
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 1769 **Hearing Date:** June 14, 2016
Author: Rodriguez
Version: March 28, 2016
Urgency: No **Fiscal:** Yes
Consultant: ML

Subject: *911 Emergency System: Nuisance Communications*

HISTORY

Source: Office of the San Bernardino Sheriff – Coroner

Prior Legislation: SB 1211 (Padilla) – Ch. 926, Stats. 2014
SB 333 (Lieu) – Ch. 284, Stats. 2013
AB 538 (Arambula) – 2009-2010 Legislative Session, Vetoes
AB 2741 (Cannella) – Ch. 262, Stats. 1994

Support: Association for Los Angeles Deputy Sheriffs; California Association of Code Enforcement Officers; California College and University Police Chiefs Association; California Fire Chiefs Association; California Narcotic Officers Association; California Peace Officers' Association; California Police Chiefs Association; California State Sheriffs' Association; City of Ontario; Fire Districts Association of California; Los Angeles Police Protective League; Los Angeles Country Professional Peace Officers Association; Office of the Los Angeles Sheriff; Professional Peace Officers Association; Riverside Sheriffs Association; San Diego County Sheriff's Department

Opposition: None known

Assembly Floor Vote: 79 - 0

PURPOSE

The purpose of this bill is to expand existing law, which makes a "nuisance call" to the 911 system a misdemeanor, subject to specific fines, by making the same prohibitions and penalties applicable to other electronic communication devices.

Existing law prohibits the use of a telephone for the purpose of annoying or harassing an individual through the 911 line. (Pen. Code, § 653x(a).)

Existing law states that the intent to annoy or harass is established by proof of repeated calls that are unreasonable under the circumstances. (Pen. Code, § 653x(b).)

Existing law states that anyone guilty of using the 911 line to annoy or harass is responsible for all reasonable costs incurred by the unnecessary emergency response. (Pen. Code, § 653x(c).)

Existing law states that anyone who knowingly uses the 911 telephone system for any reason other than because of an emergency is guilty of an infraction, punishable by a warning for a first offense, and fines for subsequent offenses. (Pen. Code, § 653y)

This bill prohibits the use of electronic communications for the purpose of annoying or harassing an individual through the 911 system.

This bill states that the intent to annoy or harass is established by proof of repeated communications that are unreasonable under the circumstances.

This bill states that anyone who knowingly contacts the 911 system via electronic communication for any reason other than an emergency is guilty of an infraction.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015." (Defendants' December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place

the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Bill

According to the author:

Under current law, any person who telephones the 911 emergency system with the intent to annoy or harass another person is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000), by imprisonment in a county jail for not more than six months, or by both the fine and imprisonment. The intent to annoy or harass can be established by proof of repeated calls over a period of time that are unreasonable under the circumstances. Upon conviction of a violation of this section, a person also shall be liable for all reasonable costs incurred by any unnecessary emergency response.

Calling 911 from a phone in California connects you with the emergency telephone response system. A “legacy system,” it was first established in California in the early 1970s to summon aid for medical, law enforcement, and fire department emergencies. Initially designed and developed for use with landlines, the system has been to the use of cell phones.

The next phase, Next Generation 9-1-1 or NextGen911 is now being implemented in California. This system is aimed at updating the 9-1-1 service infrastructure to improve public emergency communications services in a growingly wireless mobile society. In addition to calling 9-1-1 from a phone, it will enable the public to transmit text, images, video and data to a 9-1-1 center. NextGen911 also envisions additional types of emergency communications and data transfer and is intended to replace the current system over time.

San Bernardino County is one of the first places in California to implement the NextGen 911 system. As of November 5, 2015, twenty-one agencies in the Inland

Empire went live with Text to 9-1-1 service and now answer texts and other types of media requests for emergency aid. Since the beginning of that start up these agencies are already receiving nuisance text messages. Existing law will not cover these messages.

2. Background; Effect of Legislation

The Warren 911 Emergency Assistance Act established the original 911 line in California as part of a national push to make 911 the primary contact number for emergencies nationwide. The Local Emergency Telephone Systems Article required localities to develop their own system or join a regional system for police, fire and medical emergency dispatch using the 911 phone number rather than the thousands of separate emergency numbers for each local department which previously existed. The regional dispatchers who connect 911 callers to the appropriate emergency response entity are called Public Safety Answering Points (PSAPs). Currently, there are 452 PSAPs statewide receiving tens of millions of calls each year, with approximately half of these coming from cell phones. The volume of calls and the difficulty in locating cell phone callers, among other issues, precipitated the need for an upgrade to the 911 system.

The Office of Emergency Services (OES) is responsible for planning, implementing and upgrading the 911 system statewide. Through the California 911 Emergency Communications Branch of the Logistics Operation Directorate, OES has begun the process of upgrading the 911 system as required under the Government Code. The IP based network of NextGen911 (NG911) will allow for capabilities such as location based routing, policy based routing and dynamic call routing between PSAPs. Additionally, applications like text, video and photos along with continual advancements in communications technology create the desire for a more advanced system to access emergency care. Currently, there are five NG911 pilot programs in the state. As these expand, the volume of text and other electronic communications to the 911 system will increase.

The Penal Code provisions amended by this bill deter frivolous or harassing calls which can clog the 911 system. The National Emergency Number Association 911 dispatchers' goal of answering 90% of calls in ten seconds or less were not met in many California counties due to high volume of calls. Frivolous calls, non-emergency calls or prank calls that include 'swatting' and other harassment consume dispatchers' time and prevent them from helping individuals in actual emergencies. The Penal Code attempts to deter frivolous, harassing or otherwise inappropriate non – emergency calls by imposing a schedule of warnings and fines in the case of frivolous and non-emergency calls, or fines and jail time for use of the 911 system to annoy or harass dispatchers. However, both of these Code Sections prohibit only telephone calls and not the other electronic communications methods enabled by NG911 systems. This bill would prohibit those electronic communications.

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