



January 30th, 2024

Senator Wanggaard, Chair
Members of the Senate Committee on Judiciary and Public Safety

Testimony on 2023 Senate Bill 890

Relating to: emergency communications device location information.

Thank you, Chairman Wanggaard and other members of the committee, for hearing my testimony on Senate Bill 890 today. I would also like to thank Greg and Missey Smith for their dedication, passion, and work over these last few years in getting this legislation to where it is today, as well as the WI Department of Justice for their willingness to work with us on this issue.

In 2007, Kelsey Smith was abducted in broad daylight from a local department store in Kansas. Four days after her abduction, Kelsey's body was found. During her short disappearance, law enforcement struggled to get her telecommunications service provider to disclose the location of her cell phone, even with a subpoena. After three days, the company finally gave that information to the police, but by then it was too late. When someone goes missing, every second counts; law enforcement cannot be sitting ducks when a person's life is in immediate danger.

SB 890 aims to address how quickly law enforcement officers are able to obtain cell phone location data from telecommunications service providers. Under current law, a law enforcement officer *may* seek, and the wireless providers *may* provide, the location of an individual's cell phone without a warrant, only if the customer/subscriber consents or if an emergency involving a death or serious bodily harm exists. This bill would require wireless communications providers to turn over the device location information to law enforcement without a warrant if the customer/subscriber consents, if the provider believes that there is an emergency involving a potential death or serious bodily harm and the location is relevant to helping prevent that, or if law enforcement sends a written request to the provider stating that the disclosure of the location information is crucial in helping prevent a death or seriously bodily harm in an emergency situation. The bill also requires providers to send the emergency contact information for these requests to the Department of Justice annually.

Kelsey's parents have been advocating for this type of legislation nationwide. Similar legislation has been enacted in 30 states since 2009. This is a matter of saving lives and utilizing every bit of information we can in order to do so. Thank you, and I will take any questions at this time.

Respectfully,

A handwritten signature in black ink, appearing to read "Jesse James".

Senator Jesse James
23rd Senate District
Sen.James@legis.wisconsin.gov



JOEL KITCHENS

STATE REPRESENTATIVE • 1ST ASSEMBLY DISTRICT

Public Testimony
Senate Committee on Judiciary and Public Safety
Senate Bill 890
January 30, 2023

Thank you, Chairman Wanggaard and members of the committee for holding this public hearing on Senate Bill 890.

In 2007, Kelsey Smith, a recent high school graduate, was abducted in broad daylight from a local department store in Kansas. She had been captured on surveillance video being followed by a suspicious person. Four days after her abduction, Kelsey's body was found.

Kelsey had her phone with her when she disappeared, yet during her short disappearance, law enforcement struggled to get her telecommunications service provider to disclose the location of her cell phone, even with a subpoena. Her phone was with her body when she was found.

This bill would require wireless communications providers to turn over the device location information to law enforcement without a warrant:

- If the customer/subscriber consents,
- If the provider believes that there is an emergency involving potential death or serious bodily harm, and
- If the location is relevant to help prevent that, or
- If law enforcement sends a written request to the provider stating that the disclosure of the location information is crucial in helping prevent death or serious bodily harm in an emergency.

Current law allows providers to provide this information under the previous scenarios. This bill would make it mandatory. It would also provide immunity to service providers from criminal prosecution.

Senate Bill 890 also requires providers to send their emergency contact information to the Department of Justice on an annual basis to make requests move quickly.

When it comes to missing people or life-threatening situations, every second can make a difference. Kansas was the first state to pass similar legislation following the death of Kelsey Smith. Since then, 29 other states have followed suit. This bill allows our first

responders to have the necessary tools to act quickly. It is past time that we make Wisconsin the 31st state to pass the Kelsey Smith Act.

I'm glad to report that both the Badger State Sheriffs' Association and Wisconsin Sheriffs and Deputy Sheriffs Association support this bill.

I want to thank my co-author Senator James. Thank you members for your time and I hope you consider supporting Senate Bill 890. And a special thanks to my constituent for bringing this bill to my attention.

Testimony of Missey Smith in Support of SB890

Chair Wanggaard, Vice Chair Jacque, and Members of the Committee on Judiciary and Public Safety:

Thank you for the opportunity to present testimony in support of **SB 890**

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, but without this law that decision making is still up to the provider. 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 Wisconsin 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:

The Kelsey Smith Act

- 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."


The Kelsey Smith Act



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.

