

THE ALPENA NEWS

Digital data now protected after Proposal 2 passes



News Photo by Julie Riddle Aidan Kinsman, 3, plays Pokemon Go! on a smartphone, watched by sister PatienceMarie Kinsman and Amethyst Mann. Police should have access to digital data, as long as they have reasonable cause to extract it, the women said.

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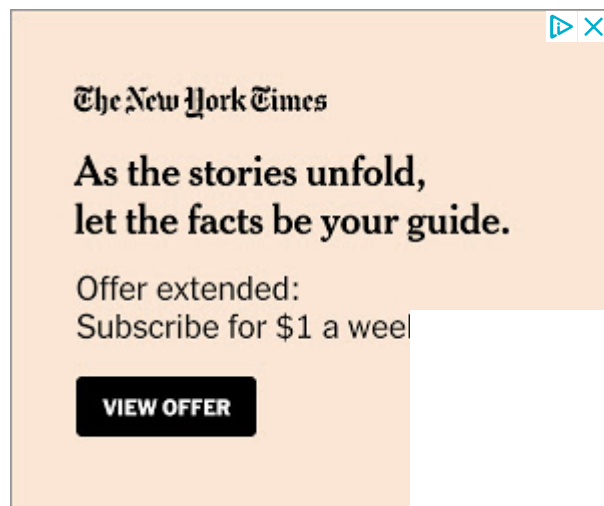
ALPENA — Voters in the Nov. 3 election may have barely noticed a proposal on the back of their ballots that gave an official stamp to the notion that their digital lives should be protected from police.

Though protection against unreasonable search of homes and seizure of possessions has been promised in writing since the Fourth Amendment was ratified in 1791, Michigan has never put in writing a mandate that police can't take digital data — such as texts, emails, online search histories, and photos — without a justifiable reason and written permission.

Proposal 2, which passed with an overwhelming 89% voter approval, allows a change to the state constitution requiring police to obtain a warrant before extracting data or using digital surveillance technology.

The proposal does not apply to police use of geofencing data collected by companies such as Google, which can track the location of electronics users within a specified area.

People's digital privacy “*should absolutely be protected,*” according to Detective Anthony Utt of the Michigan State Police-Alpena Post.

An advertisement from The New York Times. It features the logo at the top left, followed by the headline "As the stories unfold, let the facts be your guide." Below the headline, it says "Offer extended: Subscribe for \$1 a week". At the bottom, there is a black button with the text "VIEW OFFER" in white. In the top right corner of the ad, there are small icons for play and close.

According to Utt, the proposal's inclusion on the Nov. 3 ballot came as a surprise to many in law enforcement, because police have been requesting warrants before extracting digital data for a long time.

To request and be granted a warrant, police have to provide probable cause that the device contains evidence necessary to an investigation.

"We're not going to be out there like cowboys, just snagging everybody's stuff and searching it without due process," Utt said.

Digital data is presented as evidence in Alpena courtrooms regularly, used by either the prosecution or the defense in cases involving charges ranging from stalking to possession of child pornography.

Warrants for digital data are common in investigations involving drug crime, sexual assault, or other crimes against persons, Utt said.

If police suspect an electronic device was used in the commission of a crime, the device may be seized at the time of an arrest, with a warrant filed afterward.

In that case, evidence still isn't pulled off a device until the action has been given a judge's approval, Utt said.

At the Alpena Post, as with many police agencies without a dedicated in-house expert, electronic devices are sent to a separate computer crimes unit for data extraction.

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The information retrieved can be invaluable to finding evidence that someone did something to endanger the community, Utt said.

People love to take pictures and share snapshots of their lives on social media — and that includes the criminal world, the detective said.

Offenders commonly take and share photos of illegal narcotics, breaking and entering escapades, or stolen goods, or discuss their criminal activity via text or social media chat — information police can use to build a solid case to present to a court.

That information can protect a community, but the community also needs to be protected from unwarranted search of their electronic lives, Utt said.

As long as police have solid evidence that something on a phone is needed for their investigation, they should be able to pull information off the device, according to PatienceMarie Kinsman, of Alpena, who was strolling downtown Wednesday evening.

Digital data — including information that has been deleted by a phone's user — can be helpful to residents seeking police help, said Amethyst Mann, who was walking with Kinsman. That buried information is important to police investigations — as long as it's obtained the right way, she said.

"It's like, you can't put somebody in jail without being on trial," Mann said. "Don't go through their phone without a trial."

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