

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

SB 918 (Umberg)  
Version: March 18, 2024  
Hearing Date: April 30, 2024  
Fiscal: No  
Urgency: No  
AWM

**SUBJECT**

Law enforcement liaisons: search warrants

**DIGEST**

This bill requires social media platforms, as defined, with one million or more discrete monthly users to make a law enforcement liaison available by telephone and immediately respond to search warrants, as specified.

**EXECUTIVE SUMMARY**

Evidence shows that social media platforms have become an increasingly popular avenue for the distribution and sale of illegal drugs, especially to younger generations. This includes fentanyl, a synthetic opioid that is 50 to 100 times stronger than morphine. The Drug Enforcement Administration (DEA) has warned about the threat of drug trafficking on social media platforms to adolescents and young adults.

Recent laws have required more transparency from social media platforms about their policies and required them to report quantitative data on their content moderation efforts. According to the author, however, social media platforms are still not reliably responding to notifications from users and law enforcement about drug dealers on the platforms, allowing drug dealers to continue to sell illicit drugs on the platform for weeks or months after being made aware of the illegal conduct.

This bill requires social media platforms, as defined, with one million discrete monthly users to have a law enforcement liaison available by phone at all times for the purpose of receiving, and responding to, requests for information from law enforcement; and to immediately comply with a search warrant when the subject of the search warrant is an account of a user on the platform. The author has agreed to amendments to clarify that the bill does not displace existing law relating to search warrants, which include procedures for obtaining information from electronic communication service providers and limitations relating to out-of-state warrants.

This bill is sponsored by the author and is supported by the Drug Induced Homicide Organization, the Orange County Sheriff's Department, and the Peace Officers' Research Association of California. This bill is opposed by ACLU California Action, the Electronic Frontier Foundation, and Internet.Works California.

### **PROPOSED CHANGES TO THE LAW**

Existing constitutional law:

- 1) Provides that the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and that no warrant shall issue without probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized. (U.S. Const., 4th amend.; Cal. Const., art. I, § 13.)

Existing law:

- 1) Defines "content" as statements or comments made by users and media that are created, posted, shared, or otherwise interacted with by users on an internet-based service or application; and excludes media put on a service or application exclusively for the purpose of cloud storage, transmitting files, or file collaboration. (Bus. & Prof. Code, § 22945(a)(1).)
- 2) Defines "controlled substance" as a drug, substance, or immediate precursor that is listed on one of the schedules in the Health and Safety Code. (Bus. & Prof. Code, § 22945(a)(2); Health & Saf. Code, §§ 11007, 11054-11058.)
- 3) Defines "social media platform" as a public or semipublic internet-based service or application that has users in California and that meets both of the following criteria:
  - a) A substantial function of the service or application is to connect users in order to allow users to interact socially with each other within the service or application.
    - i. A service or application that provides email or direct messaging services shall not be considered to meet this criterion on the basis of that function alone.
  - b) The service or application allows users to do all of the following:
    - i. Construct a public or semipublic profile for purposes of signing into and using the service.
    - ii. Populate a list of other users with whom an individual shares a social connection within the system.
    - iii. Create or post content viewable by others, including, but not limited to, on message boards, in chat rooms, or through a landing page or main feed that presents the users with content generated by others. (Bus. & Prof. Code, § 22945(a)(3).)