The Kelsey Smith Act – History

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

Testimony of Greg Smith in Support of Senate Bill 890

Chair Wanggaard, Vice Chair Jacque, and Members of the Committee on Judiciary and Public Safety:

Thank you for the opportunity to present testimony in support of **SB 890**

My name is Greg Smith. I am a Special Deputy Sheriff for the Johnson County (KS) Sheriff's Office. In that capacity I oversee our government affairs division where I frequently testify in various committees concerning legislation that may impact our agency.

I am also a former state legislator from the State of Kansas. I served six years in the Kansas Legislature. Two years in the House of Representatives, where I served on the House Corrections and Juvenile Justice Committee, which oversees legislation dealing with our state's criminal code for both adults and juveniles, as well as our prison system. I also served on the House Judiciary Committee and the House Utilities Committee, which oversees the wireless telecom industry in our state.

I served four years in the Kansas Senate, serving on the same committees as I did on the House side. However, I was the Chairman of the Senate Committee on Corrections and Juvenile Justice, and the Vice Chair of the Senate Judiciary Committee. I was fortunate enough to advocate for several legislative changes which helped our state, including a total reform of our adult and juvenile criminal justice system.

I have served for over 25 years in law enforcement, received numerous awards including graduating as valedictorian in two academy classes in two states, received training in wireless device location, trained dozens of officers as a Field Training Officer (FTO), commanded a patrol squad, and had the privilege of working with many fine men and women who daily put their lives on the line so that others may live in safety.

I serve as the Executive Director of the Kelsey Smith Foundation, Inc.® that was started in 2007 after the murder of my daughter, Kelsey Smith. It is in that capacity, as Kelsey's father, that I appear before you today to support this legislation. I took the time to present my background in the hopes that you will see that, while I am a grieving father, I am also a capable, experienced, knowledgeable, and trained law enforcement officer.

Thirty states have passed this legislation. Kansas was the first – Illinois was the most recent. I can tell you from every perspective of my life experiences that this bill will save lives and will not cost one cent to the state of Maryland. This legislation is too important to ignore. It brings people home, to their loved ones, alive.

The Kelsey Smith Act is an invaluable tool to law enforcement that provides a way for an efficient emergency response. Simply put, it allows law enforcement access to location from a

wireless device when a person is believed to be at risk of serious bodily harm or death and their whereabouts are unknown.

Deputy sheriffs and police officers are intimately familiar with the fourth amendment. Nearly every action we take hinges on understanding what the meaning of this amendment is. Deputies and officers receive hours and hours of training on this one topic alone. It is imperative we get it right.

You will hear opponent testimony that claims that the Kelsey Smith Act is a violation of the 4th Amendment to the U.S. Constitution. This is a false narrative.

The Fourth Amendment of the U.S. Constitution spells out what searches are permissible.

*The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*¹

“The Constitution, through the Fourth Amendment, protects people from unreasonable searches and seizures by the government. The Fourth Amendment, however, is not a guarantee against all searches and seizures, but only those that are deemed unreasonable under the law.”²

There are many “exceptions” to the Fourth Amendment that are well recognized by the judicial system. These fall under exigent circumstances. Exigent circumstances are defined as:

*“Those circumstances that would cause a reasonable person to believe that entry (or other relevant prompt action) was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.”*³

It has long been established by the federal courts that officers **must** act based on what they know at the time; that speculation could lead to a person’s death:

But a warrant is not required to break down a door to enter a burning home to rescue occupants or extinguish a fire, to prevent a shooting or to bring emergency aid to an injured person. The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency. Fires or dead bodies are reported to police by cranks where no fires or bodies are to be found. Acting in response to reports of “dead bodies,” the police may find the “bodies” to be common drunks, diabetics in shock, or distressed

¹ U.S. Constitution, 4th Amendment

² “What Does the Fourth Amendment Mean?” United States Courts. January 20, 2024.

<https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/what-does-0>.

³ United States v. McConney - 728 F.2d 1195, 1199 (9th Cir.) (1984)

*cardiac patients. But the business of policemen and firemen is to act, not to speculate or meditate on whether the report is correct. People could well die in emergencies if police tried to act with the calm deliberation associated with the judicial process. Even the apparently dead often are saved by swift police response. A myriad of circumstances could fall within the terms "exigent circumstances" referred to in Miller v. United States, supra, e.g., smoke coming out a window or under a door, the sound of gunfire in a house, threats from the inside to shoot through the door at police, reasonable grounds to believe an injured or seriously ill person is being held within.*⁴

The language of the opinion is unusually strong stating that "the need to protect or preserve life or avoid serious injury is **justification** for what would be otherwise illegal absent an exigency or emergency."

