

HOUSE BILL REPORT

ESSB 5158

As Reported by House Committee On:
Public Safety

Title: An act relating to requiring call location information to be provided to law enforcement responding to an emergency.

Brief Description: Requiring call location information to be provided to law enforcement responding to an emergency.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators McCoy and Fraser).

Brief History:

Committee Activity:

Public Safety: 3/13/15, 3/26/15 [DPA].

**Brief Summary of Engrossed Substitute Bill
(As Amended by Committee)**

- Requires wireless telecommunications providers to provide the location and call information of a telecommunications device when requested by a law enforcement agency responding to a call for emergency services or in an emergency situation that involves the risk of death or serious physical harm to a person.
- Provides guidelines that law enforcements agencies must follow prior to obtaining location and call information of a telecommunications device.
- Requires the Washington State Patrol (WSP) to maintain a database with emergency contact information for all of the wireless telecommunications providers and make the information immediately available upon request from law enforcement.
- Requires the Secretary of State to make records available from the Address Confidentiality Program to the WSP for the purpose of providing the location and call information of a telecommunications device in response to an emergency situation.

HOUSE COMMITTEE ON PUBLIC SAFETY

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: Do pass as amended. Signed by 9 members: Representatives Goodman, Chair; Orwall, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Griffey, Moscoso, Pettigrew and Wilson.

Staff: Yvonne Walker (786-7841).

Background:

In 2007 a young woman named Kelsey Smith, died after being kidnapped. Although she had a cell phone in her possession, law enforcement was unable to obtain her cell phone's location from the telecommunications service provider until more than three days had elapsed. Ms. Smith's family has established a foundation in her name that works to pass state laws that allow law enforcement to quickly ascertain the location of a wireless telecommunications device if a missing person has been determined, by law enforcement, to be at risk of death or serious physical harm.

Federal law prohibits providers of electronic communication services from knowingly divulging records or other information pertaining to a customer except under specific circumstances, such as pursuant to a warrant. Providers may disclose records or information pertaining to customers to a governmental entity, if the provider, in good faith, believes that an emergency involving danger of death or serious physical injury to a person requires the disclosure, without delay, of information relating to the emergency.

The Fourth Amendment of the United States Constitution and Article I, section 7 of the state Constitution guards against the government's ability to conduct unreasonable (warrantless) search and seizures when the individual party being searched has a reasonable expectation of privacy. Two exceptions from the warrant requirement that the court has recognized are: (1) when a party has consented to the search; and (2) when disclosure is necessary without waiting for a court order, due to exigent circumstances such as an emergency involving immediate danger of death or serious bodily injury.

Address Confidentiality Program.

The Address Confidentiality Program (ACP) is a program of the Office of the Secretary of State that allows victims of domestic violence, sexual assault, or stalking to have an alternative address designated as his or her substitute mailing address. The ACP also allows state and local agencies to comply with requests for public records without disclosing the confidential location of a victim.

Summary of Amended Bill:

Wireless telecommunications providers must provide the location and call information of a telecommunications device when requested by a law enforcement agency. A law enforcement agency may not request such information relating to a telecommunications device other than when responding to a call for emergency services or in an emergency situation that involves the risk of death or serious physical harm of a person. The law

enforcement agency must meet the following requirements in order to obtain such information from a telecommunications device:

- in the law enforcement officer's exercise of reasonable judgment, the officer must believe that an individual is in an emergency situation that involves the risk of death or serious physical harm and the disclosure of such information is needed without a delay relating to the emergency;
- the law enforcement officer making the request for location and call information must be on duty during the course of his or her official duties at the time of the request;
- a law enforcement agency must verify there is no relationship or conflict of interest between the law enforcement officer responding, investigating or making the request, and either the person requesting the call location information or the person for whom the call location information is being requested;
- concurrent to making a request, the responding law enforcement agency must check the Federal Bureau of Investigation's National Crime Information Center and any other available databases to determine whether the person requesting the call location information or the person for whom the call location information is being requested has any history of domestic violence or any court order restricting contact by a respondent;
- concurrent to making a request, the responding law enforcement agency must verify with the Washington State Patrol (WSP) whether either the person requesting the call location information or the person for whom the call location information is being requested is participating in the ACP; and
- if the responding law enforcement agency identifies or has reason to believe someone has a history of domestic violence or stalking, has a court order restricting contact, or if the WSP identifies someone as participating in the ACP, then the law enforcement agency must not provide call location information to the individual who requested the information unless pursuant to a court order. The law enforcement agency is prohibited from distributing call location information back to the requester or any other party, except to first responders responding to the emergency situation, when it is believed that someone has a history of domestic violence, stalking, is under a court order restricting contact, or is participating in the address confidentiality program.

No cause of action may be brought in any court against a wireless telecommunications provider for providing call location information while acting in good faith and in accordance with this act.

All wireless telecommunications providers registered to do business in Washington and all resellers of wireless telecommunications services must submit emergency contact information to the WSP, and submit new information immediately if there is any change.

The WSP is required to maintain a database with emergency contact information for all of the wireless telecommunications providers and make the information immediately available upon a request from a law enforcement agency. The WSP may adopt rules as needed to fulfill the requirements of this act.

Address Confidentiality Program.

The Office of the Secretary of State (SOS) must make records available from the ACP to the WSP for the purpose of location of a telecommunications device and call information of a

device in emergency situations; however, the WSP must not disseminate the information any further. The participant information must clearly distinguish between those participants requesting disclosure and those requesting nondisclosure, to a law enforcement agency, of the location of a telecommunications device and call information of the user. The WSP may not use the information or make the information available for inspection and copying for any other purpose. The SOS may adopt rules to fulfill the requirements of this act. The Secretary of the SOS and its employees are not liable for any loss or damage based upon the release of information, or the nondisclosure of information, from the ACP to the WSP if the entity was acting in good faith in attempting to comply with the provisions of this act.

The act may be known and cited as the Kelsey Smith Act.

Amended Bill Compared to Engrossed Substitute Bill:

The amendment: (1) requires that the law enforcement officer making a request for cell phone information be on duty during the course of his/her official duties at the time of the request; (2) prohibits law enforcement from distributing cell phone information back to the requester or any other party, except to first responders responding to the emergency situation, when it is believed that someone has a history of domestic violence, stalking, is under a court order restricting contact, or is participating in the address confidentiality program; (3) requires that, prior to requesting a person's call information, a law enforcement agency must verify there is no relationship or conflict of interest between the law enforcement officer responding, investigating or making the request, and either the person requesting the call location information or the person for whom the call location information is being requested; and (4) clarifies that the law enforcement agency must meet all the requirements as set out in the act.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) None.

(Opposed) None.

Persons Testifying: None.

Persons Signed In To Testify But Not Testifying: None.