Kansas Senate

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Senator Greg Smith
21st District

Chairman Heise, Vice-Chair Graves, Minority Vice-Chair Oakes, and members of the House Criminal Justice Committee:

Thank you for allowing me to submit testimony concerning HB 5110.

The Kelsey Smith Act was signed into law In Kansas on April 17, 2009. Since then it has been used in Kansas multiple times by law enforcement with favorable results. The need for this law is, to me, self-evident. It is a tool that gives law enforcement an immediate edge in a case where a person is missing for any reason. Technology has advanced and it is necessary for us to advance with the technology to keep people safe.

I speak about this law from the experience of a law enforcement veteran with 18 years of experience. It saves lives. Time is of the essence when a person goes missing and, statistically speaking, if harm comes to a missing person it usually occurs within the first two hours. If a missing person is not found within 48 hours their chance of surviving the abduction is minimal. HB 5110 is good public policy. It fulfills the core function of government – providing for the safety of your state's citizens. Courts recognize that the police must respond in emergency situations or people can be harmed or killed. They also recognize that law enforcement is trained to analyze evidence and information to determine what an emergency situation is. Often times this must be done under extreme circumstances and time constraints that do not allow the procuring of legal documents. This bill allows police to use best practices to respond within the realm of today's technology and save lives.

Fourteen states have enacted this law. 911 operators, family members of missing people and law enforcement from some of these states have sent emails to my wife and me or posted messages on the Kelsey Smith Foundation Facebook page with success stories. They tell us how the law has been used to bring people home alive.

I also speak from the perspective of a father whose daughter was missing. The agony of not knowing what had happened to Kelsey or knowing where she was for four days was literally a living hell. She had her cell phone with her yet as her dad I couldn't get the location of her phone. The police couldn't get the location of her phone, even after a subpoena had been served. Why?

There are several reasons the information wasn't released for four days. I'll address two of them. The first one is that a customer service representative for a cell phone company made a decision not to kick the locate request up to someone who could actually make the decision. In essence, an employee trained to handle service issues or calling plan upgrades made the decision on what should be done in an emergency. They made the incorrect choice. The second is that without *legislative certainty*, no business will knowingly put itself at risk of litigation by an affirmative act. Releasing records, even the location of cellular device in an emergency, could, without a law providing clear public policy, make a business pause or refuse to cooperate with law enforcement. It did in Kansas in 2007.

My wife has said it takes either lawsuits or legislation to make big corporations take notice. We did not sue the cell phone provider. What purpose would it have accomplished? No amount of money will bring Kelsey back. As a state senator in Kansas I believe that the Legislature's primary duty is to provide for the public safety. HB 5110 is an excellent example of how government can do that. It provides certainty for the business community, responsible public policy for law enforcement, and codification for the judicial branch. It also provides for the public safety of all citizens of your state. It does all of this without a tax increase, without a budget increase, or the expansion of government.

I respectfully request this committee recommend HB 5110 favorable for passage so that it can be heard by the House and passed. The people of Michigan, and for that matter, every state, deserve the protections this bill offers.

Thank you.

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