

CULVER CITY POLICE

TRAINING INFORMATION

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Legal Update and California Penal Code Amendments Prohibiting Enforcement of Abortion and Gender Affirming Care Activities Under Assembly Bill 1242 and Senate Bill 345

Purpose:

To provide guidance to Culver City Police Department (CCPD) personnel on recent amendments to the California Penal Code regarding cooperation with out-of-state investigations related to abortion activities that are legal in the state of California, as outlined in Assembly Bill 1242 (Reproductive Rights).

This training bulletin also includes key provisions from California Senate Bill 345, known as "The Shield Act" which also prohibits California Law Enforcement agencies from cooperating with out-of-state investigations related to abortion and gender affirming care activities that are legal in the state of California.

Background:

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

Additionally, on September 27, 2023, Governor Newsom signed Senate Bill (SB) 345 (The Shield Act) into law. SB 345 reenforces the same laws covered under AB 1242 related to abortion rights, however, it also prohibits California law enforcement officials from cooperating with out-of-state prosecutions related to gender-affirming care.

Context for the changes Per Assembly Bill 1242:

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. The laws discussed below make it illegal for California law enforcement to assist with an 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 outlined in Assembly Bill 1242.

Under Assembly Bill 1242 the following changes have been made to the California 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).)
- 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.”

California Senate Bill 345 “The Shield Act”

On September 27, 2023, Governor Gavin Newsom signed Senate Bill (SB) 345 (The Shield Act) into law. SB 345 reenforces the same laws under AB 1242 related to abortion rights, however, it also prohibits California law enforcement officials from cooperating with out-of-state prosecutions related to gender-affirming care.

S.B. 345, California’s “Shield Law,” provides that California will not deliver a person accused or charged with committing a crime related to abortion and/or gender-affirming care over to law enforcement officials. This includes providers licensed in California, pharmacists, individuals providing funding assistance, travel assistance, and even information for legally protected care. The law does not preclude subpoenas, licensure actions, warrants, or litigation from occurring, but rather, offers in-state protections from these out-of-state actions.

The law prohibits all California law enforcement officers from cooperating with out-of-state prosecutions related to abortion, contraception, or gender-affirming care and prohibits California-based corporations, including social media and tech companies, from disclosing to law enforcement any private communication of patients regarding health care that is legally protected in the state.

This bill also prohibits a state or local government employee or a person acting on behalf of the local or state government, among others, from providing information or expending resources in furtherance of an investigation that seeks to impose civil or criminal liability or professional sanctions on an individual for a legally protected health activity occurring in this state.

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