

HOUSE BILL 804

Senate Judiciary I Committee Substitute Adopted 7/23/15

Senate Rules and Operations of the Senate Committee Substitute Adopted 6/28/16

Short Title: Kelsey Smith Act.

(Public)

Sponsors:

Referred to:

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE ACCESS BY LAW ENFORCEMENT TO TELECOMMUNICATIONS
DEVICE LOCATION INFORMATION UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known as the Kelsey Smith Act.

SECTION 2. Chapter 15A of the General Statutes is amended by adding a new
Article to read:

"Article 16C.

"Provision of Wireless Call Location Information to Law Enforcement.

**"§ 15A-300.10. Provision of call location information by wireless service provider to law
enforcement; call location warrant required.**

(a) Definitions. – The following definitions apply in this section:

(1) Call location data. – Global positioning system, triangulation, and per-call
measurement data indicating the location of a telecommunications device. Call
location data does not include the contents of any communication made using a
telecommunications device.

(2) Call location warrant. – A warrant issued pursuant to this section that authorizes
a law enforcement agency or public safety answering point to obtain call
location data from a wireless service provider.

(3) Imminent. – With respect to a risk of death or serious physical harm, means that
the length of time necessary to comply with otherwise applicable provisions of
law pertaining to obtaining authorization for electronic surveillance would, in
the professional judgment of the law enforcement agency based upon generally
accepted surveillance and investigation protocols, significantly reduce the
chance of preventing death or serious physical harm.

(4) Wireless service provider. – A commercial mobile radio service provider, as
defined in G.S. 143B-1400, including providers of subscription-based,
in-vehicle security service.

(b) Call Location Warrant; Application; Issuance. – A law enforcement agency that
believes the user of a telecommunications device to be in imminent risk of death or serious
physical harm or to be criminally involved in the imminent risk of death or serious physical harm
to another may apply for and be issued a call location warrant as follows:

(1) The warrant may be issued by any person authorized to issue a search warrant
pursuant to G.S. 15A-243(a) or G.S. 15A-243(b)(3).



1 (2) The application shall be made in writing upon oath and affirmation and shall
2 contain (i) the name and title of the applicant, (ii) identification of the
3 telecommunications device and user for which the call location data is
4 requested, (iii) the allegations of fact establishing probable cause to believe that
5 the user of the telecommunications device is in imminent risk of death or
6 serious physical harm or is criminally involved in the imminent risk of death or
7 serious physical harm to another, and (iv) a request that the court issue a
8 warrant authorizing the applicant to obtain call location data for that
9 telecommunications device and user from a wireless service provider.

10 Upon a finding that the call location warrant is necessary to prevent imminent risk of death or
11 serious physical harm, the issuing official may issue a warrant authorizing the applicant to obtain
12 call location data for the telecommunications device and user indicated. The warrant shall be valid
13 anywhere in this State for a period of 48 hours from issuance.

14 (c) Expedited Warrant. – Notwithstanding the requirements of subsection (b) of this
15 section, a law enforcement agency may request the issuance of a call location warrant from a
16 judge of the superior court via telephone by verbally providing the information required by
17 subdivision (2) of subsection (b) of this section. If the judge finds that the call location warrant is
18 necessary to prevent imminent risk of death or serious physical harm, the judge may verbally issue
19 a call location warrant. For any warrant issued pursuant to this subsection, within 48 hours of
20 issuance, the applicant shall file with the clerk of court in the county in which the warrant was
21 issued a written application that complies with the requirements of subdivision (2) of subsection
22 (b) of this section. Any applicant who receives a verbal call location warrant shall execute an
23 affidavit to that effect for presentation to the wireless service provider.

24 (d) Service of Warrant. – Upon receipt of proof of issuance of a warrant from a law
25 enforcement agency, a wireless service provider shall provide to the law enforcement agency call
26 location information concerning the telecommunications device of any user identified in the
27 warrant for the period of time deemed by the law enforcement agency to be relevant to preventing
28 the imminent death or serious physical harm. Provision of a copy of the warrant, or an affidavit
29 executed by the law enforcement officer obtaining a verbal warrant pursuant to subsection (c) of
30 this section, to the wireless service provider by electronic or facsimile transmission shall be
31 sufficient proof of issuance of a warrant for purposes of this section.

32 (e) Filing of Warrant. – Any warrant issued pursuant to this section shall be filed with the
33 clerk of court in the county in which it is issued. The warrant shall remain under seal for 30 days
34 from the date it is filed, unless that period is extended by the superior court upon motion of the
35 law enforcement agency.

36 (f) Waiver of Liability. – No cause of action shall lie in any court against a wireless
37 service provider, its officers, directors, employees, agents, or other specified persons for providing
38 mobile communications tracking information to a law enforcement agency as required by this
39 section."

40 **SECTION 3.** G.S. 7A-273 reads as rewritten:

41 "**§ 7A-273. Powers of magistrates in infractions or criminal actions.**

42 In criminal actions or infractions, any magistrate has power:

43 ...

44 (4a) To issue a call location warrant valid anywhere in the State pursuant to
45 G.S. 15A-300.10.

46 "

47 **SECTION 4.** This act becomes effective December 1, 2016.