

# HOUSE BILL REPORT

## HB 1897

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**As Reported by House Committee On:**  
Technology & Economic Development

**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:** Representatives McCoy, Ryu and Pollet.

**Brief History:**

**Committee Activity:**

Technology & Economic Development: 2/19/13, 2/21/13, [DPA], 2/5/14 [DP2S].

**Brief Summary of Second Substitute Bill**

- Requires wireless telecommunications providers to provide call location information for the telecommunications device of a user when requested by a law enforcement agency responding to an emergency.

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### HOUSE COMMITTEE ON TECHNOLOGY & ECONOMIC DEVELOPMENT

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass. Signed by 18 members: Representatives Morris, Chair; Habib, Vice Chair; Smith, Ranking Minority Member; Short, Assistant Ranking Minority Member; Dahlquist, DeBolt, Fey, Freeman, Hudgins, Kochmar, Magendanz, Morrell, Stonier, Tarleton, Vick, Walsh, Wylie and Zeiger.

**Staff:** Jasmine Vasavada (786-7301).

**Background:**

In 2007 a young woman named Kelsey Smith died after being kidnapped; she had a cell phone that might have revealed her location in time for emergency response, but 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

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foundation in her name that works to pass state laws to provide law enforcement with a way to quickly ascertain the location of a wireless telecommunications device if a person has been determined, by law enforcement, to be at risk of death or serious physical harm due to being kidnapped or missing.

Federal law prohibits providers of electronic communication services to the public from knowingly divulging records or other information pertaining to a customer, except under specific circumstances, such as pursuant to a warrant. Another circumstance in which providers are authorized to disclose records or information pertaining to customers is disclosure to a governmental entity, if the provider, in good faith, believes that an emergency involving danger of death or serious physical injury to any person requires disclosure, without delay, of information relating to the emergency. A number of states have enacted laws to regulate or encourage the disclosure by providers of cell phone location information.

The Fourth Amendment of the United States Constitution and Article I, section 7 of the state Constitution prohibits the government from conducting a warrantless search, unless an exception applies. Two exceptions from the warrant requirement that the court has recognized are when a party has consented to the search and 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. Although some federal court decisions have held that the government does not need a warrant under the Fourth Amendment to obtain cell phone location data, the analysis under the state Constitution may be different. Currently, Washington prosecuting attorneys advise law enforcement to obtain search warrants before requesting cell phone location data from service providers.

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### **Summary of Second Substitute Bill:**

Wireless telecommunications providers must provide call location information for the telecommunications device of a user when requested by a law enforcement agency responding to an emergency. Law enforcement agencies may not request this information for any other purpose. No cause of action may be brought in any court against wireless telecommunications providers 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 Washington State Patrol (WSP) by September 30, 2013, update the information annually, 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 law enforcement. The WSP may adopt rules as needed to fulfill the requirements of this act.

### **Second Substitute Bill Compared to Original Bill:**

The second substitute bill establishes the following requirements or restrictions on a law enforcement request for call location information:

- provides that a law enforcement agency may not convey or disclose the call location information to any individual except as strictly necessary for the purposes of responding to a call for emergency services or in an emergency situation that involves the risk of death or serious physical harm, or as required by an order of a court of competent jurisdiction;
- requires a law enforcement officer to exercise reasonable judgment in determining whether an emergency is likely to exist, or whether the call or other initiation of the request for emergency response is pretextual;
- requires the law enforcement officer or other delegated agent within the law enforcement agency to check relevant databases before or concurrently with initiating the request for call location information, unless the law enforcement officer reasonably determines that the circumstances require immediate action; and
- specifies that relevant databases to check may include, but are not necessarily limited to, the Federal Bureau of Investigation's National Crime Information Center and the Washington Secretary of State's Office's address confidentiality program.

The second substitute bill provides that the protocols a wireless telecommunications provider may establish for voluntary disclosure of call location information apply only to disclosure to a law enforcement agency for the emergency purposes outlined in the bill.

The second substitute bill removes the deadline establishing a specific date by which wireless telecommunications providers must submit emergency contact information to the WSP.

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**Appropriation:** None.

**Fiscal Note:** Requested February 6, 2014.

**Effective Date of Second Substitute 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) The prime sponsor had been thinking about this as an idea for a bill for a number of years when he had a conversation on Facebook with Kelsey's father, who is a legislator in Kansas. This bill followed the example of legislation enacted in Kansas and combined it with the best parts of other bills that have been introduced in other states. There will be one amendment coming to line it up with federal law.

(Opposed) None.

**Persons Testifying:** Representative McCoy, prime sponsor.

**Persons Signed In To Testify But Not Testifying:** None.