Later, in the opinion the court states:

*The appraisal of exigent circumstances surrounding execution of search warrants or forcible entries without a search warrant presents difficult and delicate problems. These cases do not arise in the calm which pervades a courtroom or library. They are rarely if ever seen by courts except in cases where criminal activity has been uncovered by the challenged police actions. They are not matters resolved by meditation and reflection of the participants. The events are likely to be emotion-charged, filled with tension, and frequently attended by grave risks. Neither the Constitution, statutes nor judicial decisions have made the home inviolable in an absolute sense. Collectively they have surrounded the home with great protection but protection which is qualified by the needs of ordered liberty in a civilized society.*⁵

In short, an officer or officers conduct is justified when there is a believe that a person is at risk of serious bodily harm or death. Law enforcement has duty to respond. The two cases cited in my testimony lay out the guidelines for exigent circumstances.

Law enforcement officers rely on the courts long-standing definition of exigent circumstances. The Kelsey Smith Act simply codifies those decisions.

As is always the case, technology moves faster than the law. Court cases provide "case law" until state legislatures and/or Congress can catch up via the more laborious and time-consuming legislative process. Of note for this committee is a U.S Second Circuit Court opinion. While the Second Circuit has jurisdiction in Connecticut, New York, and Vermont, this case started in Maryland.

In *United States v. Gilliam* law enforcement became involved when Gilliam took Jasmin from Maryland to New York to work as a prostitute for him there, and Jasmin's foster mother reported her missing. The Maryland State Police requested that the provider, Sprint, provide location information for Gilliam's cell phone, without a warrant, based on an exigent situation involving immediate death or serious bodily injury. Sprint supplied the information which was relayed to the NYPD. The NYPD was able to locate Jasmin and Gilliam. Gilliam was convicted of sex trafficking of a minor by force, fraud, or coercion and of

⁴ Wayne v. United States, 318 F.2d 205 (D.C. Cir. 1963)

⁵ Ibid

transporting a minor in interstate commerce for purposes of prostitution and sentenced to 240 months' imprisonment.⁶

This case is important, because it references the federal law that applies to these types of situations – The Stored Communication Act, specifically 18 U.S.C. § 2702(c)(4):

18 U.S. Code § 2702 – Voluntary disclosure of customer communications or records

(c) Exceptions for Disclosure of Customer Records. —A provider described in subsection (a) may divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a)(1) or (a)(2))—

(4) to a governmental entity, if the provider, in good faith, believes that an emergency involving danger of death or serious physical injury to any person requires disclosure without delay of information relating to the emergency.

This provision is problematic for law enforcement because of who is making the determination if the situation is an emergency (exigent circumstance). I will discuss that after finishing my review of federal case law.

In 2018, *Carpenter v. United States*, was a landmark case concerning government access to wireless device location. Prior to this case, cell site location information (CSLI) was considered a business record and under federal law was accessible to law enforcement under the “third party doctrine.” Information released to a business was accessible without a warrant since the person had released that information to the business to complete a transaction or other business action.

The *Carpenter* case found that “a detailed chronicle of a person’s physical presence compiled every day, every moment, over several years” implicates privacy concerns that surpass the third-party doctrine.⁷ The acquisition of the long-term CSLI data was a search under the Fourth Amendment. In fact, the Government was able to obtain 12,898 location points cataloging Carpenter’s movements over 127 days—an average of 101 data points per day. This type of location collection is obviously intrusive and unreasonable.

However, as with *Gilliam*, the court found that *Carpenter* is a narrow decision. They specifically point out that they do not opine on “real-time CSLI or “tower dumps” (a download of information on all the devices that connected to a particular cell site during a particular interval).”⁸

They also did not “disturb” settled case law in *Smith* and *Miller* (cases that dealt with “conventional surveillance techniques and tools).

Many cite *Carpenter* as a complete nullification of access to wireless location data. Those that do so, conveniently leave out the court’s analysis of exigent circumstances.

