

Legislative Analysis



"KELSEY SMITH" ACT

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House Bill 5110 (Substitute H-1)

Sponsor: Rep. Kurt Heise

Committee: Criminal Justice

First Analysis (3-17-14)

BRIEF SUMMARY: The bill would (1) require a wireless carrier to provide location information on a wireless device to a law enforcement officer upon request in certain emergency conditions, (2) provide civil and criminal immunity to a wireless carrier that responds to the request for device location information, and (3) define terms.

FISCAL IMPACT: The bill would appear to have no significant fiscal impact on state or local government. Generally, wireless carriers already have policies and procedures in place on how to respond to exigent requests from public safety answering points and other law enforcement agencies, providing law enforcement agencies with initial and follow-up contact points (phone/fax/email) that should be used when requesting information pertaining to an emergency.¹ The requirement that the Department of State Police (MSP) provide contact information for wireless carriers can be provided with little additional work and with no budgetary impact on MSP.

THE APPARENT PROBLEM:

Wireless carriers have the ability to determine the location of one of their devices. Sometimes, especially in the case of an emergency, a law enforcement officer needs to quickly find the location of a person. Several years ago, a young woman named Kelsey Smith went missing from a Target Store in Kansas City, Missouri. According to news accounts, the store's security tapes showed that a man had followed her to the parking lot and then forced her into her car. Despite repeated attempts by her family and law enforcement, including a court-issued subpoena, reportedly it took four days before her cell phone carrier would release information indicating the current location of her cell phone. Within an hour, Kelsey's body was located.

In the years following this tragedy, 14 states have enacted Kelsey Smith Laws to require wireless carriers to provide wireless device location information when a law enforcement officer specifies that the information is needed to locate a person in an emergency. Whether due to illness, an accident, or becoming the victim of a criminal act, minutes can matter. Already there have been many reports of lives saved in the states that have enacted a Kelsey Smith Law. Reportedly, shortly after Tennessee enacted its statute, a young girl was located and saved from a man who had previously been charged multiple

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http://www.michigan.gov/documents/msp/Wireless_Carrier_Policies_for_Exigent_Situations_NENA_FINAL_325433_7.pdf

times with crimes against children. In another incident, a stroke victim who could only dial his wife's number was able to be located in time to get needed medical care.

Some feel that Michigan should also enact a Kelsey Smith Law to ensure that wireless carriers provide law enforcement officers with the location of a cell phone, tablet, or other wireless device in an emergency.

THE CONTENT OF THE BILL:

House Bill 5110 would create a new act to require a wireless carrier to provide the device location information concerning a wireless telecommunication device (i.e., a cell phone or tablet) to a police officer upon request if needed in an emergency situation involving the risk of death or serious physical harm to the user of the device. A wireless carrier could establish protocols for the disclosure of device location information in response to requests from law enforcement. (This could be done without first obtaining a search warrant.) The bill would take effect 90 days after enactment.

Under the bill, the Department of State Police (MSP) must obtain contact information for all wireless carriers authorized to do business in Michigan in order to facilitate a request from an investigative or law enforcement officer for device location information. The MSP would have to disseminate the information on a quarterly basis, or immediately as changes occur, to all public safety answering points and law enforcement agencies.

A cause of action, whether civil or criminal, could not lie in any court against a wireless carrier or its officers, employees, agents, or other specified persons for providing complying with a request from a law enforcement officer under the bill.

"Public safety answering point" would mean a communications facility operated or answered on a 24-hour basis and assigned responsibility by a public safety agency or county to receive 9-1-1 calls and to dispatch public safety response.

"Wireless carrier" would mean a provider of commercial mobile services, as that term is defined under federal law, and includes all broadband personal communications services, wireless radio services, and incumbent wide area specialized mobile radio licensees that offer real-time, 2-way voice or data service interconnected with the public switched telephone network, and that does business in Michigan. "Law enforcement officer," "law enforcement agency," and "public safety agency" are also defined in the bill.

ARGUMENTS:

For:

The bill would clarify the duties of a wireless carrier in response to a law enforcement officer's request in an emergency situation for location information of a wireless device serviced by that carrier. The bill would also provide that the carrier would not be held criminally or civilly liable for providing the requested information. A warrant for device location information would not be required in an emergency. In a nonemergency, a law enforcement officer would have to seek a warrant just as in any investigation.

The bill does not require the carrier to provide any other information, such as the names of individuals to whom calls or texts had previously been made or the content of any text or phone message. Therefore, there should not be any privacy concerns.

Under the bill, a carrier could establish its own protocols for employees to follow in releasing the location information. Apparently some carriers, if not all, already have a form that a dispatcher or investigating officer fills out when making a request for a cell phone location. Law enforcement agencies are likely also to have their own protocols in place for when such requests may be made.

No problems have been noted in Michigan with a carrier refusing to provide location information for a wireless device. Thus, the bill would appear to be a proactive measure and intended to create clarity to prevent future issues such as experienced by the parents of Kelsey Smith and the law enforcement personnel investigating her disappearance. Though in Kelsey's case she was likely deceased before the request for her cell phone location had been made, the bill is expected to help others in need of prompt assistance. Supporters of Kelsey Smith laws say there have been numerous situations in other states involving accident victims, stroke victims, individuals who had become lost, or a crime in progress in which a quick response from a carrier to an officer's request enabled law enforcement and other emergency responders to provide timely assistance.

At least 14 other states have recognized the lifesaving potential of having a clear policy in statute and so have enacted a Kelsey Smith law. Some believe it is good public policy for Michigan to do the same.

Response:

Though the bill limits application to an emergency situation involving the risk of death or serious physical harm, some maintain that this is a standard easily abused. Several states include a definition for the term "emergency" and/or include a penalty for a law enforcement officer who abuses the privilege and obtains or seeks to obtain the location information of a wireless device under false pretenses; for example, for personal, rather than law enforcement, purposes. Michigan law currently provides a criminal penalty for any person authorized to access LEIN (law enforcement information network) who does so for personal, and not permitted, purposes. LEIN abuses are rare, and having a criminal penalty in place is believed to be the major reason why.

POSITIONS:

A representative of the Michigan State Police testified in support of the bill. (1-29-14)

Verizon Wireless indicated support for the bill. (2-26-14)

General Motors indicated support for the bill. (2-26-14)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.