



Interoffice Memo

DATE: April 12, 2016

PHONE:

FROM: Dave Williams, Assistant Sheriff

TO: All Personnel,
Gang/Narcotics Division

SUBJECT	Temporary Order: Use of Cell-Site Simulators
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Effective immediately, the following policies shall guide members in their usage of cell site simulators.

Cell-Site Simulator Policy: Introduction

Cell-site simulator technology significantly enhances the Department's efforts to achieve its public safety and law enforcement objectives. Whether deployed as part of a fugitive apprehension effort, a complex narcotics investigation, or to locate or rescue a kidnapped child, cell-site simulators fulfill critical operational needs. As with other capabilities, the Department must always use the technology in a manner that is consistent with the Constitution and all other legal authorities. Moreover, any information resulting from the use of cell-site simulators must be handled in a way that is consistent with the array of applicable statutes, regulations, and policies that guide law enforcement in how it may and may not collect, retain, and disclose data.

As technology evolves, the Department must continue to assess its tools to ensure that practice and applicable policies reflect the Department's law enforcement and public safety missions, as well as the Department's commitments to accord appropriate respect for individuals' privacy and civil liberties. This policy provides guidance and establishes common principles designed to ensure that the Department continues to deploy cell-site simulators in an effective, appropriate, and consistent way. The Department's individual divisions may issue additional specific guidance consistent with this policy.

Authorized Purposes and Use of Cell-Site Simulator

Cell site simulator technology may be used to gather information leading to the identity or whereabouts of fugitives, suspects, victims, or missing persons. Authorized Department operators can use cell-site simulators to help locate cellular devices whose unique identifiers are already known to law enforcement, or to determine the unique identifiers of an unknown device by collecting limited signaling information from devices in the simulator user's vicinity.

A cell-site simulator receives and uses an industry standard unique identifying number assigned by a device manufacturer or cellular network provider. When used to locate a known cellular device, a cell-

site simulator initially receives the unique identifying number from multiple devices in the vicinity of the simulator. Once the cell-site simulator identifies the specific cellular device for which it is looking, it will obtain the signaling information relating only to that particular phone. When used to identify an unknown device, the cell-site simulator obtains signaling information from non-target devices in the target's vicinity for the limited purpose of distinguishing the target device.

By transmitting as a cell tower, cell-site simulators acquire the identifying information from cellular devices. This identifying information is limited, however. Cell-site simulators provide only the relative signal strength and general direction of a subject cellular telephone; they do not function as a GPS locator, as they do not obtain or download any location information from the device or its applications. Moreover, cell-site simulators used by the Department cannot, and shall not be used to collect the contents of any communication or any data contained on the phone itself, such as emails, texts, contact lists, images or any other data from the phone. In addition, Department cell-site simulators do not provide subscriber account information (for example, an account holder's name, address, or telephone number).

Authorized Cell-Site Simulator Operators and Training Requirements

Cell-site simulators require training and practice to operate correctly. Department personnel must be trained and supervised appropriately. Cell-site simulators may be operated only by trained personnel who have been authorized by the Department to use the technology and whose training has been administered by a qualified Department component or expert. This training shall include laws and concerns related to privacy and civil liberties, and, when available, training from the product manufacturer.

Legal Process and Court Orders for Use of Cell-Site Simulator

Whenever possible, a search warrant supported by probable cause shall be obtained prior to use of a cell-site simulator. When making any application to a court, a deputy must disclose appropriately and accurately the underlying purpose and activities for which an order or authorization is sought. Applications for the use of a cell-site simulator must include sufficient information to ensure that the courts are aware that the technology may be used.

Regardless of the legal authority relied upon, at the time of making an application for use of a cell-site simulator, the application or supporting affidavit should describe in general terms the technique to be employed. The description should indicate that investigators plan to send signals to the cellular phone that will cause it, and non-target phones on the same provider network in close physical proximity, to emit unique identifiers, which will be obtained by the technology, and that investigators will use the information collected to determine information pertaining to the physical location of the target cellular device or to determine the currently unknown identifiers of the target device. If investigators will use the equipment to determine unique identifiers at multiple locations and/or multiple times at the same location, the application should indicate this also.

