

Introduced by Senator Leno

February 18, 2011

~~An act relating to interrogation.~~ *An act to add Section 1542.5 to the Penal Code, relating to search warrants.*

LEGISLATIVE COUNSEL'S DIGEST

SB 914, as amended, Leno. ~~Interrogation: electronic recordation.~~ *Search warrants: portable electronic devices.*

Existing law provides that a search warrant cannot be issued but upon probable cause supported by affidavit, naming or describing the person to be searched or searched for, and particularly describing the property, thing, or things and place to be searched. Existing case law authorizes arresting officers, without a warrant, to conduct a search incident to a lawful arrest, including to search the contents of a cell phone taken from a suspect during an arrest.

This bill would prohibit the search of information contained in a portable electronic device, as defined, by a law enforcement officer incident to a lawful custodial arrest except pursuant to a warrant issued by a duly authorized magistrate using established procedures. Because the bill would impose additional duties on local law enforcement, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state,

reimbursement for those costs shall be made pursuant to these statutory provisions.

~~Existing law provides that under specified conditions the statements of witnesses, victims, or perpetrators of specified crimes may be recorded and preserved by means of videotape.~~

~~This bill would state the intent of the Legislature to later amend into this bill provisions that would require the interrogation of individuals that are suspected of homicide or violent felonies to be recorded.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
 State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 *SECTION 1. The Legislature finds and declares all of the*
- 2 *following:*
- 3 *(a) The right of privacy is fundamental in a free and civilized*
- 4 *society.*
- 5 *(b) The number of Californians utilizing and carrying portable*
- 6 *electronic devices is growing at a rapidly increasing rate. These*
- 7 *devices are capable of and encourage the storing of an almost*
- 8 *limitless amount of personal and private information. Commonly*
- 9 *linked to the Internet, these devices are used to access personal*
- 10 *and business information and databases that reside in computers*
- 11 *and servers located anywhere in the world. Users of portable*
- 12 *electronic devices have a reasonable and justifiable expectation*
- 13 *of privacy in the information these devices contain and can access*
- 14 *through the Internet.*
- 15 *(c) The California Supreme Court, in People v. Diaz, No.*
- 16 *SI66600, held that the information in these devices may be subject*
- 17 *to search incident to an arrest without a warrant or other judicial*
- 18 *supervision.*
- 19 *(d) The intrusion on the information privacy and freedom of*
- 20 *communication of any person arrested is of such enormity that it*
- 21 *must require arresting officers to obtain a warrant to search the*
- 22 *information contained in or accessed through an arrested's*
- 23 *portable electronic device.*
- 24 *SEC. 2. Section 1542.5 is added to the Penal Code, to read:*
- 25 *1542.5. (a) The information contained in a portable electronic*
- 26 *device shall not be subject to search by a law enforcement officer*
- 27 *incident to a lawful custodial arrest except pursuant to a warrant*

1 issued by a duly authorized magistrate using the procedures
2 established by this chapter.

3 (b) As used in this section, “portable electronic device” means
4 any portable device that is capable of creating, receiving,
5 accessing, or storing electronic data or communications.

6 SEC. 3. If the Commission on State Mandates determines that
7 this act contains costs mandated by the state, reimbursement to
8 local agencies and school districts for those costs shall be made
9 pursuant to Part 7 (commencing with Section 17500) of Division
10 4 of Title 2 of the Government Code.

11 SECTION 1. ~~It is the intent of the Legislature to later amend~~
12 ~~into this bill provisions that would require the electronic~~
13 ~~recording of the entire proceedings of any custodial interrogation~~
14 ~~of an individual who is in a fixed place of detention and who, at~~
15 ~~the time of the interrogation, is suspected of committing or accused~~
16 ~~of a homicide or a violent felony.~~