

Testimony of Missey Smith in Support of HB 129 Criminal Procedure - Location Information - Exigent Circumstances (Kelsey Smith Act for Maryland)

Chair Clippinger, Vice Chair Bartlett, and Members of the Judiciary Committee:

Thank you for the opportunity to present testimony in support of **HB 129 Criminal Procedure - Location Information - Exigent Circumstances (Kelsey Smith Act for Maryland)**.

My name is Missey Smith, I am the mother of Kelsey Smith. She is the reason this legislation began and the reason we continue to work to ensure every state has this life-saving legislation. While Kelsey was murdered in 2007, this legislation is more important than ever. Cell phones have become even more prevalent in everyday life. Even our grandchildren have them. According to CTIA – 71% of American homes are wireless only.¹ Should we not make it as safe as possible?

Since Kelsey’s murder wireless providers do a much better job at releasing the location when it is needed, the law still leaves that decision making up to the provider. When meeting with them they told me, “Mrs. Smith we learned from Kelsey’s case also.” A lot of time, money, and resources are spent to train law enforcement on what an emergency is – that is not the training a cell phone provider uses for their customer service representative. We need to ensure that this tool is available when needed.

When traveling across the nation training law enforcement on Kelsey’s case we often hear of cases where the law was used. In Utah we heard of a baby that social workers were concerned about because the mother was not returning calls as required. The social worker contacted police because the baby’s life was at risk. They located the mother’s phone, found the baby who was obviously neglected and malnourished. We were then shown a picture of that baby a few weeks later and it had big fat baby cheeks. I cannot tell you the feelings I have to see a baby that is alive because my child is not. This is just one example that we know of.

A couple of things I would like to point out that The Kelsey Smith Act does – it creates a central database so that any law enforcement agency has the ability to contact telecom provider even at 2:00 am on a Saturday when someone is endangered. It holds the providers harmless should they release the information to law enforcement. It actually restricts who can access the location information of a wireless customer in an emergency situation. Lastly, this is LIFE SAVING legislation. It will save lives – LITERALLY - and the fiscal note is \$0. Not many times in your career as a legislator do you have the chance to pass a bill that will save lives and cost nothing.

I have attached for you the legislative packet on The Kelsey Smith Act as part of my testimony. I appreciate your time and look forward to the day when we can add Maryland to the list of states that have passed this legislation.

Missey Smith
8605 Robinson St.
Overland Park, KS 66212
913-558-1691

¹ <https://www.ctia.org/the-wireless-industry/infographics-library>

Kelsey Smith Act

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) Upon request of a law enforcement agency, a wireless telecommunications carrier shall provide call location information concerning the telecommunications device of the user to the requesting law enforcement agency in order to respond to a call for emergency services or in an emergency situation that involves the risk of death or serious physical harm.

(b) Notwithstanding any other provision of law to the contrary, nothing in this section prohibits a wireless telecommunications carrier from establishing protocols by which the carrier could voluntarily disclose call location information.

(c) No cause of action shall lie in any court against any wireless telecommunications carrier, its officers, employees, agents or other specified persons for providing call location information while acting in good faith and in accordance with the provisions of this section.

(d) (1) All wireless telecommunications carriers registered to do business in the state of Kansas or submitting to the jurisdiction thereof and all resellers of wireless telecommunications services shall submit their emergency contact information to the Kansas bureau of investigation in order to facilitate requests from a law enforcement agency for call location information in accordance with this section. This contact information must be submitted annually by June 15th or immediately upon any change in contact information.

(2) The Kansas bureau of investigation shall maintain a database containing emergency contact information for all wireless telecommunications carriers registered to do business in the state of Kansas and shall make the information immediately available upon request to all public safety answer points in the state.

(e) Rules and regulations shall be promulgated by the director of the Kansas Bureau of Investigation to fulfill the requirements of this section no later than July 1, 2010.

(f) *This section shall be known and may be cited as the Kelsey Smith Act.*

Other States that have passed similar

legislation: Nebraska, New Jersey, Minnesota, New Hampshire, North Dakota, Tennessee, Hawaii, Missouri, Utah, West Virginia, Colorado, Nevada, Rhode Island and Oregon, Pennsylvania, Arkansas, Iowa, Washington, Louisiana, Delaware, Indiana, Alabama, Kentucky (Leah Carter Act), South Dakota, Wyoming, Oklahoma, Montana and Illinois.

Under what conditions can my information be released?

To respond to a call for emergency services or in an emergency situation that involves the risk of death or serious physical harm.

What information is released and to whom?

The physical location **ONLY** of the cell phone (latitude/longitude) and only to law enforcement under the conditions listed in question 1. **NO CONTENT!**

Why is this law necessary? Don't cell phone providers have to provide this information to law enforcement anyway?

