

Senate Bill No. 1016

CHAPTER 971

An act to amend Sections 629, 629.02, 629.06, 629.08, 629.10, 629.32, 629.38, 629.44, and 629.48 of, and to add and repeal Chapter 1.4 (commencing with Section 629.50) of Title 15 of Part 1 of, the Penal Code, relating to wiretapping.

[Approved by Governor October 16, 1995. Filed
with Secretary of State October 16, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1016, Boatwright. Electronic surveillance.

(1) Existing law governs until January 1, 1999, the interception of wire communications by law enforcement officers investigating certain controlled substance violations under specified judicial authorization procedures. Specifically, it allows a judge, upon application, to authorize interception of wire communications if he or she determines, among other things, that probable cause exists to believe that an individual is committing, has committed, or is about to commit one of various specified offenses involving controlled substances, or conspiring to commit any of those crimes.

This bill instead would allow a judge to authorize interception of wire, electronic digital pager, or electronic cellular telephone communications, from January 1, 1996, to December 31, 1997, and only wire communications from January 1 to December 31, 1998, if he or she determines, among other things, that probable cause exists to believe that an individual is committing, has committed, or is about to commit any controlled substance offense specified above or murder, solicitation to commit murder, the commission of a crime involving the bombing of public or private property, or aggravated kidnapping, or conspiring to commit any of those crimes.

(2) Existing law provides that every order authorizing the interception of a communication shall contain a provision that the authorization to intercept shall be executed as soon as practicable and shall be conducted so as to minimize the interception of communications not otherwise subject to interception.

This bill would provide that, in the event the intercepted communication is in a foreign language, an interpreter of that foreign language may assist peace officers in executing the authorization provided in this bill, provided that the interpreter has the same training as any other authorized interceptor and provided that the interception shall be conducted so as to minimize the interception of communications not otherwise subject to interception under this bill.

(3) Existing law requires specified written reports to be made to the judge who issued the order authorizing interception at least every 72 hours.

This bill would provide that the reports shall be made by any reasonable and reliable means, as determined by the judge.

(4) Existing law specifies those provisions which are not to be construed as prohibiting a peace officer from intercepting a communication pursuant to a properly issued order, rendering inadmissible in any criminal proceeding in a court or before a grand jury any evidence obtained by means of a properly issued order, or prohibiting the disclosure of the contents of any communication properly obtained by authorized means.

This bill would specify additional provisions for this purpose.

(5) Existing law provides that the Attorney General shall set minimum standards for certification and periodic recertification of investigative or law enforcement officers as eligible to apply for orders authorizing the interception of private communications, to conduct interceptions, and to use the communications or evidence derived from them in official proceedings.

This bill would add to this list of eligible persons those persons needed to provide linguistic interpretation who are designated by the Attorney General or the district attorney and are supervised by an investigative or law enforcement officer.

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

SECTION 1. Section 629 of the Penal Code is amended to read:

629. Each application for an order authorizing the interception of a wire communication shall be made in writing upon the personal oath or affirmation of the Attorney General, Chief Deputy Attorney General, or Chief Assistant Attorney General, Criminal Law Division, or of a district attorney, to the presiding judge of the superior court or one other judge designated by the presiding judge. Each application shall include all of the following information:

(a) The identity of the investigative or law enforcement officer making the application, and the officer authorizing the application.

(b) The identity of the law enforcement agency that is to execute the order.

(c) A statement attesting to a review of the application and the circumstances in support thereof by the chief executive officer, or his or her designee, of the law enforcement agency making the application. This statement shall name the chief executive officer or the designee who effected this review.

(d) A full and complete statement of the facts and circumstances relied upon by the applicant to justify his or her belief that an order should be issued, including (1) details as to the particular offense that has been, is being, or is about to be committed, (2) the fact that



conventional investigative techniques had been tried and were unsuccessful, or why they reasonably appear to be unlikely to succeed or to be too dangerous, (3) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (4) a particular description of the type of communication sought to be intercepted, and (5) the identity, if known, of the person committing the offense and whose communications are to be intercepted, or if that person's identity is not known, then the information relating to the person's identity that is known to the applicant.

(e) A statement of the period of time for which the interception is required to be maintained, and if the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of the facts establishing probable cause to believe that additional communications of the same type will occur thereafter.

(f) A full and complete statement of the facts concerning all previous applications known, to the individual authorizing and to the individual making the application, to have been made to any judge of a state or federal court for authorization to intercept wire communications involving any of the same persons, facilities, or places specified in the application, and the action taken by the judge on each of those applications.

