

HBO33-Criminal Procedure-Location Information-Exig

Uploaded by: Claudia Weakland

Position: FAV

HBO33-Criminal Procedure-Location Information-Exigent Circumstances (Kelsey Smith Act For Maryland)

February 17, 2023

I am a certified as a Wilderness Search and Rescue K9 Handler and have been participating in searches for lost persons in the state of Maryland for over 10 years. I would like to support HBO33-Criminal Procedure-Location Information-Exigent Circumstances (Kelsey Smith Act For Maryland). Rapid deployment for teams in the search of a lost person is essential in finding that individual as quickly as possible and thereby preventing the possibility of medical complications or death. An important factor in locating a missing person is deploying search teams in an area where they can actually find the person.

Cell phones can be an important factor for locating missing individual even in a wilderness areas where there may be only one tower. A cell phone ping can provide information as to when the phone was in the area and assist the Incident command in deploying search teams to a focused area. Even if the cell phone dies important information such as probability of area can be derived before the phone went dead.

This information could significantly decrease the amount of time spent on creating a strategic plan and assigning tasks to search teams as well as decrease the amount of time between search teams arrival on scene and deployment to search, thereby increasing the probability of success.

Respectfully,

Claudia Weakland

K-9 Handler

President, Board of Directors, Western Maryland K9- Search and Rescue Inc.

HB0533 (Kelsey Smith) Bill Testimony.pdf

Uploaded by: Nicole Williams

Position: FAV

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DEPUTY MAJORITY WHIP

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THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

February 21, 2023

The Honorable Delegate Luke Clippinger

Chairman of the House Judiciary Committee

6 Bladen Street, Room 101

Annapolis, Maryland 21401

House Bill 0533

Good afternoon, Chair Clippinger, Vice-Chair Moon, and members of the House Judiciary Committee. I am Delegate Nicole Williams of District 22, and I will be testifying today in favor of House Bill 0533, also known as the Kelsey Smith Act of Maryland, a bill that I sponsored and am reintroducing on the floor from the last session.

As many may know, in August 2020, my good friend Joseph Lynn Kitchen was found dead after being reported missing for eight days. He is from California but came to Maryland for higher education. He kept in daily contact with his family in California, always keeping his cell phone on his person. When nobody heard from Joseph for a day, his friends and family grew concerned. We contacted local law enforcement, filed a missing person report, and provided the police with all of our current information regarding Joseph's last known location. Law enforcement went through all of the proper legal channels to obtain a warrant and tried to ping his phone for an approximate location. Unfortunately, by the time law enforcement obtained the warrant, Mr. Kitchen's phone was dead, and they could not ping his device.

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Some people are still [missing to this day](#) around the country that would have benefitted from such legislation. A woman in Florida named Rachel Yates went missing almost two decades ago when she borrowed a co-worker's car to go to a party in Delton, FL, a city about 23 miles away from her town of Winter Springs. While in Delton, an incident occurred where Rachel ended up being chased, on foot, by members of the party. By the time law enforcement tracked her phone and her call log, they noticed that her phone was undetectable after a certain period and they needed special permission to follow her exact location using her cell phone. Due to the judge's decision to deny law enforcement this special permission, Rachel Yates has been missing now for about 17 years. If there had been permission to track location only in the cases of emergencies such as missing, injured, or dead persons, then she would have had a greater chance of being found by now.

The Kelsey Smith Act gets its name after Kelsey Smith, a young woman that was kidnapped, sexually assaulted, and murdered in 2007. She had a cell phone, but law enforcement could not obtain her cell phone's location from the telecommunications service provider until over three days had passed, at which point it was too late to save her. Kelsey's family has since established a foundation in her name and has worked to enact legislation in 30 states with bipartisan support, including New Jersey, Pennsylvania, and Hawaii, just to name a few. The goal of this legislation is to ensure that other families will never experience the pain and suffering that Kelsey's family went through. This bill seeks to obtain just the physical location of the cell phone, and allows that information to be available only to law enforcement within 48 hours, so it is a limited exception that protects individual privacy and the privacy of the telecommunications company. We have spoken with several advocates since last year. Since then, we incorporated some amendments that address some of the concerns raised in the past.