Cell phone providers under federal law **MAY** provide the information when requested by law enforcement. The **Kelsey Smith Act** makes providing the information mandatory but only in the states where it has passed.

We spend a lot of time money and resources training our law enforcement about emergency situations. We don't with a customer service representative.

How can I get this law in my state?

Contact your state Representative or Senator and ask them to sponsor it.



For more information go to:
KelseysArmy.org

Facebook – Kelsey's Law

The Kelsey Smith Act



Background: In 2007, Kelsey Smith, had gone to a local department store in broad daylight. She was kidnapped, sexually assaulted, and murdered. She had a cell phone, but law enforcement was unable to obtain her cell phone's location from the telecommunications service provider until more than three days had elapsed. After the many difficulties law enforcement encountered with the provider – even though a subpoena had been issued – the Smiths established a foundation in her name and part of that work is to pass state laws to provide law enforcement with a way to quickly ascertain the location of a wireless telecommunications device *if a person has been determined, by law enforcement, to be at risk of death or serious physical harm. ONLY WHERE IS THE DEVICE.*

Bi-Partisan Support: To date 30 states have enacted similar legislation. This has been a bi-partisan bill across the nation with the primary sponsor being Republican in 10 states, Democrat in 13 and bi-partisan in 6.

Privacy Concerns: The Fourth Amendment of the United States Constitution prohibits the government from conducting an unreasonable search, *unless* an exception applies in an exigent circumstance. The Kelsey Smith Act is the response to that exception. The US Supreme Court has multiple consistent opinions on exigent searches; the latest being Carpenter vs US in 2018. The Kelsey Smith Act codifies case law concerning exigent circumstances providing clear guidance to law enforcement and to wireless providers in circumstances where a person is at *risk of death or serious physical harm.*

Summary/Major Elements: AN ACT relating to emergency telephone service; requiring wireless carriers and service suppliers to provide call location information to law enforcement in emergency situations as specified; providing immunity; defining terms; and providing for an effective date. Location information – ONLY! Just where is the device.

- The act requires wireless carriers and service suppliers to provide call location information for telecommunications devices to law enforcement or a public safety answering point if:

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- The device was used to place a 911 call requesting emergency assistance: or
- There is reasonable suspicion that the device is in the possession of an individual who is involved in an emergency situation that involves the risk of death or great bodily harm.
- The act requires that records be kept of officers requesting call location information, including a description that explains the need for the disclosure.
- The act provides that wireless carriers and service suppliers may establish protocols for voluntarily disclosing call location information.
- A statewide agency such as the 911 coordinator (in Kansas it is Kansas Bureau of Investigation – KBI) shall maintain updated direct contact information for wireless carriers and services suppliers and each carrier or supplier must update coordinator with any changes.
- The act provides immunity to any public service answering point, wireless carrier, service supplier or any other person who provides call location information pursuant to the act.
- There has NOT been a single reported instance of this law being used inappropriately – NOT ONE.

LIVES SAVED - This law works. It saves lives and changes the way that law enforcement is able to do their job and this link will show you how

https://www.youtube.com/watch?v=cx_jSZC5ryc.

- This news story is of a case where The Kelsey Smith Act brought a child home alive - <https://fox4kc.com/2015/02/10/kelseys-law-helped-police-track-cell-phone-to-find-stolen-car-with-baby-inside/>.
- An elderly gentleman that had a stroke and could not speak but could only dial his wife's number. They used The Kelsey Smith Act to locate this gentleman and get him the medical help he needed. It has been used to prevent suicides, rescued a traveler from Arizona that was swept away in flooding.
- A teenage girl left a note that she was going to commit suicide – she was found in time.
- A baby in Utah was saved after repeated attempts to contact the mother by social workers. When the baby was located and was obviously malnourished and neglected. Smiths were told, "Your law saved this baby's life."
- A young woman informed family and friends she was going to jump off a mountain, while she was not located before jumping she was found in time to get medical treatment.

LAW ENFORCEMENT'S USEFUL RESOURCE - Captain Scott Boden issued this press release and he made a similar statement when giving a tour of the Communications Department for the Johnson County Sheriff's Office, not knowing I (Kelsey's mother) was in attendance.

“Over my 22-year law enforcement career with the Johnson County Sheriff's Office, 17 years have been spent in our dispatch/911 center. During that time, the Kelsey Smith Law has been the single most important piece of legislation related to potentially saving the lives of suicidal subjects, assisting endangered children and addressing life threats when cell phone location is necessary and seconds count. The difference this law has made cannot be overstated and I look forward to the day it becomes available across the country as a resource to assist first responders in their most critical service, saving lives.”

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Telecom Providers are supportive of this legislation and have testified for it in other states. I would be happy to inquire as to the lobbyist in your state to have them reach out to you if you would like. There are a couple of points I would like to make regarding this law – it gives providers immunity should they release the information in good faith; it creates a central deposit location of wireless providers emergency contact information. While urban areas may have readily available information – many times having a point of contact for rural locations is ideal.