(g) If the application is for the extension of an order, a statement setting forth the number of communications intercepted pursuant to the original order, and the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain results.

The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

SEC. 2. Section 629.02 of the Penal Code is amended to read:

629.02. Upon application made under Section 629, the judge may enter an ex parte order, as requested or modified, authorizing interception of wire communications within the territorial jurisdiction of the court in which the judge is sitting, if the judge determines, on the basis of the facts submitted by the applicant, all of the following:

(a) There is probable cause to believe that an individual is committing, has committed, or is about to commit, one of the following offenses:

(1) Importation, possession for sale, transportation, manufacture, or sale of controlled substances in violation of Section 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code with respect to a substance containing heroin, cocaine, PCP, methamphetamine, or their analogs where the substance



exceeds 10 gallons by liquid volume or three pounds of solid substance by weight.

(2) Murder, solicitation to commit murder, the commission of a crime involving the bombing of public or private property, or aggravated kidnapping, as specified in Section 209.

(3) Conspiracy to commit any of the above-mentioned crimes.

(b) There is probable cause to believe that particular communications concerning the illegal activities will be obtained through that interception.

(c) There is probable cause to believe that the facilities from which, or the place where, the wire communications are to be intercepted are being used, or are about to be used, in connection with the commission of the offense, or are leased to, listed in the name of, or commonly used by the person whose communications are to be intercepted, including, but not limited to, communications that may be utilized for locating or rescuing a kidnap victim.

(d) Normal investigative procedures have been tried and have failed or reasonably appear either to be unlikely to succeed if tried or to be too dangerous.

SEC. 3. Section 629.06 of the Penal Code is amended to read:

629.06. (a) Upon informal application by the Attorney General, Chief Deputy Attorney General, or Chief Assistant Attorney General, Criminal Law Division, or a district attorney, the presiding judge of the superior court or one other judge designated by the presiding judge may grant oral approval for an interception, without an order, if he or she determines all of the following:

(1) There are grounds upon which an order could be issued under this chapter.

(2) There is probable cause to believe that an emergency situation exists with respect to the investigation of an offense enumerated in this chapter.

(3) There is probable cause to believe that a substantial danger to life or limb exists justifying the authorization for immediate interception of a private wire communication before an application for an order could with due diligence be submitted and acted upon.

(b) Approval for an interception under this section shall be conditioned upon filing with the judge, within 48 hours of the oral approval, a written application for an order which, if granted consistent with this chapter, shall also recite the oral approval under this subdivision and be retroactive to the time of the oral approval.

SEC. 4. Section 629.08 of the Penal Code is amended to read:

629.08. No order entered under this chapter shall authorize the interception of any wire communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than 30 days. Extensions of an order may be granted, but only upon application for an extension made in accordance with Section 629 and upon the court making findings required by Section



629.02. The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event any longer than 30 days. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this chapter, and shall terminate upon attainment of the authorized objective, or in any event at the time expiration of the term designated in the order or any extensions. In the event the intercepted communication is in a foreign language, an interpreter of that foreign language may assist peace officers in executing the authorization provided in this chapter, provided that the interpreter has the same training as any other interceptor authorized under this chapter and provided that the interception shall be conducted so as to minimize the interception of communications not otherwise subject to interception under this chapter.

SEC. 5. Section 629.10 of the Penal Code is amended to read:

629.10. Whenever an order authorizing an interception is entered, the order shall require reports in writing or otherwise to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective, or a satisfactory explanation for its lack, and the need for continued interception. If the judge finds that such progress has not been made, that the explanation for its lack is not satisfactory, or that no need exists for continued interception, he or she shall order that the interception immediately terminate. The reports shall be made at the intervals that the judge may require, but not less than one for each period of 72 hours and shall be made by any reasonable and reliable means, as determined by the judge.

SEC. 6. Section 629.32 of the Penal Code is amended to read:

629.32. (a) If a peace officer, while engaged in intercepting wire communications in the manner authorized by this chapter, intercepts wire communications relating to crimes other than those specified in the order of authorization, but which are enumerated in subdivision (a) of Section 629.02, (1) the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in Sections 629.24 and 629.26 and (2) the contents and any evidence derived therefrom may be used under Section 629.28 when authorized by a judge if the judge finds upon subsequent application, that the contents were otherwise intercepted in accordance with the provisions of this chapter. The application shall be made as soon as practicable.

