



PAUL DEWOLFE
PUBLIC DEFENDER

KEITH LOTRIDGE
DEPUTY PUBLIC DEFENDER

MELISSA ROTHSTEIN
DIRECTOR OF POLICY AND DEVELOPMENT

KRYSTAL WILLIAMS
DIRECTOR OF GOVERNMENT RELATIONS DIVISION

ELIZABETH HILLIARD
ASSISTANT DIRECTOR OF GOVERNMENT RELATIONS DIVISION

POSITION ON PROPOSED LEGISLATION

BILL: HB 1053 - Criminal Procedure - Location Information - Exigent Circumstances
(Kelsey Smith Act for Maryland)

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: 2/17/2022

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on House Bill 1053.

House Bill 1053 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.

Section 1-203.1 of the Criminal Procedure Article already 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 because there are serious privacy and individual liberty implications of access to location information.

House Bill 1053 proposes an expansion of Section 1-203.1 that would provide law enforcement agencies with access to personal location information with nearly no procedural safeguards nor oversight. This expansion's only requirement is "exigent circumstances." Exigent circumstances are defined as "an emergency or other judicially recognized exception to the constitutional warrant requirements." There is no standard of proof attached to those incredibly broad circumstances. Neither probable cause nor reasonable suspicion of an exigent circumstance must exist, rather a request vaguely based on a law enforcement agent's behalf such circumstances exist. There is no specificity as to whose location information must be provided nor what the scope of the emergency must be.

This bill purports to aid law enforcement in circumstances in which there is fear that a person face imminent danger or harm, yet the bill does not require such a circumstance nor does

Maryland Office of the Public Defender, Government Relations Division, 45 Calvert St, Suite 108, Annapolis MD 21401
For further information please contact Krystal Williams, krystal.williams@maryland.gov 443-908-0241; Elizabeth Hilliard, Elizabeth.hilliard@maryland.gov 443-507-8414

it limit the access to location services data to a person who law enforcement believes to be in danger. Narrowing the access to the person in danger would be one of numerous ways to narrow and improve this bill. Another way would be to provide for after-the-fact judicial review and prompt notice to the person whose location information was obtained. Moreover, this bill should provide judicially enforceable remedies when location information is acquired in violation of the law.

In the digital age that we live in today where majority of Americans have smartphones which they carry on their persons the majority – if not all – of the time, invasive access to a person’s location based on their cell phone or other electronic device must be exercised with the utmost care and caution. The breadth and vagueness of this bill causes great concern for its utilization by law enforcement and far-reaching consequences and implications for such unbridled scope of reach.

For these reasons, the Maryland Office of the Public Defender urges an unfavorable report on House Bill 1053.

Submitted By: Maryland Office of the Public Defender, Government Relations Division.