



OFFICE OF THE DISTRICT ATTORNEY
CONTRA COSTA COUNTY

Mark A. Peterson
DISTRICT ATTORNEY

September 21, 2011

Sylvia Moir
Chief of Police
El Cerrito Police Department
10900 San Pablo Avenue
El Cerrito, CA 94530

Dear Chief Moir:

Penal Code 633.8 is a new statute which authorizes designated peace officers to use, or authorize the warrantless use of, an electronic amplifying or recording device to eavesdrop on or record oral communication in an emergency hostage or barricade situation. Only a peace officer who has been designated by either a district attorney in the county where the emergency exists, or by the attorney general may make use of Penal Code 633.8.

The warrantless use of an eavesdropping device under Penal Code 633.8 requires the satisfaction of the following conditions:

- 1) The designated officer reasonably determines that an emergency situation exists involving the taking of a hostage or the barricading of a location, and the immediate danger of death or serious physical injury to any person within the meaning of section 2518(7)(a)(i) of Title 18 of the United States Code*.
- 2) The designated officer reasonably determines that the emergency situation requires immediate eavesdropping on oral communications.
- 3) There are grounds upon which an order could be obtained pursuant to Section 2516(2) of Title 18 of the United States Code, in regard to the offenses enumerated therein.**

So long as the conditions of Penal Code 633.8 are satisfied, a peace officer is not required to knock and announce his or her presence before entering and installing the eavesdropping device.

Note that within 48 hours after an eavesdropping device is deployed under Penal Code 633.8, the statute requires an application for an order approving the eavesdropping in compliance with Penal Code 629.50.

The below listed law enforcement personnel, when acting as a representative of their agency, are the El Cerrito Police Department's designated peace officers pursuant to Penal Code 633.8.

Designated Peace Officers per Penal Code 633.8:

- 1) Lieutenant Steve Bonini
- 2) Captain Michael Regan

Please contact Deputy District Attorney, Brian Feinberg, with any questions regarding Penal Code 633.8. Also, in order to maintain a current record of designees, please contact Mr. Feinberg with the names of El Cerrito peace officers that should be removed from or added to the section 633.8 designated officer list.

Sincerely,



Mark Peterson
District Attorney
Contra Costa County

** Section 2518(7)(a)(i) of Title 18 of the United States Code – states:*

(7) Notwithstanding any other provision of this chapter, any investigative or law enforcement officer, specially designated by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or by the principal prosecuting attorney of any State or subdivision thereof acting pursuant to a statute of that State, who reasonably determines that –

- (a) an emergency situation exists that involves –*
- (i) immediate danger of death or serious physical injury to any person*

*** Section 2516(2) of Title 18 of the United States Code – states:*

(2) The principal prosecuting attorney of any State, or the principal prosecuting attorney of any political subdivision thereof, if such attorney is authorized by a statute of that State to make application to a State court judge of competent jurisdiction for an order authorizing or approving the interception of wire, oral, or electronic communications, may apply to such judge for, and such judge may grant in conformity with section 2518 of this chapter and with the applicable State statute an order authorizing, or approving the interception of wire, oral, or electronic communications, may apply to such judge for, an such judge may grant in conformity with section 2518 of this chapter and with the applicable State statute an order authorizing, or approving the interception of wire, oral, or electronic communications by investigative or law enforcement officers having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of the commission of the offense of murder, kidnapping, gambling, robbery, bribery, extortion, or dealing in narcotic drugs, marihuana or other dangerous drugs, or other crime dangerous to life, limb or property, and punishable by imprisonment for more than one year, designated in any applicable State statute authorizing such interception {emphasis added} or any conspiracy to commit any of the foregoing offenses.