

WIRELESS CARRIERS MUST PROVIDE LOCATION INFO TO LAW ENFORCEMENT IN EMERGENCIES

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4006 (Reported from committee as Substitute H-1)

Sponsor: Rep. Kurt Heise

Committee: Criminal Justice

Analysis available at
<http://www.legislature.mi.gov>

Complete to (2-23-15)

BRIEF SUMMARY: The bill would create a new act to:

- Require a wireless carrier to provide location information on a wireless device to a law enforcement officer upon request in certain emergency conditions.
- Provide civil and criminal immunity to a wireless carrier that responds to the request for device location information.
- Make it a misdemeanor offense for a law enforcement officer to use the new act to obtain device location information for personal use or gain.
- Define terms.

FISCAL IMPACT: The bill could have fiscal implications for the Michigan State Police, local correctional systems, and on the judiciary and local court funding units, as explained in more detail later in the analysis.

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. In 2007, a young woman in Kansas disappeared after leaving a local Target store. The store's security surveillance tapes showed that Kelsey Smith, 18, was abducted by a man who had followed her to the parking lot. Despite repeated requests by her family and law enforcement for the location information of Kelsey's cell phone, including a court-issued subpoena, reportedly it took four days before her cell phone carrier would release that information. Within an hour of the release of the information, Kelsey's body was located. Eventually, the wireless carrier told the family that it was "human error" that caused the delay in releasing the cell phone location information. According to information provided by Kelsey's father, now a Kansas state senator, a customer service representative, an employee whose training included service issues or calling plan upgrades, "made a decision not to kick the locate request up to someone who could actually make the decision."

In response, Kansas adopted the first "Kelsey Smith Act" in 2009; to date, 15 states have enacted similar "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. Supporters of state Kelsey

Smith laws say that it is an important tool for emergency responders. Already there have been many reports of lives saved in the states that have enacted a Kelsey Smith law.

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 4006 would create a new act to require a wireless carrier to provide the device location information concerning a wireless telecommunication device (e.g., a cell phone or tablet) to a police officer upon request, if needed in an emergency situation involving the imminent risk of death or serious physical harm to the user of the device. (This could be done without first obtaining a search warrant.) A request for device location information would have to be written and signed by the requesting law enforcement officer's supervisor.

A law enforcement officer could not request, access, use, or disclose device location information from a wireless carrier more than 48 hours after the time of the initial request for the information unless the request, access, use, or disclosure was under a valid court order.

A wireless carrier could establish protocols for the disclosure of device location information in response to requests from law enforcement.

The bill would require the Department of State Police (MSP) to obtain contact information for all wireless carriers authorized to do business in the state 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" (be brought) in any court against a wireless carrier or its officers, employees, agents, or other specified persons for complying with a request from a law enforcement officer under the bill.

A law enforcement officer who uses the provisions of the bill to request, access, use, or disclose device location information for personal use or gain would be guilty of a misdemeanor punishable by imprisonment for not more than 93 days and/or a fine of not more than \$500.

"Law enforcement officer" would mean a police officer of a county, city, village, or township in the state; a public safety officer at a public university; a prosecuting attorney, assistant prosecuting attorney, or investigator for the office of prosecuting attorney; or any other person whose duty is to enforce the laws of Michigan or of the U.S.

"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. "Public safety agency" would mean a functional division of a public agency, county, or of the state that provides firefighting, law enforcement, ambulance, medical, or other emergency services.

"Law enforcement agency" means the Department of State Police; a police agency of a city, village, or township; a sheriff's department; a public safety department of a state university described in Section 4, 5, or 6 of Article VIII of the State Constitution; or any other governmental law enforcement agency in the state.

"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.

The bill would take effect 90 days after enactment.

BACKGROUND INFORMATION:

The bill is similar to House Bill 5110 of the 2013-2014 legislative session.

FISCAL INFORMATION:

House Bill 4006 would have a nominal fiscal impact on the Michigan State Police (MSP) to the extent that the MSP would be required to obtain contact information for wireless carriers and quarterly disseminate such information to local law enforcement agencies and public safety answering points (i.e., emergency dispatches).

The bill could increase costs on local correctional systems. Information is not available on the number of persons that might be convicted under the provisions of the bill. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. The increase in penal fine revenue would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

The bill could also increase costs on the judiciary and local court funding units. The fiscal impact would depend on how the provisions of the bill affected caseloads and related administrative costs.

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. Under the bill, 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 and would be required to have a valid court order in order to request, access, use, or disclose device location information from a wireless carrier more than 48 hours after the initial (emergency) request.

The bill would also provide that the carrier would not be held criminally or civilly liable for providing the requested information; without such certainty, a business is unlikely to put itself at risk of being sued.

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. As to releasing the device location, recent federal appeals decisions have found that there is no reasonable expectation of privacy in certain collected cell data – such as location data.

The bill provides flexibility for a carrier to 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. An amendment adopted in committee will require an officer to put such a request in writing and requires the officer's supervisor to sign the request. Coupled with the misdemeanor penalty for requesting or accessing device location information for an officer's personal use or gain, the bill provides strong privacy protections.

Though in Kelsey Smith'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, victims of natural disasters such as tornadoes, 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. For example, earlier this month, Kansas police were able to quickly locate a stolen car with a baby inside; the mother had left her cell phone in the car and police used their state's Kelsey Smith Act to request and receive prompt cell phone location information.

At least 16 states have recognized the lifesaving potential of having a clear policy in statute and so have enacted a Kelsey Smith law. Thus, some believe it is good public policy for Michigan to do the same. 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.

Against:

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." Also, some still believe the bill would violate a citizen's privacy right.

Response:

Federal law allows wireless carriers to both collect and disclose wireless device location information. Recent cases at the federal appeals level in the 5th and 6th Circuit, as mentioned above, regarding location information of wireless devices, have found that location data is outside a person's reasonable expectation of privacy. The current version contains sufficient privacy protections and penalties for unlawful purposes to assure residents that such requests by law enforcement officers would only be made, and therefore location information obtained, only when circumstances warranted it. If a request was made based on a false report by a member of the public, that person would be subject to prosecution for making a false police report.

POSITIONS:

A representative of the Department of State Police testified in support of the bill. (2-17-15)

Melissa Smith, the mother of Kelsey Smith, testified in support of the bill. (2-17-15)

Verizon Communications, Inc. indicated support for the bill. (2-17-15)

The Michigan Association of Chiefs of Police indicated support for the bill. (1-27 and 2-17-15)

The Michigan Sheriffs' Association indicated support for the bill. (2-17-15)

A representative of the Michigan Campaign for Liberty testified in opposition to the bill. (2-17-15)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Paul Holland
Robin Risko

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