

# Legislative Analysis



## ACCESSING ELECTRONIC DATA OR COMMUNICATIONS

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**Senate Joint Resolution G as enrolled**  
**Sponsor: Sen. Jim Runestad**  
**House Committee: Judiciary [Discharged]**  
**Senate Committee: Judiciary and Public Safety**  
**Complete to 9-27-20**

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

**BRIEF SUMMARY:** Senate Joint Resolution G 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 electronic communications.

**FISCAL IMPACT:** This amendment would have no fiscal impact on the Department of State Police, local law enforcement agencies, or the judiciary.

### **THE APPARENT PROBLEM:**

The Fourth Amendment to the U.S. Constitution, echoed in section 11 of Article I of the Michigan constitution, protects citizens from unreasonable search and seizure of property. Generally speaking, a warrant is required before law enforcement can search a person's home, car, briefcase, or person, among other things. In 2014, the U.S. Supreme Court ruled in *Riley v California*<sup>1</sup> that the search of a cell phone incident to an arrest requires a warrant. However, this ruling only addressed accessing data on a cell phone; to expand this scope to other electronics, another case would have to be litigated or a federal amendment would have to be enacted. But these processes can be lengthy. In the meantime, law enforcement must obtain a warrant to search a person's postal mail, but a warrant is not required to read a person's electronic mail.

Because the laws have not caught up with technology, this resolution seeks to modernize Michigan's protections against unreasonable searches.

### **THE CONTENT OF THE RESOLUTION:**

Senate Joint Resolution G 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 electronic communications.

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 electronic communications and would require a search warrant to access electronic data or electronic communications.

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<sup>1</sup> *Riley v California*, 575 US 373 (2014). See [https://www.supremecourt.gov/opinions/13pdf/13-132\\_8I9c.pdf](https://www.supremecourt.gov/opinions/13pdf/13-132_8I9c.pdf)

