



2-14 USE OF CELL-SITE SIMULATOR (CSS) TECHNOLOGY

Related SOP(s), Form(s), Other Resource(s), and Rescinded Special Order(s):

A. Related SOP(s)

None

B. Form(s)

PD 1305 Electronic Communications Privacy Act Warrant Tracking Form
PD 1308 Letter of Notification
PD 1340 Consent to Search Digital Devices
Affidavit Submitted Pursuant to New Mexico Electronic Communications Privacy Act
Application and Order Pursuant to Electronic Communications Privacy Act
Order of Delayed Notification
Order of Delayed Notification and Non-Disclosure
Order Sealing Search Warrant and Affidavit
Return and Inventory

C. Other Resource(s)

NMSA 1978, §§ 10-16F-1 to 10-16F-6 Electronic Communications Privacy Act

D. Rescinded Special Order(s)

None

2-14-1 Purpose

The purpose of this policy is to set requirements for the operation of any cell-site simulator technology by authorized Albuquerque Police Department (Department) personnel.

2-14-2 Policy

It is the policy of the Department to utilize cell-site simulator (CSS) technology as one tool among many traditional law enforcement techniques and to achieve important public safety objectives, including Search and Rescue, criminal investigations, and other public safety operations. The Department's use of CSS technology provides valuable assistance supporting the Department's important public safety objectives. Only appropriately trained Department personnel may use and operate the CSS technology. Because the Department is committed to constitutional and effective community policing, the use of any CSS technology shall strictly comply with the requirements and protections of the United States Constitution, including the Fourth Amendment and the New Mexico Constitution, Article II, Section 10.

N/A 2-14-3 Definitions



A. Authorized Information

The industry standard unique identifying number assigned by the device manufacturer or cellular network provider and limited signaling information from a cellular device, including the relative strength and general direction of a cellular device.

B. Cell-Site Simulator (CSS) Technology

Technology that transmits as a cell tower and acquires identifying information from cellular devices; however, this identifying information is limited. CSS does not function as a Global Positioning System (GPS) locator and does not obtain or download any location information from the cellular device or its applications.

C. Prohibited Information and Data

Contents of any communications; data contained on the phone itself, including emails, texts, contact lists, images, etc.; or subscriber account information, including the account holder's name, address, or telephone number.

2-14-4 Staffing and Personnel Responsibilities

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A. Only Electronic Support Unit (ESU) personnel within the Investigative Services Division (ISD) shall administer CSS technology.

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B. ESU sworn personnel operating CSS technology shall only acquire Authorized Information and shall not acquire Prohibited Information and Data from a cellular device.

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C. The ESU Sergeant shall:

1. Supervise, train, and evaluate the ESU detectives' training in utilizing CSS technology;
2. Assist in coordinating the use of CSS technology and trained personnel to support Department operations, including Search and Rescue, criminal investigations, and public safety operations;
3. Receive, review, authorize, and assign the requests to utilize CSS technology based on the appropriateness of the underlying case, operation, or mission, as well as the lawfulness and compliance with the Electronic Communications Privacy Act;
4. Be responsible for confirming approval from the Career Criminal Lieutenant or their designee before using any CSS technology. In exigent circumstances, the ESU Sergeant shall be responsible for confirming approval from the ISD Commander or their designee;



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5. Ensure that any Authorized Information is removed from the CSS technology after the CSS operation and provided to the case agent, consistent with the requirements in this Standard Operating Procedure (SOP);
6. Maintain a log of the use of CSS technology;
7. Conduct a monthly audit to ensure strict compliance with all applicable laws and procedures, document the results, and address any issues resulting from the monthly audit; and
8. Maintain all Department CSS technology to ensure it remains in working condition and consistent with the manufacturer's recommendations.

D. An ESU detective who operates CSS technology shall:

- 4 1. Obtain approval from the ESU Sergeant or their designee before using any CSS technology; and
- 7 2. Be responsible for the operation of CSS technology.

3 E. Confidentiality

1. Due to the sensitive nature of CSS technology and its use, the ESU Sergeant and ESU detectives shall abide by the requirements under all applicable confidentiality and non-disclosure agreements.
2. All Department personnel shall consider any Authorized Information obtained from CSS technology as confidential, and they shall confidentially handle Authorized Information.

7 **2-14-5 Training and Accountability**

- 4 A. Department personnel shall not use CSS technology, except for the ESU Sergeant and ESU detectives who have been trained in the operation of CSS technology.
 1. The ESU Sergeant shall conduct inspections of all CSS technology to ensure the equipment is properly functioning.
 2. Consistent with federal and state laws, local ordinances, and this SOP, at least on an annual basis and in consultation with the Office of the City Attorney, the ESU Sergeant shall conduct training for ESU detectives. The training shall include a component of the Electronic Communications Privacy Act.
 - a. The ESU Sergeant and ESU detectives shall be trained on the manufacturer's directions and manual before using any CSS technology.