- 4) Provides that “public or semipublic internet-based service or application” excludes a service or application used to facilitate communication within a business or enterprise among employees or affiliates of the business or enterprise, provided that access to the service or application is restricted to employees or affiliates of the business enterprise using the service or application. (Bus. & Prof. Code, § 22945(a)(4).)
- 5) Requires a social media platform that operates in the state to create, and publicly post on the platform’s website, a policy statement that includes all of the following:
  - a) The social media platform’s policy on the use of the social media platform to illegally distribute a controlled substance.
  - b) A general description of the social media platform’s moderation practices that are employed to prevent users from posting or sharing electronic content pertaining to the illegal distribution of a controlled substance. The description shall not include any information that the platform believes might compromise operational efforts to identify prohibited content or user activity, or otherwise endanger user safety.
  - c) A link to mental health and drug education resources provided by governmental public health authorities.
  - d) A link to the social media platform’s reporting mechanism for illegal or harmful content or behavior on the platform, if one exists.
  - e) A general description of the social media platform’s policies and procedures for responding to law enforcement inquiries, including warrants, subpoenas, and other court orders compelling the production of or access to electronic communication information, as defined.
  - f) A general description of the social media platform’s policy on the retention of electronic communication information, as defined, including how long the platform retains that information.
  - g) A general description of the social media platform’s policy and procedures governing when a platform proactively shares relevant information pertaining to the illegal distribution of a controlled substance. (Bus. & Prof. Code, § 22945(b).)
- 6) Provides that the disclosures required in 5) may be posted separately or incorporated within another document or post, including, but not limited to, the terms of service or the community guidelines. (Bus. & Prof. Code, § 22945(c).)
- 7) Requires a person or entity operating a social media platform in the state to do all of the following:
  - a) Update the policy statement created pursuant to 5) as necessary.
  - b) Consider consulting with nonprofits, safety advocates, and survivors to assist in developing and supporting the policy statement created pursuant to 5).
  - c) Retain data on content on which it has taken action to take down or remove for a violation of a policy prohibiting the unlawful sale, distribution,

- amplification, or otherwise proliferation of controlled substances and related paraphernalia. A social media platform shall retain such content and the username of the violating account for a period of 90 days; except that the platform is not required to retain content removed in violation of the policy if there is a good faith belief that the content is related to the offering, seeking, or receiving of gender-affirming health care, gender-affirming mental care, or reproductive health care that is lawful under California law. (Bus. & Prof. Code, § 22945(d).)
- 8) Permits a person to seek an order requiring a social media platform to remove content that includes an offer to transport, import into the state, sell, furnish, administer, or give away a controlled substance in violation of specified state law.
    - a) If the platform has a reporting mechanism, the person must report the content and request that it be removed before seeking the order, and the court may not act upon the request until 48 hours have passed since the request was made.
    - b) If the platform does not have a reporting mechanism, the person may bring, and the court may act on, the action at any time.
    - c) The court shall award court costs and reasonable attorney's fees to a prevailing plaintiff. (Bus. & Prof. Code, § 22945.5.)
  - 9) Defines a "search warrant" as "an order in writing, in the name of the people, signed by a magistrate, directed to a peace officer, commanding them to search for a person or persons, a thing or things, or personal property, and, in the case of a thing or things or personal property, bring the same before the magistrate." (Pen. Code, § 1523.)
  - 10) Provides the specific grounds upon which a search warrant may be issued, including when the property or things to be seized consist of any item or constitute any evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony. (Pen. Code, § 1524.)
  - 11) Provides that a search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person to be searched or searched for, and particularly describing the property, thing, or things and the place to be searched. (Pen. Code, § 1525.)
  - 12) Requires a magistrate to issue a search warrant if they are satisfied of the existence of the grounds of the application or that there is probable cause to believe their existence. (Pen. Code, § 1529(a).)
  - 13) Establishes the Electronics Communications Privacy Act (CalEPCA), which addresses the production of access to electronic communications pursuant to a warrant. (Pen. Code, pt. 2, tit. 12, ch. 3.6, §§ 1546 et seq.)

14) Defines the following relevant terms:

- a) "Electronic communication" means the transfer of signs, signals, writings, images, sounds, data, or intelligence of any nature in whole or in part by a wire, radio, electromagnetic, photoelectric, or photo-optical system.
- b) "Electronic communication information" means any information about an electronic communication or the use of an electronic communication service, including, but not limited to, the contents, sender, recipients, format, or location of the sender or recipients at any point during the communication, the time or date the communication was created, sent, or received, or any information pertaining to any individual or device participating in the communication, including, but not limited to, an IP address; but does not include subscriber information.
- c) "Electronic communications service" means a service that provides to its subscribers or users the ability to send or receive electronic communications, including any service that acts as an intermediary in the transmission of electronic communications, or stored electronic communications.
- d) "Electronic device" means a device that stores, generates, or transmits information in electronic form; but does not include the magnetic strip on a driver's license or identification card.
- e) "Electronic device information" means any information stored or generated through the operation of an electronic device, including the current and prior locations of the device.
- f) "Electronic information" means electronic communication information or electronic device information.
- g) "Government entity" means a department or agency of the state or a political subdivision thereof, or an individual acting for or on behalf of the state or a political subdivision thereof.
- h) "Service provider" means a person or entity offering an electronic communication service.
- i) "Subscriber information" means the name, street address, telephone number, email address, or similar contact information provided by the subscriber to the service provider to establish and maintain an account or communication channel, a subscriber or account number or identifier, the length of service, and the types of services used by a user of or a subscriber to a service provider. (Pen. Code, § 1546.)

15) Sets forth the process by which a government entity may compel production of, or access to, electronic communication information and electronic device information, including through a warrant. (Pen. Code, §§ 1546.1, 1546.2.)

16) Provides that a person whose electronic information was obtained in violation of CalEPCA may move to suppress the electronic information at trial, as specified. (Pen. Code, § 1546.6.)

- 17) Requires a provider of an electronic communication service subject to CalECPA to maintain a law enforcement contact process that must do all of the following, at a minimum:
  - a) Provide a specific contact mechanism for law enforcement personnel.
  - b) Provide continual availability of the law enforcement contact process.
  - c) Provide a method to provide status updates to a requesting law enforcement agency on a request for assistance. (Pen. Code, § 1524.4(a), (b).)
  
- 18) Requires every covered service provider to file a statement with the Attorney General describing the law enforcement contact process maintained in 17), and to provide updates as soon as practicable after changing its process. (Pen. Code, § 1524.4(b)(3).)
  
- 19) Requires the Attorney General to consolidate the statements received pursuant to 18) into one discrete record and regularly make the record available to local law enforcement agencies. A statement filed or distributed pursuant to 17)-19) is confidential and shall not be disclosed pursuant to any state law, including the California Public Records Act (Gov. Code, div. 10, tit. 1, §§ 7920.000 et seq.). (Pen. Code, § 1524.4(c), (d).)

This bill:

- 1) Defines the following terms:
  - a) "Law enforcement agency" means a law enforcement agency in the state.
  - b) "Law enforcement liaison" means a natural person employed by a social media platform who serves as a point of contact with law enforcement agencies.
  - c) "Social media platform" has the same meaning as defined in Business and Professions Code section 22945.
  
- 2) Requires a social media platform to, at all times, make available by telephone to a law enforcement agency a law enforcement liaison for the purpose of receiving, and responding to, requests for information.
  
- 3) Requires a social media platform to immediately comply with a search warrant provided to a social media platform by a law enforcement agency if the subject of the search warrant is an account on the social media platform owned by a user of the social media platform.
  
- 4) Provides that 2)-3) do not apply to a social media platform with fewer than 1,000,000 discrete monthly users.

## COMMENTS

### 1. Author's comments

As a society, we bear a collective responsibility to care for the health and safety of our citizens. That responsibility extends to private companies. Social media companies find themselves in a unique position in terms of their monopolization of communication between people of all ages. With this in mind, companies and sites should be more proactive and aggressive in their enforcement of their terms of service, especially when it comes to prohibitions on drug sales.

SB 918 will help stop drug traffickers from using social media to distribute drugs and prevent unintentional overdoses. SB 918 will achieve this by requiring social media platforms to have a telephone hotline available at all times for law enforcement agencies to be able to timely request information. Social media sites must be more proactive and communicative in their enforcement of their terms of service, which should include being responsive to law enforcement agencies investigating crimes on their platforms. SB 918 also compels social media platforms to immediately comply with a search warrant provided by a law enforcement agency if the subject of the search warrant has an account on the social media platform.