(b) If a peace officer, while engaged in intercepting wire communications in the manner authorized by this chapter, intercepts wire communications relating to crimes other than those specified in the order of authorization, the contents thereof, and



evidence derived therefrom, may not be disclosed or used as provided in Sections 629.24 and 629.26, except to prevent the commission of a public offense. The contents and any evidence derived therefrom may not be used under Section 629.28, except where the evidence was obtained through an independent source or inevitably would have been discovered, and the use is authorized by a judge who finds that the contents were intercepted in accordance with this chapter.

(c) The use of the contents of an intercepted wire communication relating to crimes other than that specified in the order of authorization to obtain a search or arrest warrant entitles the person named in the warrant to notice of the intercepted wire communication and a copy of the contents thereof which were used to obtain the warrant.

SEC. 7. Section 629.38 of the Penal Code is amended to read:

629.38. Nothing in Section 631, 632, 632.5, 632.6, or 632.7 shall be construed as prohibiting any peace officer from intercepting any wire communication pursuant to an order issued in accordance with the provisions of this chapter. Nothing in Section 631, 632, 632.5, 632.6, or 632.7 shall be construed as rendering inadmissible in any criminal proceeding in any court or before any grand jury any evidence obtained by means of an order issued in accordance with the provisions of this chapter. Nothing in Section 637 shall be construed as prohibiting the disclosure of the contents of any wire communication obtained by any means authorized by this chapter, if the disclosure is authorized by this chapter. Nothing in this chapter shall apply to any conduct authorized by Section 633.

SEC. 8. Section 629.44 of the Penal Code is amended to read:

629.44. (a) The Commission on Peace Officer Standards and Training, in consultation with the Attorney General, shall establish a course of training in the legal, practical, and technical aspects of the interception of private wire communications and related investigative techniques.

(b) The Attorney General shall set minimum standards for certification and periodic recertification of the following persons as eligible to apply for orders authorizing the interception of private wire communications, to conduct the interceptions, and to use the communications or evidence derived from them in official proceedings:

(1) Investigative or law enforcement officers.

(2) Other persons, when necessary, to provide linguistic interpretation who are designated by the Attorney General, Chief Deputy Attorney General, or Chief Assistant Attorney General, Criminal Law Division, or the district attorney and are supervised by an investigative or law enforcement officer.

(c) The Commission on Peace Officer Standards and Training may charge a reasonable enrollment fee for those students who are



employed by an agency not eligible for reimbursement by the commission to offset the costs of the training. The Attorney General may charge a reasonable fee to offset the cost of certification.

SEC. 9. Section 629.48 of the Penal Code is amended to read:

629.48. (a) This chapter shall remain in effect only until January 1, 1999, and as of that date is repealed.

(b) The operation of this chapter shall be suspended from January 1, 1996, to December 31, 1997, during which period the provisions of Chapter 1.4 (commencing with Section 629.50) shall instead be operative.

(c) The operation of this chapter shall resume on January 1, 1998, subject to subdivision (a), and as of that date Chapter 1.4 (commencing with Section 629.50) is repealed.

SEC. 10. Chapter 1.4 (commencing with Section 629.50) is added to Title 15 of Part 1 of the Penal Code, to read:

CHAPTER 1.4. INTERCEPTION OF WIRE, ELECTRONIC DIGITAL PAGER,
OR ELECTRONIC CELLULAR TELEPHONE COMMUNICATIONS

629.50. Each application for an order authorizing the interception of a wire, electronic digital pager, or electronic cellular telephone communication shall be made in writing upon the personal oath or affirmation of the Attorney General, Chief Deputy Attorney General, or Chief Assistant Attorney General, Criminal Law Division, or of a district attorney, to the presiding judge of the superior court or one other judge designated by the presiding judge. Each application shall include all of the following information:

(a) The identity of the investigative or law enforcement officer making the application, and the officer authorizing the application.

(b) The identity of the law enforcement agency that is to execute the order.

(c) A statement attesting to a review of the application and the circumstances in support thereof by the chief executive officer, or his or her designee, of the law enforcement agency making the application. This statement shall name the chief executive officer or the designee who effected this review.

