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**SAN DIEGO POLICE DEPARTMENT
ORDER**

DATE/TIME: OCTOBER 11, 2022 1735 HOURS

NUMBER: 22-29

SUBJECT: EXIGENT CELLULAR LOCATION PROCEDURE

COST CENTER: N/A

SCOPE: ALL MEMBERS OF THE DEPARTMENT

DEPARTMENT PROCEDURE AFFECTED: TBD

In 2015, the Electronic Communications Protection Act (ECPA) was added to the California Penal Code (Chapter 3.6, sections 1546-1546.4). One of the provisions of this act covers the documentation of access to electronic communications, most notably location information data from cellular devices. Although access to location information is usually obtained from the providers via search warrant, that data can sometimes be obtained voluntarily from providers under exigent circumstances. There is no requirement for the providers to release information to law enforcement agencies without a court order.

Access to exigent location data is typically coordinated through Communications after they provide the cellular providers with a written request and justification for exigent location data. These requests usually require the immediate threat to human life. California Penal Code sections 1546.1(f) and 1546.1(g) set forth the requirements for disposition of the data gathered voluntarily from providers.

California Penal Code section 1546.1(g) requires the government entity receiving the voluntary information (e.g., exigent location data) to “destroy” the information received within 90 days unless one of the listed exceptions is met. If exigent information is received by an agency they shall, within three court days of receiving the information, file an application for a warrant or

order authorizing retention or destruction of the information, stating the facts surrounding the exigent request. This request (see attached template) will also cover delayed notification and sealing requests if applicable. The court will rule on the submitted requests and disposition of the obtained information (i.e., grant a warrant or order, or authorize destruction of the information).

Many of the exigent requests for information initiated by the Department do not result in a criminal prosecution, and no investigator is ever assigned the case. The Department currently averages about 10 exigent requests per month.

To ensure accountability and the Department's compliance with ECPA, the following procedure shall be followed for exigent requests initiated through Communications:

Communications will notify the Robbery Unit Lieutenant when requests for exigent location information from cellular providers have been submitted. The Robbery Lieutenant already handles the invoices and authorizes payments to cellular providers, so this will also assist them in tracking requests for payment. The Robbery Lieutenant will research the incident and see which investigative command would be most appropriate to submit the court filings. In cases where centralized investigative units were assigned to the case, they shall be responsible for the filings. In situations where no centralized investigative response was warranted, the area command shall be responsible. The Robbery Lieutenant will forward the information and required form to the appropriate lieutenant for assignment. Once the form is completed, it can be submitted through the SDPD Liaison from the District Attorney's Office, or the assigned prosecutor.

Questions can be directed to **(Deleted – records of security)**. A new Department Procedure will be forthcoming.

Please read at squad conferences and give a copy to all personnel.