### 2. The problem of drug sales on social media

According to the National Center for Health Statistics, 106,699 people died of drug-involved overdoses in 2021.<sup>1</sup> Over 80,000 of those deaths involved opioids, including fentanyl, a synthetic opioid.<sup>2</sup> By contrast, in 2010, there were approximately 40,000 drug-involved overdose deaths, 21,089 of which involved opioids.<sup>3</sup> “The primary driver of the opioid epidemic today is illicit fentanyl...[which] is up to 50 times more potent than heroin.”<sup>4</sup> Among teens aged 15-19, the death rate from unintentional drug overdose has more than doubled since 2015.<sup>5</sup>

Because of fentanyl's extreme potency, “imprecise dosing and a lack of quality controls increase the risk of a fatal overdose.”<sup>6</sup> Additionally, many individuals who take

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<sup>1</sup> National Institutes of Health, National Institute on Drug Abuse, Drug Overdose Death Rates (Jun. 30, 2023), <https://nida.nih.gov/research-topics/trends-statistics/overdose-death-rates>. All links in this analysis are current as of April 26, 2024

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> Commission on Combating Synthetic Opioid Trafficking, *Final Report* (Feb, 2022), p. ix.

<sup>5</sup> National Institutes of Health, National Institute on Drug Abuse, Unintentional Drug Overdose Death Rates Among US Youth Aged 15-19 (Dec. 13, 2023), <https://nida.nih.gov/research-topics/trends-statistics/infographics/unintentional-drug-overdose-death-rates-among-us-youth-aged-15-19>. The death rate as of Q4 2022, the most recent quarter for which there is data available, is lower than the Q2 2021 peak, but is still significantly higher than pre-pandemic rates. (*Ibid.*)

<sup>6</sup> *Id.* at p. xi.

fentanyl do not realize they are taking fentanyl; fentanyl is frequently present in counterfeit tablets represented as heroin or prescription medications.<sup>7</sup> The federal Drug Enforcement Administration (DEA) found that about four out of ten counterfeit pills it seized in 2021 contained lethal doses of fentanyl.<sup>8</sup>

Young people seeking pills need look no further than the social media apps on their smartphones. Large numbers of drug dealers now use social media apps – particularly those with encrypted or disappearing messages – to offer drugs and make sales.<sup>9</sup> Snapchat, a social media app with features that allow messages to disappear and to be locked with a password, has been particularly widely criticized for facilitating drug sales to minors over its platform,<sup>10</sup> but the DEA has identified other social media platforms – including Facebook, Instagram, and TikTok – that are also used for drug sales.<sup>11</sup> Drug dealers have been able to exploit the built-in features of these platforms, as well as inconsistent content moderation by the platforms, to the point that “gaining access to illicit drugs via social media...is nearly as convenient as using one’s phone to order a pizza or call an Uber.”<sup>12</sup>

Over the past few years, the Legislature has passed several measures attempting to encourage, or require, social media platforms to be more proactive about blocking or banning drug dealers from their sites.<sup>13</sup> Nevertheless, the author reports that social media platforms continue to allow known drug dealers to operate on their platforms long after they have been put on notice of the user’s illegal activity. Stakeholders also note that, because some social media platforms fail to retain records of communications on the platforms for long periods of time, time can be of the essence when obtaining information about drug activity from a platform.

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<sup>7</sup> *Ibid.*

<sup>8</sup> Hoffman, *Fentanyl Tainted Pills Bought on Social Media Cause Youth Drug Deaths to Soar*, N.Y. Times (May 19, 2022), available at <https://www.nytimes.com/2022/05/19/health/pills-fentanyl-social-media.html>.

<sup>9</sup> *Ibid.*; Whitehurst, *Group urges feds to investigate Snapchat over fentanyl sales*, L.A. Times (Dec. 22, 2022), available at <https://www.latimes.com/business/story/2022-12-23/group-urges-feds-investigate-snapchat-over-fentanyl-sales>.

<sup>10</sup> Mann, *Social media platforms face pressure to stop online drug dealers who target kids*, NPR (Jan. 26, 2023), <https://www.npr.org/2023/01/26/1151474285/social-media-platforms-face-pressure-to-stop-online-drug-dealers-who-target-kids>.

