

# FINAL BILL REPORT

## ESSB 5158

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Synopsis as Enacted

**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).

**Senate Committee on Law & Justice**  
**Senate Committee on Ways & Means**  
**House Committee on Public Safety**

**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 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 recognizes are when a party consents 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

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*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.*

Washington prosecuting attorneys advise law enforcement to obtain search warrants before requesting cell phone location data from service providers.

**Summary:** 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 involving risk of death or serious physical harm. Law enforcement agencies may not request this information for any other purpose. A law enforcement officer making a request for call location information be on duty during the course of official duties at the time of the request. The 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. Law enforcement is prohibited from distributing cell phone information to any other party, except to first responders responding to the emergency situation. Law enforcement agencies must check with the Federal Bureau of Investigation's Crime Information Center, and any other databases to determine if the person requesting the information has a history of domestic violence or stalking, or a court order restricting contact, or if either the person requesting the information or the person for whom the call location information is being requested is participating in the address confidentiality program. Law enforcement agencies may not provide call location information to any person where there is a reasonable belief that the person has a history of domestic violence or stalking, or there is a court order restricting contact, or the person is participating in the address confidentiality program, 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 Washington State Patrol (WSP), and submit new information immediately if there is any change. WSP must 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. WSP may adopt rules as needed to fulfill the requirements of this act.

**Votes on Final Passage:**

Senate	48	0	
House	97	0	(House amended)
Senate	49	0	(Senate concurred)

**Effective:** July 24, 2015