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Constitutionality of Law Enforcement Tracking of Cell Phones

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With the explosive growth of cell phone use and its ever advancing technology, police departments are rapidly increasing their tracking and surveillance capabilities. Cell phones have been described as “the virtual biographer of our daily activities,” giving police fertile ground for finding contact and location information of both victims and suspects.

Tracking has become big business for cell phone providers, some of whom market surveillance packages to police departments to help them determine a suspect’s location, trace phone calls and texts or provide other services.

However, civil liberty advocates argue the wider use of cell tracking raises legal and constitutional questions, particularly when the police act without judicial orders. While many departments require warrants to use phone tracking in non-emergencies, others claim broad discretion to get the records on their own.

The issue has taken on new legal urgency in light of a recent Supreme Court decision that a Global Positioning System tracking device placed on a drug suspect’s car violated his First Amendment rights against unreasonable searches. While the ruling did not directly involve cell phones—many of which also include GPS locators—it raised new questions about the standards for cell phone tracking.

Congress and about a dozen states are considering legislative proposals to tighten restrictions on the use of cell phone tracking. However, advances in cell phone technology will continue to outpace police departments’ policies and procedures as well as state and federal laws dealing with the government using your cell phone for information.