

**SenatorBailey\_FAV\_SB517\_House.pdf**

Uploaded by: Jack Bailey

Position: FAV

JACK BAILEY  
*Legislative District 29*  
Calvert and St. Mary's Counties

Judicial Proceedings Committee



THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

*Annapolis Office*  
James Senate Office Building  
11 Bladen Street, Room 402  
Annapolis, Maryland 21401  
410-841-3673 • 301-858-3673  
800-492-7122 Ext. 3673  
Jack.Bailey@senate.state.md.us

*District Office*  
Dorsey Professional Park  
23680 Three Notch Road, Unit 101  
Hollywood, Maryland 20636  
240-309-4238

April 5, 2022

**Senate Bill 517 – Criminal Procedure – Location Information (Kelsey Smith Act for Maryland)**

Dear Chairman Clippinger and Members of the Committee,

I am writing to introduce Senate Bill 517 – Criminal Procedure – Location Information (Kelsey Smith Act for Maryland). This bill would require that service providers of electronic devices cooperate with law enforcement and public safety agencies by providing the location information of an electronic device if requested when a person is reported missing.

The purpose of this bill is to save the lives of missing persons. When first responders are looking for a missing person, minutes and seconds matter to find that person while they are still alive. Senate Bill 517 is based on legislation that has passed in 30 other states. This legislation is necessary because, currently in Maryland, service providers can take hours and sometimes days to respond to requests from law enforcement.

The Kelsey Smith Act is named after a young woman who was abducted in broad daylight from a Target store in Overland, Kansas in June of 2007. About three hours after she was abducted, her car was found in the Target parking lot, and her family and friends as well as the police began to search for her. An hour after Kelsey was kidnapped, a signal from her cell phone was picked up. When law enforcement officials asked her cell phone carrier for the “ping” records which would have pinpointed her location, the carrier did not provide those records for over three days. When the carrier did turn over the records, it took authorities 45 minutes to locate Kelsey’s body. She had been raped and murdered.

Law enforcement officers are currently able to obtain this information in exigent circumstances, but it can take hours to days as the law does not require service providers to comply. The bill limits agencies requesting location information to a maximum of 48 hours, and provides that a person who complies with this law cannot be held civilly liable.

Senate Bill 517 was substantially amended in the Senate to address privacy concerns. The provisions of the bill now only apply to a person who has been reported missing and include safeguards to prohibit law enforcement officers from obtaining this location information if a person has not been reported missing. The Senate amendments remove all references to exigent circumstances, provide that the person is notified about the request, and add reporting requirements. With these amendments, this bill passed the Senate 46-0.

I respectfully request a favorable report on Senate Bill 517. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Bailey".

Senator Jack Bailey

**ACLUMD\_SB517\_UNF.pdf**

Uploaded by: Olivia Spaccasi

Position: UNF



## Testimony for the House Judiciary Committee

April 5, 2022

### SB 517 - Criminal Procedure - Location Information (Kelsey Smith Act for Maryland)

OLIVIA SPACCASI  
PUBLIC POLICY INTERN

AMERICAN CIVIL  
LIBERTIES UNION  
FOUNDATION OF  
MARYLAND

3600 CLIPPER MILL ROAD  
SUITE 350  
BALTIMORE, MD 21211  
T/410-889-8555  
F/410-366-7838

WWW.ACLU-MD.ORG

OFFICERS AND DIRECTORS  
HOMAYRA ZIAD  
PRESIDENT

DANA VICKERS SHELLEY  
EXECUTIVE DIRECTOR

ANDREW FREEMAN  
GENERAL COUNSEL

### UNFAVORABLE

The American Civil Liberties Union of Maryland respectfully urges an unfavorable report on SB 517, The Kelsey Smith Act for Maryland. SB 517 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 fulfilling what they suspect or know to be bogus requests. 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.”<sup>1</sup> Additionally, the Department of Justice’s Inspector General found

---

<sup>1</sup> 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>

systemic misuse of emergency requests for call record information by the FBI.<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup> Some of these companies actually fulfilled these forged data requests. Mandated disclosure would only empower the hackers who forged these emails and diminish provider's willingness to refuse dubious requests, putting users at risk.

Additionally, while this bill does introduce criminal penalties for law enforcement officers who request location information of individuals they "know" have not been reported missing, the actual utility of this provision in preventing unlawful requests is questionable at best. This provision 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 to share location information. This legislation will not improve on those mechanisms, but instead simply expand the number of wrongful

---

<sup>2</sup> 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]

<sup>3</sup> 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>.

<sup>4</sup> Ibid.

disclosures. For the foregoing reasons, the ACLU of Maryland respectfully urges an unfavorable report on SB 517.

AMERICAN CIVIL  
LIBERTIES UNION  
FOUNDATION OF  
MARYLAND