



Prosecutors don't expect Pennsylvania to move toward warrantless cellphone searches anytime soon

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By **MATTHEW KEMENY**, *The Patriot-News*

These days, many people keep their lives on their smartphones.

But what happens if you get arrested? Can police freely access texts, emails, voice mail, Internet searches, pictures and other data?

In Pennsylvania, the answer is no. But elsewhere in the country, warrantless cellphone searches are becoming more common.

The Oregon State Supreme Court is set to hear arguments in a case where police searched a criminal suspect's phone without a warrant after the suspect had been arrested and put in a holding cell. Police contend the search was legal because of an exception to the warrant requirement allowing officers to search for weapons or to prevent evidence from being destroyed in certain circumstances.

But others disagree, saying the police overstepped their bounds and violated the Fourth Amendment, which protects against illegal search and seizure.

The California Supreme Court ruled this year that it's legal for police to search a suspect's cellphone without a warrant. Courts in Florida and Georgia also have upheld warrantless cellphone searches, according to recent published news reports.

In Pennsylvania, police need a search warrant or consent to search a cellphone, and midstate prosecutors do not expect that to change anytime soon. To get cellphone records, police need a subpoena.

"We've got our own framework that works well," Dauphin County First Assistant District Attorney Fran Chardo said. "It's a significant privacy issue. There ought to be safeguards, and Pennsylvania has a system where records are disclosed depending on a good showing of why you need them."

The Dauphin County district attorney's office obtains warrants to search cellphones five to 10 times a month, Chardo said. The records are often helpful in shooting and drug cases.

Cellphone usage information also has been an issue in fatal crashes involving distracted drivers. Police have legally obtained records to determine what drivers were doing with their phones at the time of a crash. Take **Joanna L. Seibert of Dillsburg, who was applying makeup and using a multimedia function on her iPhone when her car hit and killed Northern**



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To access cellphone searches in Pennsylvania, police need a subpoena. Harrisburg-area prosecutors don't expect that to change anytime soon.

Regional Police Officer David Tome on Oct. 21, 2008.

Seibert was convicted in October of homicide by vehicle and is serving 1 to 5 years in state prison.

Perry County District Attorney Charles Chenot III said the only time he would authorize a warrantless cellphone search is if it were a life-and-death situation where obtaining information in a short amount of time would be vital, such as a kidnapping or child abduction.

"It's more important to get to that person who's been taken than it is to make an arrest," he said.

But the lag time in getting a warrant can present problems for law enforcement. The process can take hours, even up to a half day, depending on the time of the arrest, availability of a judge and other factors. Unless police have seized the phone in an arrest, someone might have time to erase incriminating data.

Police also need probable cause to get a warrant to search a phone.

"You have to have a basis for seeking that information," Chenot said. "You have to believe the driver of a vehicle was using the phone or it was used in a drug deal. Just because there's a phone in the car doesn't mean a police officer can get a warrant for it."

In other states, including Ohio and Michigan, police need warrants to search suspects' cellphones. In Michigan, state police use data-extraction devices to lift information from suspects' smartphones, according to the Electronic Frontier Foundation, a San Francisco-based digital-rights group. They can do this only after obtaining a warrant.

"Think about the amount of information on your phone," group spokeswoman Rebecca Jeschke said. "It's important to know what happens to that data. Is it really fair for a cop to be able to collect all that information? I'm not saying police and investigators shouldn't have access to it. They should. They just need to go to a judge and get a warrant with probable cause."

To prevent the issue from reaching the courts here, a midstate lawmaker wants to introduce a bill this fall that would better define the law in Pennsylvania. Though it hasn't been drafted, the measure would protect electronic documents from being searched without a warrant, said state Rep. Bryan Cutler, R-Lancaster County.

To Cutler, there shouldn't be a difference between a cellphone and a briefcase in plain view in a vehicle. Police should need a warrant to gain access to either, he said.

"I know that oftentimes individuals say, 'If you're not doing anything wrong, why be worried?'" Cutler said. "Our basic constitutional rights must be protected."

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