

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1053
(Delegates Williams and Shoemaker)
Judiciary and Economic Matters

Criminal Procedure - Location Information - Exigent Circumstances (Kelsey Smith Act for Maryland)

This bill requires a service provider, on request of a law enforcement agency or a public safety answering point (PSAP) made on behalf of a law enforcement agency, to provide the location information of an electronic device in exigent circumstances. The law enforcement agency/PSAP may not obtain more than 48 hours of location information for an electronic device from this type of request, and a person may not be held civilly liable for complying with the request by providing location information. The Department of State Police (DSP) must obtain contact information from all service providers authorized to do business in the State and any other relevant information that would assist a law enforcement agency or PSAP in making such a request; DSP must provide the collected information to each law enforcement agency and PSAP in the State.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State finances and operations, as discussed below.

Local Effect: The bill is not anticipated to materially affect local finances and operations, as discussed below.

Small Business Effect: None.

Analysis

Current Law:

Court Orders for Electronic Device Location Information

Section 1-203.1 of the Criminal Procedure Article authorizes a court to issue an order authorizing or directing a law enforcement officer to obtain location information from an electronic device if there is probable cause to believe that (1) a misdemeanor or felony has been, is being, or will be committed by the owner or user of the electronic device or the individual about whom electronic location information is being sought and (2) the location information being sought is evidence of, or will lead to evidence of, the misdemeanor or felony being investigated or will lead to the apprehension of an individual for whom an arrest warrant has previously been issued. Section 1-203.1 contains extensive procedural requirements regarding these orders.

An order to obtain location information issued under § 1-203.1 must (1) contain specified information regarding the electronic device, the owner/user of the device, the grounds for obtaining the location information, and the application for the order; (2) authorize the executing law enforcement officer to obtain the location information without giving notice to the owner or user of the electronic device or to the individual about whom the location information is being sought for the duration of the order; (3) specify the period of time for which location information is authorized to be obtained; and (4) if applicable, order the service provider to disclose to the executing law enforcement officer the location information associated with the electronic device for the period of time authorized and refrain from notifying the user, owner, or any other person of the disclosure of location information for as long as the required notice of the order to the user/subscriber of the electronic device is delayed. Up to 30 days of location information may be obtained under the order, unless extended as specified in statute.

Despite these requirements, a law enforcement officer *may obtain location information for up to 48 hours in exigent circumstances* or with the express consent of the user or owner of the electronic device (without the need for a court order). However, statute does not *require* a service provider to comply with a request made under these circumstances.

A person may not be held civilly liable for providing location information under the aforementioned circumstances.

Definitions

With specified exceptions, an “electronic device” is a device that enables access to or use of an electronic communication service, a remote computing service, or a geographic location information service.

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

“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.

The State’s 9-1-1 system operates primarily through PSAPs. A PSAP is a communications facility that (1) is operated on a 24-hour basis; (2) first receives 9-1-1 requests for emergency services in a 9-1-1 service area; and (3) as appropriate, dispatches public safety services directly, transfers 9-1-1 requests for emergency services, or transmits incident data.

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

State Expenditures: DSP advises that it can comply with the bill’s requirements with existing budgeted resources. DSP notes that it has never had a circumstance where a service provider has failed to provide data when a life was in danger. According to DSP, service providers do give the information for short periods of time but require a court order after 48 hours.

The Natural Resources Police advises that the bill may have an operational impact if it results in more efficient search efforts. The Office of the Public Defender (OPD) advises that the bill may result in additional research/litigation regarding whether disclosures in OPD cases are authorized and comply with the bill’s provisions. Regardless, any potential operational impacts are assumed to be minimal and do not materially affect State operations or finances.

Local Expenditures: The bill is not anticipated to materially affect local finances or operations. Charles County advises that, according to its Emergency Services Department, the bill *may* cause a *minimal* fiscal impact for the county to manage Public Information Act requests and purchase a digital recording device if the county receives an increase in such requests under the bill. Frederick County does not expect a fiscal or operational impact from the bill, and the City of Havre de Grace does not foresee a substantive change to the city’s operations or costs.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 517 (Senator Bailey) - Judicial Proceedings.

Information Source(s): Charles, Frederick, and Somerset counties; City of Havre de Grace; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of General Services; Maryland Department of Health; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

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