

SENATE BILL 517

E2, E4

2lr2369
CF HB 1053

By: **Senator Bailey**

Introduced and read first time: January 28, 2022

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 5, 2022

CHAPTER _____

1 AN ACT concerning

2 **Criminal Procedure – Location Information – ~~Exigent Circumstances~~**
3 **(Kelsey Smith Act for Maryland)**

4 FOR the purpose of requiring certain service providers to provide certain location
5 information for ~~an electronic device~~ certain electronic devices to a law enforcement
6 agency or public safety answering point in certain circumstances for a certain period
7 of time; prohibiting a person from being held civilly liable for making required
8 disclosures; requiring the Department of State Police to collect and disseminate
9 certain information under certain circumstances; prohibiting a law enforcement
10 officer from requesting certain information from a certain service provider under
11 certain circumstances; requiring a certain law enforcement agency or public safety
12 answering point to report certain information to the Governor’s Office of Crime
13 Prevention, Youth, and Victim Services annually under certain circumstances; and
14 generally relating to location information and exigent circumstances.

15 BY repealing and reenacting, without amendments,
16 Article – Criminal Procedure
17 Section 1–203.1(a)(1), (4), (5), (6), and (9)
18 Annotated Code of Maryland
19 (2018 Replacement Volume and 2021 Supplement)

20 BY adding to
21 Article – Criminal Procedure
22 Section 1–203.2
23 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



(2018 Replacement Volume and 2021 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Criminal Procedure

1–203.1.

(a) (1) In this section the following words have the meanings indicated.

(4) (i) “Electronic device” means a device that enables access to or use of an electronic communication service, as defined in § 10–401 of the Courts Article, a remote computing service, as defined in § 10–4A–01(c) of the Courts Article, or a geographic location information service.

(ii) “Electronic device” does not include:

1. an automatic identification system installed on a vessel in accordance with Title 33, Part 164.46 of the Code of Federal Regulations; or

2. a vessel monitoring system (VMS) or a VMS unit installed on board a vessel for vessel monitoring in accordance with Title 50, Part 648 of the Code of Federal Regulations.

(5) “Exigent circumstances” means an emergency or other judicially recognized exception to constitutional warrant requirements.

(6) “Location information” means real-time or present information concerning the geographic location of an electronic device that is generated by or derived from the operation of that device.

(9) “Service provider” means the provider of an electronic communication service, a remote computing service, or any location information service.

1–203.2.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “ELECTRONIC DEVICE” HAS THE MEANING STATED IN § 1–203.1 OF THIS SUBTITLE.

~~**(3) “EXIGENT CIRCUMSTANCES” HAS THE MEANING STATED IN § 1–203.1 OF THIS SUBTITLE.**~~

1 ~~(4)~~ (3) “LOCATION INFORMATION” HAS THE MEANING STATED IN §
2 1-203.1 OF THIS SUBTITLE.

3 ~~(5)~~ (4) “PUBLIC SAFETY ANSWERING POINT” HAS THE MEANING
4 STATED IN § 1-301 OF THE PUBLIC SAFETY ARTICLE.

5 ~~(6)~~ (5) “SERVICE PROVIDER” HAS THE MEANING STATED IN §
6 1-203.1 OF THIS SUBTITLE.

7 **(B) THIS SECTION APPLIES ONLY TO A REQUEST FOR LOCATION**
8 **INFORMATION OF AN ELECTRONIC DEVICE IF THE OWNER OR USER OF THE**
9 **ELECTRONIC DEVICE HAS BEEN REPORTED MISSING.**

10 ~~(B)~~ (C) ON REQUEST OF A LAW ENFORCEMENT AGENCY OR A PUBLIC
11 SAFETY ANSWERING POINT MADE ON BEHALF OF A LAW ENFORCEMENT AGENCY, A
12 SERVICE PROVIDER SHALL PROVIDE THE LOCATION INFORMATION OF AN
13 ELECTRONIC DEVICE ~~IN EXIGENT CIRCUMSTANCES.~~

14 ~~(C)~~ (D) A LAW ENFORCEMENT AGENCY OR PUBLIC SAFETY ANSWERING
15 POINT MAY NOT OBTAIN LOCATION INFORMATION FOR AN ELECTRONIC DEVICE
16 UNDER THIS SECTION FOR A PERIOD EXCEEDING 48 HOURS.

17 ~~(D)~~ (E) A PERSON MAY NOT BE HELD CIVILLY LIABLE FOR COMPLYING
18 WITH THIS SECTION BY PROVIDING LOCATION INFORMATION.

19 ~~(E)~~ (F) (1) THE DEPARTMENT OF STATE POLICE SHALL OBTAIN
20 CONTACT INFORMATION FROM ALL SERVICE PROVIDERS AUTHORIZED TO DO
21 BUSINESS IN THE STATE AND ANY OTHER RELEVANT INFORMATION THAT WOULD
22 ASSIST A LAW ENFORCEMENT AGENCY OR PUBLIC SAFETY ANSWERING POINT IN
23 MAKING A REQUEST FOR LOCATION INFORMATION UNDER THIS SECTION.

24 (2) THE INFORMATION COLLECTED UNDER PARAGRAPH (1) OF THIS
25 SUBSECTION SHALL BE PROVIDED TO EACH LAW ENFORCEMENT AGENCY AND
26 PUBLIC SAFETY ANSWERING POINT IN THE STATE.

27 **(G) (1) A LAW ENFORCEMENT OFFICER MAY NOT REQUEST INFORMATION**
28 **FROM A SERVICE PROVIDER UNDER THIS SECTION IF THE LAW ENFORCEMENT**
29 **OFFICER KNOWS THE OWNER OR USER OF THE ELECTRONIC DEVICE HAS NOT BEEN**
30 **REPORTED MISSING.**

31 **(2) A LAW ENFORCEMENT OFFICER WHO VIOLATES THIS SUBSECTION**
32 **IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT**
33 **NOT EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING \$500 OR BOTH.**

1 **(H) IF A LAW ENFORCEMENT AGENCY OR PUBLIC SAFETY ANSWERING POINT**
 2 **OBTAINS THE LOCATION INFORMATION OF AN ELECTRONIC DEVICE UNDER THIS**
 3 **SECTION, THE LAW ENFORCEMENT AGENCY OR PUBLIC SAFETY ANSWERING POINT**
 4 **SHALL NOTIFY THE OWNER OR USER OF THE ELECTRONIC DEVICE THAT THEIR**
 5 **LOCATION INFORMATION WAS OBTAINED AS SOON AS PRACTICABLE.**

6 **(I) ON OR BEFORE MARCH 1 EACH YEAR, A LAW ENFORCEMENT AGENCY OR**
 7 **PUBLIC SAFETY ANSWERING POINT THAT HAS MADE A REQUEST TO A SERVICE**
 8 **PROVIDER IN THE PRECEDING CALENDAR YEAR UNDER THIS SECTION SHALL**
 9 **REPORT TO THE GOVERNOR’S OFFICE OF CRIME PREVENTION, YOUTH, AND VICTIM**
 10 **SERVICES ON THE TOTAL NUMBER OF REQUESTS THAT THE LAW ENFORCEMENT**
 11 **AGENCY MADE IN THE PRECEDING CALENDAR YEAR.**

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
 13 October 1, 2022.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.