



Written by [Joe Wolverton, II, J.D.](#) on July 24, 2015

## California Bills Restore Fourth Amendment, Restrict Use of Stingray Surveillance Device

A pair of bills are working their way through the California State Assembly that would push back the borders of the surveillance state. Should the measures become law in the Golden State, the protection of personal privacy would be bolstered and efforts of law enforcement to violate civil liberties would be thwarted.



The Tenth Amendment Center reports:

Sen. Mark Leno (D) and Sen. Joel Anderson (R) introduced Senate Bill 178 ([SB178](#)) in February. The bill would prohibit a government entity from compelling the production of or access to electronic communication information or electronic device information without a search warrant, a wiretap order, or an order for electronic reader records, with only a few exceptions.

The Committee on Public Safety unanimously approved the bill 5-0. It will now pass on to the Appropriations Committee for its consideration.

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Among its many provisions, the bill mandates the issuance of a search warrant or wiretap order before a government entity can (1) compel the production of or access to electronic communication information from a service provider, (2) compel the production of or access to electronic device information from any person or entity except the authorized possessor of the device, and (3) access electronic device information by means of physical interaction or electronic communication with the device.

According to a recent investigative report by a San Diego news team, these bills couldn't have come at a better time, as the use of the Stingray surveillance device is running rampant throughout California. More on the details of that exposé in a bit. First, a little review of the function of the Stingray.

The suitcase-sized Stingray masquerades as a cell tower to trick cellphones into connecting to it. It can give police tracking identifiers for phones within a mile or more, depending on terrain. Given the mobility of the device, police who use it can triangulate a target's location with better accuracy than if they relied on data transferred by traditional cell towers.

This equipment isn't cheap. According to published reports, each Stingray device costs about \$350,000. Despite the cost, however, it has been reported that nearly 30 police departments admit to owning a Stingray, with about 50 other cities refusing to disclose whether or not they own one of these expensive



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surveillance devices.

San Diego is among those cities spending tax dollars on these invasive devices. Although they'd likely rather residents not know how much of their money is being used to keep them under surveillance, News Channel 7's investigation reveals the details:

Through a California Public Records Act request to the San Diego Police Department, focused on stingrays, we asked for details about how SDPD is using the technology.

In its response, a city purchase order for \$33,000 worth of stingrays bought through the Department of Homeland Security was provided.

In its response, SDPD told NBC 7 Investigates, "the information you seek would reveal security or intelligence information, and is exempt from disclosure...."

In another public records act request, we asked about closed cases where SDPD has used the technology in its investigation. The department, once again, denied our request.

"The exemption ... does not end with the completion of the investigation," according to the CPRA request response.

In this as in so many other examples of the government's violations of civil liberty, supporters of the surveillance state claim these tactics are necessary to keep us safe. Again, from the San Diego news report:

Former San Diego U.S. Attorney Peter Nunez said he believes these "tools are fantastic" in terms of effectiveness in fighting crime. He argues no protections are needed.

"Unless there is an abuse," he said, "we shouldn't mess around with it. We should not limit it. If there is an abuse, we should deal with it as we do in any other context."

The report reveals that law enforcement went to great lengths to block efforts by the news team and others to expose the scope of the Stingray's deployment in San Diego specifically and California generally. This is a tactic displayed by other such agencies around the country, and it seems to be an order from the federal government, the frequent source of the Stingrays, including those sent to San Diego.

In April, CNNMoney reported on one example of the FBI working with a county sheriff's office to squelch any possible leak regarding the Stingray's use:

The FBI has a secret device to locate criminal suspects, but they would apparently rather let suspects go free than reveal in court the details of the high tech tracker.

The device, called a "Stingray," tricks cell phones into revealing their locations. Closely guarded details about how police Stingrays operate have been threatened this week by a judge's court order.

Judge Patrick H. NeMoyer in Buffalo, New York, described a 2012 deal between the FBI and the Erie County Sheriff's Office in his court order Tuesday. The judge, who reviewed the deal, said the FBI instructed the police to drop criminal charges instead of revealing "any information concerning the cell site simulator or its use."

Erie police had long tried to keep that contract secret, but the judge rejected that idea and ordered that details of the Stingrays be made public.



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“If that is not an instruction that affects the public, nothing is,” NeMoyer wrote.

As a result of an investigation similar to that carried out by the San Diego news channel, a Buffalo, New York, news station provided additional details of the sheriff’s office’s use of the Stingray in an assault on the liberties of citizens of Erie County and the constitutional provisions that protect them:

The NYCLU [New York Civil Liberties Union] says records from the sheriff’s office shows it has been used at least 47 times between May 1, 2010 and October 3, 2014, including to assist other law enforcement agencies like the Monroe County Sheriff’s Office.

In those instances, documents show that the sheriff’s office obtained a court order only once, even though the sheriff made statement to local media and the Erie County Legislature that each use of the device was subject to “judicial review.” The court order that was obtained in October 2014 was not a warrant, but a lower level court order called a “pen register” order.

“These records confirm some of the very worst fears about local law enforcement’s use of this expensive and intrusive surveillance equipment,” said NYCLU Staff Attorney Mariko Hirose. “Not only did the Sheriff’s Office promise the FBI breathtaking secrecy to keep information about stingrays as hidden as possible, it implemented almost no privacy protections for the Erie County residents it is sworn to protect and serve.”

Read that again: The sheriff’s office used the Stingray to track cellphone signals on 47 occasions and sought judicial oversight only one time. In other words, the mandates of the Fourth Amendment were followed a scant two percent of the time. Ninety-eight percent of the time, therefore, deputies did exactly as they pleased — abusing authority in open defiance of the Constitution.

Fortunately, there are lawmakers like Leno and Anderson in California who are true to their oaths of office and are “refus[ing] to cooperate with officers of the union” as recommended by James Madison for those situations when the federal government exceeds its constitutional authority.

Should the measure pass into law, the effect would extend beyond the borders of California. As Mike Maharrey points out, “By making information ‘obtained’ in violation of the law inadmissible in court, SB178 would effectively stop one practical effect of NSA spying in California.”

There is hope, then, that citizens can encourage their state representatives to exercise their authority and derail the surveillance train before it crosses the state borders.



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