

Develop Sound Offender Tracking Evidence Protocols Before Cases Reach the Courtroom

By Theodore D. Robinson

Author's Note: Findings and conclusions reported in this article are those of the author and do not necessarily represent the official positions or policies of the U.S. Department of Justice.

Imagine one of your parolees violates the conditions of his or her release. The ankle monitor used to track his or her movements has reported the parolee entering a restricted area. When the parolee reports to you in person, you see the strap has been tampered with, showing visible tool marks and broken attachment pieces. You're confident you have an open and shut parole violation case, right? Think again. Having data from a tracking report and evidence of tampering may not be enough to prove the parolee violated the terms of his or her release. How do you prove the device was in working condition prior to being assigned to the parolee? How do you display tracking reports to the court while protecting the integrity of the evidence? Who will give oral testimony during a hearing? Is your staff adequately trained on your agency's offender tracking evidence protocols?

Establishing Evidence Protocols

A Practical Guide for Offender Tracking Evidence Protocols by Sgt. David Schepppegrell, George Drake and Joe Russo can help you and your correctional agency answer these questions. Developed with the National Institute of Justice's Corrections Technology Center of Excellence — one of the National Law Enforcement and Corrections Technology Centers — the guide was designed to maximize the value of offender tracking evidence and provide useful tips correctional agencies can use to prepare for court. Evidence from a tracking device can be vital in establishing innocence or guilt. Corrections agencies, however, receive little guidance on how best to prepare for and use offender tracking evidence in court. The guide addresses this issue by discussing the most important aspects of the technology and the value of collaborating with criminal justice stakeholders to develop protocols before cases reach the courtroom.¹ The authors describe the following four types of tracking evidence most likely to be required for a court proceeding:

Physical evidence. Physical evidence is any object that can be introduced as an exhibit in a court of law. The most common pieces of physical evidence are tracking devices, straps and other attaching components. Judges and attorneys appreciate seeing the actual equipment used to place the defendant at the scene of the crime. In preparation for possible court proceedings, it is important to properly inventory, store and document physical evidence to demonstrate it has not been physically altered. If possible, agencies should take high-resolution photographs of all evidence, so if pieces of evidence are lost or mishandled, acceptable substitutes are available. Consider developing a written agreement between the legal parties that outlines protocols for reviewing offender tracking evidence held by the agency. Tracking devices are expensive and are often used on multiple participants. To avoid inconvenience, set a fixed time limit for legal parties who want to examine the equipment.

Electronic evidence. If a case goes to trial, the accuracy of a tracking device may be questioned. Electronic evidence includes the data recorded and transmitted from an offender's tracking device. The court will also be concerned about the

chain-of-custody methods used to safeguard the integrity of the evidence. Scheppegrell, Drake and Russo recommend that when establishing protocols, agencies should consider how long the data will be available online or by request, the availability of offender tracking points and which monitoring entity will testify as the custodian of records. To address accuracy issues, agencies may also find it useful to establish a testing procedure for monitoring equipment. When the court asks for evidence to be displayed visually, the data often need to be converted into a video format that can be played on a computer without specific vendor software. This conversion of data must be done in a manner that protects the integrity of the evidence. Have the vendor who converts the data provide a letter describing how the video was made and attesting to the validity of the reproduction method.

Documentary evidence. Documentary evidence pertains to photographs and written material, including: items that identify the person who placed the monitor on the defendant; strap and equipment settings; placement of equipment; inspection dates; condition of tamper-evidence components; recording of statements concerning a violation or crime; post-removal testing procedures undertaken; and photographs of tamper indicators. Agencies should develop appropriate guidelines and procedures for generating and handling this type of evidence, if needed in court. Having a valid record of the functioning and maintenance of a device before a trial is also critical; it will boost the reliability of the evidence. Agencies should ensure the records include the equipment's capability to accurately record location points, the

life of the battery, and refurbishment and repair records.

Oral testimony. Any words spoken by a sworn witness in an official proceeding are considered oral testimony. All witnesses should be thoroughly prepared to provide oral testimony that is accurate and does not exceed the scope of their level of competency. The witness should not use hyperbole (i.e., "always accurate" or "the best equipment"); instead, they should use reasonable language that can be supported by facts and records obtained by tracking devices. During cross-examination, the witness should provide honest answers and not display overt bias. A witness should have a basic understanding of the technology and also be cognizant of its drawbacks and limitations. For example, a variety of factors can cause inaccurate plotting of location points, so it is important to not overstate the reliability of location points in question, as it could eventually prove detrimental to the case. Instead, the witness should be prepared to articulate the causes of interruptions in tracking points, such as shielding, jamming or low battery levels. The witness should also be well-versed in the agency's policies and procedures, for it is vital to show the program staff complied with policies and procedures. For example, should an event occur when agency policies and procedures do not readily apply to a situation, it is crucial an officer shows steps taken toward accomplishing the overall objectives of the agency. Most vendors provide expert witnesses to testify on the operations of their tracking software and hardware. Agencies that choose to certify a staff member as an "expert witness" should develop a protocol in conjunction with

the local prosecutor, and they should create an expert witness folder for that individual that includes documents such as pertinent training records, certifications and a list of previous cases in which the witness has testified. However, in most cases, program staff are not used as experts.

Conclusion

A Practical Guide for Offender Tracking Evidence Protocols contains information to guide your agency's development of protocols and procedures for presenting offender tracking evidence in court. The goal is to use procedures that maximize the value of the tracking device evidence. Appendix A of the guidebook contains sample checklists of evidence and information agencies can consider collecting and having available during a courtroom proceeding. Appendix B provides a sample agreement for equipment availability letter. Appendix C contains an offender tracking accuracy test.

ENDNOTE

¹ Scheppegrell, D., G. Drake and J. Russo. 2014. *A practical guide for offender tracking evidence protocols*. Washington, D.C.: National Institute of Justice. (It is available on request to law enforcement and corrections agencies by emailing the National Law Enforcement and Corrections Technology Center at asknlectc@justnet.org).



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