

<p>California Department of Justice DIVISION OF LAW ENFORCEMENT John D. Marsh, Chief</p> 	<h1>INFORMATION BULLETIN</h1>	
<p>Subject: Recent Penal Code Amendments Prohibiting Law Enforcement from Cooperating with Other States' Investigations of Abortions that are Legal in California</p>	<p>No. 2022-DLE-13</p>	<p>Contact for information: John D. Marsh, Chief Division of Law Enforcement (916) 210-6300</p>
	<p>Date: October 20, 2022</p>	

TO: All CALIFORNIA DISTRICT ATTORNEYS, CHIEFS OF POLICE, SHERIFFS, AND STATE LAW ENFORCEMENT AGENCIES

California has recognized and supported reproductive freedom and access to safe, legal abortion for over half a century. Recently, the Governor signed Assembly Bill (AB) 1242 into law effective September 27, 2022. AB 1242 made several changes to the Penal Code as part of California's commitment to protecting individuals who provide, obtain, or assist others in obtaining abortions that are legal under California law.

This bulletin provides information to help law enforcement ensure their practices are consistent with the changes to the Penal Code. Specifically, this bulletin provides guidance about Penal Code sections 629.51, 629.52, 638.50, 638.52, 1269b, 1551, 1524, 1524.2, and 13778.2.

Context for the Changes to the California Penal Code

After the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* (2021) holding there is no federal constitutional right to abortion, some states have outlawed abortion in some or all circumstances, and authorized civil suits and criminal prosecutions of those who perform, seek, obtain, or assist others in seeking or obtaining abortions.

Law enforcement in states where abortion is illegal may try to enlist California law enforcement to arrest, extradite, or obtain or share information about individuals for abortion-related activities that are legal here. Examples of such activities may include: procuring, providing, or obtaining a prescription for mifepristone or misoprostol (pills used for, among other things, medication abortion) and the taking of such medication; the use of the internet or web or phone-based apps to procure, provide, or obtain such medication or a surgical abortion; and providing or obtaining in-clinic or surgical abortion without medical or other justification (as defined by the demanding state).

The laws discussed below make it illegal for California law enforcement to assist in out-of-state investigation and enforcement efforts related to providing, facilitating, or obtaining an abortion that is lawful under California law, or intending or attempting to do the same. It is possible, however, that out-of-state law enforcement seeking California's assistance may not disclose to California law enforcement that their request is about abortion-related activity by characterizing it as, for example, child endangerment, child abuse, drug abuse, concealing a death, or murder.

For that reason, California law enforcement should carefully examine requests from law enforcement in states where abortion is illegal to ensure they are not assisting with the investigation or prosecution of abortion-related activity that is legal in California, in addition to complying with the other changes to California's Penal Code.

As of the date of this publication, states that have implemented abortion bans following the *Dobbs* decision include: Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana*, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, North Dakota*, Ohio*, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, Wisconsin, and Wyoming*.

The Changes to the California Penal Code

The following changes have been made to the Penal Code:

- Arrests and Information Sharing
 - State and local law enforcement agencies and officers are prohibited from arresting or participating in the arrest of someone for performing, obtaining, or helping someone obtain a legal abortion in California. (Pen. Code, § 13778.2, subd. (a).)
 - State and local public agencies and their employees are prohibited from cooperating with or providing information to any individual, agency, or department from another state about a legal abortion in California. Sharing such information with federal law enforcement agencies is also not permitted, unless required by federal law. (Pen. Code, § 13778.2, subd. (b).)
- Wires, Electronic Communications, Pen Registers, Trap and Trace Devices, and Warrants
 - No court may issue ex parte orders authorizing (i) interception of wire or electronic communications, or (ii) the installation and use of pen registers or trap and trace devices, and no search warrants may be issued, for the purpose of investigating or recovering evidence of a "prohibited violation." (Pen. Code, §§ 629.52, subd. (e), 638.52, subd. (m), 1524, subd. (h).)
 - "Prohibited violation" is defined as any violation of law that creates liability for, or arising out of, either of the following:
 - (i) Providing, facilitating, or obtaining an abortion that is lawful under California law.
 - (ii) Intending or attempting to provide, facilitate, or obtain an abortion that is lawful under California law.
 - "Facilitating" means assisting, directly or indirectly in any way, with the obtaining of an abortion that is lawful under California law.
 - (Pen. Code, §§ 629.51, subds. (5)(A)-(B)), 638.50, subd. (d).)

