



# **SAN JOSE POLICE DEPARTMENT**

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## **TRAINING BULLETIN**

**TO: All Sworn Personnel**

**FROM: Larry Esquivel  
Chief of Police**

**SUBJECT: Search Warrants for Cell Phones**

**DATE: July 14, 2014**

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**BULLETIN NO: 007-2014**

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It has been a common practice for officers to search a suspect's cell phone after arrest. These searches often yield contacts, e-mails, photos, and text messages that have investigatory and/or evidentiary value. To date, these cell phone searches have generally been viewed as part of the "search incident to arrest."

However, on June 25, 2014, the U.S. Supreme Court ruled that cell phones seized pursuant to an arrest **cannot** be searched absent a search warrant, consent, or valid exception to the search warrant requirement [Riley v. California and U.S. v. Wurie.] In addition, this ruling also held that officers may seize and secure a cell phone to prevent destruction of evidence while seeking a search warrant and may take steps to prevent remote wiping or locking (see Training Bulletin 003-2013 regarding Cell Phone Evidence Loss for assistance).

### **Exceptions to the Cell Phone Search Warrant Requirement**

Traditionally, the exceptions to the search warrant requirement are limited to: (1) exigency, (2) probation or parole searches based on a search clause, or (3) consent.

*Exigency:* The Riley Court rejected the idea that the possibility of remotely destroying the phone's contents qualifies as an exigency.

*Probation, Parole, or PRCS Searches:* We believe that searches of cell phones belonging to people with search conditions are still permissible. [Note: Verification of a search clause should be done before the search.] We expect the defense will contest this, as the Riley decision seems to place great weight on the increased expectation of privacy based on the amount and type of information people carry on their cell phones. However, other court opinions interpreting the scope and effect of search clauses have routinely held that someone who accepts probation, parole, or PRCS and the search conditions that go with those, have already given up privacy rights in almost everything: their person, their homes, their cars.

*Consent:* Consent searches of cell phones are still valid, post-Riley. However, officers should clarify the scope of the search with the suspect. Asking, "Okay if I take a look at your phone?" may not be viewed as consent to download the phone's entire contents.

*Seizure Incident to Arrest Still Allowed:* Riley does not forbid the police from seizing a phone incident to arrest. If the officer makes an arrest supported by probable cause, and the officer finds a phone on the suspect's person or within arm's reach, they can seize that phone and book it into evidence if they believe the phone has evidentiary value.

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This means that unless the follow-up investigation on the phone is a matter of urgency, the phone can be seized, booked into evidence after taking precautions to keep it from being wiped remotely (e.g., a Faraday bag, airplane mode setting, etc., see Training Bulletin 003-2013 regarding Cell Phone Evidence Loss for assistance). The warrant can then be sought during normal business hours.

Department members are thus reminded that a search of a cell phone does not fall under a "search incident to arrest." Cell phone searches require a warrant or an exception to the warrant requirement. Based upon this court decision, in order for your warrantless search to be upheld, you must explain and document specific factors and circumstances for the exception.

Regular search warrant templates can be used, however, the attached cell phone affidavit and search warrant template were provided by the Santa Clara County District Attorney's Office for your use if needed.

A handwritten signature in black ink, appearing to read 'L. Esquivel', is positioned above the typed name.

LARRY ESQUIVEL  
Chief of Police

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