The Kelsey Smith Act Dates signed by Governors

1. Kansas – April 17, 2009
2. New Jersey – January 29, 2010
3. Nebraska – March 17, 2010
4. Minnesota - May 13, 2010
5. New Hampshire – July 13, 2010
6. North Dakota – April 8, 2011
7. Tennessee – April 26, 2012
8. Hawaii – April 30, 2012
9. Missouri – July 6, 2012
10. Utah – March 27, 2013
11. West Virginia – April 12, 2013
12. Colorado – May 13, 2013
13. Nevada- May 23, 2013
14. Rhode Island- July 15, 2013
15. Oregon - March 6, 2014
16. Pennsylvania – October 22, 2014
17. Arkansas – March 13, 2015
18. Iowa – May 1, 2015
19. Washington – May 7, 2015
20. Louisiana – June 23, 2015
21. Delaware – August 7, 2015
22. Indiana – March 21, 2016
23. Virginia – March 29, 2016
24. Alabama – May 26, 2017
25. Kentucky – (Leah Carter Act) – March 26, 2019
26. South Dakota – March 4, 2020
27. Wyoming – March 13, 2020
28. Oklahoma – May 3, 2021
29. Montana – May 3, 2021
30. Illinois – August 20, 2021

The Kelsey Smith Act – History

There are 20 states that have yet to pass The Kelsey Smith Act. Several states have drafted legislation and are identified with a . In other states either the legislation did not pass, a sponsor has not been identified, or there has been no draft of The Kelsey Smith Act.

1. Alaska – We have heard from the office of Representative Craig Johnson, Chair of the Rules committee that they are interested in the legislation this session.
2. Arizona – It was drafted in 2012 and at that time law enforcement stated they did not think they needed the bill.
3. California – Many legislators were contacted there. Specifically, there were two that stated they would sponsor and after several emails and phone calls there has been no response. They are – Senator Melissa Melendez, Senator Steve Glazer, and Assemblyman Chris Holden.
4. Connecticut – We have not found a legislator to sponsor.
5. Georgia – HB 127 was sponsored by Representative Rick Williams for the second time in 2021. It is stuck in committee because the ACLU and Defense Attorneys were objecting to the legislation and the Chair sent it back to the subcommittee. We need law enforcement support of this bill.
<https://www.legis.ga.gov/legislation/58995>
6. Florida – President Pro Tempore Bean was contacted. His office looked into the legislation, contacted law enforcement, and determined that the law was not needed in Florida.
7. Idaho – We have not found a legislator to sponsor. Emails were sent to the entire Senate Judiciary committee along with Representative Ehardt, Senator Zito, and Representative Brent Crane stated he did not have time with being a chair of his committee.
8. Maine – The bill did not pass in the Maine House and therefore died. The sponsors were Rep. Richard Pickett in the House (LD 1581) and Senator Cyrway in the Senate (SP 492).
http://www.mainelegislature.org/legis/bills/display_ps.asp?ld=1581&PID=1456&snum=130
9. Maryland – Delegate Nicole Williams is sponsoring in the 2024 session it is House Bill 129 and will have a hearing on January 30th.
10. Massachusetts – House Bill 1580 is sponsored by Colleen M. Garry. This is the second time the legislation has been drafted in this state.
<https://malegislature.gov/Bills/192/HD165>
11. Michigan – Sponsored by Kurt Heise in 2015 did not pass out of the House and the sponsor was not able to sponsor again due to term limits.
12. Mississippi – No sponsor has been identified. The entire Judiciary committee of the House and Senate were contacted to possibly sponsor.
13. New Mexico – It has not passed there. It was in the 2015 Regular Session - *SB 534 sponsored by Senator Mimi Stewart. Missey attended in person to testify before the Senate Judiciary committee. It made it through the committee, but no votes were taken in the full Senate. Senator Stewart when contacted again stated feel free to find a new sponsor.

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14. New York – A04699 and the Senate - S06454. Was sponsored by Assembly woman Seawright and Senator Sanders. It did not pass. <https://nyassembly.gov/leg/?bn=A04699&term=2021>
15. North Carolina - House Bill 213 was sponsored by Representative Pat Hurley, this was the third time. It has made its way through the house and does not get worked in the Senate. <https://ncleg.gov/BillLookUp/2021/H213>
16. Ohio – There have been several attempts in Ohio with the last one being in the 2013-2014 session. Senator Theresa Gavarone has been identified as a possible sponsor and has spoken with Missey. No further movement since the phone call.
- 17. South Carolina – Sponsored in the Senate by Brian Adams S 0581. This is the fourth time for sponsorship – in previous years it was not worked or did not get a hearing. <https://www.scstatehouse.gov/billsearch.php?billnumbers=0235&session=125&summary=B&PRINT=1>
18. Texas – No sponsor has been identified. Representative Jared Patterson has sponsored a legislation that dealt with cell phone tracking and carved out exigent circumstances. His office was emailed and called with no response. Spoke with Alison Brock the Policy Advisor in the Office of State Senator Lois W. Kolkhorst she said she would look into the legislation and there has been no response since.
- 19. Wisconsin – Senator Jesse James has sponsored SB 890 and the first hearing is January 30th.
20. Vermont – In 2013 was sponsored and did not pass. The sponsor is no longer an elected official, and another sponsor has not been located.

