
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 1129 **Hearing Date:** June 4, 2019
Author: Chau
Version: April 8, 2019
Urgency: No **Fiscal:** No
Consultant: SC

Subject: *Privacy*

HISTORY

Source: Author

Prior Legislation: AB 2320 (Calderon), 2016, Vetoed
SB 142 (Jackson), 2015, Vetoed
SB 15 (Padilla), 2015, failed passage in Assembly Public Safety
AB 2306 (Chau), Ch. 858, Stats. 2014
AB 1256 (Bloom), Ch. 852, Stats. 2014

Support: Unknown

Opposition: None known

Assembly Floor Vote: 76 - 0

PURPOSE

The purpose of this bill is to add electronic devices and drones to the list of instruments that may not be used to invade an individual's privacy.

Existing law states that a person who loiters, prowls, or wanders upon the private property of another, at any time, without visible, or lawful business with the owner or occupant is guilty of disorderly conduct. (Pen. Code, § 647, subd. (h).)

Existing law states that a person who while loitering, prowling, or wandering upon the private property of another, at any time, peeks in the door or window of any inhabited building or structure, without visible or lawful business with the owner, is guilty of disorderly conduct. (Pen. Code, § 647, subd. (i).)

Existing law makes a person who looks through a hole or opening, into, or otherwise views, by means of any instrumentality, including, but not limited to, a periscope, telescope, binoculars, camera, motion picture camera, camcorder, or mobile phone, the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which the occupant has a reasonable expectation of privacy, with the intent to invade the privacy of a person or persons inside, guilty of disorderly conduct which is punishable as a misdemeanor. This crime is also known as invasion of privacy. (Pen. Code, § 647, subd. (j)(1).)

This bill includes electronic devices and unmanned aircraft systems (drones) in the list of instruments that may not be used to invade the privacy of a person.

COMMENTS

1. Need for This Bill

According to the author of this bill:

Currently in California, under Penal Code section 4577, it is illegal to fly a drone in or around a correctional facility. Under Penal Code section 402, it is illegal to fly a drone in such a manner that interferes with emergency responders. If a drone is interfering with emergency responders, then law enforcement can intercept and even shoot down the drone. The Federal Aviation Administration allows drones to be flown within 400 feet above ground, and just about anywhere. Throughout the law, however, personal safety in the case of stalking and invasion of privacy is not clearly addressed.

In one instance, an entire Cleveland family was being stalked and harassed by an unknown individual. The individual even followed the family to a retail store using a drone and texted their daughter's cell phone intimidatingly. Because there are no comprehensive statutes that make it illegal to use electronic devices or drones to invade someone's privacy, victims are left unprotected.

AB 1129 protects victims as technology has evolved by adding electronic devices and drones to the list of instruments which may not be used to invade an individual's privacy.

2. Invasion of Privacy

The California Constitution explicitly deems privacy an inalienable right. (Cal. Const. art. I, § 1.) Accordingly, the Legislature has criminalized the intrusion of privacy by looking into places where a person has a reasonable expectation of privacy (Pen. Code, § 647, subd. (j)(1), as well as created a separate civil cause of action for that conduct. (Civ. Code, § 1708.8)

This bill updates the crime of invasion of privacy, to reflect the ability to surveille others with newly-emerging technology, specifically electronic devices and drones.

Such devices are increasingly being used to access areas that are typically not accessible to the public. For example, in Oakland, a Nest device was used to harass and scare a couple when a hacker used the device to air an emergency broadcast alert that said intercontinental missiles were headed to Los Angeles, Chicago and Ohio. The couple said later, a Nest supervisor told them that they likely were the victims of a "third party hack" that gained access to their camera and its speakers. (Matthias Gafni, "*5 minutes of sheer terror*": *Hackers Infiltrate East Bay Family's Nest Surveillance Camera, Send Warning of Incoming North Korea Missile*, Mercury News, January 21, 2019, < <https://www.mercurynews.com/2019/01/21/it-was-five-minutes-of-sheer-terror-hackers-infiltrate-east-bay-familys-nest-surveillance-camera-send-warning-of-incoming-north-korea-missile-attack/>> [as of May 23, 2019].))

The hacking of electronic devices is becoming so commonplace, that the Los Angeles Times has reported on a search engine called Shodan that allows subscribers to view unsecured webcams. “[S]ecurity researcher Dan Tentler told Ars Technica that the feeds include ‘images of marijuana plantations, back rooms of banks, children, kitchens, living rooms, garages, front gardens, back gardens, ski slopes, swimming pools, colleges and schools, laboratories, and cash register cameras in retail stores.’” (Michael Hiltzik, *Apple, the FBI, and the Internet of Things: Your Whole House is Open to Attack*, Los Angeles Times, March 1, 2016, <<https://www.latimes.com/business/hiltzik/la-fi-mh-apple-the-internet-of-things-vulnerable-to-attack-20160301-column.html>> [as of May 23, 2019].)

In order to be guilty of invasion of privacy, a person must have used one of the listed instruments to observe the interior of a location in which the occupant has a reasonable expectation of privacy when committed with the intent to invade the privacy of the person. This bill includes electronic devices and drones are among the list of instruments that may not be used to invade an individual’s privacy.

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