



*Kern County Sheriff's Office*  
**Policies and Procedures**

<b>TITLE: CELLULAR SITE SIMULATOR</b>		<b>NO: J-3900</b>	
<b>APPROVED: Donny Youngblood, Sheriff-Coroner</b>			
<b>EFFECTIVE:</b> <b>October 22, 2020</b>	<b>REVIEWED:</b>	<b>REVISED:</b>	<b>UPDATED:</b>

**POLICY:**

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 Kern County Sheriff's Office – will be made in compliance with California Government Code section 53166.

It is the policy of the Kern County Sheriff's Office to respect the privacy rights and civil liberties of individuals and to follow the United States Constitution, particularly the First and Fourth Amendments, the California Constitution, and all applicable laws. Kern County Sheriff's Office members shall use only department-approved devices and usage shall be in strict compliance with this policy.

**BASIS FOR POLICY**

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

- 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.
- 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 laws 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 requirements necessary for those authorized employees.

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 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 communications interception technology with other local agencies and persons.
6. The length of time information gathered through the use of communications interception technology will be retained and the process the local agency will utilize to determine if and when to destroy retained information.

## **HOW THE TECHNOLOGY WORKS**

**Cellular site simulator technology authorized for use by the Kern County Sheriff's Office cannot and shall not capture, nor receive, any content such as text messages, emails, voicemails, contact lists, images, applications, multimedia messages, or other data contained on the phone. This technology also does not have the capability of listening to phone calls. In addition, cellular site simulator technology cannot and shall not collect subscriber account information (e.g. an account holder's name, address, or telephone number).**

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.

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

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need of assistance or furthering 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 event in accordance with this policy.

A mass casualty incident includes, but is not limited to a natural disaster (e.g. earthquake, fire, flood, etc.); a terrorist attack; or any other critical incident resulting in imminent loss of life or serious injury.

**INFORMATION OBTAINED:**

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

- (a) Azimuth (an angular measurement in a spherical coordinate system)
- (b) Signal strength
- (c) Device identifier for the target device when locating a single individual or all device identifiers for a mass casualty incident

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.

**PROCEDURE A**

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

*18 U.S.C. § 3121 (c) - A government agency authorized to install and use a pen register or trap and trace device under this chapter or under State law shall use technology reasonably available to it that restricts the recording or decoding of electronic or other impulses to the dialing, routing, addressing, and signaling information utilized in the processing and transmitting of wire or electronic communications so as not to include the contents of any wire or electronic communications.*

**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

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- (c) Locate victims of mass casualty incidents
- (d) Assist in felony investigations
- (e) Apprehend fugitives

**LEGAL AUTHORITY**

**Cellular site simulator technology may only be used by the Kern County Sheriff’s Office with a search warrant or for an exigent circumstance, with a concurrent application for a search warrant/court order.** It is recognized some exigent circumstances, such as a natural disaster with no nexus to criminal activity, do not satisfy the grounds for which a search warrant may be issued as outlined within PC 1524. For instances such as these only, a court order application shall be made no later than 72 hours after use in such an exigent circumstance. When using cellular site simulator technology to assist in an investigation, Kern County Sheriff’s Office personnel may only attempt to locate cellular devices whose unique identifiers are already known to law enforcement, unless used for a mass casualty incident to aid in recovery efforts.

In the case of an exigent circumstance involving danger of death or serious physical injury to any person requiring use of cellular site simulator technology without delay, the technology may be deployed prior to obtaining a court order/search warrant. In every case of a warrantless use of a cell-site simulator, the authorized operator shall ensure that, within 72 hours 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 and probable cause giving rise to the emergency and need for immediate deployment.

Regardless of the legal authority relied upon, at the time of making an application for use of a cellular site simulator, the application or supporting affidavit should describe in general terms the technique to be employed. When making any application to a court, members of the Kern County Sheriff’s Office shall disclose appropriately and accurately the underlying purpose and activities for which a court order or search warrant 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.

**PROCEDURE B**

**DESIGNATED EMPLOYEES**

The Kern County Sheriff’s Office’s cellular site simulator shall be operated and maintained by trained investigators assigned to the Kern County Sheriff’s Office Special Investigations Division. Personnel shall be specifically trained in such technology and authorized for its use by

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the Sheriff, or his/her designee. Such personnel shall be limited to designated investigators assigned to the Investigations Bureau.

