



VIA EMAIL

September 15, 2015

Governor Edmund G Brown, Jr  
State Capitol  
Sacramento, CA 95814

**RE: SB 741 (Hill) – Support**

Dear Governor Brown:

The Electronic Frontier Foundation (EFF) is a non-profit member-supported civil liberties organization based in San Francisco, California, that works to protect rights in the digital world. EFF has more than 22,000 dues-paying members and supporters across the country.

The Electronic Frontier Foundation (EFF) supports SB 741, which would force local agencies to be more honest about government acquisition and use of surveillance technology that enables police to secretly grab people's cellphone signals (content and call information).

Cellular communications interception technology—sometimes known as a “Stingray” or “IMSI catcher”—is being used unconstitutionally. As EFF stated a few years ago:

The device, which acts as a fake cell phone tower, essentially allows the government to electronically search large areas for a particular cell phone's signal—sucking down data on potentially thousands of innocent people along the way. At the same time, law enforcement has attempted to use them while avoiding many of the traditional limitations set forth in the Constitution, like individualized warrants. This is why we called the tool “an unconstitutional, all-you-can-eat data buffet.”<sup>1</sup>

Stingrays have been the subject of a lot of media attention and concern from activists at the local level. Yet law enforcement—well aware of the constitutional problems with IMSI catchers—has been incredibly secretive about their use and acquisition.<sup>2</sup> In fact, the Harris Corporation, the vendor of Stingrays,

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<sup>1</sup> Trevor Timm, *As Secretive "Stingray" Surveillance Tool Becomes More Pervasive, Questions Over Its Illegality Increase*, EFF (Feb. 12, 2013), <https://www.eff.org/deeplinks/2013/02/secretive-stingray-surveillance-tool-becomes-more-pervasive-questions-over-its>

<sup>2</sup> See, Larry Greenemeier, *What Is the Big Secret Surrounding Stingray Surveillance?*, SCIENTIFIC AMERICAN (Jun. 25, 2015),

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requires police departments sign a non-disclosure agreement<sup>3</sup> promising not to reference Stingrays. Federal agencies like the US Department of Justice and the US Marshals Service have instructed local cities and police to keep details of Stingray surveillance secret, with the Marshals physically intervening in one instance to prevent information from becoming public. There have been repeated instances of police agencies across the country hiding their use of IMSI catchers from the judges entrusted to provide police oversight[.]<sup>4</sup>

In early September, just before SB 741 was enrolled, the Justice Department finally reversed its course on the use of Stingrays at the Federal level.<sup>5</sup> The new policy statement from the DOJ<sup>6</sup> will require federal law enforcement agents to obtain a search warrant supported by probable cause before using a cell-site simulator in a law enforcement context. While the change is riddled with myriad loopholes (including one that says the policy is not applicable when federal agents use cell-site simulators for “national security”), it is still a huge shift from the Department’s position to this point —and it reflects a growing public concern about this technology.

But we believe California can do better. California residents need transparency about the acquisition and use of Stingrays in their communities. The DOJ policy won’t apply to local law enforcement, unless they are working with federal agencies in a law enforcement context, and law enforcement agencies across the state have improperly denied public records act requests about their use.<sup>7</sup>

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<http://www.scientificamerican.com/article/what-is-the-big-secret-surrounding-stingray-surveillance/>

<sup>3</sup> See Jessica Glenza and Nicky Woolfe, *Stingray spying: FBI's secret deal with police hides phone dragnet from courts*, THE GUARDIAN (Apr. 10, 2015), <http://www.theguardian.com/us-news/2015/apr/10/stingray-spying-fbi-phone-dragnet-police>

<sup>4</sup> Hanni Fakhoury, *Stingrays Go Mainstream: 2014 in Review*, EFF (Jan. 2, 2015), <https://www.eff.org/deeplinks/2015/01/2014-review-stingrays-go-mainstream>

<sup>5</sup> Nate Cardozo, *Finally! DOJ Reverses Course and Requires Warrants for Stingrays!*, EFF (Sep. 3, 2015), <https://www.eff.org/deeplinks/2015/09/finally-doj-reverses-course-and-will-get-warrants-stingrays>

<sup>6</sup> U.S. Department of Justice, *Department of Justice Policy Guidance: Use of Cell-Site Simulator Technology* (Sep. 3, 2015), available at [https://www.eff.org/files/2015/09/03/doj\\_cell\\_site\\_simulator\\_policy\\_9-3-15.pdf](https://www.eff.org/files/2015/09/03/doj_cell_site_simulator_policy_9-3-15.pdf)

<sup>7</sup> See, Candice Nguyen, *First Amendment Coalition Files Lawsuit About Stingray Surveillance*, NBC SAN DIEGO (Dec. 17, 2014), <http://www.nbcsandiego.com/news/local/First-Amendment-Coalition-Files-Lawsuit-About-Stingray-Surveillance--286092741.html> Richard Winton, *Anaheim police, Sacramento sheriff sued over surveillance device*, LA TIMES (Mar. 10, 2015),

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That governments would work with surveillance vendors to hide technology from both the general public and the judges charged with protecting our constitutional rights is truly disturbing. EFF supports this attempt to promote democratic accountability and suggests that the bill could be even stronger: it should apply to state as well as local agencies; it should clearly require the publication of any NDAs or related documents that would assist the public in understanding how this technology has been and is being used; and it should prohibit all NDAs regarding Stingrays or other high-tech mass surveillance equipment.

We urge you to sign this bill as soon as possible. Please do not hesitate to contact us if there are any questions.

Nadia Kayyali, Activist  
Lee Tien, Senior Staff Attorney  
Electronic Frontier Foundation

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<http://www.latimes.com/local/lanow/la-me-l-secret-phone-surveillance-device-20150310-story.html>