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## Public Safety Committee

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### ESSB 5158

**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 Summary of Engrossed Substitute Bill

- Authorizes 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 enforcement 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 a 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 location of a telecommunications device and call information of a device in emergency situations.

**Hearing Date:** 3/13/15

**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

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

- when, in the law enforcement officer's exercise of reasonable judgment he or she believes 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;
- when, concurrent to making a request, the responding law enforcement agency has checked 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;
- when, concurrent to making a request, the responding law enforcement agency has verified 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.

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 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 law enforcement. 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 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.

**Appropriation:** None.

**Fiscal Note:** Available on original bill. New fiscal note requested on March 10, 2015.

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