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136th General Assembly

Bill Analysis

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Version: As Reported by House Public Safety

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SUMMARY

Interference with custody

- Modifies the penalties for the offense of "interference with custody" if a person entices, takes, keeps, or harbors a child under 18 years old or a child with a mental or physical disability under 21 years old from the child's parent, guardian, or custodian.
- If a court issues a warrant for interference with custody, requires the local law enforcement agency to enter the warrant into the National Crime Information Center Computer (NCIC) and the Law Enforcement Automated Data System (LEADS) with a national pickup radius.

Call location information

- Requires a wireless service provider, on request and under certain emergency circumstances, to provide call location information (CLI) regarding a wireless service device user to a law enforcement agency, a peace officer, or a public safety answering point (PSAP) on behalf of a law enforcement agency ("emergency services").
- Allows a wireless service provider, notwithstanding any other provision of law, to establish protocols for the voluntary disclosure of CLI.
- Requires the Bureau of Criminal Investigations (BCI) to obtain contact information from wireless service providers to facilitate a request from an emergency service for CLI and to disseminate the contact information to each PSAP in Ohio.
- Provides that no cause of action may arise against a wireless service provider, its officers and employees, or other specified persons for providing any information, facilities, or assistance to an emergency service.

Statewide Endangered Missing Child Emergency Alert Program

- Establishes the Statewide Endangered Missing Child Emergency Alert Program to aid in the identification and location of endangered missing children who are determined to be at a high risk for serious bodily harm.

Bill name

- Names the bill the "Kelsey Smith Act."

DETAILED ANALYSIS

Summary

The bill, named the "Kelsey Smith Act,"[1] makes changes to current law, as well as enacts new law, regarding missing or endangered children and emergency services generally. First, the bill modifies criminal penalties for offenses related to illegally keeping, enticing, or harboring a child from the child's parent, guardian, or custodian. Should any warrants be put out for such an offense, law enforcement must enter them into certain national registries. Next, the bill creates a framework by which call location information can be shared by wireless service providers with law enforcement and other emergency services during emergency events to help track down the user's location. Lastly, the bill establishes the Statewide Endangered Missing Child Emergency Alert Program, which will be a coordinated effort among the Governor's Office and other entities to aid in identifying and finding endangered children who have been determined to be at a high risk of serious bodily harm or death.

Discussion

Interference with custody

Offense

Under continuing law, the offense of "interference with custody" prohibits a person from enticing, taking, keeping, or harboring any of the following persons from the person's parent, guardian, or custodian knowing the person is without privilege to do so or being reckless in that regard:

1. A child under 18 years old or a child with a mental or physical disability under 21 years old;
2. A person committed by law to an institution for delinquent, unruly, neglected, abused, or dependent children;
3. A person committed by law to an institution for persons with mental illness or an institution for persons with intellectual disabilities.

Interference with custody also prohibits a person from aiding, abetting, inducing, causing, or encouraging a child or a ward of the juvenile court who has been committed to the custody of

[1] Section 3.

any person, department, or public or private institution to leave the custody of that person, department, or institution without legal consent.[2]

Affirmative defense

Under continuing law, it is an affirmative defense to a charge of enticing or taking under (1) above that the actor reasonably believed that the actor's conduct was necessary to preserve the child's life or safety. It is an affirmative defense to a charge of keeping or harboring under (1), (2), or (3) above, that the actor in good faith gave notice to law enforcement or judicial authorities within a reasonable time after the child or committed person came under the person's shelter, protection, or influence.[3]

Penalties

Under continuing law, the penalty for a violation of (1) above is generally a first degree misdemeanor.[4] The bill modifies the penalties for (1) as follows:

- Under the bill, if the child who is the subject of the violation is removed from the state or if the offender previously has been convicted of the offense, the penalty is a fourth degree felony[5] (under current law, a fifth degree felony).[6]
- Under the bill, if the child who is the subject of the violation is removed from the United States, the penalty is a third degree felony.[7]
- Under the bill, repeals the penalty for when the child who is the subject of the violation suffers physical harm (under current law, a fourth degree felony).[8]

Under continuing law, the penalty for (2) and (3) above is a third degree misdemeanor.[9] The penalty for a violation of the provisions in the second paragraph is a first degree misdemeanor and each day the violation is committed is a separate offense.[10]

Enter warrants into NCIC and LEADS

The bill requires the court, if the court issues a warrant for the arrest of a person for interference with custody, to notify the "local law enforcement agency" of the warrant. The local law enforcement agency must enter the warrant into the National Crime Information Center

[2] R.C. 2919.23(A) and (B).

[3] R.C. 2919.23(C).

[4] R.C. 2919.23(D)(2)(a).

[5] R.C. 2919.23(D)(2)(b).

[6] R.C. 2919.23(D)(2).

[7] R.C. 2919.23(D)(2)(c).

[8] R.C. 2919.23(D)(2).

[9] R.C. 2919.23(D)(3).

[10] R.C. 2919.23(D)(4).

