

Alameda County District Attorney's Policy for Use of Cell-Site Simulator Technology

Cell-site simulator technology provides valuable assistance in support of important public safety objectives. Whether deployed as part of a fugitive apprehension effort, to locate at-risk people or missing children, or to provide search and rescue support in natural disasters and emergencies, cell-site simulators fulfill critical operational needs. This technology will only be utilized when authorized by a search warrant signed by a judicial officer that has been reviewed through the judicial process.

As with any law enforcement capability, the Alameda County District Attorney's Office (“the District Attorney’s Office”) must use cell-site simulators in a manner that is consistent with the requirements and protections of the Constitution, including the Fourth Amendment, and applicable statutory authorities, including the Pen Register Statute and Government Code Section 53166 (Senate Bill 741, Acts 2015). 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 District Attorney’s Office must continue to assess its tools to ensure that practice and applicable policies reflect the District Attorney’s Office's law enforcement and public safety missions, as well as the District Attorney's Office's commitment to uphold every individuals' privacy and civil liberties. The District Attorney’s Policy for Use of Cell-Site Simulator Technology (the “Policy”) provides additional guidance and establishes common principles for the use of cell-site simulators and identifies practices that will be implemented by the District Attorney’s Office to ensure privacy protections for all individuals.

I. BACKGROUND

Cell-site simulators have been the subject of misperception and confusion. This section provides information about how the District Attorney’s Office intends to use the equipment and defines the capabilities that are the subject of this Policy.

Basic Uses

The District Attorney's Office shall maintain custody and control of the cell-site simulator technology as set out herein and oversee all requested uses of that technology in order to ensure full compliance with this Policy, as well as state and federal law. Law enforcement agents can request use of cell-site simulators to help locate cellular devices whose unique identifiers are already known to law enforcement. This technology will only be utilized for this purpose when authorized by a search warrant signed by a judicial officer that has been reviewed through the judicial process.

The District Attorney's Office may also use the cell-site simulator technology in the wake of a natural disaster or an emergency, where the ability to locate a victim's cell phone can assist first responders to narrow the area of search, locate victims and render aid in the shortest possible time frame. All such uses of this technology would be in compliance with state and federal law.

Cell-site simulator technology is but one tool among many traditional law enforcement strategies, and will only be deployed in a fraction of cases in which the technology is best suited to achieve specific public safety objectives.

How the Technology Functions

Cell-site simulators, as governed by this Policy, will function by transmitting as a cell tower. In response to the signals emitted by the simulator, cellular devices in the proximity of the simulator identify it as the most attractive cell tower in the area and thus transmit signals to the simulator that identify the device in the same way that they would with a networked tower.

A cell-site simulator will receive these signals and use an industry standard unique identifying number assigned by a device manufacturer or cellular network provider to distinguish between incoming signals until the targeted device is located. 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, rejecting all others. Although the cell-site simulator initially receives signals from multiple devices in the vicinity of the simulator while attempting to locate the target device, it does not display the unique identifying numbers of those

other devices for the operator. To the extent that any unique identifier for the non-targeted device might exist in the simulator itself, it will be purged at the conclusion of operations in accordance with Section V. of this Policy.

When used in a natural disaster or emergency situation, or to aid search and rescue efforts, the cell-site simulator will obtain signaling information from all devices in the simulator's target vicinity for the limited purpose of locating persons in need of assistance or to further recovery efforts. Any information received from the cellular devices during this time will only be used for these limited purposes and all such information received will be purged at the conclusion of the effort in accordance with section V. of this Policy.

What They Do and Do Not Obtain – The Authorized Purposes of the District Attorney's Use of a Cell-Site Simulator

By transmitting as a cell tower, cell-site simulators acquire the identifying information from cellular devices. As employed by the District Attorney's Office, this information will be limited. Cell-site simulators will provide only the relative signal strength and general direction of a subject cellular telephone. They will not function as a GPS locator, as they will not obtain or download any location information from the device or its applications. Moreover, cell-site simulators used by the District Attorney's Office and any authorized law enforcement agency will be configured as pen registers, and will not be used to collect the contents of any communication, in accordance with 18 U.S.C. § 3127(3). This limitation will be made an express part of any search warrant sought by the District Attorney's Office. The simulator will not remotely capture emails, texts, contact lists, images or any other data contained on the phone. In addition, the District Attorney's Office cell-site simulators do not collect subscriber account information (*for example, an account holder's name, address, or telephone number*). In fact, the specific cell-site simulator sought by the District Attorney's Office does not have the capacity to intercept or capture communications, emails, texts, contact lists, images or other data contained on the device.

II. MANAGEMENT CONTROLS, AUTHORIZATION FOR USE, AND ACCOUNTABILITY

Cell-site simulators require training and practice to operate correctly. To that end, the following management controls and approval processes will help ensure that only knowledgeable and accountable personnel will use the technology.

1. The District Attorney's Office, and any authorized law enforcement personnel with access to the simulator in accordance with this Policy, will be trained and supervised appropriately. All such law enforcement personnel shall be sworn peace officers as defined in California Penal Code section 830.1. Cell-site simulators will be operated only by personnel who have been authorized by the District Attorney's Office to use the technology and who have been trained by a qualified agency component or expert.
2. To the extent the District Attorney's Office shares the information collected through a cell-site simulator with any third party, such third party will enter into a memorandum of understanding or other agreement (MOU) with the District Attorney's Office regarding the uses and restrictions from sharing information, including the purposes of, processes for, and limitations from sharing information. The terms of each MOU will be consistent with the Policy.
3. Prior to deployment of the technology, use of a cell-site simulator by the District Attorney's Office must be approved by the Chief of Inspectors or the Assistant Chief of Inspectors. Any emergency use of a cell-site simulator must be approved by a Lieutenant of Inspectors or above.