Training requirements for the above employees include completion of training by the manufacturer of the cellular communications interception technology or appropriate subject matter experts as identified by the Kern County Sheriff's Office. Such training shall include the applicable State and Federal laws. Operators 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 as needed to reflect the current state of the law.

## **PROCEDURE C**

### **AGENCY MONITORING AND CONTROLS**

Deployment of a cellular site simulator by the Sheriff's Office must be approved by a trained Special Investigations Division (SID) Sergeant. Any emergency/warrantless use of a cell-site simulator must be approved by a SID Sergeant, and notice shall be given to the SID Lieutenant. The approving SID Sergeant shall be responsible for reviewing all court paper work, or any facts giving rise to an emergency situation, to ensure compliance with this policy and the law.

The Kern County Sheriff's Office will monitor its use of cellular site simulator technology to ensure the accuracy of the information collected and time period system audits. The SID Commander, or their designee, shall annually review all deployment logs to ensure compliance with this policy.

### **DEPLOYMENT LOG**

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) Date(s)/time(s) of use
- (b) Reason for use
- (c) Location used (i.e. Bakersfield, Mojave, Wasco)
- (d) Associated case number(s), if applicable
- (e) Phone number or device identification number (i.e. IMEI or IMSI)
- (f) Name of requesting agency and case agent
- (g) Name of each user of the cellular site simulator
- (h) Results using the cellular site simulator

### **ANNUAL REPORT**

A designated SID Sergeant will be responsible for serving as the Cellular Site Simulator Program Coordinator. The Cellular Site Simulator Program Coordinator shall provide the Sheriff, via the chain of command, 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:

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- (a) The total number of times cellular site simulator technology was deployed
- (b) The number of times the Kern County Sheriff's Office used the cellular site simulator for another agency, as well as the identity of those agencies.
- (c) A numerical breakdown and analysis of deployments to include:
  1. Total number of deployments for arrests/attempted arrests
  2. Total number of deployments for at-risk or missing persons
  3. Total number of deployments for search and rescue efforts
  4. Total number of deployments for any other reasons
  5. The effectiveness of each deployment
  6. Geographical areas deployed

**PROCEDURE D**

**ASSISTING OTHER DEPARTMENTS**

Any request from an outside agency to use the Kern County Sheriff's Office's cellular site simulator must be approved by the Special Investigation 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 Kern County Sheriff's Office. 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 members of the Kern County Sheriff's Office designated by this policy. No outside agency members shall operate the cellular site simulator. The requesting agency will be responsible for compliance with all requirements under California Penal Code §§ 1546 – 1546.4.

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

- (a) Mass casualty incidents
- (b) Abductions (including kidnappings for ransom)
- (c) Persons missing under suspicious circumstances
- (d) Assault on a peace officer
- (e) Homicide
- (f) Attempted homicide
- (g) Fugitive apprehension

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

## **PROCEDURE E**

### **SHARING OF INFORMATION**

The Kern County Sheriff's Office will share information gathered using 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 need is established when the law enforcement agency or individual investigator needs the information in the course of their official authorized duties and there is no other practical way that they can obtain it.

Information will be shared only with agencies in accordance with a lawful purpose and limited to a court order, search warrant, or exigent circumstances on the part of the agency. All requests for information shall be reviewed by the Special Investigations Division Commander, or their designee.

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.

## **PROCEDURE F**

### **RETENTION AND DISPOSAL OF INFORMATION**

The Kern County Sheriff's Office may keep captured data as evidence for use in a felony criminal investigation only when specifically authorized in a search warrant. The storage of this information shall be documented in a Kern County Sheriff's Office incident report. The captured data will be downloaded and booked into the Kern County Sheriff's Office Property Room. Any data seized as evidence in this case will be retained pending the adjudication of the respective court case and disposed of in accordance with KCSOPPM J-1800 or other orders of the court.

In all other circumstances where it is not specifically authorized by a search warrant, the Kern County Sheriff's Office 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:

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- (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 or once daily for a known cellular device.
- (b) When the cellular site simulator equipment is used in a missing person operation or 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 once every ten days, depending on the length of the operation.
- (c) Prior to deploying the cellular site simulator equipment for a subsequent operation, ensure the equipment has been cleared of any previous operational data.
- (d) Aside from evidence, 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.

It is not likely, given the limited type of data cellular site simulators technology collect (as discussed above), that exculpatory evidence would be obtained by such a device 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.

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