“One well-recognized exception applies when “the exigencies of the situation” make the needs of law enforcement so compelling that [a] warrantless search is objectively reasonable under the Fourth Amendment.” *Kentucky v. King*, 563 U. S. 452, 460 (2011) (quoting *Mincey v. Arizona*, 437 U. S. 385, 394

⁶ United States v. Gilliam - No. 15-387 (2nd Cir. 2016)

⁷ *Carpenter v. United States*, 585 U.S. ____ (2018)

⁸ *Carpenter v. United States*, 585 U.S. ____ (2018)

(1978)). Such exigencies include the need to pursue a fleeing suspect, protect individuals who are threatened with imminent harm, or prevent the imminent destruction of evidence. 563 U. S., at 460, and n. 3.

Our decision today does not call into doubt warrantless access to CSLI in such circumstances. While police must get a warrant when collecting CSLI to assist in the mine-run criminal investigation, the rule we set forth does not limit their ability to respond to an ongoing emergency.⁹

The last federal case I will mention is *United States v. Hammond*. In this case real time location information was accessed by law enforcement to locate a suspect who was on a robbery spree, The court found the real-time CSLI collection was not a search. It did not rise to the months of data collected as in the *Carpenter* case. It was an exigent circumstance as Hammond was committing a spree of violent crimes with a firearm placing persons at risk of serious bodily harm or death.

Hammond was a U.S. Federal Court Seventh Circuit case in 2021. It is important to note this occurred after the *Carpenter* decision. In 2022, Hammond appealed the decision to the U.S. Supreme Court, which denied hearing the case. It is clear the U.S. Supreme Court saw no issue with the exigent circumstances and the use of location data in this situation – following the guidelines of *Carpenter*.¹⁰

As stated earlier in my testimony there is federal law in place that applies to the states, but only to those states that have not adopted the Kelsey Smith Act. There are two key points to consider when operating under the federal law:

- 1) The wireless provider is the entity that decides if the circumstances are an emergency (exigent), and:
- 2) The information can be released to a “governmental entity.”

If you are concerned about government access to data, this law should cause you concern. The definition of governmental entity under the law means “a department or agency of the United States or any State or political subdivision thereof.”

Any governmental entity can request the location information of a wireless device under **18 U.S. Code § 2702 – Voluntary disclosure of customer communications or records**. The scope of agencies that could access your location if a wireless provider decides you are in an emergency is staggering. It could be anyone from the President of the United States to a local school board official.

Enter the Kelsey Smith Act. As stated before, it codifies court decisions, eliminating doubt as to what an exigent circumstance is – and limiting the use of the Act to only those circumstances.

Second, it changes who makes the decision on what is an emergency to law enforcement. Men and women who are extensively trained to recognize and respond to such situation instead of a wireless provider. When Kelsey went missing our wireless provider, Verizon, refused to release the location of Kelsey’s device. Instead, they offered to change our calling plan. A wireless company customer service

⁹ Ibid

¹⁰ *United States v. Hammond*, United States Court of Appeals for the Seventh Circuit, Apr 26, 2021 996 F.3d 374 (7th Cir. 2021)

representative is not trained to evaluate the nuances of an exigent circumstance, especially at 2 AM on a Sunday morning.

Third, it limits the scope of which governmental entity can access the information to law enforcement and only law enforcement. Limiting the scope of access is extremely important providing certainty that only those who have a need to know the location of a device are receiving that information.

SB 890 provides certainty for law enforcement officers as well as wireless providers. Companies are sometimes reticent to act when there is risk of litigation. SB 890 eliminates that risk by providing immunity from litigation when providing information to law enforcement.

The language in the bill has resulted in wide support for the Kelsey Smith Act from the wireless industry. In fact, CTIA is the lobbying organization for the wireless industry, and they have consistently supported the Kelsey Smith Act issuing statements of support on their website.¹¹

SB 890 also provides an information repository for law enforcement to assist in making a request for location information if needed. In Kansas, for example, our repository is kept at our Amber Alert Desk. It is manned 24/7 and can provide emergency contact information of any wireless provider who does business in Kansas to law enforcement.

Since 2009, thirty states have adopted the Kelsey Smith Act, or the language of the Kelsey Smith Act. Kansas was the first and legislators there named the legislation in Kelsey's memory. It is not something that my wife, Missey, or I asked for. Some states have continued doing so and it is an honor to have life saving legislation named after her. More importantly is the difference this law will provide. Lives will be saved. We receive information from around the country from agencies that tell us of instances they have successfully used the Act to bring people home to loved ones alive.

I provide training around the country at law enforcement training conferences on use of the Kelsey Smith Act as well as policy considerations for law enforcement agencies. I have presented at the National Sheriffs Association, the International Association of Chiefs of Police Technology Conference, and the Dallas Crimes Against Children Conference to list a few. Law enforcement officers in states both with the Act and without attend the training. I learn as much from them about the issues they face as well as the success stories of they have achieved with the Act as they do from my training.

SB 890 is good public policy. I would ask that this committee advance this bill and pass it into law.

Greg Smith
8605 Robinson Street
Overland Park, KS 66212

¹¹ Kelly Cole, Senior Vice President, Government Affairs. CTIA. January 21, 2024. "CTIA Statement on Reintroduction of the Kelsey Smith Act ." <https://www.ctia.org/news/statement-on-reintroduction-of-the-kelsey-smith-act>



DOOR COUNTY
SHERIFF'S OFFICE

TAMMY A. STERNARD, SHERIFF
Patrick McCarty, Chief Deputy
Carl Waterstreet, Professional Standards Captain
Brad Shortreed, Patrol Lieutenant
Kyle Veeseer, Jail Lieutenant

Integrity - Professionalism - Fairness - Teamwork

01/29/2024

Wisconsin State Senate
Wisconsin State Capitol
Madison, WI 53707

1201 S. Duluth Ave
Sturgeon Bay, WI 54235

Senate Committee Members,

Thank you for taking the time to hear my written testimony in regard to the Kelsey Smith Act. This bill has major implications to assisting law enforcement in critical lifesaving situations.

To give you my background, I have been in Law Enforcement for approximately 24 years. During my time I have been employed with the Sturgeon Bay Police Department, Wisconsin Department of Justice, Division of Criminal Investigation as a Senior Special Agent, and currently a Captain with the Door County Sheriff's Office. With my time at WI DOJ/DCI, I worked and have been named an expert in Human Trafficking investigations, and have worked major crimes, spending several years on the Child Abduction Response Team. Through my time there I was involved in multiple missing person investigations.

A few years ago, my son, Conor Waterstreet, was involved in Youth in Government and looking for a bill idea. At the time I had just worked an investigation where it was difficult to locate the person, as it was deemed a missing person only, with no crime committed. Typically, in order to obtain location information on a person's device, you need to obtain a warrant. Considering a warrant grants police, the opportunity to forego the 4th Amendment right to search and seizure, law enforcement needs probable cause and a judge's authorization to search that device. Often times in a missing person case, there is initially not a crime investigated, meaning a warrant cannot be obtained. Conor had written his bill in Youth in Government to allow law enforcement to have the ability to obtain geographical information from a person's wireless communications provider without the need for a warrant. His bill passed and was signed by the Youth in Government Governor.

Hoping that this bill could become a reality, Conor and I met with Representative Joel Kitchens. Representative Kitchens, working with Senator Jesse James drafted the Kelsey Smith Act. This law would do wonders for law enforcement's efforts to locate someone faster, and by easier means than having to wait for a crime to be committed, thus potentially saving lives in a proactive matter, rather than having someone become victimized from a crime.

Opposition to this bill argues that law enforcement can get a "ping" of the cell phone signal without a warrant currently. An argument can also be made that this bill overreaches law enforcement authority. Cell pings are often inaccurate as it gives a large location, and depending on the tower it could actually lead to misinformation. This also does not work if the cell phone is off. The Kelsey Smith Act could aid law enforcement with historical data giving the last known location, almost pin point, even if the device is off. At least law enforcement could have a starting point and be able to track down that missing person, potentially saving their life more efficiently than we currently do now. There would be very little if no overreach in this bill as this bill has a narrow focus. Only geographical information can be obtained, meaning no email, text message, photo data or phone call data can be released. Those items would still require a warrant to obtain. This is simply giving geographical information only. In addition, law enforcement has to justify the request in a written report which is considered a document of the court. If a law enforcement officer provides misinformation on that report there are legal consequences for that action, along with internal consequences for that officers employment.

The other thought is this would only apply to missing children. This reaches a vast audience, especially in the Door County area where we have an aging population and the threat of dementia is prevalent. Elderly drivers who are confused and lost most often now have cell phones also. This bill could aid law enforcement in many different ways in locating persons who are in danger. In fact, over the last several months, we could have used this bill on a couple different occasions. This could have saved time and money as significant resources were expended as a result of the search.

Thank you for taking the time to consider this bill, and listening to my written testimony.

Sincerely,

Captain Carl G. Waterstreet
Door County Sheriff's Office
(920) 746-2595