

AMENDED IN ASSEMBLY JULY 25, 2002

AMENDED IN SENATE MAY 28, 2002

AMENDED IN SENATE APRIL 9, 2002

AMENDED IN SENATE MARCH 21, 2002

**SENATE BILL**

**No. 1541**

**Introduced by Senator ~~Aekerman~~ O'Connell**

February 20, 2002

---

---

~~An act to amend Section 853.5 of the Penal Code, and to amend Sections 40302, 40303, 40305, 40305.5, and 40500 of the Vehicle Code, relating to arrests. An act to add Section 633.3 to the Penal Code, relating to peace officers.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1541, as amended, ~~Aekerman~~ O'Connell. ~~Arrest: release~~ *Peace officers: recording communications.*

*Existing law generally prohibits wiretapping and related activities, but provides that the Attorney General, district attorney, and other specified law enforcement officers are not prohibited from overhearing or recording any communication they could lawfully overhear or record, as specified, prior to the enactment of the statutory prohibitions against wiretapping.*

*This bill would enlarge the peace officer exemption to the prohibition against wiretapping and related activities to include peace officers who are Bureau of Fraudulent Claims investigators within the Department of Insurance and peace officers who are Department of Alcohol Beverage Control investigators. The bill would require the Department of Insurance and the Department of Alcohol Beverage Control to have*

written policies in effect that govern procedures to be used in the gathering of evidence and that address any required notification procedures relating to the monitoring or recording of conversations, before the peace officers may engage in the activity authorized by the bill. The bill would furthermore require those agencies to have those written policies on file with the Attorney General.

~~Existing law generally provides that in any case in which a person is arrested for an offense declared to be an infraction, the person may be released, as specified, provided the arrestee presents his or her driver's license or other satisfactory evidence of identity for examination and signs a written promise to appear. Existing law further provides that if the arrestee does not have a driver's license or other satisfactory evidence of identity in his or her possession, the officer may require the arrestee to provide thumbprints or fingerprints, as specified, and that only if the arrestee refuses to sign a written promise, has no satisfactory identification, or refuses to provide a thumbprint or fingerprint may the arrestee be taken into custody.~~

~~This bill would instead provide that if the arrestee does not have a driver's license or other satisfactory evidence of identity in his or her possession, and the jurisdiction has waived reimbursement for fingerprinting and related costs, the officer shall require the arrestee to provide thumbprints or fingerprints, as specified, unless the officer is called away for an emergency or otherwise cannot perform the task. An officer employed by a jurisdiction which does not waive reimbursement would still be permitted to require the arrestee to provide those prints. The bill would specify that only if the arrestee refuses to sign a written promise to appear, has no satisfactory identification, or refuses to provide a thumbprint or fingerprint may the arrestee be taken into custody.~~

~~Under existing law, in most cases in which a person is arrested for a Vehicle Code violation declared to be an infraction or a misdemeanor, including a violation of any city or county traffic ordinance, the person may be released pursuant to specified procedures, in addition to those described above, without the involvement of a magistrate. These procedures generally require, among other things, presenting to a peace officer satisfactory identification or signing a promise or notice to appear. Existing law authorizes a peace officer to obtain a thumbprint or fingerprint on a promise to appear from the person arrested for a traffic infraction or misdemeanor if that person does not provide satisfactory evidence of identity. Under certain of these provisions,~~



~~when a traffic arrestee does not have sufficient evidence of identity, an officer may require the arrestee to provide a thumbprint or fingerprint prior to a release authorized without a magistrate.~~

~~This bill would require rather than permit an arresting officer from a jurisdiction which has waived reimbursement for fingerprinting and related costs who utilizes certain specified release procedures that do not involve a magistrate to take a thumbprint or fingerprint from the arrestee who does not have sufficient identification, as specified, unless the officer is called away for an emergency or is otherwise unable to perform the task. If reimbursement is not waived, the officer would still have authority to require the arrestee to provide those prints. The bill would also require an officer from a jurisdiction waiving reimbursement to take a thumbprint or fingerprint from any arrestee with or without sufficient identification who is released on specified Vehicle Code changes without the involvement of a magistrate.~~

~~This bill would also specify that a provision that requires a nonfelony Vehicle Code arrestee who lacks satisfactory identification to be brought before a magistrate without delay does not apply to a person arrested for an infraction who agrees to provide a thumbprint or fingerprint.~~

~~This bill also would provide that when a person contests a charge by claiming not to be the person issued the written promise to appear on an infraction and there is no thumbprint or fingerprint as provided above, the court, if it believes that sufficient identification is not apparent from the face of the promise to appear, may refer the promise to appear back to the issuing agency for further investigation. In this event, the court would be required to continue the case and the speedy trial period shall be tolled for 45 days. Upon receipt of the issuing agency's response, if the court determines there is insufficient evidence that the person cited is the person charged, the court would have the authority to dismiss the matter, and if the issuing agency fails to respond within 45 days, the court would be required to dismiss the charges.~~

~~Existing law regarding certain arrest procedures without the involvement of a magistrate provides that prints taken by arresting officers shall not be used to create a data base.~~

~~This bill would forbid the use of prints in all the arrest procedures addressed in this bill for inclusion in or to create a data base, and would forbid the sale, gift, or distribution of these prints for any purpose except law enforcement purposes relating to the identity of the arrestee.~~



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

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

1 ~~SECTION 1.—Section 853.5 of the Penal Code is amended to~~  
2 *SECTION 1. Section 633.3 is added to the Penal Code, to*  
3 *read:*  
4 *633.3. (a) Nothing in Section 631, 632, 632.6, or 632.7*  
5 *prohibits a peace officer, who is a Bureau of Fraudulent Claims*  
6 *investigator within the Department of Insurance or a Department*  
7 *of Alcoholic Beverage Control investigator, when acting within the*  
8 *course and scope of his or her employment and when conducting*  
9 *a criminal investigation, or any person acting pursuant to the*  
10 *direction of one of these law enforcement officers acting within the*  
11 *scope of his or her authority, from overhearing or recording any*  
12 *communication that these law enforcement agencies and peace*  
13 *officers could lawfully overhear or record prior to the effective*  
14 *date of this chapter.*  
15 *(b) Nothing in Section 631, 632, 632.5, 632.6, or 632.7, renders*  
16 *inadmissible any evidence obtained by any person specified in*  
17 *subdivision (a) by means of overhearing or recording any*  
18 *communication that they could lawfully overhear or record prior*  
19 *to the effective date of this chapter.*  
20 *(c) (1) Before any of the peace officers specified in subdivision*  
21 *(a) may utilize the exemption provided by this section, the*  
22 *employing agencies of those peace officers shall have a written*  
23 *policy in effect that governs the procedures to be used in the*  
24 *gathering of evidence under this section and that addresses any*  
25 *notification procedures required with respect to the monitoring or*  
26 *recording of conversations.*  
27 *(2) At a minimum, each agency’s policy shall require the*  
28 *approval of a supervisor of the peace officer before the peace*  
29 *officer may obtain evidence in accordance with this section.*  
30 *(3) Each agency exempted by this section shall have on file with*  
31 *the Attorney General that agency’s written policy.*



1  
2  
3  
4  
5  
6  
7

**All matter omitted in this version of the bill appears in the bill as amended in the Senate, May 28, 2002.**

O