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- B. The ESU Sergeant or their designee shall approve the use of any CSS technology for training purposes. The ESU Sergeant and ESU detectives shall understand the legal process described below, including any requirements to apply for and receive judicial authorization as described in this SOP.
1. The ESU Sergeant shall periodically review and revise this SOP and any associated training as a result of any significant advances in technological capabilities.
 2. All Department personnel are prohibited under federal law from intercepting the contents of any communications through the use of CSS technology. Additionally, all Department personnel are prohibited under this SOP from intercepting any Prohibited Information and Data through the use of CSS technology.
 3. When CSS technology is used to locate a known cellular device, the ESU Sergeant and ESU detectives shall delete all Authorized Information as soon as the particular device is located.
 4. When CSS technology is used to identify an unknown cellular device, the ESU Sergeant and ESU detectives shall delete all Authorized Information as soon as the target cellular device is identified and not less than once every thirty (30) days if a court order is granted allowing for the retention of the Authorized Information.
 5. Before deploying CSS technology for a different mission, the ESU detectives shall verify that the Authorized Information from a previously completed mission has been cleared from the CSS technology.
 6. When CSS technology is used following a natural disaster or when the ESU Sergeant or ESU detectives assist the Open Space Section in a Search and Rescue operation, ensure that any Authorized Information is removed from the CSS technology after the CSS operation and provided to the case agent, consistent with the requirements in this SOP.

2-14-6 Legal Process and Applications for the Use of CSS Technology

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- A. Consistent with the Electronic Privacy Communications Act, the Department may access electronic device information through physical interaction or electronic communication with the device only if that access is made:
1. Under a warrant that complies with the requirements of the Electronic Privacy Communications Act;
 2. Under a wiretap order;
 3. With the specific consent of the device's authorized possessor;



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4. With the specific consent of the device's owner if the device has been reported as lost or stolen;
5. Because the government entity believes in good faith that the device is lost, stolen, or abandoned, in which case, the government entity may access that information only as necessary and to attempt to identify, verify, or contact the device's authorized possessor; or
6. Because the government entity believes in good faith that an emergency involving danger of death or serious physical injury to a natural person requires access to the electronic device information.

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- B. Before using CSS technology, consistent with the Electronic Communications Privacy Act, the ESU detective or sworn personnel assigned as case agents shall apply to the appropriate court for a judicial warrant supported by probable cause. The judicial warrant requirement may not apply to the following situations:
1. Exigent circumstances under the Fourth Amendment, consistent with the Electronic Communications Privacy Act and Article II, Section 10 of the New Mexico Constitution;
 - a. An exigency that excuses the need to obtain a warrant may arise when the needs of the Department are so compelling that they render a warrantless search objectively reasonable. Assuming the ESU detective or sworn personnel assigned as case agents has the requisite probable cause, then a variety of exigent circumstances may justify dispensing with a warrant, including, but not necessarily limited to:
 - i. The need to protect human life or avert serious injury;
 - ii. The prevention of the imminent destruction of evidence;
 - iii. The escape of an individual suspected of committing a crime; or
 - iv. The prevention of escape by an individual suspected of committing a crime or convicted fugitive from justice.
 2. The ISD Commander or their designee shall approve the use of CSS technology to ensure exigency exists and deployment is authorized;
 3. Even if exigent circumstances do not exist, the Electronic Communications Privacy Act does not require a judicial warrant in emergency situations or when circumstances make obtaining a judicial warrant impracticable. The pre-judicial warrant use of CSS technology under this provision shall be restricted to emergency situations that involve:
 - a. Immediate danger of death or serious bodily injury to any person;
 - b. Conspiratorial activities characteristic of organized crime;
 - c. An immediate threat to a national security interest; or
 - d. An ongoing attack on a protected computer that constitutes a crime punishable by a term of imprisonment greater than one (1) year.



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4. The ESU Detective or sworn personnel assigned as case agents shall only use CSS technology under this provision if and only if legal approval is provided by an attorney from the Bernalillo County District Attorney and shall also seek a judicial warrant or order within forty-eight (48) hours of such use.

N/A

- C. When sworn personnel assigned as case agents complete an application or supporting affidavit for the use of CSS technology, they shall include sufficient information to ensure that the court is aware of:

1. The general terms of the technique to be employed;
2. A description that should indicate the CSS technology may send signals to the cellular device that shall cause it and non-target cellular devices in the area to emit unique identifiers, which shall be obtained by the CSS technology. The unique identifiers shall be used to determine information pertaining to the physical location of only the target cellular device or to determine the currently unknown identifiers of the target cellular device;
3. The potential that the target cellular device and other cellular devices in the area might experience a temporary disruption of service from the service provider; and
4. Any Authorized Information from the CSS technology is removed after the CSS operation and provided to the case agent, consistent with the requirements in this SOP.

N/A

2-14-7

Operations

- A. The Department, through the ESU detective's use of the CSS technology, may provide another law enforcement agency assistance or support for public safety operations or criminal investigations, but only when the use of CSS technology occurs in the City of Albuquerque.

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1. The Department shall not allow another law enforcement agency to use or operate the Department's CSS technology.



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