

Prepared Testimony of Melissa Smith

Mother of Kelsey Smith

In Support of H.R. 4889

April 13, 2016



In Memory of Kelsey

First, I would like to thank Chairman Walden, Vice Chairman Latta, Ranking Member Eshoo, and the honorable committee members for considering 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 seven years ago and to date has passed in twenty-two states. On June 2, 2007 - nine days after graduating from high school -Kelsey was kidnapped in broad daylight from a Target store in Overland Park, Kansas. Her story made national and international news. Four days after her disappearance Kelsey's body was recovered in Missouri, she had been raped, sodomized and strangled to death. What does a parent go through when a child is missing? You do not eat because you do not know if your child is eating. You do not 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 Verizon responsible for Kelsey's death.

I was out of state and on my way home when our daughter Lindsey called me. She informed me that Kelsey was not answering her phone nor was she responding to text messages, I knew immediately that something was wrong. My husband Greg, Kelsey's siblings and her boyfriend John, 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 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 phone provider, explained that my daughter was missing and that I needed help to find her. They told me that they were unable to do that and that I could look on-line for her cell phone activity. We had already done that. The police had been contacted and I believe Kelsey's car had been located. Some time that night Greg had also contacted them and they repeated the same to him. Sgt. Tippe of the Overland Park Police Department contacted them – which was recorded – explaining why he needed this information. Still it was not

released. Over the next few days, Verizon was contacted multiple times by family, law enforcement and was even issued a subpoena by the district attorney's office asking for Kelsey's cell phone "pings". My understanding of events is that on the third day of Kelsey's disappearance an FBI agent was finally able to get through to Verizon regarding what was needed. By the time that information was released it was evening, so on the morning of the fourth day, law enforcement along with an engineer went out to the tower Kelsey's phone had last made contact with. The engineer narrowed the area law enforcement should look and Kelsey's body was found in about forty-five minutes.

In July of 2007, Greg and I had a meeting with Verizon officials regarding what had occurred in Kelsey's case. This meeting included the President of our area – Mark Crumpton – and THREE lawyers. During that meeting one of the lawyers told us that we used incorrect terminology when requesting their help. We had used the word "ping", apparently that was not terminology they used. I explained to her in some very strong language to not make a family figure out what is the magical words to get them to help when a loved one is missing. I told her that Verizon knew exactly what I was asking for because I told them my child was missing and asked them to help find her. I also told all of them to go back, check their protocols to see what was broke, and figure out where they had failed Kelsey. I informed them that I would be following up.

After several months of not hearing anything, I called Mr. Crumpton's office. His administrative assistant Nancy Bates, informed me that he was no longer with the company. I explained who I was and why I was calling. She had the unfortunate job of calling me back and explaining to me that the lawyers said to inform me they found the protocols to be adequate; to which my response was, "Please tell those lawyers they have not heard the last from this mom."

If their actions were adequate I would hate to see what inadequate is. My husband and I met again with Verizon officials sometime after the first passage of The Kelsey Smith Act. At that time, it was explained to us when we were asking for Kelsey's cell phone "pings" they were not able to do that. They explained to "ping" a phone is to send an active signal to the phone and the phone responds. They could have however, looked at the history of where her phone had made contact with the network but, because of human error that was not done. There was also human error involved many times over when Kelsey's situation was continuously handled by a customer service representative instead of being kicked up to the next level. I fully understand that employees are human and that mistakes will be made. This legislation will reduce those errors when a life is at risk.

We spend a lot of time, money, and resources training our law enforcement personnel as to what is a life threatening emergency; we do not invest the same resources training a customer service representative for a wireless provider. Sheriff Frank Denning - the sheriff when Kelsey went missing describes The Kelsey Smith Act this way: "Kelsey's Law transcends simply being labeled as "important". This puts in the hands of emergency responders a tool that can be used to immediately take action in the face of horrible crimes." Kelsey's Law saves lives. It works and the good news is that the cost is NOTHING!! There are not many times a legislator can pass a law that will save lives and it will not cost one cent. After this legislation passed has passed at the state level, we have received emails and heard from 911 managers of how the law works and of situations where lives were saved. There was an elderly gentleman who had a stroke and could only remember wife's phone number but did not know where he was. With Kelsey's law they were able to find him in time and to get him the medical assistance he needed. In Tennessee there was a child that had been taken by a man charged with crimes against ten (10) different

children. They were able to recover this child. A year ago in Lenexa, Kansas, a baby was in a car when it was carjacked. That baby was found in less than forty minutes. The police stated to the news they recovered that baby because of Kelsey's Law.

This legislation has had bi-partisan support at the state level, with sponsors from both parties.

Legislation tends to lag behind technology. This bill amends the telecommunications act of 1934, were cell phones even a thought then? The twenty-two states that have passed similar legislation are the following:

- | | |
|------------------------------------|-------------------------------------|
| 1. Kansas – April 17, 2009 | 12. Colorado – May 13, 2013 |
| 2. New Jersey – January 29, 2010 | 13. Nevada- May 23, 2013 |
| 3. Nebraska – March 17, 2010 | 14. Rhode Island - July 15, 2013 |
| 4. Minnesota - May 13, 2010 | 15. Oregon March 6, 2014 |
| 5. New Hampshire – July 13, 2010 | 16. Pennsylvania – October 22, 2014 |
| 6. North Dakota – April 8, 2011 | 17. Arkansas – March 13, 2015 |
| 7. Tennessee – April 26, 2012 | 18. Iowa – May 1, 2015 |
| 8. Hawaii – April 30, 2012 | 19. Washington – May 7, 2015 |
| 9. Missouri – July 6, 2012 | 20. Louisiana – June 23, 2015 |
| 10. Utah – March 27, 2013 | 21. Delaware – August 7, 2015 |
| 11. West Virginia – April 12, 2013 | 22. Indiana – March 21, 2016 |

There are usually two main concerns when it comes to this bill; those are privacy rights and improper use by law enforcement. The Act only allows law enforcement to access the location of a wireless device. It does not allow the search of the device's contents – phone call history, actual phone calls, text messages, pictures, or any other content on the device. As to the improper use by law enforcement – this Act does not authorize unlawful action, which this would clearly be. For example - an officer who falsifies information to obtain a warrant is in violation of the law and the 4th amendment – subject to criminal prosecution and/or sanction. Misconduct by law enforcement is not unheard of but it is rare and is more the stuff of movie and

television drama than actual day-to-day conduct by law enforcement. Not a single state that has enacted the Kelsey Smith Act has reported any officer misconduct in the use of the Act.

When Greg and I found out that only one of us could testify, he was kind enough to step aside and allow me to be the voice for Kelsey today. That could not have been easy for him being her father, a former police officer and a state Senator in Kansas. We have worked as a team since Kelsey's murder in trying to keep young people safe by establishing The Kelsey Smith Foundation and working on this legislation. I believe his testimony is just as critical in doing that, so I have included his testimony in mine.

On the day that The Kelsey Smith Act passed in Kansas, I told now Senator Rob Olson, the first sponsor of this legislation, maybe the reason my baby laid in the woods for four days was because God knew this law needed to change. He also knew this mama had the mouth to do it. 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,

Melissa Smith

8605 Robinson St.
Overland Park, KS 66212
913-383-1574
Missey5mae@gmail.com