(d) A full and complete statement of the facts and circumstances relied upon by the applicant to justify his or her belief that an order should be issued, including (1) details as to the particular offense that has been, is being, or is about to be committed, (2) the fact that conventional investigative techniques had been tried and were unsuccessful, or why they reasonably appear to be unlikely to succeed or to be too dangerous, (3) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (4) a particular description of the type of communication sought to be intercepted, and (5) the identity, if known, of the person committing the offense and whose



communications are to be intercepted, or if that person's identity is not known, then the information relating to the person's identity that is known to the applicant.

(e) A statement of the period of time for which the interception is required to be maintained, and if the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of the facts establishing probable cause to believe that additional communications of the same type will occur thereafter.

(f) A full and complete statement of the facts concerning all previous applications known, to the individual authorizing and to the individual making the application, to have been made to any judge of a state or federal court for authorization to intercept wire, electronic digital pager, or electronic cellular telephone communications involving any of the same persons, facilities, or places specified in the application, and the action taken by the judge on each of those applications.

(g) If the application is for the extension of an order, a statement setting forth the number of communications intercepted pursuant to the original order, and the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain results.

The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

629.51. For the purposes of this chapter, the following terms have the following meanings:

(a) "Electronic digital pager communication" means any tone or digital display or tone and voice pager communication.

(b) "Electronic cellular telephone communication" means any cellular or cordless radio telephone communication.

629.52. Upon application made under Section 629.50, the judge may enter an ex parte order, as requested or modified, authorizing interception of wire, electronic digital pager, or electronic cellular telephone communications within the territorial jurisdiction of the court in which the judge is sitting, if the judge determines, on the basis of the facts submitted by the applicant, all of the following:

(a) There is probable cause to believe that an individual is committing, has committed, or is about to commit, one of the following offenses:

(1) Importation, possession for sale, transportation, manufacture, or sale of controlled substances in violation of Section 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code with respect to a substance containing heroin, cocaine, PCP, methamphetamine, or their analogs where the substance exceeds 10 gallons by liquid volume or three pounds of solid substance by weight.



(2) Murder, solicitation to commit murder, the commission of a crime involving the bombing of public or private property, or aggravated kidnapping, as specified in Section 209.

(3) Conspiracy to commit any of the above-mentioned crimes.

(b) There is probable cause to believe that particular communications concerning the illegal activities will be obtained through that interception, including, but not limited to, communications that may be utilized for locating or rescuing a kidnap victim.

(c) There is probable cause to believe that the facilities from which, or the place where, the wire, electronic digital pager, or electronic cellular telephone communications are to be intercepted are being used, or are about to be used, in connection with the commission of the offense, or are leased to, listed in the name of, or commonly used by the person whose communications are to be intercepted.

(d) Normal investigative procedures have been tried and have failed or reasonably appear either to be unlikely to succeed if tried or to be too dangerous.

629.54. Each order authorizing the interception of any wire, electronic digital pager, or electronic cellular telephone communication shall specify all of the following:

(a) The identity, if known, of the person whose communications are to be intercepted, or if the identity is not known, then that information relating to the person's identity known to the applicant.

(b) The nature and location of the communication facilities as to which, or the place where, authority to intercept is granted.

(c) A particular description of the type of communication sought to be intercepted, and a statement of the illegal activities to which it relates.

(d) The identity of the agency authorized to intercept the communications and of the person making the application.

(e) The period of time during which the interception is authorized including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

629.56. (a) Upon informal application by the Attorney General, Chief Deputy Attorney General, or Chief Assistant Attorney General, Criminal Law Division, or a district attorney, the presiding judge of the superior court or one other judge designated by the presiding judge may grant oral approval for an interception, without an order, if he or she determines all of the following:

(1) There are grounds upon which an order could be issued under this chapter.

(2) There is probable cause to believe that an emergency situation exists with respect to the investigation of an offense enumerated in this chapter.



(3) There is probable cause to believe that a substantial danger to life or limb exists justifying the authorization for immediate interception of a private wire, electronic digital pager, or electronic cellular telephone communication before an application for an order could with due diligence be submitted and acted upon.

(b) Approval for an interception under this section shall be conditioned upon filing with the judge, within 48 hours of the oral approval, a written application for an order which, if granted consistent with this chapter, shall also recite the oral approval under this subdivision and be retroactive to the time of the oral approval.