Computer (NCIC) and the Law Enforcement Automated Data System (LEADS) with a national pickup radius.[11]

The bill defines "local law enforcement agency" as the police department of a municipal corporation in which an offense occurred or, if the offense did not occur in a municipal corporation, the sheriff of the county in which the offense occurred.[12]

Call location information disclosure

The bill requires a wireless service provider, on request, to provide call location information (CLI) to a law enforcement agency, a peace officer, or a public safety answering point (PSAP) on behalf of a law enforcement agency ("emergency services") concerning a wireless service device user, in the following emergency situations:

- To enable the peace officer or law enforcement agency to respond to a call for emergency service by a wireless service subscriber, customer, or user; or
- Danger of death or serious physical injury to a person is involved, where disclosure of communications relating to the emergency is required without delay.

In either circumstance, the bill provides that a wireless service provider must believe, in good faith, that an emergency exists requiring the disclosure without delay of emergency communications.

Under the bill, "emergency" means an occurrence or event that poses an imminent threat to the health or life of a human. "Call location information" means real-time, precision location requests from a wireless service device, commonly referred to as "pings," and will typically reflect a latitude and longitude along with a certainty factor.

"Law enforcement agency" means an organization or unit made up of law enforcement officers.

"Peace officer" and "law enforcement officer" are defined to include, for example, a sheriff, deputy sheriff, a deputy marshal, municipal police officers, or township police officers. Peace officer and law enforcement officer definitions are not identical, such that a large number of persons are included as those officers.

A "PSAP" is an entity responsible for receiving requests for emergency services sent by dialing 9-1-1 within a specified territory and processing those requests for emergency services according to a specific operational policy that includes directly dispatching the appropriate emergency service provider, relaying a message, or transferring the request for emergency services to such provider, and can be a physical location or virtual.[13]

[11] R.C. 2929.45(B).

[12] R.C. 2929.45(A).

[13] R.C. 4927.25 (A) through (E) and 4927.26; R.C. 128.01, 2901.01, and 2921.51, not in the bill.

Voluntary disclosure of CLI

The bill allows a wireless service provider, notwithstanding any other provision of law, to establish protocols for the voluntary disclosure of CLI.[14]

Contact information given to BCI

The bill requires the Bureau of Criminal Investigation (BCI) to obtain contact information from all wireless service providers authorized to do business in Ohio to facilitate a request from an emergency service for CLI pursuant to the bill's provisions. Additionally, the bill requires BCI to disseminate the contact information to each PSAP in Ohio.[15]

Immunity from legal action

The bill provides that no cause of action can arise in any state court against a wireless service provider, or its officers, employees, agents, or other persons, for providing any information, facilities, or assistance to an emergency service in accordance with the bill's provisions.[16]

Statewide Endangered Missing Child Emergency Alert Program

The bill establishes the Statewide Endangered Missing Child Emergency Alert Program ("Alert Program") to aid in the identification and location of endangered missing children who are under 18 years old and who are at a high risk for serious bodily harm or death, as determined by a law enforcement agency. The Alert Program is required to be a coordinated effort among:

- The Governor's Office;
- The Department of Public Safety;
- The Attorney General;
- Law enforcement agencies;
- Ohio's public and commercial TV and radio broadcasters;
- Any others as deemed necessary by the Governor.

"Law enforcement agency" under the Alert Program includes a county sheriff's office, the office of a village marshal, a municipal corporation police department, a regional transit authority police force, a metropolitan housing authority police force, the state highway patrol, a state university law enforcement agency, the office of a township police constable, and the police department of a township or joint police district.[17]

[14] R.C. 4927.27.

[15] R.C. 4927.28.

[16] R.C. 4927.29.

[17] R.C. 5502.55(A)(2) and (B)(1) and (2).

Activation criteria

The bill requires the following criteria to be met prior to activating the Alert Program:

- The local investigating law enforcement agency confirms that the disappearance of the endangered missing child has occurred;
- That agency determines that the child is under 18 years old;
- That agency determines the disappearance poses a high risk for serious bodily harm or death to the child;
- There is sufficient descriptive information about the child and the circumstances surrounding the disappearance to indicate that activation of the Alert Program will help locate the child.

The bill emphasizes that nothing in the bill's provisions prevents the activation of a local or regional emergency alert program that may impose different activation criteria. Additionally, the bill allows for cooperation from the state highway patrol and BCI to ensure that an endangered missing child that meets the activation criteria is entered into LEADS as a missing person; and upon entry of the child, LEADS must automatically notify law enforcement agencies and BCI that the child is a missing person.[18]

Immunity from legal action

The bill provides that any radio broadcast system, TV broadcast station, or cable system participating in the Alert Program, and a director, officer, employee, or agent of a station or system participating in the Alert Program, is immune from liability for damages for any loss allegedly caused by or resulting from a broadcast or cablecast of any information pursuant to the Alert Program, including a failure to do so.

Under the bill, "cable system," means any facility, with certain exclusions, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service that includes video programming and that is provided to multiple subscribers within a community.[19]

Criminal offense

The bill prohibits a person from knowingly making a false report that a child is missing and that leads to the implementation of the Alert Program, or a local or regional emergency alert program. A person found guilty of violating this offense is guilty of a fourth degree felony.[20]

[18] R.C. 5502.55(B)(3), (C), and (D).

[19] R.C. 5502.55(E).

[20] R.C 5502.55(A)(1) and (F) and 2913.04(J)(3).

HISTORY

Action	Date
Introduced	02-04-26
Reported, H. Public Safety	06-03-26

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