

**Department of Legislative Services**  
Maryland General Assembly  
2022 Session

**FISCAL AND POLICY NOTE**  
**Third Reader - Revised**

Senate Bill 517

(Senator Bailey)

Judicial Proceedings

Judiciary and Economic Matters

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

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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 if the owner or user of the device has been reported missing. 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. A law enforcement agency or PSAP that obtains location information from a service provider under the bill's provisions must notify the owner or user of the electronic device that their location information was obtained as soon as practicable. The bill also contains criminal penalties for law enforcement officers who make unauthorized requests, requires the Department of State Police (DSP) to collect and distribute specified information, and requires law enforcement agencies and PSAPs to report specified data to the Governor's Office of Crime Prevention, Youth, and Victim Services (GOCPYVS).

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**Fiscal Summary**

**State Effect:** DSP and GOCPYVS can implement the bill using existing budgeted resources. The bill is not anticipated to otherwise materially affect State finances and operations.

**Local Effect:** The bill is not anticipated to materially affect local finances and operations.

**Small Business Effect:** None.

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## Analysis

**Bill Summary:** A law enforcement officer may not request information from a service provider under the bill's provisions if the law enforcement officer knows the owner or user of the electronic device has not been reported missing. A violation is a misdemeanor punishable by imprisonment for up to six months and/or a fine of up to \$500.

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.

By March 1 of each year, a law enforcement agency or PSAP that has requested location information from a service provider under the bill must report the total number of requests it made during the preceding calendar year to GOCPYVS.

### **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.

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## **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** HB 1053 (Delegates Williams and Shoemaker) - Judiciary and Economic Matters.

**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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Analysis by: Amy A. Devadas

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510