

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 533 (Delegate Williams)
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 a 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.

Small Business Effect: None.

Analysis

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 Maryland Transportation Authority Police, and the Maryland Department of Transportation’s Maryland Transit Administration Police report that they can meet the requirements of the bill with existing resources. 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 results in additional research/litigation regarding whether disclosures in OPD cases are authorized and comply with the bill’s provisions. According to OPD, this additional workload requires one attorney to litigate the disclosure issues and a paralegal to assist with the cell phone analysis, at an estimated cost \$171,638 in fiscal 2024 and increasing to \$236,382 by fiscal 2028. However, OPD did not provide information regarding how it calculated this need for additional resources. The Department of Legislative Services advises that challenging evidence (include evidence obtained from cell phones) is standard practice in criminal cases, and the bill’s alteration of procedures for electronic location information alone does not generate the need for these additional resources.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See SB 517 and HB 1053 of 2022.

Designated Cross File: None.

Information Source(s): Baltimore City; Kent and Worcester counties; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of General Services; Department of Natural Resources; 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