

Senate Bill No. 61

Passed the Senate September 8, 2011

Secretary of the Senate

Passed the Assembly September 7, 2011

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2011, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 629.62 and 629.98 of the Penal Code, relating to wiretapping.

LEGISLATIVE COUNSEL'S DIGEST

SB 61, Pavley. Wiretapping: authorization.

Existing law establishes a procedure for the application for, and issuance of, an order authorizing the interception of a wire, electronic pager, or electronic cellular telephone communication, as those terms are defined, and, among other things, establishes additional provisions regarding those interceptions for purposes of criminal proceedings. Existing law requires the Attorney General to prepare and submit an annual report to the Legislature, the Judicial Council, and the Director of the Administrative Office of the United States Court regarding these interceptions, as specified. The report is required to include, among other things, a general description of the interceptions made under the order or extension, including the approximate nature and frequency of incriminating communications intercepted, the approximate nature and frequency of other communications intercepted, the approximate number of persons whose communications were intercepted, and the approximate nature, amount, and cost of the manpower and other resources used in the interceptions. Existing law provides that a violation of these provisions is punishable as a misdemeanor with specified penalties, or as a felony. Existing law further provides that all of these provisions shall remain in effect until January 1, 2012.

This bill would extend the operation of these provisions until January 1, 2015. This bill would further revise the reporting requirement to require the report to include, among other things, a general description of the interceptions made under the order or extension, including the number of persons whose communications were intercepted, the number of communications intercepted, the percentage of incriminating communications intercepted and the percentage of other communications intercepted, and the approximate nature, amount, and cost of the manpower and other resources used in the interceptions.

By extending the operation of provisions of law creating a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

SECTION 1. Section 629.62 of the Penal Code is amended to read:

629.62. (a) The Attorney General shall prepare and submit an annual report to the Legislature, the Judicial Council, and the Director of the Administrative Office of the United States Court on interceptions conducted under the authority of this chapter during the preceding year. Information for this report shall be provided to the Attorney General by any prosecutorial agency seeking an order pursuant to this chapter.

(b) The report shall include all of the following data:

- (1) The number of orders or extensions applied for.
- (2) The kinds of orders or extensions applied for.
- (3) The fact that the order or extension was granted as applied for, was modified, or was denied.
- (4) The number of wire or electronic communication devices that are the subject of each order granted.
- (5) The period of interceptions authorized by the order, and the number and duration of any extensions of the order.
- (6) The offense specified in the order or application, or extension of an order.
- (7) The identity of the applying law enforcement officer and agency making the application and the person authorizing the application.
- (8) The nature of the facilities from which or the place where communications were to be intercepted.
- (9) A general description of the interceptions made under the order or extension, including (A) the number of persons whose communications were intercepted, (B) the number of communications intercepted, (C) the percentage of incriminating

communications intercepted and the percentage of other communications intercepted, and (D) the approximate nature, amount, and cost of the manpower and other resources used in the interceptions.

(10) The number of arrests resulting from interceptions made under the order or extension, and the offenses for which arrests were made.

(11) The number of trials resulting from the interceptions.

(12) The number of motions to suppress made with respect to the interceptions, and the number granted or denied.

(13) The number of convictions resulting from the interceptions and the offenses for which the convictions were obtained and a general assessment of the importance of the interceptions.

(14) Except with regard to the initial report required by this section, the information required by paragraphs (9) to (13), inclusive, with respect to orders or extensions obtained in a preceding calendar year.

(15) The date of the order for service of inventory made pursuant to Section 629.68, confirmation of compliance with the order, and the number of notices sent.

(16) Other data that the Legislature, the Judicial Council, or the Director of the Administrative Office shall require.

(c) The annual report shall be filed no later than April of each year, and shall also include a summary analysis of the data reported pursuant to subdivision (b). The Attorney General may issue regulations prescribing the content and form of the reports required to be filed pursuant to this section by any prosecutorial agency seeking an order to intercept wire or electronic communications.

(d) The Attorney General shall, upon the request of an individual making an application, provide any information known to him or her as a result of these reporting requirements that would enable the individual making an application to comply with paragraph (6) of subdivision (a) of Section 629.50.

SEC. 2. Section 629.98 of the Penal Code is amended to read:

629.98. This chapter shall remain in effect only until January 1, 2015, and as of that date is repealed.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or

infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2011

Governor