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AB-413 Confidential communications: domestic violence. (2017-2018)

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Assembly Bill No. 413

CHAPTER 191

An act to amend Sections 633.5 and 633.6 of the Penal Code, relating to confidential communications.

[Approved by Governor September 01, 2017. Filed with Secretary of State September 01, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 413, Eggman. Confidential communications: domestic violence.

Existing law makes it a crime, subject to specified exemptions, for a person to intentionally eavesdrop upon or record a confidential communication by means of an electronic amplifying or recording device without the consent of all parties to the confidential communication. Existing law exempts from the prohibition the recording of a confidential communication made for the purpose of obtaining evidence reasonably believed to relate to the commission by another party to the communication of certain crimes, including any felony involving violence against the person making the recording. Existing law also allows a judge to include a provision in a domestic violence restraining order permitting a victim of domestic violence to record any prohibited communication made to him or her by the perpetrator.

This bill would allow a party to a confidential communication to record the communication for the purpose of obtaining evidence reasonably believed to relate to domestic violence, as specified, and the evidence so obtained would not be rendered inadmissible in a prosecution against the perpetrator for domestic violence.

The bill would also authorize a victim of domestic violence who is seeking a domestic violence restraining order from a court to record specified communications made by the perpetrator for the exclusive purpose and use of providing the evidence to the court.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 633.5 of the Penal Code is amended to read:

633.5. Sections 631, 632, 632.5, 632.6, and 632.7 do not prohibit one party to a confidential communication from recording the communication for the purpose of obtaining evidence reasonably believed to relate to the commission by another party to the communication of the crime of extortion, kidnapping, bribery, any felony involving violence against the person, including, but not limited to, human trafficking, as defined in Section 236.1, or a violation of Section 653m, or domestic violence as defined in Section 13700. Sections 631, 632, 632.5, 632.6, and 632.7 do not render any evidence so obtained inadmissible in a prosecution for extortion, kidnapping, bribery, any felony involving violence against the person, including, but not limited to, human trafficking, as defined in Section 236.1, a violation of Section 653m, or domestic violence as defined in Section 13700, or any crime in connection therewith.

SEC. 2. Section 633.6 of the Penal Code is amended to read:

633.6. (a) Notwithstanding the provisions of this chapter, and in accordance with federal law, upon the request of a victim of domestic violence who is seeking a domestic violence restraining order, a judge issuing the order may include a provision in the order that permits the victim to record any prohibited communication made to him or her by the perpetrator.

(b) Notwithstanding the provisions of this chapter, and in accordance with federal law, a victim of domestic violence who is seeking a domestic violence restraining order from a court, and who reasonably believes that a confidential communication made to him or her by the perpetrator may contain evidence germane to that restraining order, may record that communication for the exclusive purpose and use of providing that evidence to the court.

(c) The Judicial Council shall amend its domestic violence prevention application and order forms to incorporate the provisions of this section.