



FAIRFIELD POLICE DEPARTMENT

Electronic Bulletin

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Cell Phone Searches

The Electronic Communications Privacy Act (ECPA) generally restricts warrantless access to a suspect's electronic devices, including cell phones.

Assembly Bill 1924 became effective September 23, 2016 and made the following changes to Penal Code 1546.1 and the ECPA:

Penal Code 1546.1(c)(9) states that people on **PRCS** or **Parole** are now subject to warrantless searches of their electronic devices, including cell phones.

Penal Code 1546.1(c)(10) states that people on **probation** can be subject to warrantless searches of their electronic devices, including cell phones, as long as it is a clear and unambiguous condition of their probation. (If they are subject to cell phone searches it will be a condition of their probation, and listed in their probation terms)

The California Supreme Court recently weighed in on this as well in the case of *People v. Macabeo*. In this incident, Police Officers had stopped the defendant and asked him about his probation status. The defendant claimed he did not know if he was on probation or not. The Officers made no effort to confirm if the defendant was on probation and if he was, did he have a search clause for his phone. The search of the phone was found to be unconstitutional.

What does this mean?

You no longer need to get a warrant to search a cell phone that is seized from a person who is in lawful possession of it and is either on parole, PRCS. If the subject is on probation they must have a cell phone search clause.

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Source: Assembly Bill 1924, City of Fairfield Attorney

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