

CELLULAR SITE SIMULATOR USAGE AND PRIVACY

610.1 PURPOSE AND SCOPE

The purpose of this policy is to set guidelines and requirements pertaining to cellular site simulator technology usage and privacy. Any changes to this policy - including authorized uses of the cellular site simulator technology by the Orange County Sheriff's Department - will be made in compliance with California Government Code Section 53166.

610.2 POLICY

It is the policy of the Orange County Sheriff's Department to respect the privacy rights and civil liberties of individuals and to follow the United States Constitution, including the First and Fourth Amendments, the California Constitution, and all applicable laws.

610.3 BASIS FOR POLICY

Government Code § 53166(b) requires all law enforcement organizations that use cellular communications interception technology, including cellular site simulator technology, to:

- (a) Maintain reasonable security procedures and practices, including operational, administrative, technical and physical safeguards, to protect information gathered through the use of cellular communications interception technology from unauthorized access, destruction, use, modification or disclosure.
- (b) Implement a usage and privacy policy to ensure that the collection, use, maintenance, sharing and dissemination of information gathered through the use of cellular communications interception technology complies with all applicable law and is consistent with respect for an individual's privacy and civil liberties. The usage and privacy policy shall be available in writing to the public, and, if the local agency has an internet website, the usage and privacy policy shall be posted conspicuously on that internet website. The usage and privacy policy shall, at a minimum, include all of the following:
 1. The authorized purposes for using cellular communications interception technology and for collecting information using that technology.
 2. A description of the job title or other designation of the employees who are authorized to use or access information collected through the use of cellular communications interception technology. The policy shall identify the training process and time period system audits.
 3. A description of how the local agency will monitor its own use of cellular communications interception technology to ensure the accuracy of the information collected and compliance with all applicable laws, including laws providing for process and time period system audits.
 4. The existence of a memorandum of understanding or other agreement with another local agency or any other party for the shared use of cellular

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communications interception technology or the sharing of information collected through its use, including the identity of signatory parties.

5. The purpose of, the process for, and restrictions on the sharing of information gathered through the use of cellular communications interception technology with other local agencies and persons.
6. The length of time information gathered through the use of cellular communications interception technology will be retained and the process the local agency will utilize to determine if and when to destroy retained information.

Members shall use only department-approved devices and usage shall be in compliance with department security procedures, the department's usage and privacy procedures and all applicable laws.

610.4 HOW THE TECHNOLOGY WORKS

Cellular site simulator technology relies on the use of cellular site simulators. Cellular site simulators, as governed by this policy, function by transmitting as a cell tower. In response to the signals emitted by the simulator, cellular devices in proximity of the simulator identify it as the most attractive cell tower in the area and thus transmit signals to the simulator that identifies the device in the same way that they would a networked tower. **Cellular site simulator technology does not capture nor receive any content such as text messages, voicemails, applications, multimedia messages, etc. It does not have the capability of listening to phone calls.**

A cellular site simulator receives signals and uses an industry-standard unique identifying number assigned by a device manufacturer or cellular network provider to distinguish between the incoming signals until the targeted device is located. Once the cellular 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.

When used in a mass casualty event, the cellular 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 this policy. A mass casualty incident is a natural disaster such as an earthquake or fire; a terrorist attack; or any event resulting in imminent loss of life or injury.

610.4.1 INFORMATION OBTAINED

By transmitting as a cell tower, cellular site simulators acquire identifying information from cellular devices. As employed by the Orange County Sheriff's Department, this information is limited. Cellular site simulators employed by the Orange County Sheriff's Department will be limited to providing only:

- (a) Azimuth (an angular measurement in a spherical coordinate system)

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- (b) Signal strength
- (c) Device identifier for the target device when locating a single individual or all device identifiers when necessary, i.e. mass casualty event.

Cellular site simulators do not function as GPS locators, as they will not obtain or download any location information from the device or its applications.

