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MEMORANDUM

February 20, 2024

SUBJECT: Constitutional issues with HB 316
(HB 316; Work Order No. 33-LS1235\A)

TO: Representative Laddie Shaw
Chair of the House State Affairs Committee
Attn: Buddy Whitt

FROM: Ian E. Walsh 
Legislative Counsel

You asked whether there are any constitutional issues with HB 316. In short, although disclosing the location of an individual's wireless telephone potentially raises concerns under both the Constitution of the State of Alaska¹ and the United States Constitution,² as drafted, the bill likely does not violate these constitutional provisions.

The governing provisions of the Constitution of the State of Alaska and the United States Constitution both include exigent circumstances exceptions that permit police to conduct a search when necessary to provide aid in an emergency.³ Under the Fourth Amendment of the United States Constitution, police may conduct a warrantless search when there is a need "to render emergency assistance to an injured occupant or to protect an occupant from imminent injury."⁴ The Constitution of the State of Alaska is even more protective; it permits a warrantless search under the emergency aid doctrine only if:

(1) the police must have reasonable grounds to believe there is an emergency at hand and an immediate need for their assistance in the protection of life or property; (2) the search must not be primarily motivated by the intent to arrest a person or to seize evidence; and (3) there must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched.⁵

¹ Art. I, sec. 14, Constitution of the State of Alaska; art I, sec. 22, Constitution of the State of Alaska.

² U.S. Const. amend. IV.

³ See *Brigham City v. Stuart*, 547 U.S. 398, 403-06 (2006) (Fourth Amendment); *State v. Gibson*, 267 P.3d 645, 659-61 (Alaska 2012) (Constitution of the State of Alaska).

⁴ *Brigham City*, 547 U.S. at 403.

⁵ *Gibson*, 267 P.3d at 659.

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Although these cases historically arise in the context of searches of homes, which are "place[s] where the individual's privacy receives special protection,"⁶ cell phone location, especially historical cell phone location, may be entitled to similar special protection.⁷ No governing cases address this question directly.

Assuming that the real-time location information disclosed under HB 316 is entitled to special protection, disclosure of this information must satisfy the criteria for the emergency aid exception to the Constitution of the State of Alaska.⁸ As drafted, this bill likely satisfies these criteria because disclosure is limited to ongoing emergencies and, if the phone was not used to call 911, HB 316 requires a law enforcement agency to have "a reasonable basis to believe that [it] is in the possession of an individual who is in an ongoing emergency that involves the risk of death or serious physical injury." The bill also only permits disclosure of the "current or most recent location information" that is available to the wireless telephone provider, so it does not permit disclosure of historical location information. Therefore, a court would likely conclude that HB 316 does not violate the Constitution of the State of Alaska or the United State Constitution.

Please let me know if I may be of further assistance.

IEW:mis

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⁶ *Lum v. Koles*, 426 P.3d 1103, 1113 (Alaska 2018).

⁷ *See Carpenter v. United States*, 585 U.S. 296, 310-13 (2018) (discussing the revealing nature of historical cell-site records that convey an individual's location).

⁸ These protections are greater than those afforded by the Fourth Amendment, so if the bill satisfies the "emergency aid exception" criteria under the Constitution of the State of Alaska, it also satisfies the Fourth Amendment's exigent circumstances criteria.