

Senate Bill No. 914

Passed the Senate September 1, 2011

Secretary of the Senate

Passed the Assembly August 22, 2011

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2011, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

SB 914, Leno. 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 cellular telephone 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.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) The right of privacy is fundamental in a free and civilized society.

(b) The number of Californians utilizing and carrying portable electronic devices is growing at a rapidly increasing rate. These devices are capable of and encourage the storing of an almost limitless amount of personal and private information. Commonly linked to the Internet, these devices are used to access personal and business information and databases that reside in computers and servers located anywhere in the world. Users of portable electronic devices have a reasonable and justifiable expectation of privacy in the information these devices contain and can access through the Internet.

(c) The California Supreme Court, in *People v. Diaz*, 51 Cal.4th 84 (2011), held that the information in these devices may be subject to search incident to an arrest without a warrant or other judicial supervision.

(d) The intrusion on the information privacy and freedom of communication of any person arrested is of such enormity that it must require arresting officers to obtain a warrant to search the information contained in or accessed through an arrested person's portable electronic device, such as a cellular telephone.

(e) It is the intent of the Legislature in enacting Section 1542.5 of the Penal Code to reject as a matter of California statutory law the rule under the Fourth Amendment to the United States Constitution announced by the California Supreme Court in *People v. Diaz*. The Legislature finds that once in the exclusive control of the police, cellular telephones do not ordinarily pose a threat to officer safety. The Legislature declares that concerns about destruction of evidence on a cellular telephone can ordinarily be addressed through simple evidence preservation methods and prompt application to a magistrate for a search warrant and, therefore, do not justify a blanket exception to the warrant requirement. Moreover, good forensic evidence practice supports the use of search warrants to obtain information contained in a cellular telephone seized incident to arrest. Except as otherwise stated in this section, it is not the intent of the Legislature to curtail law enforcement reliance on established exceptions to the warrant requirement.

(f) It is the intent of the Legislature, through the enactment of Section 1542.5 of the Penal Code, to implement the provisions of Sections 1 and 13 of Article 1 of the California Constitution.

SEC. 2. Section 1542.5 is added to the Penal Code, to read:

1542.5. (a) The information contained in a portable electronic device shall not be subject to search by a law enforcement officer incident to a lawful custodial arrest except pursuant to a warrant issued by a duly authorized magistrate using the procedures established by this chapter.

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

(c) Except as provided in subdivision (a), nothing in this section curtails law enforcement reliance on established exceptions to the warrant requirement.

Approved _____, 2011

Governor