629.58. No order entered under this chapter shall authorize the interception of any wire, electronic digital pager, or electronic cellular telephone communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than 30 days. Extensions of an order may be granted, but only upon application for an extension made in accordance with Section 629.50 and upon the court making findings required by Section 629.52. The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event any longer than 30 days. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted so as to minimize the interception of communications not otherwise subject to interception under this chapter, and shall terminate upon attainment of the authorized objective, or in any event at the time expiration of the term designated in the order or any extensions. In the event the intercepted communication is in a foreign language, an interpreter of that foreign language may assist peace officers in executing the authorization provided in this chapter, provided that the interpreter has the same training as any other interceptor authorized under this chapter and provided that the interception shall be conducted so as to minimize the interception of communications not otherwise subject to interception under this chapter.

629.60. Whenever an order authorizing an interception is entered, the order shall require reports in writing or otherwise to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective, or a satisfactory explanation for its lack, and the need for continued interception. If the judge finds that progress has not been made, that the explanation for its lack is not satisfactory, or that no need exists for continued interception, he or she shall order that the interception immediately terminate. The reports shall be made at the intervals that the judge may require, but not less than one for each period of 72 hours, and shall be made by any reasonable and reliable means, as determined by the judge.



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 period of interceptions authorized by the order, and the number and duration of any extensions of the order.

(5) The offense specified in the order or application, or extension of an order.

(6) The identity of the applying law enforcement officer and agency making the application and the person authorizing the application.

(7) The nature of the facilities from which or the place where communications were to be intercepted.

(8) A general description of the interceptions made under the order or extension, including (A) the approximate nature and frequency of incriminating communications intercepted, (B) the approximate nature and frequency of other communications intercepted, (C) the approximate number of persons whose communications were intercepted, and (D) the approximate nature, amount, and cost of the manpower and other resources used in the interceptions.

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

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

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

(12) 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.

(13) Except with regard to the initial report required by this section, the information required by paragraphs (8) to (12), inclusive, with respect to orders or extensions obtained in a preceding calendar year.

(14) 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, electronic digital pager, or electronic cellular telephone communications.

629.64. The contents of any wire or oral communication intercepted by any means authorized by this chapter shall, if possible, be recorded on tape or other comparable device. The recording of the contents of any wire or electronic cellular telephone communication pursuant to this chapter shall be done in a way that will protect the recording from editing or other alterations and ensure that the audiotape recording can be immediately verified as to its authenticity and originality and that any alteration can be immediately detected. In addition, the monitoring or recording device shall be of a type and shall be installed to preclude any interruption or monitoring of the interception by any unauthorized means. Immediately upon the expiration of the period of the order, or extensions thereof, the recordings shall be made available to the judge issuing the order and sealed under his or her directions. Custody of the recordings shall be where the judge orders. They shall not be destroyed except upon an order of the issuing or denying judge and in any event shall be kept for 10 years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of Sections 629.74 and 629.76 for investigations. The presence of the seal provided for by this section, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire or electronic cellular telephone communication or evidence derived therefrom under Section 629.78.

629.66. Applications made and orders granted pursuant to this chapter shall be sealed by the judge. Custody of the applications and orders shall be where the judge orders. The applications and orders shall be disclosed only upon a showing of good cause before a judge and shall not be destroyed except on order of the issuing or denying judge, and in any event shall be kept for 10 years.

629.68. Within a reasonable time, but no later than 90 days, after the termination of the period of an order or extensions thereof, or after the filing of an application for an order of approval under Section 629.56 which has been denied, the issuing judge shall cause to be served upon persons named in the order or the application, and other known parties to intercepted communications, an inventory which shall include notice of all of the following:

- (a) The fact of the entry of the order.
- (b) The date of the entry and the period of authorized interception.
- (c) The fact that during the period wire, electronic digital pager, or electronic cellular telephone communications were or were not intercepted.



The judge, upon filing of a motion, may, in his or her discretion, make available to the person or his or her counsel for inspection the portions of the intercepted communications, applications, and orders that the judge determines to be in the interest of justice. On an ex parte showing of good cause to a judge, the serving of the inventory required by this section may be postponed. The period of postponement shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted.

629.70. The contents of any intercepted wire, electronic digital pager, or electronic cellular telephone communication or evidence derived from it shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding, except a grand jury proceeding, unless each party, not less than 10 days before the trial, hearing, or proceeding, has been furnished with a transcript of the contents of the interception and with a copy of the court order and accompanying application under which the interception was authorized. This 10-day period may be waived by the judge if he or she finds that it was not possible to furnish the party with the above information 10 days before the trial, hearing, or proceeding, and that the party will not be prejudiced by the delay in receiving that information.