<sup>11</sup> Whitehurst, *Group urges feds to investigate Snapchat over fentanyl sales*, L.A. Times (Dec. 22, 2022), available at <https://www.latimes.com/business/story/2022-12-23/group-urges-feds-investigate-snapchat-over-fentanyl-sales>.

<sup>12</sup> Colorado Department of Law, *Social Media, Fentanyl, & Illegal Drug Sales: A Report from the Colorado Department of Law* (2023), pp. 8-9.

<sup>13</sup> E.g., SB 60 (Umberg, Ch. 698, Stats. 2023); AB 1027 (Petrie-Norris, Ch. 824, Stats. 2023); AB 1628 (Ramos, Ch. 432, Stats. 2022).



3. This bill requires social media platforms to make a law enforcement liaison available by telephone and immediately respond to search warrants, as specified

This bill is intended to make social media platforms more responsive to requests from law enforcement. To that end, the bill imposes two new requirements on social media platforms – defined using the existing uniform definition in the Business and Professions Code<sup>14</sup> – with one million or more discrete monthly users.

First, the bill requires a covered social media platform to make available, at all times, a law enforcement liaison for the purpose of receiving, and responding to, requests for information from law enforcement. The law enforcement liaison must be available by telephone. Opponents of the bill have raised concerns over whether having a liaison available by phone could give rise to fraud from individuals posing as law enforcement, and argue that the phone availability is duplicative of the requirement that electronic communication service providers maintain a contact mechanism for law enforcement personnel.<sup>15</sup> Nothing in the bill, however, requires that the liaison be available in lieu of the portal, or prevents a social media platform from developing security measures with respect to the law enforcement liaison (such as identity verification).

Second, the bill requires a social media platform to immediately comply with a search warrant provided to the social media platform by a law enforcement agency if the subject of the search warrant is an account on the social media platform owned by a user of the platform. Opponents of the bill argue that the requirement of “immediate” action might cause social media platforms to respond to requests from out-of-state, such as requests targeting reproductive health care services or gender-affirming care, in violation of California law.<sup>16</sup> The bill, however, expressly limits the definition of “law enforcement agency” to in-state law enforcement agencies.

CalECPA, enacted in 2015, imposes specific procedural requirements for obtaining information from an electronic communication service via a warrant.<sup>17</sup> The author has agreed to an amendment clarifying that this bill does not alter those existing provisions or other laws relating to compliance with search warrants, such as limits on requests from out-of-state law enforcement.

4. Amendments

As noted above, the author has agreed to amend the bill to clarify that it does not displace existing statutory provisions. The amendment is as follows, subject to any nonsubstantive changes the Office of Legislative Counsel may make:

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<sup>14</sup> See Bus. & Prof. Code, § 22945(a)(3).

<sup>15</sup> Pen. Code, § 1524.4.

<sup>16</sup> *Id.*, § 13778.3(f).

<sup>17</sup> See SB 178 (Leno, Ch. 651, Stats. 2015); Pen. Code, §§ 1546-1546.5.)

At page 1, in line 20, after “(b)”, insert “Except as provided in any other law,”

5. Arguments in support

According to the Orange County Sheriff’s Department:

A factor in the proliferation of fentanyl is the use of social media for illicit drug sales. Drug Enforcement Agency Administrator Milgram has called social media platforms the “superhighway of drugs.” We have seen this firsthand during our law enforcement investigations. Drug-related deaths in Orange County are investigated with the intent of identifying the drug’s supplier for prosecution. In several cases we have investigated, social media was the means for making the drug sale. One challenge we face in the work to bring these investigations to a conclusion is the short time frame records with regard to the drug transactions are available. Some of the most prominent social media companies only retain communication records for a limited period of time. As a result, communications related to a fatal drug sale can often be gone before law enforcement has time to access them. By providing law enforcement with a 24/7 designated liaison at large social media companies and requiring immediate compliance with a search warrant, SB 918 would help take away a drug trafficker’s advantage and help our investigators have the time necessary to identify a suspect.