* Indicates that the ban has been temporarily blocked by court order.

- In order to obtain a search warrant for electronic communications under section 1524.2, out-of-state law enforcement must provide an attestation stating that the evidence being sought does not relate to an investigation or prosecution of a “prohibited violation.”
- Bail Schedule
 - The countywide bail schedule will set bail at zero dollars (\$0) for any individual who has been arrested in connection with a proceeding in another state regarding an individual performing, supporting, or aiding in the performance of a legal abortion in California, or an individual obtaining a legal abortion in California. (Pen. Code, § 1269b, subd. (f)(2).)
- Extradition of Fugitives
 - When an agency files a verified complaint under Penal Code Section 1551 regarding the extradition of an individual taken into custody on the basis of an out-of-state warrant, the filing agency must, within 24 hours, electronically transmit to the Attorney General's office a complete copy of the verified complaint, the out-of-state indictment, information, complaint or judgment, out-of-state warrant, and the affidavit upon which the out-of-state warrant was issued. (Pen. Code, § 1551, subd. (b).) These materials should be sent to Extradition@doj.ca.gov.
 - For additional information regarding extradition, please see Information Bulletin 2022-DLE-10, Non-Extradition of Individuals Providing Care to Out-of-State Patients in California, or Other Persons in California who Assist Out-of-State Patients in Seeking Abortion Care in California, <https://oag.ca.gov/system/files/media/2022-DLE-10.pdf>.

Best Practices

Below is a summary of best practices for compliance with these new laws.

Law Enforcement Training

All staff should receive training on the recent changes to the Penal Code. This training should include the following points:

- (1) California Law enforcement agencies should be careful, when sharing any information or otherwise cooperating with law enforcement from other states or federal agencies, to prevent information sharing about legal abortions in California.
- (2) Law enforcement agencies should closely examine any out-of-state arrest warrant prior to taking any person into custody or accepting bail based on an out-of-state warrant. Law enforcement is prohibited from cooperating where the arrest relates to an abortion that is legal in California, but the warrant may not clearly state that the offense is related to abortion.
- (3) Law enforcement agencies should be aware that there is no obligation that they make an arrest based on an out-of-state warrant.
- (4) Law enforcement should be careful when applying for authorization from a magistrate to intercept electronic communications or wires, to install trap and trace devices, or for warrants on behalf of other states to ensure the other states are not seeking information relating to abortions that are legal under California law.
- (5) Law enforcement agencies should immediately contact the California Attorney General's Office if they have any questions regarding an out-of-state warrant.

District Attorney-Specific Training

Reproductive rights crimes may not be clearly identified as such. Prosecutors should carefully review any out-of-state information requests before responding. Likewise, prosecutors should closely review out-of-state warrants and any supporting documents provided by the out-of-state agency, in consultation with the Attorney General's Office, before filing a complaint pursuant to Penal Code § 1551. Information about the underlying crime(s) may be found in the indictment, information, complaint, or affidavit and the out-of-state warrant provided by the demanding agency. Prosecutors should not rely solely on the statutes contained in the above documents, but should carefully review the underlying facts to ensure that activity associated with reproductive healthcare services is not improperly described as criminal conduct, including child neglect, child abuse, drug use, or murder. If the underlying facts cannot be readily determined from the documents provided by the demanding agency, additional documentation should be requested before filing a complaint pursuant to Penal Code § 1551.

Contact Information

The California Department of Justice is available to assist local law enforcement agencies in complying with the above-described amendments to the Penal Code. Should your agency or individual officers require technical assistance, please contact Division of Law Enforcement Chief John Marsh at (916) 210-6300 or (916) 210-7690, or Senior Assistant Attorney General Renuka George in the Department's Healthcare Rights and Access Section at Renuka.George@doj.ca.gov or (916) 714-3563.