

LATE TESTIMONY

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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FIRST DEPUTY PROSECUTING ATTORNEY



**THE HONORABLE WILL ESPERO, CHAIR
SENATE COMMITTEE ON PUBLIC SAFETY,
GOVERNMENT OPERATIONS, AND MILITARY AFFAIRS**
Twenty-sixth State Legislature
Regular Session of 2012
State of Hawai'i

January 25, 2012

RE: S.B. 2247; RELATING TO PUBLIC SAFETY.

Chair Espero, Vice Chair Kidani and members of the Senate Committee on Public Safety, Government Operations, and Military Affairs, the Department of the Prosecuting Attorney, City and County of Honolulu, submits the following testimony in support of, and suggesting amendments to, Senate Bill 2247.

The Department agrees with the intent of S.B. 2247, to the extent that it would require (electronic) communication service providers to provide call location information to law enforcement agencies, for purposes of responding to emergencies involving risk of death or serious bodily injury. Law enforcement agencies regularly contact the Department to inquire about their ability to have electronic communication service providers "ping" a handheld electronic device, to obtain real-time location information for a particular device.

HRS §803-42(b)(10), however, specifically prohibits electronic communication service providers from divulging the contents of any communications transmitted via their services, to anyone other than to the intended recipient, and this particular statute has kept electronic communication service providers from divulging this type of information in the past. Thus, law enforcement has been left without an important tool that could save lives.

To avoid any conflict for electronic communication service providers, and provide explicit authorization for them to act in these types of situations, the Department suggests adding an exception under HRS §803-42(b)(11), which already lists four exceptions to the prohibition. The new language could mirror the federal "exigency provision" found at 18 U.S.C. 2702(b)(8), which allows disclosure: "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 communications relating to the emergency." The only changes we would suggest to this language would be to narrow the term "governmental entity" to "law enforcement agency," and change the term "serious physical injury" to "serious bodily injury."

For these reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports S.B. 2247, with the suggested amendments. Thank for you the opportunity to testify on this matter.

LATE TESTIMONY

Dear Hawaii State Senators;

My name is Sarah Robin. I am president of the Katie Poirier Legislative Coalition for Victim's Rights (KPLCVR) to you on behalf of KPLCVR, to ask you to vote yes for SB2247 a.k.a. the Kelsey Smith Act.

The Kelsey Smith Act is a bill that would, require that wireless phone companies immediately respond to law enforcement requests for location information of victims who are in jeopardy of death or serious physical harm. In addition it would aid more responsive coordination between law enforcement agencies and wireless cell phone carriers during emergencies involving missing persons.

The Kelsey Smith Act is named after, an eighteen year old young woman, named Kelsey Smith who was abducted in broad day light, from a local Target department store in Overland, Kansas in June of 2007. About three hours, after Kelsey was abducted, her car was found in the Target parking lot, and her family and friends and 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 Verizon for the "ping" records that would pinpoint her location via cell phone, Verizon did not hand those records over, until three and a half days later. When the Verizon did turn over the records, it took authorities 45 minutes to locate Kelsey's body. However, she was founded dead, after being raped and murdered.

Now, Kelsey's parents, Greg and Missey Smith are working to pass a piece of legislation in their daughter's name called the Kelsey Smith Act. The Kelsey Smith Act would allow law enforcements would require that wireless phone companies immediately respond to law enforcement requests for location information in emergency situations.

The Kelsey Smith Act also doesn't require any funding. In fact it saves money.

The Kelsey Smith Act is being campaigned for at the state and federal level. So far the Kelsey Smith Act has been successfully enacted, in the following states; Kansas, Nebraska, Minnesota, New Hampshire, North Dakota, and Missouri.

Kelsey's story is not the first time, that a tragedy could have been prevented if cell phone companies had turned over their records to help find missing persons. By passing the Kelsey Smith Act, lives can be saved. When a person has been abducted, or in an emergency situation, it is vital that law enforcements act quickly, which is why law enforcements need wireless carriers to cooperate with them in emergency situations.

Therefore I please ask you to vote yes for this legislation in Hawaii, to protect all people from this same kind of situation.

Sincerely,

Sarah

LATE TESTIMONY

NEIL ABERCROMBIE
GOVERNOR



PATRICIA McMANAMAN
DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809

January 26, 2012

TO: The Honorable Will Espero, Chair
Senate Committee on Public Safety, Government Operations, &
Military Affairs

FROM: Patricia McManaman, Director

SUBJECT: S.B. ²²⁴⁷~~2447~~ - RELATING TO PUBLIC SAFETY

Hearing: Thursday, January 26, 2012; 2:50 p.m.
Conference Room 224, State Capitol

PURPOSE: The purpose of S.B. 2247 is to require communications service providers to provide call location information upon request by public safety agencies responding to emergencies.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports the intent of S.B. 2247 to help public safety agencies to better respond to emergencies.

DHS defers to the Department of the Attorney General for their technical amendments to this bill.

Thank you for the opportunity to provide this testimony.

LATE TESTIMONY

Prepared Testimony of Missey Smith

Mother of Kelsey Smith

for the

Hawaii Senate Committee on Public Safety, Government
Operations, and Military Affairs.

In Support of SB 2247

January 26, 2012



In Memory of Kelsey

First I would like to thank Senator Espero for sponsoring such an important piece of legislation. My name is Missey Smith; I am the mother of Kelsey Smith. She is the reason this legislation began in Kansas 3 years ago. Kelsey is the young lady that was taken from a Target store in Overland Park, Kansas on June 2, 2007, just nine days after graduating from high school. Her story made national and international news. Kelsey's body was recovered four days later. What does a parent go through when a child is missing? You don't eat because you don't know if your child is eating. You don't sleep, because you wonder if they are sleeping. It is pure hell. What took so long to find Kelsey? ONE word, Verizon. Let me be perfectly clear, in no way do we hold them responsible for Kelsey's death. I do however believe she did not have to lie out in the woods for days waiting to be found.

I was on my way home from a wedding in Des Moines, Iowa, when our daughter Lindsey called me. She let me know that Kelsey was not answering her phone or text messages, I knew immediately that something was wrong. My husband, Kelsey's siblings and John, her boyfriend, continued to try and reach her as did I for the last hour of my trip home. After I arrived home, John explained that his uncle used to work for Sprint and had explained that our cell phone company could "ping" Kelsey's phone so we could locate her. It seemed simple enough. Little did we know? I called our cell provider and explained that my daughter was missing and I needed help to locate her. They told me that they were unable to do that. They explained that I could get on-line and check her cell phone activity. We had already contacted police and I believe had located her car. I know some time that night Greg also contacted them and was told the same thing.

I believe it was in July of 2007 that we had a meeting with Verizon officials regarding what had occurred in Kelsey's case. It included the President and three lawyers. During that meeting one of the lawyers basically said to us that we used incorrect terminology when requesting their help. WE had used the word "ping". Apparently that was terminology they did not use. I told them to go back, check their protocol and figure out where they had failed Kelsey and us as a family. I told them I would follow up to see what they had found. After several months of not hearing anything, I called Nancy Bates an administrative assistant. I explained why I was calling. She had the unfortunate job of calling me back to say the lawyers found their protocol to be "adequate". If their actions were adequate, I would hate to see what inadequate is. I can tell you this; if Verizon had acted in a more responsive manner we probably would not have seen a need for this legislation. We have since met with Verizon officials who basically told us it was human error that caused the error in not releasing Kelsey's cell phone locate information. You see, Verizon is NOT able to ping a phone as we had asked. They can however look at the history

of where a cell phone made contact with a tower. I fully understand that no company can be perfect. I understand that employees are human and that mistakes will be made. I believe that this legislation WILL reduce those errors. Let our law enforcement be the deciding factor as to what is an emergency. That is what we train them to do.

We have heard of a couple of instances where Kelsey's Law has made a difference and I would like to inform you of them. The first was of a 14 year old who had run away with a man that was much and was considered an endangered person. The second instance was of a young lady that had left a suicide note for her family. The police were able to locate her alive by tracking her cell phone. Thank God!

As my husband and I have traveled around the country and have met with different law enforcement agencies we have found that Verizon is not the only company that this type of situation occurs with. Police run into situations with almost every company, *especially* some of the smaller less known companies. Law enforcement in the states that have passed similar legislation has supported The Kelsey Smith Act. We also have the support of AT&T, Sprint and yes even Verizon.

I truly believe that this legislation HAS saved a life. It will also save money. How much money was spent those three extra days looking for Kelsey? How many man hours? How many young people and volunteers were invested in bringing her home? All the while the technology to let us know where she was, was available. After Verizon FINALLY did the right thing, and sent an engineer to the tower that Kelsey's phone last made contact with, Kelsey was found in 45 minutes.

According to C.S. Lewis, "Experience: that most brutal of teachers. But you learn, my God do you learn." In 2007, there were 4176 young people ages 17-24, murdered in the United States. How many of those victims had a cell phone? I personally knew one of them. Please learn from our experience.

Thank you,

Missey Smith

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LATE TESTIMONY

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LATE TESTIMONY



Honorable Will Espero, Chair
Senate Committee on Public Safety, Government Operations, and Military Affairs
Hawaii State Capitol
Honolulu, HI 96813

RE: SB 2247 – Relating to Public Safety – Support with amendment
January 26, 2012, 2:50 PM, Hawaii State Capitol Room 224

Aloha Chair Espero, Vice Chair Kidani and members of the committee,

As a communication service provider that participates in connection with the release of customer information to any governmental entity, including any public safety answering point, as required under Hawaii's Enhanced 911 service, we support the intent of this bill. However, we would respectfully request an amendment to clarify language in the bill, which, if unamended, may result in unintended consequences.

We offer the following changes to avoid potential problems:

1. We suggest that the words "call for" on page 1, line 11 be changed to "call requesting;" and
2. We also request that the words "or to an emergency situation" on line 12 of Page 1 be changed to "or identify the location of an emergency situation."

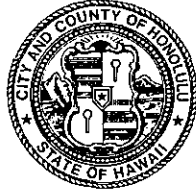
Thank you for the opportunity to provide input on this matter. We appreciate your committee's consideration of this request.

Sincerely,

Kimman Wong
General Manager
Oceanic Time Warner Cable Digital Phone

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE JT-LS

January 26, 2012

The Honorable Will Espero, Chair
and Members
Committee on Public Safety, Government
Operations, and Military Affairs
The Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chair Espero and Members:

Subject: Senate Bill No. 2247, Relating to Public Safety

I am John Thompson, Major of the Communications Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports Senate Bill No. 2247. This bill enables communications service providers to make available call location information to public safety agencies and public safety answering points upon request. The information is to be released to these parties in order for them to respond to calls for emergency services or in an emergency situation that involves the risk of death or serious physical harm. This bill would provide authority for the release of the required information without delay and provide liability protection when acting in good faith. This benefits public safety by improving our ability to obtain vital information quickly when time is a factor to save lives.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read "John C. Thompson".

JOHN C. THOMPSON, Major
Communications Division

APPROVED:

A handwritten signature in black ink, appearing to read "Louis M. Kealoaha".
LOUIS M. KEALOHA
Chief of Police

LATE TESTIMONY



TESTIMONY OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-SIXTH LEGISLATURE, 2012

ON THE FOLLOWING MEASURE:
S.B. NO. 2247, RELATING TO PUBLIC SAFETY.

BEFORE THE:

SENATE COMMITTEE ON
PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY

DATE: Thursday, January 26, 2012 TIME: 2:50 p.m.

LOCATION: State Capitol, Room 224

TESTIFIER(S): David M. Louie, Attorney General, or
Randall S. Nishiyama, Deputy Attorney General

Chair Espero and Members of the Committee:

The Department of the Attorney General supports this bill.

This bill requires communication service providers to provide call location information upon request by public safety agencies responding to emergencies.

We believe that providing our first responders with call location information in times of emergencies promotes public safety and will save lives.

We respectfully ask the Committee to pass this bill.