629.72. Any person in any trial, hearing, or proceeding, may move to suppress some or all of the contents of any intercepted wire, electronic digital pager, or electronic cellular telephone communications, or evidence derived therefrom, only on the basis that the contents or evidence were obtained in violation of the Fourth Amendment of the United States Constitution or of this chapter. The motion shall be made, determined, and be subject to review in accordance with the procedures set forth in Section 1538.5.

629.74. The Attorney General, any Deputy Attorney General, district attorney, or deputy district attorney, or any peace officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire, electronic digital pager, or electronic cellular telephone communication, or evidence derived therefrom, may disclose the contents to one of the individuals referred to in this section and to any investigative or law enforcement officer as defined in subdivision (7) of Section 2510 of Title 18 of the United States Code to the extent that the disclosure is permitted pursuant to Section 629.82 and is appropriate to the proper performance of the official duties of the individual making or receiving the disclosure. No other disclosure, except to a grand jury, of intercepted information is permitted prior to a public court hearing by any person regardless of how the person may have come into possession thereof.

629.76. The Attorney General, any Deputy Attorney General, district attorney, or deputy district attorney, or any peace officer who, by any means authorized by this chapter, has obtained



knowledge of the contents of any wire, electronic digital pager, or electronic cellular telephone communication, or evidence derived therefrom may use the contents or evidence to the extent the use is appropriate to the proper performance of his or her official duties and is permitted pursuant to Section 629.82.

629.78. Any person who has received, by any means authorized by this chapter, any information concerning a wire, electronic digital pager, or electronic cellular telephone communication, or evidence derived therefrom, intercepted in accordance with the provisions of this chapter, may, pursuant to Section 629.82, disclose the contents of that communication or derivative evidence while giving testimony under oath or affirmation in any criminal court proceeding or in any grand jury proceeding.

629.80. No otherwise privileged wire, electronic digital pager, or electronic cellular telephone communication intercepted in accordance with, or in violation of, the provisions of this chapter shall lose its privileged character. When a peace officer, while engaged in intercepting wire, electronic digital pager, or electronic cellular telephone communications in the manner authorized by this chapter, intercepts wire, electronic digital pager, or electronic cellular telephone communications that are of a privileged nature he or she shall immediately cease the interception for at least two minutes. After a period of at least two minutes, interception may be resumed for up to 30 seconds during which time the officer shall determine if the nature of the communications is still privileged. If still of a privileged nature, the officer shall again cease interception for at least two minutes, after which the officer may again resume interception for up to 30 seconds to redetermine the nature of the communication. The officer shall continue to go on-line and off-line in this manner until the time that the communication is no longer privileged or the communication ends. The recording device shall be metered so as to authenticate upon review that interruptions occurred as set forth in this chapter.

629.82. (a) If a peace officer, while engaged in intercepting wire, electronic digital pager, or electronic cellular telephone communications in the manner authorized by this chapter, intercepts wire, electronic digital pager, or electronic cellular telephone communications relating to crimes other than those specified in the order of authorization, but which are enumerated in subdivision (a) of Section 629.52, (1) the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in Sections 629.74 and 629.76 and (2) the contents and any evidence derived therefrom may be used under Section 629.78 when authorized by a judge if the judge finds upon subsequent application, that the contents were otherwise intercepted in accordance with the provisions of this chapter. The application shall be made as soon as practicable.



(b) If a peace officer, while engaged in intercepting wire, electronic digital pager, or electronic cellular telephone communications in the manner authorized by this chapter, intercepts wire, electronic digital pager, or electronic cellular telephone communications relating to crimes other than those specified in the order of authorization, the contents thereof, and evidence derived therefrom, may not be disclosed or used as provided in Sections 629.74 and 629.76, except to prevent the commission of a public offense. The contents and any evidence derived therefrom may not be used under Section 629.78, except where the evidence was obtained through an independent source or inevitably would have been discovered, and the use is authorized by a judge who finds that the contents were intercepted in accordance with this chapter.

(c) The use of the contents of an intercepted wire, electronic digital pager, or electronic cellular telephone communication relating to crimes other than that specified in the order of authorization to obtain a search or arrest warrant entitles the person named in the warrant to notice of the intercepted wire, electronic digital pager, or electronic cellular telephone communication and a copy of the contents thereof which were used to obtain the warrant.