Cellular site simulators used by the Orange County Sheriff's Department shall not be used to collect the contents of any communication, in accordance with 18 U.S.C § 3121 (c).

Cellular site simulators employed by the Orange County Sheriff's Department shall not capture emails, texts, contact lists, images or any other data contained on the phone. In addition, the cellular site simulators shall not be used by the Orange County Sheriff's Department to collect subscriber account information (for example, an account holder's name, address or telephone number).

610.5 AUTHORIZED PURPOSES

The authorized purposes for using cellular communications interception technology and for collecting information using that technology are to:

- (a) Locate missing persons
- (b) Locate at-risk individuals
- (c) Locate victims of mass casualty incidents
- (d) Assist in felony investigations
- (e) Apprehend fugitives

610.5.1 LEGAL AUTHORITY

Cellular site simulator technology may only be used by the Orange County Sheriff's Department with a search warrant or for an identified exigency, with a concurrent application for a search warrant whenever possible and no later than 72 hours after use.

When using cellular site simulator technology to assist in an investigation, Sheriff's personnel may use cellular 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. Sheriff's personnel must make reasonable efforts to:

- (a) Minimize the capture of signals emitted from cellular telephones used by people other than the target of the investigation.
- (b) Must immediately destroy all data other than the data identifying the cellular telephones used by the target, such destruction must occur within seventy-two (72) hours after the data is captured, and the destruction must be evidenced by a verification provided to the Court with the return of the warrant.
- (c) Prohibited from using the data acquired beyond that necessary to determine the cellular telephones used by the target.

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When making any application to a court, members of the Orange County Sheriff's Department shall disclose appropriately and accurately the underlying purpose and activities for which an order or authorization is sought. Search warrants for the use of a cellular site simulator must include sufficient information to ensure that the courts are aware that the technology is being used. An application for the use of a cellular site simulator shall inform the court about how law enforcement intends to address the deletion of data not associated with the target phone.

If cellular site simulator technology is used based on exigency, then the above requirements will be met by applying for a search warrant concurrently with the use of the device whenever possible and no later than 72 hours after use. An exigency is defined as an emergency involving the danger of death or serious physical injury to any person.

Sheriff's personnel 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.

610.6 JOB TITLES, DESIGNATIONS AND TRAINING REQUIREMENTS

The Orange County Sheriff's Department's cellular site simulator shall be operated and maintained by sworn members of the Orange County Sheriff's Department Technical Investigations Unit. Personnel shall be specifically trained in such technology and authorized for its use by the Orange County Sheriff or his designee. Such personnel shall be limited to designated Sheriff's sworn personnel unless otherwise authorized.

Training requirements for the above employees include completion of training by the manufacturer of the cellular site simulator interception technology or appropriate subject matter experts as identified by the Orange County Sheriff's Department. Such training shall include and follow applicable State and Federal laws. Personnel assigned to the Technical Investigations Unit at the time of the approval of this policy shall be trained by the manufacturer regarding use of the cellular site simulator. Prior to its use by subsequent personnel assigned to the Technical Investigations Unit, those personnel shall receive instruction by persons who were trained by the manufacturer.

The Technical Investigations Unit Supervisor will be designated the Cellular Site Simulator Program Coordinator ensuring compliance with all State, Federal laws and regulations.

610.7 AGENCY MONITORING AND CONTROLS

The Orange County Sheriff's Department will monitor its use of cellular site simulator technology to ensure the accuracy of the information collected and compliance with all applicable laws, including laws providing for process and time period system audits. Prior to approving use of the cellular site simulator, the Investigations Division Commander or their designee shall ensure that the proposed use complies with all applicable laws and this policy. The Investigations Division Commander or their designee shall conduct reviews every six months of all deployment logs for compliance with applicable laws and policy, and shall conduct any further audits required by law. The Investigations Division Commander, or their designee, shall ensure that process and time period system audits are conducted in accordance with the law and this policy.

