



PIA
Public Interest Advocacy

March 17, 2015

The Honorable Loni Hancock, Chair
Senate Public Safety Committee
State Capitol, Room 2031
Sacramento, CA 95814

RE: SB 178 (Leno) – Support

Dear Senator Hancock:

The California Public Defenders Association (CPDA), a statewide organization of public defenders, private defense counsel, and investigators, is pleased to inform you of our support for SB 178 by Senator Leno.

Senate Bill 178 would bar government entities from compelling the production of, or access to, electronic communications or metadata from individuals or service providers, except by means of a wiretap order or search warrant, or in cases of specific consent by the individual, or emergencies involving imminent danger of death or serious physical injury to a person.

The proposed legislation also would limit wiretap orders and search warrants targeting electronic information or metadata to only that information necessary to achieve the objective of the duly authorized intrusion on privacy, and require that wiretap orders and search warrants comply with all other provisions of California and federal law.

If a government entity seeks or obtains an individual's electronic communications or information pursuant to the emergency exception, it must file a motion with the appropriate court seeking authorization for its intrusion and setting forth the facts giving rise to the emergency. That court shall order the immediate destruction of any information obtained if it determines the submitted facts did not constitute an emergency under the legislation.

SB 178 also would require contemporaneous notice to the affected individual of a government entity's action unless a reviewing court determines that delayed notice is justified to avoid danger to the life or physical safety of an individual, flight from prosecution, imminent destruction of evidence, intimidation of witnesses, the serious jeopardizing of an investigation, or undue delay of a trial.

Under the proposed legislation, no evidence obtained in violation of SB 178 would be admissible in a criminal, civil, or administrative proceeding. The bill also would require government entities engaged in obtaining electronic information and metadata to file annual reports regarding such activity to the Attorney General. The Department of Justice would be required to publish these reports on its website, along with aggregate data across all government entities submitting such reports.

With the proliferation of electronic communication, aided by ever more powerful devices, the United States Supreme Court recently has recognized the importance of ensuring that such communications are afforded the requisite constitutional protections. Referring only to cell

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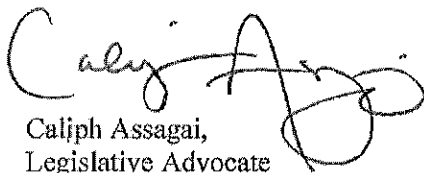


phones, the court stated, “[w]ith all they contain and all they may reveal, they hold for many Americans ‘the privacies of life,’ The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought.” *Riley v. California* (2014) 134 S.Ct. 2473, 2494-95.

SB 178 seeks to affirm these constitutional protections, and also to provide certain statutory bulwarks against unjustified intrusions, such as the immediate destruction of evidence obtained under the emergency exception where the government’s claim of emergency goes unsupported by the underlying facts. Also, the requirement of public reporting of the frequency and breadth of government efforts to undertake such intrusions into individual privacy marks a significant step in transparency in this fast-changing legal landscape.

For the above reasons, on behalf of CPDA, I respectfully urge your “Yes” vote on SB 178 when it comes before you in the Senate Committee on Public Safety. Please do not hesitate to contact me at with any questions or concerns.

Sincerely,



Caliph Assagai,
Legislative Advocate

Cc: Senator Mark Leno
Members, Senate Committee on Public Safety