

CHIEF OF DETECTIVES

NOTICE

8.4

January 28, 2021

TO: All Concerned Department Personnel

FROM: Chief of Detectives

SUBJECT: NOTICE REGARDING MANDATORY COMPLIANCE WITH
NEW ELECTRONICS COMMUNICATIONS PRIVACY ACT -
REVISED - UPDATED

This Notice revises and updates Chief of Detectives Notice, dated July 28, 2017, concerning the provisions and requirements of the California "Electronic Communication Privacy Act" (Cal. Penal Code §§1534, 1546, 1546.1 and 1546.2) which governs access to and retrieval of evidence from service providers or digital devices.

Prior to the passing of Assembly Bill (AB) 904, California Penal Code defined tracking devices as any electronic or mechanical device that permits the tracking of the movement of a person or object. Effective January 1, 2021, AB 904 amends Penal Code §1534 and revises the definition of "tracking device" to include any *software*, that permits the tracking of the movement of a person or object.

Specifically, as amended, Penal Code §1534 (b)(6) now states:

(A) As used in this section, "tracking device" means any electronic or mechanical device, or software, that permits the tracking of the movement of a person or object.

(B) Nothing in this section shall be construed to authorize the use of any device or software for the purpose of tracking the movement of a person or object.

Assembly Bill 904 thus clarifies that if a law enforcement agency utilizes software to track the movements of a person or object, even if the installation of the tracking software does not require physical contact with a device, person or vehicle, the provisions for obtaining a tracking search warrant under the California Electronic Communications Privacy Act still apply.

A Special Order updating the changes to Department Manual Section 4/742.15, *Mandatory Compliance with Electronic Communication* is forthcoming and will reflect the broadened definition of a "tracking device" in order to comply with AB 904. **As a reminder, failure to comply with the Electronic Communications Privacy Act may result in the suppression of evidence and/or civil liability.**

All Concerned Department Personnel

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If you have any issues or questions regarding this Notice, please contact Gang and Narcotics Division, at (213) 833-3700.



KRIS E. PITCHER, Deputy Chief
Chief of Detectives

APPROVED:



DANIEL RANDOLPH, Commander
Chief of Staff
Office of the Chief of Police

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