications service pursuant to a customer~~  
14 ~~service agreement, a contract, a tariff, a provider’s internal practices~~  
15 ~~to protect the security of its networks, Section 2876, 5322, or~~  
16 ~~5371.6 of this code, Section 149 or 7099.10 of the Business and~~  
17 ~~Professions Code, or Section 4575 or subdivision (d) of Section~~  
18 ~~4576 of the Penal Code.~~

19 (C) ~~“Interrupt communications service” does not include any~~  
20 ~~interruption of service pursuant to an order to cut, reroute, or divert~~  
21 ~~service to a telephone line or wireless device used or available for~~  
22 ~~use for communication by a person or persons in a hostage or~~  
23 ~~barricade situation pursuant to Section 7907. However,~~  
24 ~~“interruption of communications service” includes any interruption~~  
25 ~~of service resulting from an order pursuant to Section 7907 that~~  
26 ~~affects service to wireless devices other than any wireless device~~  
27 ~~used by, or available for use by, the person or persons involved in~~  
28 ~~a hostage or barricade situation.~~

29 (4) ~~“Judicial officer” means a magistrate, judge, justice,~~  
30 ~~commissioner, referee, or any person appointed by a court to serve~~  
31 ~~in one of these capacities of any state or federal court located in~~  
32 ~~this state.~~

33 (b) (1) ~~Unless authorized pursuant to subdivision (c), no~~  
34 ~~governmental entity and no provider of communications service,~~  
35 ~~acting at the request of a governmental entity, shall interrupt~~  
36 ~~communications service for the purpose of protecting public safety~~  
37 ~~or preventing the use of communications service for an illegal~~  
38 ~~purpose, except pursuant to an order signed by a judicial officer~~  
39 ~~obtained prior to the interruption. The order shall include all of~~  
40 ~~the following findings:~~

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

4 ~~(B) That absent immediate and summary action to interrupt~~  
5 ~~communications service, serious, direct, and immediate danger to~~  
6 ~~public safety, health, or welfare will result.~~

7 ~~(C) That the interruption of communications 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 ~~(2) The order shall clearly describe the specific communications~~  
13 ~~service to be interrupted with sufficient detail as to customer, cell~~  
14 ~~sector, central office, or geographical area affected, shall be~~  
15 ~~narrowly tailored to the specific circumstances under which the~~  
16 ~~order is made, and shall not interfere with more communication~~  
17 ~~than is necessary to achieve the purposes of the order.~~

18 ~~(3) The order shall authorize an interruption of communications~~  
19 ~~service only for as long as is reasonably necessary and shall require~~  
20 ~~that the interruption cease once the danger that justified the~~  
21 ~~interruption is abated and shall specify a process to immediately~~  
22 ~~serve notice on the communications service provider to cease the~~  
23 ~~interruption.~~

24 ~~(e) (1) Communications service shall not be interrupted without~~  
25 ~~first obtaining a court order except pursuant to this subdivision.~~

26 ~~(2) If a governmental entity reasonably determines that an~~  
27 ~~extreme emergency situation exists that involves immediate danger~~  
28 ~~of death or great bodily injury and there is insufficient time, with~~  
29 ~~due diligence, to first obtain a court order, then the governmental~~  
30 ~~entity may interrupt communications service without first obtaining~~  
31 ~~a court order as required by this section, provided that the~~  
32 ~~interruption meets the grounds for issuance of a court order~~  
33 ~~pursuant to subdivision (b) and that the governmental entity does~~  
34 ~~all of the following:~~

35 ~~(A) (i) Applies for a court order authorizing the interruption of~~  
36 ~~communications service without delay, but within six hours after~~  
37 ~~commencement of an interruption of communications service~~  
38 ~~except as provided in clause (ii).~~

39 ~~(ii) If it is not possible to apply for a court order within six hours~~  
40 ~~due to an emergency, the governmental entity shall apply for a~~

1 court order at the first reasonably available opportunity, but in no  
2 event later than 24 hours after commencement of an interruption  
3 of communications service. If an application is filed more than six  
4 hours after commencement of an interruption of communications  
5 service pursuant to this clause, the application shall include a  
6 declaration under penalty of perjury stating the reason or reasons  
7 that the application was not submitted within six hours after  
8 commencement of the interruption of communications service.

9 (B) Provides to the provider of communications service involved  
10 in the service interruption a statement of intent to apply for a court  
11 order signed by an authorized official of the governmental entity.  
12 The statement of intent shall clearly describe the extreme  
13 emergency circumstances and the specific communications service  
14 to be interrupted. If a governmental entity does not apply for a  
15 court order within 6 hours due to the emergency, then the  
16 governmental entity shall submit a copy of the signed statement  
17 of intent to the court within 6 hours.

18 (C) Provides conspicuous notice of the application for a court  
19 order authorizing the communications service interruption on its  
20 Internet Web site without delay, unless the circumstances that  
21 justify an interruption of communications service without first  
22 obtaining a court order justify not providing the notice.

23 (d) An order to interrupt communications service, or a signed  
24 statement of intent provided pursuant to subdivision (c), that falls  
25 within the federal Emergency Wireless Protocol shall be served  
26 on the California Emergency Management Agency. All other orders  
27 to interrupt communications service or statements of intent shall  
28 be served on the communications service provider's contact for  
29 receiving requests from law enforcement, including receipt of and  
30 responding to state or federal warrants, orders, or subpoenas.

31 (e) A provider of communications service that intentionally  
32 interrupts communications service pursuant to this section shall  
33 comply with any rule or notification requirement of the commission  
34 or Federal Communications Commission, or both, and any other  
35 applicable provision or requirement of state or federal law.

36 (f) Good faith reliance by a communications service provider  
37 upon an order of a judicial officer authorizing the interruption of  
38 communications service pursuant to subdivision (b), or upon a  
39 signed statement of intent to apply for a court order pursuant to  
40 subdivision (c), shall constitute a complete defense for any

1 ~~communications service provider against any action brought as a~~  
2 ~~result of the interruption of communications service as directed~~  
3 ~~by that order or statement.~~

4 ~~(g) The Legislature finds and declares that ensuring that~~  
5 ~~California users of any communications service not have that~~  
6 ~~service interrupted, and thereby be deprived of 911 access to~~  
7 ~~emergency services or a means to engage in constitutionally~~  
8 ~~protected expression, is a matter of statewide concern and not a~~  
9 ~~municipal affair, as that term is used in Section 5 of Article XI of~~  
10 ~~the California Constitution.~~

11 ~~(h) This section shall remain in effect only until January 1, 2020,~~  
12 ~~and as of that date is repealed, unless a later enacted statute, that~~  
13 ~~is enacted before January 1, 2020, deletes or extends that date.~~

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