

## **ACCESSING ELECTRONIC DATA OR COMMUNICATION: REQUIRE SEARCH WARRANT**

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**House Joint Resolution N (reported without amendment)**  
**Sponsor: Rep. Jim Runestad**  
**Committee: Criminal Justice**  
**Complete to 6-1-16**

Analysis available at  
<http://www.legislature.mi.gov>

### **SUMMARY:**

House Joint Resolution N would amend Section 11 of Article I of the state constitution to require the government to obtain a search warrant in order to access a person's electronic data or communication.

Currently, Section 11 protects against unreasonable searches and seizures by the government. A warrant cannot be issued to search a place or seize a person or things without describing them and must show probable cause, supported by oath or affirmation.

The resolution would apply the protection described above to electronic data and communications and would require a search warrant to access electronic data or communication.

To become part of the constitution, the resolution requires a two-thirds vote in each house of the legislature and approval by the voters at the next general election. A general election is an election held in November of an even-numbered year.

### **FISCAL IMPACT:**

This amendment would have no fiscal impact on the Department of State Police or local law enforcement agencies.

### **BRIEF DISCUSSION OF THE ISSUES:**

The Fourth Amendment of the U.S. Constitution, echoed in Section 11 of the Michigan constitution, protects citizens from unreasonable search and seizures of property. Generally speaking, a warrant is required before law enforcement can search a person's home, car, person, or look in a briefcase, among other things. More recently, the U.S. Supreme Court ruled in *Riley v California* (2014) that a search of a cell phone incident to an arrest requires a warrant.

#### ***Arguments in Support:***

Adoption of the resolution would mean voters would have the opportunity to decide if the state constitution should require law enforcement to obtain a warrant before searching a person's electronic data. The need for the amendment is that federal law has not kept up with advances in technology. Amending the state constitution would mean that Michiganders would not have to wait for the US Supreme Court to apply the Fourth

Amendment to searches of electronic data, wherever the data is stored and from whatever type of device it was generated; for example, cell phone, computer, tablet, or iPod. Americans increasingly use the Internet to conduct both personal and business affairs, and data is stored almost indefinitely by service providers, external devices, or in Cloud storage. Simply put, the amendment would protect access to electronic data in the same way as access to hard data (for example, a diary, letters, photographs), regardless of where it is stored. A handful of states have recently enacted or introduced similar amendments to their state constitutions.

***Arguments in Opposition:***

Those opposing efforts to amend state constitutions regarding search and seizure protections says such efforts are likely to have unintended consequences. In particular, such state constitutional amendments could make it more difficult for Michigan law enforcement officials and agencies to investigate cybercrimes and enforce cybercrime laws; for example, Internet child pornography rings. Federal law enforcement agencies would not be impacted by adoption of the resolution. Further, many feel that such state initiatives are unnecessary, as federal law already protects electronic privacy and continues to update interpretations of law when challenges arise.

**POSITIONS:**

A representative of the ACLU-MI testified in support of the resolution. (5-12 & 5-26-15)

A representative of the Criminal Defense Attorneys of Michigan testified in support of the resolution. (5-12-15)

A representative of the Michigan Tenth Amendment Center testified in support of the resolution. (5-12-15)

A representative of the Michigan Campaign for Liberty testified in support of the resolution. (5-12-15)

A representative of the Libertarian Party of Michigan testified in support of the resolution. (5-12-15)

The Cheboygan Tea Party indicated support for the resolution. (5-12-15)

The Onaway Tea Party indicated support for the resolution. (5-12-15)

The Department of State Police indicated opposition to the resolution. (5-12-15)

The Michigan Sheriff's Association indicated opposition to the resolution. (5-26-15)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.