

## NMDPS - SEARCH INCIDENT – CELL PHONES

The search incident to arrest exception has been around a long time. Officers can empty pockets, look through wallets, cigarette packages, etc., without a warrant. But what should an officer do if the person has a cell phone or smart phone?

US Supreme Court, aware of the incredible amount of information held by a cell phone, felt a bright line rule was needed to protect privacy. They held a search warrant is needed to look at the contents or data of a cell phone.

A warrant is not needed for exigent circumstances: to prevent remote detonation of a bomb, locate a missing or abducted child, to find a fleeing suspect or prevent imminent injury. Nor is a warrant needed to examine a phone or case for a weapon or contraband.

One concern is remote wiping or data encryption but there are things an officer can do. An officer can turn off a phone, pull the battery, or put it in a special bag that isolates it from radio waves that might wipe its memory. Other measures exist to avoid data encryption.

The decision was unanimous. True, bad guys can use technology, but so can law enforcement. New Mexico was one of the first states to approve electronic warrants to make it easier for an officer to get a warrant. Riley v. California (2014)

- - ADA Elliott Guttman, Law Enforcement Academy



What'd ya mean how'd he escape? He used his handcuff key app from his cell phone!