

**CPOC 11/2/23 AGENDA ITEM 7 SUPPLEMENTAL
MATERIALS:**

Provide Recommendations to City Council
Regarding
Police Department's Request to Purchase a Cellular
Site Simulator and Related Policy

Attachment B
Cellular Site Simulator Draft Policy

Cellular Site Simulator

620.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance and set guidelines and requirements for the use of a cellular site simulator (CSS). This policy is designed to ensure the department deploys the CSS in an effective, appropriate, and consistent way. CSS technology provides valuable assistance in support of important public safety objectives. Whether deployed as part of a felony fugitive apprehension effort, complex narcotics investigation, terrorism investigation, or to locate and rescue a kidnap victim or at-risk missing person, CSS' fulfill critical operational needs. Any changes to this policy – including authorized uses of the cellular site simulator technology by the Pasadena Police Department – will be made in compliance with California Government Code section 53166.

620.2 POLICY

- (a) It is the policy of the Pasadena Police Department to respect the privacy rights and civil liberties of individuals and to follow the Constitution and all applicable laws including Government Code section 53166. The Pasadena Police Department will post its usage and privacy policy related to the CSS technology on its Internet website.
- (b) Except under exigent circumstances, the use of a CSS shall only occur after a search warrant is obtained.
- (c) In all cases, use of a CSS shall be reasonable and reflect a level of necessity that balances public safety and the safety of officers with the safety and privacy of involved and uninvolved civilians. The Criminal Investigations Division Commander, or their designee, shall periodically review the uses of the equipment to ensure that it is being used in accordance with applicable law and this policy.
- (d) The Pasadena Police Department shall delete all CSS data at the conclusion of the mission.
- (e) The CSS will be managed by the Criminal Investigations Division Commander, or their designee, who will have the final approval authority for any use of the CSS.

620.3 AUTHORIZED USE

- (a) A CSS must be used in a manner that is consistent with the requirements and protections of the Constitution, including the Fourth Amendment and applicable statutory authorities. Moreover, any information resulting from the use of cellular site simulators must be handled in a way that is consistent with the array of applicable statutes, regulations, and policies that guide law-enforcement and how it may and may not collect, retain, and disclose data.
- (b) Use of a CSS and collection of information from that use is authorized only for the purpose of locating persons in connection with a pending law enforcement investigation.
- (c) CSS technology may be used to gather information leading to the identity or whereabouts of fugitives, suspects, victims, or missing persons. Authorized

Pasadena Police Department

Policy Manual

Cellular Site Simulator

department investigators can use the CSS 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 the devices in the simulator's user's vicinity.

- (d) A CSS, as governed by this policy, will function by transmitting as a cell tower. In response to the signals emitted by the CSS, cellular devices in proximity of the CSS 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. Once the CSS identifies the specific cellular device for which it is looking for, it will obtain the signaling information relating only to that particular phone, rejecting all others. A CSS does not function as a GPS locator, as they do not obtain or download any location information from the device or its applications.
- (e) A CSS used by the Department 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, CSS technology cannot and shall not collect subscriber information (e.g. an account holder's name, address, or telephone number).
- (f) The authorized purposes for using CSS technology and for collecting information using that technology are to:
 - 1. Locate missing persons
 - 2. Locate at-risk individuals
 - 3. Locate victims of mass casualty incidents
 - 4. Assist in investigations involving danger to the life or physical safety of an individual
 - 5. Assist in felony investigations
 - 6. Apprehend fugitives

620.4 LEGAL AUTHORITY

- (a) Except under exigent circumstances, the party desiring to use the CSS shall obtain a search warrant prior to its use. The CSS investigator will be responsible for ensuring that the proper legal paperwork is obtained. The case investigator requesting the CSS should normally be responsible for writing the search warrant. The information obtained from the use of the CSS shall only be utilized and accessed by the CSS investigator and involved case investigator. Regardless of the legal authority relied upon, at the time of making an application for use of a CSS, the application or supporting affidavit should describe in general terms the technique to be employed. See PPD Policy Manual section 619 regarding search warrants.
 - 1. The search warrant shall include:
 - (a) An advisement that the CSS sends signals to all cellular devices within range, which will cause the devices to emit unique identifiers.

Pasadena Police Department

Policy Manual

Cellular Site Simulator

- (b) An advisement when the intent is to determine unique identifiers at multiple locations and/or multiple times.
 - (c) An advisement that all data collected during use of the CSS will be deleted at the conclusion of the mission.
2. As a means of protecting investigative integrity and operational capabilities of the CSS, the author shall:
- (a) Request that the court order and all papers in support of any search warrant application be sealed unless otherwise ordered.
 - (b) Address privileged information as it relates to California Evidence Code 1040.

620.5 EXIGENT CIRCUMSTANCES

- (a) As an exception to the general requirement that use of a CSS shall occur only in circumstances where a search warrant has been obtained, use without a search warrant may occur in exigent circumstances.
 - 1. Examples of exigent circumstances may include, but are not limited to the following:
 - (a) Critical missing persons
 - (b) Disaster response
 - (c) Any circumstance where death or great bodily injury may occur if police response is delayed.
- (b) In exigent circumstances, the Unit supervisor with supervisor responsibility over the use of the CSS shall:
 - 1. Advise and seek approval of the Criminal Investigations Division Commander, or their designee, regarding the use of the CSS.
 - 2. Identify the facts and reasoning for not obtaining a search warrant. In all cases of exigent circumstances, a search warrant will be obtained within 72 hours after the use of the equipment and will be completed in accordance with the requirements set forth in Section 620.4. The search warrant shall set forth the facts and probable cause giving rise to the emergency and need for immediate deployment.