This Policy will include training on privacy and civil liberties under state and federal law.

III. LEGAL PROCESS AND SEARCH WARRANTS

The use of cell-site simulators will be permitted only as authorized by this Policy and pursuant to a search warrant signed by a judicial officer.

Law enforcement officers seeking to use cell-site simulators must either: (1) obtain a warrant that contains all information required to be included in a pen register order pursuant to 18 U.S.C. § 3123 (or the state equivalent); or (2) seek a warrant and a pen register order concurrently. The search warrant affidavit also must reflect the information noted in Section IV of this Policy ("Applications for Use of Cell-Site Simulators").

IV. APPLICATIONS FOR USE OF CELL-SITE SIMULATORS

When making any application to a court, members of the District Attorney's Office and law enforcement officers must disclose appropriately and accurately the underlying purpose and activities for which an order or authorization is sought. Law enforcement officers must consult with prosecutors in advance of using a cell-site simulator, and 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.

1. 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 the physical location of the target cellular device.
2. 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.
3. 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 use of any non-target data, except to identify and distinguish the target device from other devices.

V. AUDITS, MONITORING, DATA COLLECTION, AND DISPOSAL

The District Attorney's Office is committed to ensuring that law enforcement practices concerning the collection or retention of data are lawful, and appropriately respect the important privacy interests of individuals. As part of this commitment, the District Attorney's Office will operate in accordance with rules, policies, and laws that control the collection, retention, dissemination, and disposition of records that contain personal identifying information. As with data collected in the course of any investigation, these authorities apply to information collected through the use of a cell-site simulator. The District Attorney's Office will not collect, retain or disseminate any data except as authorized by this Policy and by law. Consistent with applicable existing laws and requirements, including any duty to preserve exculpatory evidence, the District Attorney's Office's use of cell-site simulators shall include the following privacy practices:

1. 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.
2. When the equipment is used following a disaster, or in a search and rescue context, all data must be deleted as soon as the person or persons in need of assistance have been located, and in any event no less than once every ten (10) days.
3. Prior to deploying equipment for another mission, the operator must verify that the equipment has been cleared of any previous operational data.

The District Attorney's Office shall implement an auditing program to ensure that the data is deleted in the manner described above. This audit shall take place not less than once every six (6) months.

On January 15th of each year, or at the next closest regularly scheduled Board meeting, the District Attorney shall prepare and present to the Board an annual report summarizing the use of the cell-site simulator technology and compliance with the Policy. This report shall not include any personally identifiable information, proprietary information, or any other information expressly prohibited by law from disclosure. The report shall include the following:

1. An overview of the number of requests for use of the equipment, how many requests were authorized, and how many times the equipment was deployed in the following categories: A) To effectuate an arrest; B) To locate an at-risk person; and C) To aid in search and rescue efforts.
2. A list of outside agencies that were authorized to use the equipment.
3. A list of outside agencies that received information from use of the equipment.
4. The number of any violations of the Policy.
5. Total additional costs for maintenance, licensing and training, if any.
6. The results of any internal audits, and if corrective action was taken.

VI. FEDERAL STATE AND LOCAL PARTNERS

The District Attorney's Office often works closely with its Federal, State or Local law enforcement partners and provides technological assistance under a variety of circumstances. This policy applies to all instances in which the District Attorney's Office use cell- site simulators in support of other Federal, State or Local law enforcement agencies. As noted above, to the extent the District Attorney's Office shares the information collected through a cell- site simulator with any third party, such third party shall enter into a MOU with the District Attorney's Office regarding the uses and restrictions from sharing information, including the purposes of, processes for, and limitations from sharing information.

VII. TRAINING AND COORDINATION, AND ONGOING MANAGEMENT

Accountability is an essential element in maintaining the integrity of the use of this technology by the District Attorney's Office. Every law enforcement agency and/or officer requesting use of the cell-site simulator, shall be provided with a copy of this Policy and specialized training in the use of this technology. Such agencies shall also provide copies of this Policy and training, as appropriate, to all relevant employees who may be involved in the use of this technology. Periodic review of this Policy and training shall be the responsibility of the Assistant Chief of Inspectors with respect to the way the equipment is being

used (e.g., significant advances in technological capabilities, the kind of data collected, or the manner in which it is collected). Officers will familiarize themselves with this Policy and comply with all orders concerning the use of this technology. Moreover, as the law in this area evolves, this Policy will be amended to reflect the current state of the law. All such amendments to the Policy will be submitted to the Board of Supervisors for approval consistent with the requirements of Government Code Section 53166 (Senate Bill 741. Acts 2015).

It is vital that all Deputy District Attorneys familiarize themselves with the contents of this Policy, so that their court filings and representations are accurate and consistent with both the intent and scope of this Policy.

VIII. CONCLUSION

Cell-site simulator technology significantly enhances the Alameda County District Attorney's Office's efforts to achieve its public safety and law enforcement objectives. As with other capabilities, the District Attorney's Office must always use this technology in a manner that is consistent with the Constitution and all other legal authorities. This policy provides additional principles and guidance to ensure that the District Attorney's Office deploys the cell-site simulator in an effective and appropriate manner consistent with authorizing law.