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610.7.1 DEPLOYMENT LOG

Prior to deployment of the technology, the use of a cellular site simulator by the Orange County Sheriff's Department must be approved by the Investigations Division Commander or their designee. Each use of the cellular site simulator device requires the completion of a log by the user. The log shall include the following information at a minimum:

- (a) The name and other applicable information of each user
- (b) The reason for each use
- (c) The results of each use including the accuracy of the information obtained

610.7.2 ANNUAL REPORT

The Cellular Site Simulator Program Coordinator (sworn member) shall provide the Orange County Sheriff with an annual report that contains all of the above information. The report shall also contain the following information for the preceding 12-month period:

- (a) The number of times cellular site simulator technology was used
- (b) The number of times the Orange County Sheriff's Department used the cellular site simulator for another agency
- (c) The number of times the equipment was deployed:
 - 1. Locate missing persons
 - 2. Locate at-risk individuals
 - 3. Locate victims of mass casualty incidents
 - 4. Assist in felony investigations
 - 5. Apprehend fugitives
- (d) The effectiveness of each deployment

610.8 INTER-AGENCY COOPERATION

Any request from an outside agency to use the Orange County Sheriff's Department's cellular site simulator must be approved by the Investigations Division Commander or their designee. Prior to the device being used on behalf of the requesting agency, there must be a written agreement between the requesting agency and the Orange County Sheriff's Department. The requesting agency must agree to adhere to this policy, which shall be provided to them. The cellular site simulator will be operated by trained sworn members of the Orange County Sheriff's Department. No outside agency members shall operate the cellular site simulator.

Upon approval, the cellular site simulator will be utilized for the requesting agency pending availability and only under the following incidents:

- (a) Locate missing persons
- (b) Locate at-risk individuals
- (c) Locate victims of mass casualty incidents
- (d) Assist in felony investigations

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(e) Apprehend fugitives

Should there be simultaneous requests from outside agencies to utilize the cellular site simulator, the Investigations Division Commander or their designee will determine which agency incident has priority.

610.9 SHARING OF INFORMATION

The Orange County Sheriff's Department will share information gathered through the use of cellular site simulator technology with other law enforcement agencies that have a right to know and a need to know the information requested. A right to know is the legal authority to receive information pursuant to a court order, statutory law or case law. A need to know is a compelling reason to request information such as direct involvement in an investigation.

Information will be shared only with a written agreement with the agencies and in accordance with a lawful purpose and limited to a court order, search warrant or identified exigency on the part of the agency. The Orange County Sheriff's Department will not share information outside of the legal parameters necessary for the lawful purpose. All requests for information shall be reviewed by the Cellular Site Simulator Program Coordinator or other individual as designated by the Orange County Sheriff.

The agency with which the information is shared ("recipient agency") shall be designated as the custodian of such information. The recipient agency shall be responsible for observance of all conditions of the use of the information including the prevention of unauthorized use, retention of information and destruction of information.

610.10 RETENTION AND DISPOSAL OF INFORMATION

Captured data may be kept as evidence for use in a felony criminal investigation only when specifically authorized in a search warrant and in accordance with applicable state laws regarding search warrants and electronic information. Any storage of this information shall be documented in a departmental report by the case agent.

In all other circumstances where captured data is not evidence nor specifically authorized by a search warrant, the Orange County Sheriff's Department shall destroy all information intercepted by the cellular site simulator equipment as soon as the objective of the information request is accomplished in accordance with the following:

- (a) When the cellular site simulator equipment is used to locate a known cellular device, all data shall be deleted upon locating the cellular device and no fewer than once daily for a known cellular device.
- (b) When the cellular site simulator equipment is used in a search and rescue operation, 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 days.
- (c) The deletion of data must be evidenced by a verification provided to the Court with the Return to Search Warrant.

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- (d) Prior to deploying the cellular site simulator equipment for a subsequent operation, personnel will ensure the equipment has been cleared of any previous operational data.
- (e) No data derived or recorded by cellular site simulator software or equipment will be stored on any server, device, cloud-based storage system or in any capacity.
- (f) 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.