

AMENDED IN ASSEMBLY MARCH 31, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 1294

Introduced by Assembly Member Umberg

February 22, 2005

~~An act to amend Section 6003 of the Penal Code, relating to the Youth Authority.~~ *An act to add Chapter 1.3 (commencing with Section 629) to Title 15 of Part 1 of the Penal Code, relating to investigative subpoenas.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1294, as amended, Umberg. ~~Youth Authority: delegation of powers~~ *Investigative subpoenas: violent felonies.*

Existing law provides for certain formal criminal investigative procedures circumscribed by statute, including search warrants, grand jury proceedings, and special procedures for wiretapping orders and for administrative subpoenas for financial records. Existing law permits the head of any executive department of the state to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony pertinent or material to any inquiry, investigation, hearing, proceeding, or action conducted in any part of the state.

This bill would authorize the chief executive officer of a law enforcement agency, or a specified designee, to issue subpoenas for the production of certain records from a public utility, bank, credit union, savings association, telephone company or other provider of electronic communication services when investigating a violent felony. The subpoenas would be authorized to require only specified limited responses. This bill would provide for an enforcement mechanism for subpoenas that are not obeyed through the superior court. This bill

would allow the public utility, bank, credit union, savings association, telephone company or other provider of electronic communication services to charge a reasonable fee for compliance with these subpoenas, and would provide criminal and civil immunity for good faith disclosures pursuant to these provisions.

~~Existing law provides that the Youth Authority and Director of Corrections may provide for the performance of any of the duties or the exercise of any of the powers of the Youth Authority by the Department of Corrections, except that the power of classification and segregation of persons committed to the authority is prohibited from being exercised by another agency.~~

~~This bill would also prohibit the power of classification and segregation of persons committed to the authority from being delegated to any other agency.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 6003 of the Penal Code is amended to~~
2 ~~read:~~

3 *SECTION 1. Chapter 1.3 (commencing with Section 629) is*
4 *added to Title 15 of Part 1 of the Penal Code, to read:*

5
6 *CHAPTER 1.3. INVESTIGATIVE SUBPOENAS*

7
8 *629. (a) In any criminal investigation of a felony listed in*
9 *subdivision (c) of Section 667.5, the chief executive officer of a*
10 *law enforcement agency, or a command officer designated by*
11 *him or her, may issue in writing and cause to be served a*
12 *subpoena to a public utility, bank, credit union, savings*
13 *association, telephone company or other provider of electronic*
14 *communication services for the name and address of a person*
15 *listed in the records of the customers of the public utility, bank,*
16 *credit union, savings association, telephone company or other*
17 *provider of electronic communication services.*

18 *(b) Except with regard to investigations of felonies listed in*
19 *subdivision (c) of Section 667.5, and, with regard to those, only*
20 *as provided in this chapter, nothing in this chapter shall be*
21 *construed to alter privacy rights or interests.*

1 629.1. (a) For a subpoena issued pursuant to Section 629 to
2 be valid, it must contain all of the following:

3 (1) The social security number of the person about whom the
4 subpoena is made, if it is known or available to the issuing
5 authority.

6 (2) A written certification that a crime report has been filed
7 that involves a violent felony and that the subpoena is made to
8 further a criminal investigation being conducted by the law
9 enforcement agency.

10 (3) The signature of the chief executive officer of the law
11 enforcement agency or the command officer he or she has
12 designated. As used in this chapter, “command officer” means
13 an officer in charge of a department, division or bureau of the
14 law enforcement agency.

15 (b) A subpoena issued pursuant to Section 629 shall require
16 compliance prior to a specified date listed prominently in the
17 subpoena.

18 (c) A subpoena issued pursuant to Section 629 may do only
19 one or both of the following:

20 (1) Require a public utility, bank, credit union, savings
21 association, telephone company or other provider of electronic
22 communication services to disclose the business records of a
23 customer which may be relevant to an authorized law
24 enforcement inquiry.

25 (2) Require a custodian of records to give a statement or an
26 affidavit concerning the production and authentication of these
27 records or information.

28 629.2. (a) (1) If a public utility, bank, credit union, savings
29 association, telephone company or other provider of electronic
30 communication services subpoenaed pursuant to this chapter
31 refuses to produce any records required by subpoena, the chief
32 executive officer or command officer of the law enforcement
33 agency may petition the superior court in the county in which the
34 matter is pending for an order compelling the entity to comply
35 with the subpoena.

36 (2) The petition shall set forth all of the following:

37 (A) That due notice of the time and place for the production of
38 the records or the giving of authentication was given.

39 (B) That the entity was subpoenaed in the manner prescribed
40 in this chapter.

1 (C) That the entity failed to produce the records required by
2 the subpoena or to authenticate records before the officer named
3 in the subpoena, or both.

4 (b) Upon the filing of the petition, the court shall enter an
5 order directing the public utility, bank, credit union, savings
6 association, telephone company or other provider of electronic
7 communication services to appear before the court at a specified
8 time and place and then and there show cause why the entity has
9 not produced or authenticated the records as required by the
10 subpoena. A copy of the order shall be served upon the entity. If
11 it appears to the court that the subpoena was properly issued by
12 the chief executive officer or command officer of the law
13 enforcement agency, the court shall enter an order that the
14 public utility, bank, credit union, savings association, telephone
15 company or other provider of electronic communication services
16 appear before the officer named in the subpoena at the time and
17 place fixed in the order and produce, authenticate, or produce
18 and authenticate the required records. Upon failure to obey the
19 order, the public utility, bank, credit union, savings association,
20 telephone company or other provider of electronic
21 communication services shall be dealt with as for contempt of
22 court.

23 629.3. The public utility, bank, credit union, savings
24 association, telephone company or other provider of electronic
25 communication services may charge a reasonable fee for any
26 administrative expense related to the disclosure.

27 629.4. A disclosure made in good faith pursuant to this
28 chapter does not give rise to any criminal liability or any action
29 for damages for the disclosure of the name and address of a
30 customer by a public utility, bank, credit union, savings
31 association, telephone company or other provider of electronic
32 communication services.

33 ~~6003. The Youth Authority and the Director of Corrections~~
34 ~~may, pursuant to Section 11253 and Sections 11256 to 11259,~~
35 ~~inclusive, of the Government Code, provide for the performance~~
36 ~~of any of the duties or the exercise of any of the powers of the~~
37 ~~Youth Authority by the Department of Corrections, subject to the~~
38 ~~direction and control of the Youth Authority, except that the~~
39 ~~power of classification and segregation of persons committed to~~

1 ~~the authority shall be exercised by the authority, and shall not be~~
2 ~~exercised by, or delegated to, any other agency.~~

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