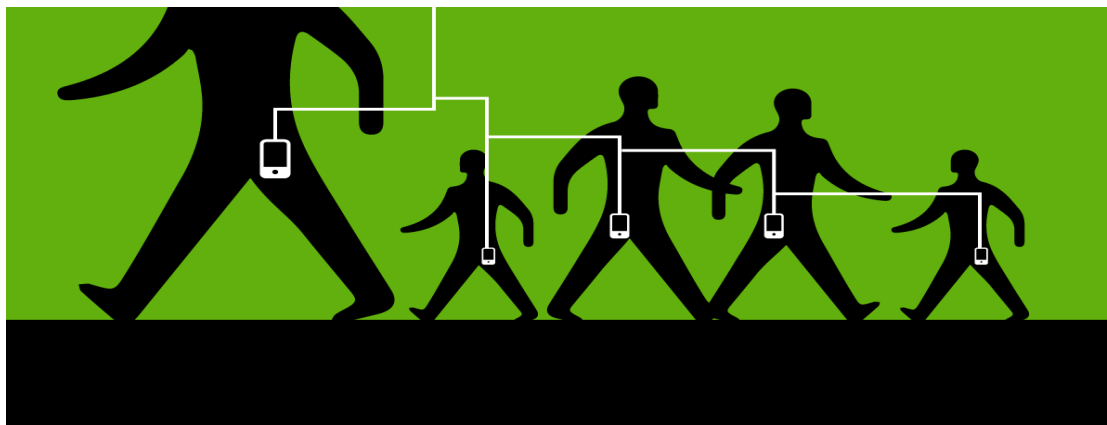




Cell Phone Location Tracking or CSLI

A Guide for Criminal Defense Attorneys



1. What is it and how does it work?
 - a. A cell phone's location can be tracked through cell site location information (CSLI) or global positioning system (GPS) data. CSLI refers to information cell phones convey to nearby cell towers. Info from several towers can be used to "triangulate" a phone's location.
 - b. In addition to the data a cell phone regularly relays to cell towers, a cell phone may be "pinged" to force it to reveal its location.
 - c. Cell phone companies store historical and prospective CSLI and prospective GPS data, which police may request.
 - i. Historical data can be used to track past movements.
 - ii. Prospective data allows police to track a phone in real time.
 - d. Law enforcement may request cell phone data under the Stored Communications Act (SCA), "hybrid" authority of the SCA and the federal pen register or trap and trace statutes, or under state or federal wiretap statutes.
2. How do I challenge the use of cell phone location data?
 - a. File an MTS challenging the foundation and admissibility of CSLI records, but beware that the 3rd-party doctrine (no REP in info you share with a 3rd party) may limit 4th Am protections for CSLI.
 - b. Many states have enacted statutes requiring a warrant to get CSLI. The thresholds for obtaining a warrant vary based on each state and the type of cell phone location data being sought. Some state statutes provide for suppression or other remedies.
 - i. CalECPA is one of the strongest privacy-protective state laws.

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3. Review CSLI tracking cases:
 - a. Fourth Circuit: *US v. Graham*, 824 F.3d 421 (4th Cir. 2016):
Held that third-party doctrine applied, and therefore no REP and govt did not need a warrant to obtain historical CSLI.
 - b. Fifth Circuit
 - i. *US v. Wallace*, No. 16-40701 (May 22, 2017): Held that no warrant required for prospective CSLI.
<https://eff.org/CSLIWallace>
 - ii. *In re US for Historical Cell Cite Data*, 724 F.3d 600 (5th Cir. 2013): Held that no warrant required and SCA subpoenas were sufficient to obtain historical CSLI.
 - iii. WDTX: *In the Matter of the Application of the US for and Order*, 727 F.Supp.2d 571 (2010)(**overruled by *Wallace***): Held warrant required for CSLI.
 - c. Sixth Circuit:
 - i. *US v. Carpenter*, 819 F.3d 880 (6th Cir. 2016)(cert granted 6/5/17): Held seizure of CSLI was not a search.
 - ii. *US v. Skinner*, 690 F.3d 772 (6th Cir. 2012): No REP in CSLI.
 - d. Supreme Court of Florida: *Tracey v. State*, 152 So. 3d 504 (Fla. 2014): Held REP in prospective CSLI, and seizure required a warrant.
 - e. Supreme Court of Massachusetts: *Commonwealth v. Augustine*, 467 Mass. 230 (Mass. 2014): Held REP in CSLI required warrant and TPD doesn't apply, but ruling applied prospectively only
 - f. Supreme Court of New Jersey: *State v. Earls*, 214 NJ 564 70 (N.J. 2013): Held REP in CSLI required warrant under the New Jersey State Constitution, but only applied prospectively.
 - g. Ninth Circuit:
 - i. NDCA: *In re Application for Telephone Information* (119 F. Supp. 3d 1011 (2015)): Held REP in CSLI and third-party doctrine did not apply. Required warrant for CSLI.
4. How do I learn more?
 - a. Read EFF's amicus briefs:
 - i. eff.org/CSLICarpenter (SCOTUS)
 - ii. eff.org/CSLIGraham (SCOTUS)
 - iii. eff.org/CSLIDavis (11th Cir.)
 - iv. eff.org/CSLIGilton (9th Cir.)
 - v. eff.org/CSLIWallace (5th Cir.)
 - b. Cell tracking issue webpage: <https://eff.org/celltracking>
 - c. State CSLI laws: <https://eff.org/CSLIstatelaws>

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