
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 1034 **Hearing Date:** June 20, 2017
Author: Chau
Version: May 17, 2017
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Government Interruption of Communications*

HISTORY

Source: California Law Revision Commission

Prior Legislation: SCR 54, Resolution Chapter 115, Stats. 2013
SB 380 (Padilla) Chapter 371, Stats. 2013

Support: Unknown

Opposition: None known

Assembly Floor Vote: 77 - 0

PURPOSE

This bill takes the existing sections of the public utility code that govern the ability of a government entity to interrupt communication services – under certain emergency circumstances – and modifies and places them in the Penal Code, as recommended by the California law revision commission.

Existing law establishes the CLRC and authorizes it to study topics approved by concurrent resolution of the Legislature. (Government Code §§ 8280 and 8293.)

Existing law authorizes a supervising law enforcement official with jurisdiction and has 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 previously designated telephone corporation security employee to arrange to cut, reroute, or divert telephone lines for the purpose of preventing telephone communication by such suspected person with any person other than a peace officer or a person authorized by the peace officer. (Public Utilities Code (PUC) § 7907.)

Existing law prohibits a governmental entity or provider of communications service, acting at the request of a governmental entity, to interrupt 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 obtained prior to the interruption. (PUC § 7908.)

Existing law authorizes a governmental entity that reasonably determines that an extreme emergency situation exists that involves immediate danger of death or great bodily injury and

there is insufficient time, with due diligence, to first obtain a court order, to interrupt communications service without first obtaining a court order, as specified. (PUC § 7908.)

Existing law requires an order to interrupt communications service, or a specified signed statement of intent, that falls within the federal Emergency Wireless Protocol (EWP) to be served on the California Governor's Office of Emergency Services (Cal OES). All other orders to interrupt communications service or statements of intent shall be served on the communications service provider's contact for receiving requests from law enforcement, including receipt of and responding to state or federal warrants, orders, or subpoenas. (PUC § 7908)

This bill takes the existing provisions in the PUC and moves them to the Penal Code with a few substantive changes including: providing for a post-interruption judicial review in cases in which the government entity terminates service without prior warning; clarifying references; clarifies the procedure for applying for the court order; and, adding additional exceptions for interruptions.

COMMENTS

1. Need for This Bill

According to the author:

Existing Public Utilities Code Section 7908 provides a procedure for the authorization of government action to interrupt communication service. That procedure is designed to ensure that any such interruption will be consistent with constitutional due process and free expression rights.

The California Law Revision Commission (CLRC) was directed to study that provision, to determine whether it is adequate to protect constitutional rights and to recommend any needed reforms.

CLRC found that the statute was mostly sufficient to protect constitutional rights, but identified the following problems:

- (a) Section 7908 will sunset on January 1, 2020. That would eliminate the main statutory guidance on how government may interrupt communication service without violating constitutional rights.
- (b) The statute does not provide for post-interruption judicial review. This appears to violate due process rights. See *Goldin v. Pub. Util. Comm'n*, 23 Cal. 3d 638 (1979).
- (c) The existing statute requires that an interruption that falls within the scope of the federal emergency wireless protocol (EWP) must be served on the "California Emergency Management Agency" (now the Governor's Office of Emergency Services (OES)). That requirement is potentially confusing, because the federal EWP is a secret protocol, and its exact scope is not generally known. This could lead to confusion about the statute's requirements, when time may be of the essence.

- (d) There are some situations that should be exempted from Section 7908, because they do not pose a threat to constitutional rights. The application of Section 7908 to those situations imposes an undue burden on law enforcement and the courts.
- (e) Section 7908 does not provide clear procedural rules for how law enforcement must apply for a court order authorizing an interruption of communication service. This could lead to problematic confusion and delay.

2. Goldin v. Public Utilities Commission

In 1979, the California Supreme Court held in *Goldin v. Public Utilities Commission*, 23 Cal. 3d 638 (1979) that a government may constitutionally deprive a person of telephone service without prior notice and an opportunity to be heard, so long as certain facts are found by a judge and certain procedures consistent with the requirements of due process were followed. These procedures including, obtaining a court order, having probable cause, finding that the absent of immediate interruption of the communication service could result in significant dangers to public health, safety, or welfare, and that the customer have a prompt post-interruption opportunity for judicial review of the governments allegations.

SB 380 (Padilla) Chapter 371, Statutes of 2013 largely codified *Goldin v. Public Utilities Commission* under Public Utilities Code (PUC) Section 7908 by establishing a process by which state and local government may interrupt a communication service. However, the provisions in PUC § 7908 are set to sunset in 2020. This bill removes that sunset. In addition, this bill moves the provisions in PUC § 7908 over to a new Penal Code Section.

Although PUC § 7908 prohibits a government interruption of communications unless the government entity obtains a court order signed by a judicial officer prior to the interruption, it does not specify any procedural guidance on how a government entity would apply for such an order, what criteria a judicial officers should consider in determining whether to issue such an order, and what form the order should take. This bill would create such a procedure that is consistent with existing laws on applying for court orders authorizing wiretaps.

3. Post-Interruption Judicial Review and Notice

As part of the process established under *Goldin v. Public Utilities Commission*, the California Supreme Court made clear that an affected customer must be given a prompt post-interruption opportunity to review the government's allegations for justifying the interruption of communications service and, if not borne out, the interrupted service should be restored. While it is possible for a person to obtain judicial review under other laws, PUC § 7908 does not specifically provide post-interruption judicial review for customers to challenge the government's allegations. In addition, PUC § 7908 does not require notice to be served upon affected customers. While in certain situations, serving a notice might not be feasible, proving notice to a specifically-identified customer when their communication service is interrupted would greater protect the due process rights of customers and provide them avenues for challenge. This bill would provide a post-interruption judicial review and notice for customers.