620.6 AUTHORIZED USERS AND TRAINING REQUIREMENTS

- (a) Personnel authorized to use or access information collected through the use of CSS technology shall be specifically trained in such technology and authorized by the Chief of Police or their designee. Such personnel shall be limited to only trained, sworn, Pasadena Police officers unless otherwise authorized.
- (b) Training requirements for the above employees include completion of training by the manufacturer of the CSS or appropriate subject matter experts. Training will be provided, as appropriate with the changes and advancements in technology, to all

Pasadena Police Department

Policy Manual

Cellular Site Simulator

relevant employees who may be involved in the use of this technology. Such training shall include the applicable State and Federal Laws. CSS investigators will familiarize themselves with this Policy and comply with all orders concerning the use of this technology.

- (c) Periodic review of this Policy and training shall be the responsibility of the Criminal Investigations Division Commander, or their designee, with respect to the way the equipment is being used or the data is being collected (e.g. operating in different environments, service provider updates, significant advances in technological capabilities, type of data collected, or the manner in which it is collected).
- (d) CSS data should not be used to support probable cause for an arrest warrant. Officers from the department and allied agencies should develop independent probable cause for an arrest warrant.

620.7 DEPLOYMENT AND AGENCY MONITORING

- (a) Deployment of the CSS, including emergency/warrantless use, by the Pasadena Police Department must be approved by the Criminal Investigations Division Commander, or their designee. The CSS investigator will ensure the use of the equipment will be in support of a public safety operation or criminal investigation. The CSS shall not be utilized unless legal requirements have been followed, including either obtaining a search warrant or identifying an exigency.
- (b) The Pasadena Police Department is committed to ensuring that the collection and retention of data is lawful and appropriately respects the privacy interests of individuals. The Pasadena Police Department will not collect, retain, or disseminate any CSS data except as authorized by this policy and by law. Data collected by the CSS, which is retained for the investigation, shall only be shared with those involved in the investigation or as required by law.
- (c) The Pasadena Police Department will monitor its use of the CSS to ensure the accuracy of the information collected and time period system audits. The Criminal Investigations Division Commander, or their designee, shall conduct audits to ensure compliance with this policy.

620.8 ASSISTING OUTSIDE AGENCIES

- (a) Any request from an outside agency to use the Pasadena Police Department's CSS must be approved by the Criminal Investigations Division Commander, or their designee. Prior to the CSS being used on behalf of the requesting agency, the requesting agency must agree to adhere to this policy.
 - 1. The CSS will be operated by trained investigators of the Pasadena Police Department designated by this policy. No outside agency members shall operate the CSS.
 - 2. Upon approval, the CSS will be utilized for the requesting agency pending availability. Should there be simultaneous requests from outside agencies to

Pasadena Police Department

Policy Manual

Cellular Site Simulator

utilize the CSS, the Criminal Investigations Division Commander, or their designee, will determine which agency incident has priority.

- (b) The Pasadena Police Department may assist any Federal, State, or local law enforcement agency, for the purpose of locating persons in connection with a pending law enforcement investigation, by sharing data obtained from the use of a CSS, after the requestor provides the following information:
 1. A copy of a signed search warrant as described in Section 620.4, or an identified exigency as described in Section 620.5.
 2. A summary of the need for assistance. The summary should address how alternative investigative procedures have failed or are unlikely to succeed and/or why alternative procedures excessively impair public safety or are overly dangerous to a person.

620.9 SHARING OF INFORMATION

- (a) The Pasadena Police Department will only share information gathered using CSS technology with other law enforcement agencies 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 Criminal Investigations Division Commander, or their designee. 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.
- (b) Prior to the Department assisting outside agencies, such agencies will be notified that information collected shall not be used to support probable cause for arrest and that independent probable cause for arrest must be developed.

620.10 RETENTION AND DISPOSAL OF INFORMATION

- (a) The Pasadena Police Department may keep captured CSS data as evidence for use, as authorized in this policy, only when specifically authorized in a search warrant. The storage of CSS data shall be documented in a Pasadena Police Department incident report. Any CSS data seized as evidence will be retained pending the adjudication of the respective court case and in accordance with any order of the court.
- (b) In all other circumstances where it is not specifically authorized by a search warrant, the Pasadena Police Department shall destroy all information intercepted by the CSS as soon as the objective of the information request is accomplished.
 1. Prior to deploying the CSS for a subsequent operation, the CSS investigator will ensure the equipment has been cleared of any previous operational data.
 2. Aside from evidence, no data derived or recorded by the CSS software or equipment will be stored on any server, device, cloud-based storage system, or in any capacity.
- (c) To the extent investigators know or have reason to believe that information is exculpatory or impeaching, they have a duty to memorialize that information.