6. Arguments in opposition

According to Internet.Works:

Since the enactment of AB 1993 (2016), internet platforms have invested resources in building our increasingly sophisticated law enforcement portals to receive and process legal process and court orders to empower law enforcement to communicate effectively with various platforms, investigate crimes with online evidence, and save lives. However, this process is characterized by a rigorous back-and-forth that narrows and refines these requests to only the most necessary information. A requirement for “immediate” compliance will erode this process by imposing liability that doesn’t incentivize responsible efforts to protect consumer data and privacy, and is unlikely to improve public safety outcomes.

Additionally, requiring a telephone number rather than a secure portal creates an attack vector for scammers, who can contact companies while posing as law enforcement. A dedicated telephone number is also redundant as state law has encouraged the development of web portals for law enforcement to submit requests and refine the details of the situation before a live conversation is necessary. We are concerned that a mandate for a telephone number dedicated to this purpose expands the opportunities for fraud and will not help law

enforcement access the information it needs. Companies must already manage the evolving risks of fraud under the status quo, which are becoming more advanced with AI voice tools, and the requirements of this bill would exacerbate the problem.

### **SUPPORT**

Drug Induced Homicide Organization  
Orange County Sheriff's Department  
Peace Officers' Research Association of California

### **OPPOSITION**

ACLU California Action  
Electronic Frontier Foundation  
Internet.Works California

### **RELATED LEGISLATION**

#### **Pending Legislation:**

AB 1800 (Jones-Sawyer, 2024) permits a person who suffers injury that is proximately caused by the illegal purchase of a controlled substance through a social media company, as specified, to recover statutory damages from the platform. AB 1800 is pending before the Assembly Judiciary Committee.

AB 522 (Kalra, 2023) requires administrative subpoenas seeking to obtain a customer's electronic communication information from a service provider to meet certain conditions, including that notice and a right to object be provided to the customer. AB 522 is pending before the Senate Appropriations Committee.

#### **Prior Legislation:**

SB 60 (Umberg, Ch. 698, Stats. 2023) authorizes a person to seek an order requiring a social media platform to remove content that includes an offer to transport, sell, furnish, administer, or give away a controlled substance in violation of specified law.

AB 1027 (Petrie-Norris, Ch. 824, Stats. 2023) required social media platforms to include in their already-required policy statements a general description of the platform's policy on the retention of electronic communication information and sharing of specified information; and added to existing terms of service reporting requirements an obligation to disclose policies on addressing the distribution of controlled substances on the platform and data on the number of times such content was flagged and actioned.

AB 955 (Petrie-Norris, 2023) would have made the sale of fentanyl on a social media platform, as defined, a felony. AB 955 died in the Assembly Public Safety Committee.

AB 2246 (Petrie-Norris, 2022) would have reclassified specified fentanyl analogues as Schedule I controlled substances and would have made the sale of fentanyl on a social media platform, as defined, a felony. AB 2246 failed passage in the Assembly Public Safety Committee.

AB 1628 (Ramos, Ch. 432, Stats. 2022) requires, until January 1, 2028, a social media company to create and publicly post a policy statement that includes, among other things, the platform's policy on the use of the platform to illegally distribute a controlled substance.

SB 1121 (Leno, Ch. 541, Stats. 2016) modified CalECPA to authorize a government entity to access, without a warrant, the location or phone number of an electronic device used to call 911; allowed a government entity to retain voluntarily received electronic communication information beyond 90 days if the service provider or subscriber is or discloses information to, a correctional or detention facility; and excluded driver's licenses and other identification cards from its provisions.

AB 1993 (Irwin, Ch. 514, Stats. 2016) required certain technology companies covered under CalEPCA to maintain a law enforcement contact process to coordinate with law enforcement agency investigations, as specified.

SB 178 (Leno, Ch. 651, Stats. 2015) enacted CalECPA, which establishes the procedures for obtaining information from an electronic communication service provider about a user of the service.

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