629.84. Any violation of this chapter is punishable by a fine not exceeding two thousand five hundred dollars (\$2,500), or by imprisonment in the county jail not exceeding one year, or by imprisonment in the state prison, or by both such fine and imprisonment in the county jail or in the state prison.

629.86. Any person whose wire, electronic digital pager, or electronic cellular telephone communication is intercepted, disclosed, or used in violation of this chapter shall have the following remedies:

(a) Have a civil cause of action against any person who intercepts, discloses, or uses, or procures any other person to intercept, disclose, or use, the communications.

(b) Be entitled to recover, in that action, all of the following:

(1) Actual damages but not less than liquidated damages computed at the rate of one hundred dollars (\$100) a day for each day of violation or one thousand dollars (\$1,000), whichever is greater.

(2) Punitive damages.

(3) Reasonable attorney's fees and other litigation costs reasonably incurred.

A good faith reliance on a court order is a complete defense to any civil or criminal action brought under this chapter, or under Chapter 1.5 (commencing with Section 630) or any other law.

629.88. Nothing in Section 631, 632.5, 632.6, or 632.7 shall be construed as prohibiting any peace officer from intercepting any wire, electronic digital pager, or electronic cellular telephone communication pursuant to an order issued in accordance with the



provisions of this chapter. Nothing in Section 631, 632.5, 632.6, or 632.7 shall be construed as rendering inadmissible in any criminal proceeding in any court or before any grand jury any evidence obtained by means of an order issued in accordance with the provisions of this chapter. Nothing in Section 637 shall be construed as prohibiting the disclosure of the contents of any wire, electronic digital pager, or electronic cellular telephone communication obtained by any means authorized by this chapter, if the disclosure is authorized by this chapter. Nothing in this chapter shall apply to any conduct authorized by Section 633.

629.89. No order issued pursuant to this chapter shall either directly or indirectly authorize covert entry into or upon the premises of a residential dwelling, hotel room, or motel room for installation or removal of any interception device or for any other purpose. Notwithstanding that this entry is otherwise prohibited by any other section or code, this chapter expressly prohibits covert entry of a residential dwelling, hotel room, or motel room to facilitate an order to intercept wire, electronic digital pager, or electronic cellular telephone communications.

629.90. An order authorizing the interception of a wire, electronic digital pager, or electronic cellular telephone communication shall direct, upon request of the applicant, that a public utility engaged in the business of providing communications services and facilities, a landlord, custodian, or any other person furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services which the public utility, landlord, custodian, or other person is providing the person whose communications are to be intercepted. Any such public utility, landlord, custodian, or other person furnishing facilities or technical assistance shall be fully compensated by the applicant for the reasonable costs of furnishing the facilities and technical assistance.

629.91. A good faith reliance on a court order issued in accordance with this chapter by any public utility, landlord, custodian, or any other person furnishing information, facilities, and technical assistance as directed by the order is a complete defense to any civil or criminal action brought under this chapter, Chapter 1.5 (commencing with Section 630), or any other law.

629.92. Notwithstanding any other provision of law, any court to which an application is made in accordance with this chapter may take any evidence, make any finding, or issue any order required to conform the proceedings or the issuance of any order of authorization or approval to the provisions of the Constitution of the United States, any law of the United States, or this chapter.

629.94. (a) The Commission on Peace Officer Standards and Training, in consultation with the Attorney General, shall establish



a course of training in the legal, practical, and technical aspects of the interception of private wire, electronic digital pager, or electronic cellular telephone communications and related investigative techniques.

(b) The Attorney General shall set minimum standards for certification and periodic recertification of the following persons as eligible to apply for orders authorizing the interception of private wire, electronic digital pager, or electronic cellular telephone communications, to conduct the interceptions, and to use the communications or evidence derived from them in official proceedings:

(1) Investigative or law enforcement officers.

(2) Other persons, when necessary, to provide linguistic interpretation who are designated by the Attorney General, Chief Deputy Attorney General, or Chief Assistant Attorney General, Criminal Law Division, or the district attorney and are supervised by an investigative or law enforcement officer.

(c) The Commission on Peace Officer Standards and Training may charge a reasonable enrollment fee for those students who are employed by an agency not eligible for reimbursement by the commission to offset the costs of the training. The Attorney General may charge a reasonable fee to offset the cost of certification.

629.96. If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the chapter, and the application of its provisions to other persons or circumstances, shall not be affected thereby.

629.98. This chapter shall remain in effect only until January 1, 1998, and as of that date is repealed.

