

REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: July 31, 2018

TO: Honorable Members of the Rules, Elections, and Intergovernmental Relations Committee

FROM: Sharon M. Tso 
Chief Legislative Analyst Council File No:
Assignment No: 18-07-0647

SUBJECT: Police Department Recommendation to include Support for AB 1948 in the 2017-2018 State Legislative Program

CLA RECOMMENDATION: Adopt the attached Resolution to include in the City's 2017 - 2018 State Legislative Program SUPPORT for AB 1948 (Jones-Sawyer) which would add fentanyl to the list of controlled substances for which interception of wire or electronic communications may be ordered.

SUMMARY

On April 24, 2018, the Police Department (LAPD) forwarded a bill response report to the Chief Legislative Analyst's Office seeking a City position in support of AB 1948 (Jones-Sawyer). This bill would add fentanyl to the list of controlled substances for which interception of wire or electronic communications may be ordered.

Upon review, this Office has prepared the attached Resolution in support of this legislation. The Resolution seeks an official position of the City of Los Angeles to support AB 1948 (Jones-Sawyer).

BACKGROUND

Under current California law, the Attorney General, Chief Deputy Attorney General, Chief Assistant Attorney General, any district attorney or district attorney's designee may apply to the presiding judge of the superior court for an order authorizing the interception of wire or electronic communications under specified circumstances. This type of authorization is referred to as a "Title III wiretap." These circumstances include:

- Murder;
- Kidnapping;
- Bombing;
- Criminal gangs;
- Possession of destructive device, weapon of mass destruction or restricted biological agents;
- Human trafficking; and
- The possession for sale, sale, transportation, or manufacturing of more than three pounds of cocaine, heroin, PCP, methamphetamine or its precursors.

AB 1948 would add fentanyl to the list of narcotics for which law enforcement could seek a warrant authorizing the interception of wire or electronic communications. Proponents of this

legislation state that the demand for fentanyl has dramatically increased over recent years. According to the Drug Enforcement Agency (DEA), 48 kilograms of fentanyl were seized in the state in 2015, which ballooned to 244 kilograms in 2016. This number has continued to grow, as has the number of seizures effectuated by law enforcement agencies in the state. Proponents state that while the amount of fentanyl being trafficked in the state has grown significantly over recent years, law enforcement efforts are hampered by their inability to use Title III wiretaps in these investigations.

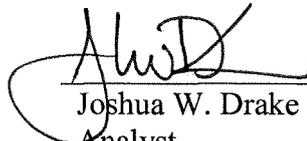
According to the Police Department (LAPD), the supply of illegal fentanyl has increased in Los Angeles over recent years. The Department states that the greater Los Angeles region is a significant hub of illegal activity surrounding controlled substances, including fentanyl. The Department states that this legislation will provide the LAPD with a valuable tool in its efforts to decrease the amount of fentanyl on the streets of the City.

DEPARTMENTS NOTIFIED

Police Department

BILL STATUS

01/29/2018	Read first time. To print.
02/08/2018	Referred to the Assembly Committee on Public Safety
03/06/2018	From committee: Do pass (7-0) and re-refer to the Assembly Committee on Appropriations with recommendation: To Consent Calendar
05/25/2018	From Committee: Do pass (16-0)
05/29/2018	Read third time. Passed (77-1). Ordered to the Senate
05/30/2018	In Senate. Read first time
06/07/2018	Referred to the Senate Committee on Public Safety
06/20/2018	From committee: Do pass (7-0) and re-refer to the Senate Committee on Appropriations
07/02/2018	In Committee: Referred to Appropriations suspense file


Joshua W. Drake
Analyst

SMT:jwd

Attachments: (1) Resolution
(2) AB 1948 (Jones-Sawyer)

RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, under current law, the interception of wire and electronic communications through a Title III wiretap by law enforcement is authorized under specific circumstances; and

WHEREAS, these circumstances include the possession for sale, sale, transportation or manufacturing of more than three pounds of cocaine, heroin, PCP, or methamphetamine or its precursors; and

WHEREAS, current law does not allow for a Title III wiretap in cases involving the possession for sale, sale, transportation or manufacturing of fentanyl; and

WHEREAS, fentanyl is an incredibly powerful and dangerous narcotic, and its use results in a number of overdoses each year; and

WHEREAS, the supply of illegal fentanyl in Los Angeles has increased significantly over recent years; and

WHEREAS, AB 1948 (Jones-Sawyer) would add fentanyl to the list of controlled substances for which law enforcement could seek a Title III wiretap;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2017 - 2018 State Legislative Program SUPPORT for AB 1948 (Jones-Sawyer), which would add fentanyl to the list of controlled substances for which the interception of wire or electronics communications may be ordered.

ASSEMBLY BILL

No. 1948

Introduced by Assembly Member Jones-Sawyer

January 29, 2018

An act to amend Section 629.52 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 1948, as introduced, Jones-Sawyer. Interception of electronic communications.

Existing law, until January 1, 2020, requires an application for an order authorizing the interception of wire or electronic communications to 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 or person designated to act as district attorney. Until January 1, 2020, existing law authorizes a court to issue an order authorizing interception of wire or electronic communications if the judge finds, among other things, that there is probable cause to believe an individual is committing, has committed, or is about to commit one of several offenses, including importing, possessing for sale, transporting, manufacturing, or selling certain controlled substances, as specified.

This bill would add fentanyl to the list of controlled substances for which interception of wire or electronic communications may be ordered pursuant to those provisions.

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

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

1 SECTION 1. Section 629.52 of the Penal Code is amended to
2 read:

3 629.52. Upon application made under Section 629.50, the judge
4 may enter an ex parte order, as requested or modified, authorizing
5 interception of wire or electronic communications initially
6 intercepted within the territorial jurisdiction of the court in which
7 the judge is sitting, if the judge determines, on the basis of the
8 facts submitted by the applicant, all of the following:

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

12 (1) Importation, possession for sale, transportation, manufacture,
13 or sale of controlled substances in violation of Section 11351,
14 11351.5, 11352, 11370.6, 11378, 11378.5, 11379, 11379.5, or
15 11379.6 of the Health and Safety Code with respect to a substance
16 containing heroin, cocaine, PCP, methamphetamine, *fentanyl*, or
17 their precursors or analogs where the substance exceeds 10 gallons
18 by liquid volume or three pounds of solid substance by weight.

19 (2) Murder, solicitation to commit murder, a violation of Section
20 209, or the commission of a felony involving a destructive device
21 in violation of Section 18710, 18715, 18720, 18725, 18730, 18740,
22 18745, 18750, or 18755.

23 (3) ~~Any~~ A felony violation of Section 186.22.

24 (4) ~~Any~~ A felony violation of Section 11418, relating to weapons
25 of mass destruction, Section 11418.5, relating to threats to use
26 weapons of mass destruction, or Section 11419, relating to
27 restricted biological agents.

28 (5) ~~Any~~ A violation of Section 236.1.

29 (6) An attempt or conspiracy to commit any of the
30 above-mentioned crimes.

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

36 (c) There is probable cause to believe that the facilities from
37 which, or the place where, the wire or electronic communications
38 are to be intercepted are being used, or are about to be used, in

1 connection with the commission of the offense, or are leased to,
2 listed in the name of, or commonly used by the person whose
3 communications are to be intercepted.

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