



Roll Call Training Bulletin

Produced by: Ofc Jeff Kuhlmann, PSU

Updated by: Lt. Ryan Bullard, Lt. Jeffrey Shiraishi, and Sgt. John Pullen

Katherine Lester, Chief of Police

Volume 40

California Electronic Communications Privacy Act

7-14-2022

California Penal Code section 1546 et seq., the California Electronic Communications Privacy Act (Cal. ECPA), was enacted in 2016 and is intended to “protect personal information of all Californians” by requiring law enforcement to obtain a search warrant to search and review information from smartphones and other electronic devices. Penal Code section 1546(f) defines an “electronic device” as a device that stores, generates, or transmits information in electronic form (e.g., cell phones, smart phones, tablets, laptop computers, home computers, credit cards etc.).

Penal Code section 1546.1 includes strict provisions for law enforcement when attempting to obtain information directly from an electronic device or from a cell phone carrier.

1546.1(c) – SEARCHING BY PHYSICAL INTERACTION OR ELECTRONIC COMMUNICATION

As applicable to Sacramento Police Department (SPD), police officers can ONLY access digital information through physical interaction with an electronic device, or electronic communication with that device, under *specific* circumstances, *including*:

1. Pursuant to a search warrant.
2. Pursuant to a wiretap order.
3. Pursuant to a tracking device search warrant.
4. With specific consent of the authorized possessor of the device.
5. With specific consent of the owner of the device when the device has been reported lost or stolen.
6. If the officer, in good faith, believes that an emergency involving danger of death or serious *physical* injury to any person requires access to the device.
7. Only when the officer, in good faith, believes the device to be lost, stolen, or abandoned, provided that the officer only searches the device in order to attempt to identify, verify, or contact the owner or authorized possessor of the device.
8. If the device is seized from an authorized possessor of the device who is serving a term of parole under the supervision of the Department of Corrections and Rehabilitation or a term of *Post Release Community Supervision (PRCS)* under the supervision of county probation.
9. If the device is seized from an authorized possessor of the device who is subject to an electronic device search clause as a clear and unambiguous condition of probation, mandatory supervision, or pretrial release.
10. If the government entity accesses information concerning the location or the telephone number of the electronic device in order to respond to an emergency 911 call from that device.
11. Pursuant to an order for a pen register or trap and trace device.

PROBATION and PAROLE

In September 2016, Cal. ECPA was amended to specifically allow warrantless searches of electronic devices seized from certain supervised offenders and pretrial releasees.

1. Penal Code section 1546.1(c)(9) allows the warrantless search of electronic devices seized from state parolees or PRCS offenders if they are an authorized possessor of the device.
2. Penal Code section 1546.1(c)(10) allows the warrantless search of electronic devices seized from persons on probation, mandatory supervision offenders, or persons on pretrial release if they are an



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The X-Drive has a folder titled "Search Warrant Patrol Resources" that includes multiple documents pertaining to search warrants including the "pre-tag" warrant templates which are in the folder titled "2022 New Search Warrant Templates".

Name	Date modified
How-to-Request-a-New-Search-Warrant...	5/12/2021 3:21 PM
How_to_Request_an_Emergency_Arrest_...	11/12/2021 3:56 PM
How to Request for a Delay of Notificatio...	5/12/2021 3:21 PM
How to Request an Emergency Arrest Wa...	2/24/2022 1:41 PM
Frequently Asked Questions (FAQ).pdf	5/12/2021 3:21 PM
Deconfliction_WMV V9.wmv	3/18/2012 12:01 PM
Affiant-eWarrants-Portal-Training.pptx	5/12/2021 3:21 PM
New folder	4/27/2022 10:41 AM
10. 2022 Updated Search Warrant Examl...	1/28/2022 7:15 AM
9. E-Warrants Training Documents	7/1/2022 3:48 PM
8. SACA Warrants (Evidentiary)	5/5/2022 9:11 AM
7. Search Warrant Manuals, Guides, & Fo...	6/8/2022 3:59 PM
6. Example Search Warrant Reports	7/15/2020 7:14 AM
5. Raid Planning & Risk Assessment	6/2/2022 6:02 PM
4. Search Warrants (ECPA)	7/15/2020 6:44 AM
3. Ramey Warrants (Arrest Warrants)	5/16/2022 2:48 PM
2. Search Warrants (Residential)	5/3/2022 10:04 AM
1. SPD General Orders (READ)	7/16/2020 8:56 AM

Officers should read the files in that folder as well as review the pertinent General Orders and the Search Manual. To avoid errors officers should use the templates in the folder titled "2022 Updated Search Warrant Examples" as these warrants are pre-tagged with the e-signature tags. The placement of e-signature tags is only required if an officer used a non-Portal template. The folder contains the "Post-Facto Authorization" and "ECPA Notice to Target (Exigent Search)" notification that officers can complete in these circumstances.