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For these reasons, I urge this committee to give a favorable report on House Bill 0533.

Sincerely,

Nicole A. Williams, Esq.

Delegate Nicole A. Williams, Esq.

ACLUMD_HB533_Spaccasi_UNF.pdf

Uploaded by: Olivia Spaccasi

Position: UNF



Testimony for the House Judiciary Committee

February 21, 2023

HB 533 - Criminal Procedure - Location Information – Exigent Circumstances (Kelsey Smith Act for Maryland)

UNFAVORABLE

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The American Civil Liberties Union of Maryland respectfully urges an unfavorable report on HB 533, The Kelsey Smith Act for Maryland. HB 533 would require service providers to provide the location information of an electronic device belonging to an individual who has been reported missing.

While we understand and are sympathetic to the circumstances that predicated the creation of this law, mandated compliance on behalf of service providers is unnecessary and raises multiple privacy concerns. Under current law, providers are able to exercise discretion when presented with law enforcement requests for location information in exigent circumstances. The law allows for compliance while also permitting providers to refuse to fulfill what they suspect or know to be bogus requests. There are numerous procedural safeguards in place should companies need to be compelled to provide such information through a court order. Such orders must be justified by probable cause. In recent years, providers have instituted effective processes for quickly evaluating and responding to emergency requests, meaning that difficulties that police may have encountered a decade or more ago are highly unlikely to occur today.

Law enforcement has been known to abuse emergency request systems. Instances of blatant abuse of emergency requests have been documented in California, Texas, New York, and Maryland. A police officer in Princess Anne County, Maryland, used an emergency request form to obtain records from Sprint- but later conceded in sworn testimony that “there was no such emergency at the time he requested the records.”¹ Additionally, the Department of Justice’s Inspector General found systemic misuse of emergency requests for call record information by the FBI.²

¹ Eric Lichtblau, More Demands on Cell Carriers in Surveillance, N.Y. Times, July 8, 2012, <http://www.nytimes.com/2012/07/09/us/cell-carriers-see-uptick-in-requests-to-aid-surveillance.html>

² Dep’t of Justice, Office of the Inspector General, A Review of the Federal Bureau of Investigation’s Use of Exigent Letters and Other Informal Requests for Telephone Records 257–72 (2010) [1]

Law enforcement already has the ability to obtain location information in exigent circumstances without a court order. But, they do so at their own risk if a judge later determines that there were not actually exigent circumstances. The burden of proving the need for such information to companies is on law enforcement, but companies can and do comply if law enforcement presents valid reasoning. From July to December 2020, Apple received 1,162 emergency requests and provided data in response to 93% of those requests. Meta, the parent company of Facebook, received 21,700 emergency requests from January to June 2021 and provided data in response to 77% of the requests.³ This bill would require companies to comply with what they suspect to be unlawful requests and essentially force them to facilitate the violation of someone's Fourth Amendment rights.

Moreover, in 2021, Apple Inc., Meta Platforms, Inc., Discord, and Snap, Inc. were targeted by hackers who masqueraded as law enforcement officials and sent forged emergency data requests to the companies.⁴ Some of these companies actually fulfilled these forged data requests. Mandated disclosure would only empower the hackers who forged these emails and diminish the provider's willingness to refuse dubious requests, putting users at risk.

Additionally, the bill does not include any penalties for law enforcement officers who request location information of individuals they "know" have not been reported missing. This leaves ample room for law enforcement to wrongfully claim they did not know an individual was not reported missing. Moreover, this bill provides victims of these violations no routes for legal redress and eliminates any judicial oversight of these requests.

There are already effective and timely mechanisms in place for companies to share location information with law enforcement. This legislation will not improve on those mechanisms, but instead simply expand the number of wrongful disclosures. For the foregoing reasons, the ACLU of Maryland respectfully urges an unfavorable report on HB 533.

³ Turton, William. "Apple and Meta Gave User Data to Hackers Who Used Forged Legal Requests." Bloomberg.com. Bloomberg, March 30, 2022.
<https://www.bloomberg.com/news/articles/2022-03-30/apple-meta-gave-user-data-to-hackers-who-forged-legal-requests?sref=y1v224K8>.

⁴ Ibid.