



San Diego County Sheriff

Training Bulletin

William D. Gore, Sheriff

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Jail Calls



The suspect has been arrested and sits in jail, awaiting his day in court. He calls everyone and anyone who will listen. All of his calls are recorded. The assigned detective or deputy dutifully downloads and listens to these calls; the good, the bad and mostly, the boring. Now what?



What is law enforcement's discovery obligation as it relates to jail calls?

If the Defendant is awaiting trial and you have downloaded the call (whether you have listened to it or not), it is now in law enforcement's possession and subject to the discovery rules set forth in Penal Code section 1054, specifically section 1054.1(b), which requires the investigating agency to disclose "Statements of all defendants" to the defense before trial. This includes statements that have nothing to do with the case. If it is a defendant's statement and we possess it, we are obligated to disclose it to the defense before trial. You download it, we now possess it and are obligated to turn it over.

Do I have to burn all of my calls to a disc and turn the disc over to the assigned Deputy DA?

No, but this will make things a lot easier on the prosecutorial team and is usually best practice. It will save someone else from having to download and copy the calls and preserve time and resources.

The information in this Training Bulletin was provided by Deputy DA Clay Biddle, District Attorney Liaison and edited for distribution by the In-Service Training Unit. If you have expertise in a particular subject and would like to write a training bulletin, please contact Corporal Daniel Gutierrez at In-Service Training, [REDACTED]

What if I am just gathering intel on the Defendant and am not involved in his current case?

It does not matter. If the Defendant has been charged and is awaiting trial in a criminal case, the discovery obligation outlined above remains the same and applies to any/all law enforcement groups that are listening in.

I believe that some of the information in the calls should not be disclosed because it's privileged or may put someone in danger. What should I do?

Notify the assigned prosecutor of the calls and your concerns. In certain instances, the calls may be privileged, but there are legal requirements that must be met before that decision is made. The important thing here is communication with DA's office regarding the calls and their content.

If nothing case-relevant has been said, what's the harm in not turning over the calls?

First, as mentioned above, all of a Defendant's statements are discoverable. Unfortunately, the Penal Code does not specify that only material or case-relevant statements need to be turned over. Additionally, failure to turn over the calls can be viewed as a discovery violation, result in judicially imposed penalties and compromise the case. It is always better to turn over the calls to the assigned Deputy DA and meet your obligation.

Second, what you think is irrelevant idle chatter may actually be important down the road. The statements may ultimately refute a defense or alternatively, establish the same. Criminal cases and trials are fluid and ever-changing. There really is no way of knowing whether what is said today will be important tomorrow or several months later.

Are you saying that any/all jail calls I listen to must be turned over to the DA's office?

Yes – if a Defendant has been charged in a criminal case and is awaiting trial, the entire law enforcement team, from the lead prosecutor to the arresting deputy, is tasked with turning over all of his statements to the defense. If those "statements" include jail calls that you downloaded or listened to, they must be given to the DA's office. At a minimum, you should notify the DA's office that you listened to the calls and specify the date and time.

Is there any way to avoid this burdensome, time-consuming task?

Usually not, but establishing an open line of communication with the assigned prosecutor is the first thing you should do. Maybe the defendant just pled guilty or is about to do so and the calls are not needed. Maybe the prosecutor and/or his investigator have also been listening to the calls. You won't know unless you communicate with DA's office and come to a clear understanding of what you need to provide.

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