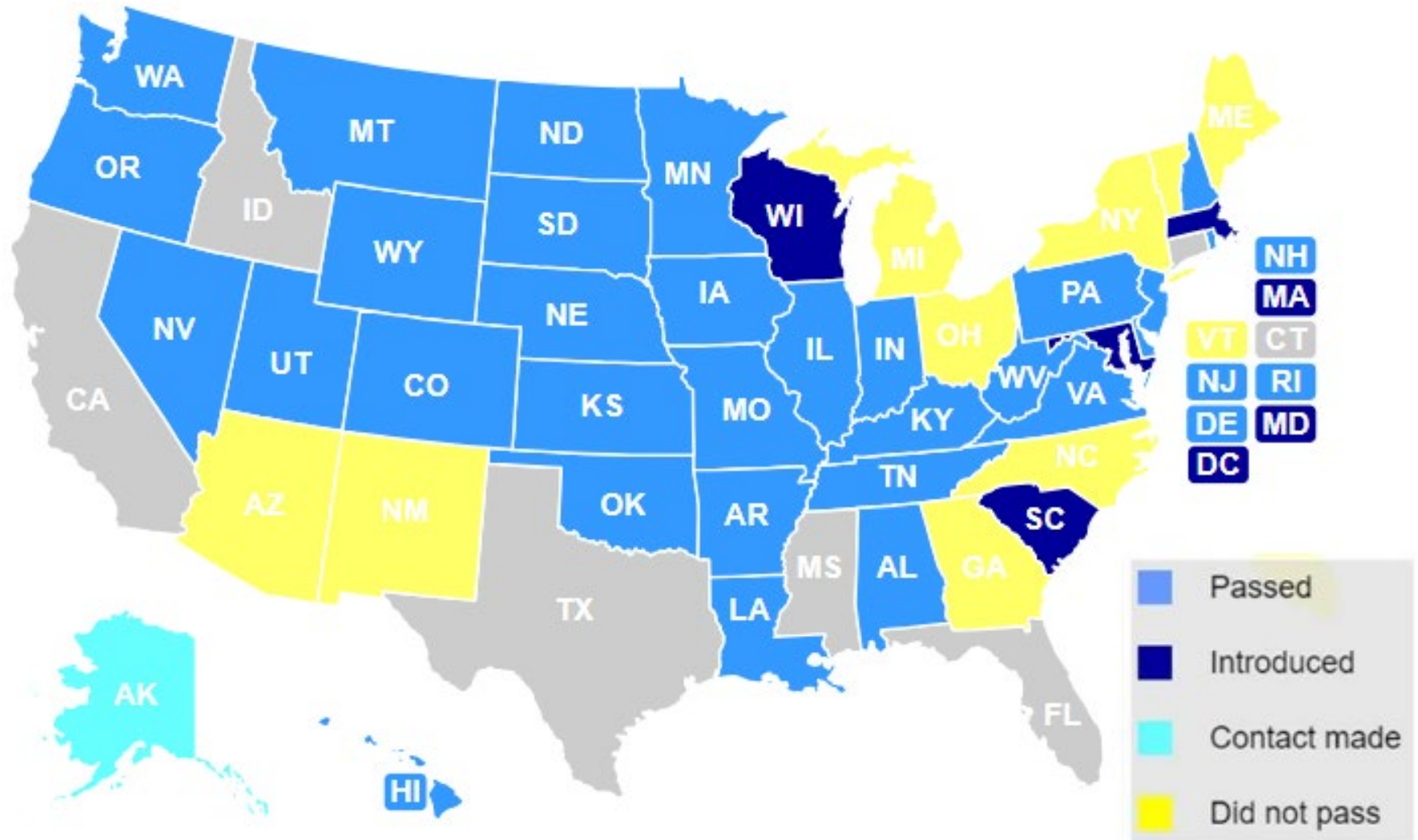
Greg and Missey Smith welcome any help in getting this life saving legislation passed in the remaining 21 states.

You can contact them at:

Greg – 913-302-0481 or email: Greg@KelseysArmy.org

Missey – 913-558-1691 or email: Missey@KelseysArmy.org

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Map as of 1-26-2024

Source : <https://kelseysarmy.org/#ks-act>