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ONE MINUTE BRIEF

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NUMBER: 2018-07 **DATE:** 05-04-18 **BY:** Devallis Rutledge **TOPIC:** Arrestee Phone Calls

ISSUE: What are the rights of a person to make phone calls after arrest or booking?

*“There is a **well-established tradition** against holding prisoners incommunicado in the United States. It would be hard to find an American who thought people could be picked up by a policeman and held incommunicado, without the opportunity to let anyone know where they were, and without the opportunity for anyone on the outside looking for them to confirm where they were.”* *Halvorsen v. Baird* (9th Cir. 1998) 146 F.3d 680, 688-89. California has **statutory mandates** to protect against protracted custody without access to communication.

- PC § 851.5 provides that **immediately upon booking** an **adult**, or except where physically impossible **within 3 hours of arrest** (whichever occurs first), officers must **advise** the person of the right to make **3 calls**, and must then accommodate the calls if requested. Officers must also **inquire** as to whether the person is the **custodial parent** of any minor children, and must permit **2 additional calls** if needed to make child-care arrangements. **Signs** containing this information must be conspicuously posted. Any violation of this section is a **misdemeanor**.

- W&I § 627(b) mandates that **immediately upon lodging** a **minor**, or except where physically impossible **within 1 hour after taking custody** (whichever occurs first), the minor must be advised of and afforded the right to make **2 phone calls**. Violation is a **misdemeanor**.

- Failure to comply with mandatory statutes governing the right to make phone calls after arrest may result in **federal civil liability** against officers and agencies. *Carlo v. Chino* (9th Cir. 1997) 105 F.3d 493 (damages and attorney's fees assessed against city and officers)

who failed to allow calls until 14 hours after DUI arrest); *Henry v. Shasta County* (9th Cir. 1997) 132 F.3d 512 (denying qualified immunity and holding officers subject to suit for allegedly violating PC § 851.5).

- One appellate opinion held that a suspect's **admission** to attempted murder should have been **suppressed** where the suspect invoked her right to counsel and was not then promptly advised of her rights under PC § 851.5, despite the passage of more than 3 hours from arrest. *People v. Locke* (1984) 152 Cal.App.3d 1130, 1133 (basing suppression *not* on the statutory violation, but upon the effect this violation had in undermining efficacy of the *Miranda* warning).

- Although **officers may not eavesdrop upon or record** communications between a prisoner and a doctor, lawyer or spiritual advisor (PC § 636), "*police may require a defendant first to disclose the telephone number of the person to whom the call is being placed, and then may place the call and ... overtly listen to the **defendant's side** of any [non-privileged] conversation....*" *People v. Siripongs* (1988) 45 Cal.3d 548, 566.

- A prisoner who has **escaped** from sentenced confinement remains in *custodia legis* and so is not "arrested" when recaptured; therefore, there is **no right to new phone calls** under § 851.5. *People v. Robinson* (1968) 266 Cal.App.2d 261, 265-66; *People v. Moreland* (1971) 15 Cal.App.3d 269, 273.

- Where an **emergency** or the suspect's **medical condition** or other factors make compliance with the statutory time limits impractical, "*an accused is not guaranteed the Absolute right to timely use of a telephone.*" *People v. Moreland* (1971) 15 Cal.App.3d 269, 275 (search-and-rescue activities during a flood prevented timely compliance).

BOTTOM LINE: Arrestees must be timely notified of their rights to phone calls (3-5 for adults within 3 hours or at booking; 2 for minors within 1 hour or at lodging), and calls then requested must be promptly accommodated. Violations may be punished as misdemeanors, may engender civil liability, and may affect admissibility of evidence.

(Bold emphases added and citations omitted from quoted material.)

This information was current as of publication date. It is not intended as legal advice. It is recommended that readers check for subsequent developments, and consult legal advisors to ensure currency after publication. Local policies and procedures regarding application should be observed.