

AMENDED IN SENATE JUNE 22, 2010

AMENDED IN ASSEMBLY APRIL 7, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2210

Introduced by Assembly Member Fuentes

February 18, 2010

An act to add Section 633.8 to the Penal Code, relating to interception of communications.

LEGISLATIVE COUNSEL'S DIGEST

AB 2210, as amended, Fuentes. Intercepted communications: hostage taking and barricading.

Existing law prohibits a person from intentionally eavesdropping *upon* or recording a confidential communication by means of any electronic amplifying device or recording device without the consent of all parties to the communication. Under existing law, specified law enforcement agents may make a written application to a judge to authorize the interception of a wire, electronic pager, or electronic cellular telephone communication. In certain instances the application can be made informally and granted orally if an emergency situation exists, as specified.

This bill would authorize a peace officer who is authorized by a county district attorney or the Attorney General to authorize the use of an electronic amplifying or recording device to eavesdrop on or record, or both, any oral communication in an emergency situation involving ~~the taking of hostages or the barricading of a location~~ *a barricade situation or hostage situation, as defined*, if the peace officer ~~has probable cause to believe~~ *reasonably determines that* an emergency situation exists,

that the emergency situation requires that the eavesdropping occur immediately, and that there are grounds upon which an order could be obtained in regard to certain specified offenses. This bill would require a written application to be made seeking to authorize the eavesdropping within 48 hours.

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

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

- 1 SECTION 1. Section 633.8 is added to the Penal Code, to read:
 2 633.8. (a) It is the intent of the Legislature in enacting this
 3 section to provide law enforcement with the ability to use electronic
 4 amplifying or recording devices to eavesdrop *on* and record the
 5 otherwise confidential oral communications of individuals within
 6 a location when responding to an emergency situation that involves
 7 the taking of a hostage or the barricading of a location. It is the
 8 intent of the Legislature that eavesdropping on oral
 9 communications pursuant to this section comply with paragraph
 10 (7) of Section 2518 of Title 18 of the United States Code.
 11 (b) Notwithstanding the provisions of this chapter, and in
 12 accordance with federal law, a designated peace officer described
 13 in subdivision (c) may use, or authorize the use of, an electronic
 14 amplifying or recording device to eavesdrop on or record, or both,
 15 any oral communication within a particular location in response
 16 to an emergency situation involving the taking of a hostage or
 17 hostages or the barricading of a location if all of the following
 18 conditions are satisfied:
 19 (1) The officer reasonably determines that an emergency
 20 situation exists involving the immediate danger of death or serious
 21 physical injury to any person, within the meaning of Section
 22 2518(7)(a)(i) of Title 18 of the United States Code.
 23 (2) The officer *reasonably* determines that the emergency
 24 situation requires that the eavesdropping on oral communication
 25 occur immediately.
 26 (3) There are grounds upon which an order could be obtained
 27 pursuant to Section 2516(2) of Title 18 of the United States Code
 28 in regard to the offenses enumerated therein.
 29 (c) Only a peace officer who has been designated by either a
 30 district attorney in the county where the emergency exists, or by

1 the Attorney General to make the necessary determinations
2 pursuant to paragraphs (1), (2), and (3) of subdivision (b) may
3 make those determinations for purposes of this section.

4 (d) If the determination is made by a designated peace officer
5 described in subdivision (c) that an emergency situation exists, a
6 peace officer shall not be required to knock and announce his or
7 her presence before entering, installing, and using any electronic
8 amplifying or recording devices.

9 (e) If the determination is made by a designated peace officer
10 described in subdivision (c) that an emergency situation exists and
11 ~~communications are overheard~~ *an eavesdropping device has been*
12 *deployed*, an application for an order approving the eavesdropping
13 shall be made within 48 hours of the beginning of the
14 eavesdropping and shall comply with the requirements of Section
15 629.50. A court may grant an application authorizing the use of
16 electronic amplifying or recording devices to eavesdrop *on* and
17 record otherwise confidential oral communications in barricade
18 or ~~hostages~~ *hostage* situations where there is probable cause to
19 believe that an individual is committing, has committed, or is about
20 to commit an offense listed in Section 2516(2) of Title 18 of the
21 United States Code.

22 (f) The contents of any oral communications overheard pursuant
23 to this section shall be recorded on tape or other comparable device.
24 The recording of the contents shall be done so as to protect the
25 recording from editing or other alterations.

26 (g) For purposes of this section, a “barricading” occurs when a
27 ~~person establishes an area from which others are excluded.~~ *person*
28 *refuses to come out from a covered or enclosed position.*
29 *Barricading also occurs when a person is held against his or her*
30 *will and the captor has not made a demand.*

31 (h) *For purposes of this section, a “hostage situation” occurs*
32 *when a person is held against his or her will and the captor has*
33 *made a demand.*

34 ~~(h)~~

35 (i) A judge shall not grant an application made pursuant to this
36 section in anticipation that an emergency situation will arise. A
37 judge shall grant an application authorizing the use of electronic
38 amplifying or recording devices to eavesdrop *on* and record
39 otherwise confidential oral communications in barricade or
40 ~~hostages~~ *hostage* situations where there is probable cause to believe

1 that an individual is committing, has committed, or is about to
2 commit an offense listed in Section 2516(2) of Title 18 of the
3 United States Code, and only if the peace officer has fully complied
4 with the requirements of this section. If an application is granted
5 pursuant to this section, an inventory shall be served pursuant to
6 Section 629.68.

7 (i)

8 (j) This section does not require that a peace officer designated
9 pursuant to subdivision (c) undergo training pursuant to Section
10 629.94.

11 (k) *A peace officer who has been designated pursuant to*
12 *subdivision (c) to use an eavesdropping device shall cease use of*
13 *the device upon the termination of the barricade or hostage*
14 *situation, or upon the denial by a judge of an application for an*
15 *order to approve the eavesdropping, whichever is earlier.*

16 (l) *Nothing in this section shall be deemed to affect the*
17 *admissibility or inadmissibility of evidence at trial.*