Below are links that contain information about the warrant process including a link to the one-hour video training session. To open the links right click on each line and in the pop-up window click "open hyperlink."

- PowerPoint-E-Warrants-Portal-Training
- How-to-Request-a-New-Search-Warrant.pdf
- How to Use Adobe Sign to Complete the eWarrant Return
- E-Sign-Signature-Tags
- Frequently Asked Questions (FAQ)
- Training video link- [REDACTED]

- Frequently Asked Questions (FAQ)
- Training video link- [REDACTED]

For a sample court order and additional step-by-step instructions on authoring and filing a court order under these circumstances, go to AMS, Reference Material, and open the Emergency Ping folder.



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WARRANTS AND FREEZING

Phones, computers, and other electronic devices can be seized and “frozen” in expectation of a search warrant if **exigent circumstances exist**. Phones which are frozen or seized should be placed in a “Faraday bag,” which is designed to prevent an electronic device from being remotely wiped. **Wrapping the seized device in aluminum foil is also an option if no “Faraday bag” is available.** These bags and/or aluminum foil rolls are available for use by patrol and investigations at any of the SPD evidence and property booking stations. Officers should be aware that these methods decrease the chance that a phone can be remotely wiped but they are not foolproof.

Officers may take other steps to secure information, such as placing a phone or electronic device into airplane mode, if they have articulable facts, based on their training, experience, and/or other specific facts and circumstances present at the time, that the device may be remotely wiped. The case law on whether manipulating the phone to place it into airplane mode constitutes a Fourth Amendment search is undecided.

Officers should carefully document what steps they took, and the rationale for those steps, because a detailed fact-by-fact inquiry will be relevant at a subsequent suppression hearing.

ABANDONED OR UNCLAIMED DEVICES

There is no provision under the law to fully search a cell phone that has been abandoned, other than to determine or verify the owner.

NOTIFICATION

California Penal Code section 1546.2(a)(1) requires that **contemporaneously with the execution of a search warrant on an electronic device, or after obtaining electronic information in an emergency, the agency shall, at the time of service of the warrant, or in the case of an emergency, by registered first class mail, email, or other reasonable means, within three court days of receiving the requested information, provide the owner or authorized possessor of the device the following:**

- (A) A notice that informs the recipient the **identified targets** of the investigation or **emergency access**.
- (B) All information regarding the target that has been **compelled** or obtained.
- (C) The nature of the investigation under which the information is being sought.
- (D) A **copy of the warrant** or a written statement setting forth the facts **which gave rise to the emergency**.

Notification that occurs at the time of the search must be documented.

Notice is not required if the government entity accesses information concerning the location or the telephone number of an electronic device in order to respond to an emergency 911 call from that device.

California Penal Code section 1546.2(b)(1) authorizes delay of the notification if the government entity submits a request supported by a sworn affidavit for an order delaying notification and prohibiting any party providing information from notifying any other party that information has been sought. The court shall issue the order if the court determines that there is reason to believe that notification may have an adverse result, but only for the period of time that the court finds there is reason to believe that the notification may have that adverse result, and not to exceed 90 days.

The court may grant additional 90-day extensions to delay this notification process.



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1546.1(b) – OBTAINING DATA FROM A SERVICE PROVIDER OR OTHER THIRD PARTY

Police officers can only compel the production of communication information from the cell phone carrier under the following circumstances:

1. Pursuant to a warrant
2. Pursuant to a wiretap order
3. Pursuant to an order for a pen register or trap and trace device

EXAMPLES OF SITUATIONS IN WHICH SEARCHES CAN NO LONGER BE CONDUCTED

- (A) A phone is found abandoned at a crime scene. A warrant must be obtained in order to search the phone for evidence relating the crime.
- (B) A tablet or phone is located in the pants pocket of a person on probation. Specific consent for a search of the phone/tablet must be obtained, even if the subject states that the phone is not theirs. **unless the person has a specific condition of probation authorizing a search of electronic devices.**
- (C) Officers arriving at the scene of a crime quickly obtain information from a witness regarding the suspect's identity and cell phone number. Absent specific and articulable facts demonstrating a threat of death or serious physical injury, a warrant must be obtained in order to ping the phone to determine its location.

Many of the questions and ambiguity related to this change in law will have to be resolved by the courts.

If you have any questions, please email or call: **Lt. Bullard at 916-321-2903, Lt. Shiraishi at 916-808-0306, or Sgt. Pullen at 916-808-6124.**

Please see the below link to read SB-178, **which established the Electronic Communications Privacy Act**, in its entirety: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB178