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FISCAL IMPACT REPORT

SPONSOR Stewart ORIGINAL DATE 02/25/15
LAST UPDATED 03/18/15 HB _____
SHORT TITLE Emergency Wireless Phone Location Info SB 534/aSPAC/aSFI#1
ANALYST Cerny

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with SB 524

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Regulation Commission (PRC)
Department of Public Safety (DPS)
NM Municipal League (NMML)
Secretary of State (SOS)
Office of the Attorney General (AGO)

SUMMARY

Synopsis of SFI#1 Amendment

Senate Floor Amendment #1 to Senate Bill 534 as previously amended by SPAC adds two new subsections to the bill, inserting new subsections E. and F. on page 3 between lines 5 and 6.

The new subsection E would require that any request to a telecommunications provider for device location must be accompanied by a sworn, written statement from a law enforcement officer stating that facts support the agency's belief that disclosure without delay is necessary either by an emergency involving risk of death or physical injury or in order to respond to the user's call for emergency services.

The new subsection F states that not later than 48 hours after a law enforcement agency has made such a request for a device location, the agency shall request a court order stating whether

the agency had probable cause to believe that the conditions set forth pursuant to subsection E existed at the time of the request.

Synopsis of SPAC Amendment

Senate Public Affairs Committee amendment to Senate Bill 534 accomplishes three changes. On page 3, line 10, it states that wireless communications providers will not be subject to any cause of action in a court for providing cell phone location information when acting in accordance with the provisions of the bill “or for not providing such information due to circumstances beyond their reasonable control.”

Just following that change, a next section G is added. This section provides that a wireless provider may establish protocols by which they voluntarily disclose cell phone call locations to a law enforcement agency for the purposes outlined in subsection A.

The amendment also states in a new section K that this act may be cited as the “Kelsey Smith Act.”

Synopsis of Original Bill

Senate Bill 534 would require wireless telecommunications providers to provide call location information to law enforcement agencies in an emergency. The DPS would be required to maintain a “database” containing emergency contact information for all wireless telecommunications providers registered to do business in this state.

The bill also details what law enforcement officers must do to prior to requesting the location information of wireless device from a wireless telecommunications provider. A law enforcement officer must first reasonably ascertain whether the situation involves a serious risk of death or serious physical harm and whether an emergency response is warranted.

Unless the officer determines that the situation requires immediate action, then the law enforcement agency may check available databases, including the federal bureau of investigation national crime information center as well as the secretary of state’s office to see if the caller is participating in the address confidentiality program, before (or concurrently with) initiating contact with the telecommunications provider.

The proposed legislation indemnifies wireless telecommunications providers from legal action when providing telecommunications device location information under the provisions of this act.

All wireless telecommunications providers and resellers of wireless telecommunications services doing business in New Mexico will provide twenty-four-hour emergency contact information to the DPS which is charged with creating a database to house that information. Any change in emergency contact information from a wireless provider/reseller shall be given to DPS within forty-eight hours of a change in that information.

Definitions for law enforcement agency, law enforcement officer, telecommunications device, telecommunications device location information, wireless telecommunications provider, and wireless telecommunications service are all provided in Section K of the bill.

The legislation carries an emergency clause and would take effect immediately upon passage.

FISCAL IMPLICATIONS

SB 534 carries no appropriation and would have minimal additional operating impact on agencies.

DPS analysis states: “Fiscal implications would be minimal requiring time of one current DPS FTE to maintain the database or a list of wireless telecommunications providers.”

SIGNIFICANT ISSUES

This bill would make it more likely that 911 callers on cell phones would be located.

The Federal Communications Commission (FCC) regulates telecommunications. Their website states:

The number of 911 calls placed by people using wireless phones has significantly increased in recent years. It is estimated that about 70 percent of 911 calls are placed from wireless phones, and that percentage is growing. For many Americans, the ability to call 911 for help in an emergency is one of the main reasons they own a wireless phone. While wireless phones can be an important public safety tool, they also create unique challenges for emergency response personnel and wireless service providers. Since wireless phones are mobile, they are not associated with one fixed location or address. While the location of the cell site closest to the 911 caller may provide a general indication of the caller's location, that information is not always specific enough.

The FCC has adopted rules aimed at improving the reliability of wireless 911 services and the accuracy of the location information transmitted with a wireless 911 call, as part of our efforts to improve public safety. The improvements help providing Public Safety Answering Points (PSAPs) with meaningful, accurate location information from wireless 911 callers in order to dispatch local emergency responders to the correct location and to provide assistance to 911 callers more quickly.

The FCC's basic 911 rules require wireless service providers to transmit all 911 calls to a PSAP, regardless of whether the caller subscribes to the provider's service or not.

Phase I Enhanced 911 (E911) rules require wireless service providers to provide the PSAP with the telephone number of the originator of a wireless 911 call and the location of the cell site or base station transmitting the call.

Phase II E911 rules require wireless service providers to provide more precise location information to PSAPs; specifically, the latitude and longitude of the caller. This information must be accurate to within 50 to 300 meters depending upon the type of location technology used.

The FCC recently required wireless carriers to provide more precise location information to PSAPs. As a result, wireless carriers will be required to comply with the FCC's location accuracy rules at either a county-based or PSAP-based geographic level. The new standards apply to outdoor measurements only, as indoor use poses unique obstacles.

<http://www.fcc.gov/guides/wireless-911-services>

PRC analysis states:

The FCC is currently working with wireless providers to increase the horizontal and eventually vertical axis accuracy of locating a wireless telecommunications device for E911 purposes.

This bill would require wireless telecommunications providers to send this location information, which would normally go to a PSAP through the E911 network, to law enforcement officials in New Mexico. As such, it is not clear if there need be any system modifications by wireless telecommunications providers in order to provide the location information as directed to the DPS, as opposed to PSAPs as required in this bill.

It is not clear if there will be any technical issues with the wireless providers sending device location accuracy information to law enforcement officials as outlined in this bill. Input from wireless telecommunications providers and E911 personnel on this bill would be useful.

SOS analysis states:

The only section of the bill that pertains to the SOS is section D which outlines that a law enforcement agency shall check relevant available databases...including checking with the SOS to identify if the user for whom the call location information is being requested is participating in the state confidential address program (CAP).

The SOS currently does not maintain a database of CAP participants, therefore, there is no available database for law enforcement to check to determine if a user is in the program. Also, availability of the SOS for law enforcement to call and validate could be an issue. Core hours of the SOS are limited to 8-5 and the administration of the program is done by a part time staff member working 20 hours per week.

DPS analysis states no significant issues with the bill.

ADMINISTRATIVE IMPLICATIONS

The DPS would be responsible for creating and maintaining a wireless provider/reseller emergency contact database.

CONFLICT

SB 534 conflicts with SB 524 but appears to resolve some issues that were raised by language in the earlier bill.

TECHNICAL ISSUES

Both SB 524 and SB 534 carry the same title.

OTHER SUBSTANTIVE ISSUES

Kelsey Smith was 18 years old when she was abducted in broad daylight as she loaded a package into her car's trunk in a Target parking lot in Overland Park, Kansas. She was subsequently raped and strangled to death with her own belt. It took four days for Verizon Wireless, her cellphone carrier, to hand over information about the location of her cellphone, which she had on her when she was abducted. When they did, her body was found within an hour. See: <http://www.washingtonpost.com/blogs/she-the-people/wp/2013/04/18/kelsey-smith-act-would-save-lives-cost-taxpayers-nothing/>

The federal Kelsey Smith Act was introduced into the House of Representatives in April 2014 (H.R 1575). The bill:

- Amends the Communications Act of 1934 to require a provider of a commercial mobile service or an IP-enabled voice service to furnish call location information concerning the telecommunications device of a user of such service at the request of an investigative or law enforcement officer.
- Requires such a request to be accompanied by a sworn written statement from such officer stating facts that support that officer's probable cause to believe that disclosure without delay is required: (1) by an emergency involving risk of death or serious physical injury, or (2) in order to respond to the user's call for emergency services. Requires the law enforcement agency of such officer, within 48 hours after the officer makes such a request, to request a court order stating whether such officer had probable cause to believe that such conditions existed at the time of the request.
- Shields a telecommunications carrier from any cause of action in any court or any civil or administrative proceeding commenced by a governmental entity for providing call location information in good faith in accordance with this Act.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Law enforcement officers and agencies may not be able to locate 911 callers on cell phones, which are increasingly used as primary phones.

CAC/je/bb