An application or supporting affidavit should inform the court that the target cellular device (e.g., cell phone) and other cellular devices in the area might experience a temporary disruption of service from the service provider. The application may also note, if accurate, that any potential service disruption to non-target devices would be temporary and all operations will be conducted to ensure the minimal amount of interference to non-target devices.

An application for the use of a cell-site simulator should inform the court about how law enforcement intends to address deletion of data not associated with the target phone. The application should also indicate that law enforcement will make no affirmative investigative use of any non-target data absent further order of the court, except to identify and distinguish the target device from other devices.

In the case of an emergency involving danger of death or serious physical injury to any person requiring use of cell-site simulator technology without delay, the technology may be deployed prior to obtaining a warrant. In every case of a warrantless use of a cell-site simulator, the authorized operator shall insure that, within three days after the use, an application for a warrant or order authorizing the emergency use of the cell-site simulator is filed with the appropriate court. The application shall set forth the facts giving rise to the emergency and probable cause.

Department Monitoring of Use of Cell-Site Simulators

Deployment of a cell-site simulator by the Department must be approved by a Gang/Narcotics Division supervisor. Any emergency/warrantless use of a cell-site simulator must be approved by a Gang/Narcotics Division supervisor, and notice shall be given to the lieutenant of the Gang/Narcotics Division. The Gang/Narcotics supervisor shall be responsible for reviewing all court paper work, or any facts giving rise to an emergency situation, to insure compliance with this policy and the law.

A cell-site simulator log shall be maintained tracking every use of a cell-site simulator by the Department. The log shall contain:

- Date(s)/time(s) of use
- Suspected crime(s), if applicable
- Location(s) used
- Associated DR numbers, if applicable
- Phone # and/or device ID
- If use of the device was at the request of an outside agency, the outside agency and case agent
- Whether a phone was successfully located or identified

A Gang/Narcotics Division supervisor shall routinely inspect the technology to insure any and all data from any completed operation has been successfully erased. Quarterly random audits of the cell-site simulator use log and corresponding search warrants will be conducted by a Gang/Narcotics Division supervisor.

An annual report shall be made to the Board of Chiefs reflecting:

- The total number of times a cell-site simulator was deployed by the Department;
- The number of deployments at the request of other agencies, including State or Local law enforcement; and
- The number of times the technology was deployed in emergency circumstances.

Sharing of Information Gathered by Cell-Site Simulators

A request from an outside agency for investigative assistance from the Department involving the use of a cell-site simulator may be honored upon approval of the Gang/Narcotics Division supervisor.

A cell-site simulator shall only be deployed at the request of an outside agency subject to the following limitations:

- Requested deployment must be for an approved purpose pursuant to this policy.
- If a warrant has been obtained by the outside agency, the warrant application must include sufficient information to ensure that the court was aware of, and authorized the use of, the technology.
- If a warrantless use is requested, the case must involve an emergency involving danger of death or serious physical injury to any person requiring use of cell-site simulator technology without delay.
- No personnel from the outside agency shall use, or observe the use of a cell-site simulator.
- Only location and/or device ID # shall be provided to the outside agency; all data unrelated to the outside agency's investigation shall not be shared, and will be destroyed by the Department.

Retention/Destruction of Information Gathered by Cell-Site Simulators

All information gathered during an approved deployment must be deleted at the conclusion of the operation. The Department's use of cell-site simulators shall include the following practices:

- When the equipment is used to locate a known cellular device, all data must be deleted as soon as that device is located, and no less than once daily.
- When the equipment is used to identify an unknown cellular device, all data must be deleted as soon as the target cellular device is identified, and in any event no less than once every 30 days.
- Prior to deploying equipment for another mission, the operator must verify that the equipment has been cleared of any previous operational data.

It is not likely, given the limited type of data cell-site simulators collect (as discussed above), that exculpatory evidence would be obtained by a cell-site simulator in the course of criminal law enforcement investigations. As in other circumstances, however, to the extent investigators know or have reason to believe that information is exculpatory or impeaching they have a duty to memorialize that information.