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Organization Founded by the Sheriffs in 1894

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April 24, 2013

The Honorable Mark Leno
Member, California State Senate
State Capitol Building, Room 5100
Sacramento, CA 95814

Subject: Senate Bill 467 (Leno) – CSSA Oppose

Dear Senator Leno:

On behalf of the California State Sheriffs' Association (CSSA), we regret to inform you that we are opposed to your measure SB 467, which would impose additional notice requirements on law enforcement when a warrant is used.

SB 467 adds portions of the federal Electronic Communications Privacy Act (18 U.S.C. 2701, et seq.) to California law. However, because the full federal law is not being adopted (and already applies to law enforcement in each of the state and local governments), this piecemeal approach will simply cause confusion about how to reconcile the two statutory schemes.

SB 467 also requires that law enforcement must give notice to the person whose electronic messages are obtained by search warrant within three days of law enforcement receiving the messages. This is not required under the federal law if a search warrant is used. (18 U.S.C. § 2703(b)(1)(A).) Prior notice to the customer of the service is only required if law enforcement proceeds by way of what is referred to as a "d" order. A "d" order can be issued on less than probable cause. (See 18 USC 2703(b)(1)(B) for the notice requirement.)

SB 467 is unnecessary in view of the extensive federal statutes on this issue. It will only further confuse the matter by applying slightly different rules to private communications systems and, may, in fact, be preempted by federal law.

For these reasons we must respectfully oppose SB 467.

Sincerely,

Aaron R. Maguire
Legislative Representative

Cc: The Honorable Loni Hancock, Chair, Senate Public Safety Committee
The Honorable Joel Anderson, Vice-Chair, Senate Public Safety Committee