

**ADMINISTRATIVE SUBPOENA AMENDMENTS**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Bradley M. Daw**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies the Code of Criminal Procedure regarding the use of administrative subpoenas in the investigation of criminal activity.

**Highlighted Provisions:**

This bill:

▸ defines electronic communication, electronic communications services and systems, and remote computing services;

▸ provides that the administrative subpoenas are for the investigation of offenses committed with the use of an electronic communications system or service or remote computing service;

▸ amends the scope of use of these administrative subpoenas to address criminal activity, rather than only sexual offenses against a minor; and

▸ amends the ground for issuing the administrative subpoena, which currently is when the investigating agency has a reasonable suspicion that an electronic communications system or service or a remote computing service has been used in

the commission of a criminal offense, to ~~H→~~ **[include] specify ←H** when the agency reasonably believes ~~H→~~ **[the criminal] a felony ←H** offense ~~H→~~ **or stalking or electronic communication harassment ←H** may have been committed.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

H.B. 150



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **77-22-2.5**, as enacted by Laws of Utah 2009, Chapter 28



33 *Be it enacted by the Legislature of the state of Utah:*

34 Section 1. Section **77-22-2.5** is amended to read:

35 **77-22-2.5. Administrative subpoenas for criminal investigations for records**  
36 **concerning an electronic communication system or service or remote computing service --**  
37 **Content -- Fee for providing information.**

38 (1) As used in this section:

39 (a) (i) "Electronic communication" means any transfer of signs, signals, writing,  
40 images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire,  
41 radio, electromagnetic, photoelectronic, or photooptical system.

42 (ii) "Electronic communication" does not include:

43 (A) any wire or oral communication;

44 (B) any communication made through a tone-only paging device;

45 (C) any communication from a tracking device; or

46 (D) electronic funds transfer information stored by a financial institution in a  
47 communications system used for the electronic storage and transfer of funds.

48 (b) "Electronic communications service" means any service which provides for users  
49 the ability to send or receive wire or electronic communications.

50 (c) "Electronic communications system" means any wire, radio, electromagnetic,  
51 photooptical, or photoelectronic facilities for the transmission of wire or electronic  
52 communications, and any computer facilities or related electronic equipment for the electronic  
53 storage of the communication.

54 ~~[(a)]~~ (d) "Internet service provider" has the same definition as in Section 76-10-1230.

55 ~~[(b)]~~ (e) "Prosecutor" has the same definition as in Section 77-22-2.

56 ~~[(c)]~~ "Sexual offense against a minor" means:

57 ~~[(i)]~~ sexual exploitation of a minor as defined in Section 76-5a-3 or attempted sexual  
58 ~~exploitation of a minor;~~

59 ~~[(ii) a sexual offense or attempted sexual offense committed against a minor in~~  
60 ~~violation of Title 76, Chapter 5, Part 4, Sexual Offenses; or]~~

61 ~~[(iii) dealing in or attempting to deal in material harmful to a minor in violation of~~  
62 ~~Section 76-10-1206.]~~

63 (f) "Remote computing service" means the provision to the public of computer storage  
64 or processing services by means of an electronic communications system.

65 (2) When a law enforcement agency is investigating ~~[a sexual offense against a minor]~~  
66 criminal activity and has reasonable suspicion that an ~~[Internet protocol address]~~ electronic  
67 communications system or service or remote computing service has been

67a ~~Ĥ→ [or may have been] ←Ĥ~~

68 used in the commission of ~~[the]~~ ~~Ĥ→ [a criminal]~~ any felony ←Ĥ offense ~~Ĥ→~~ , or the offense of  
68a stalking under Section 76-5-106.5 or electronic communication harassment under

68b Section 76-9-201 ←Ĥ , the prosecutor may issue an administrative

69 subpoena, consistent with 18 U.S.C. 2703 and 18 U.S.C. 2702, to the ~~[Internet service]~~  
70 electronic communications system or service or remote computing service provider that owns  
71 or controls the Internet protocol address, websites, email address, or service to a specific  
72 telephone number, requiring the production of the following information, if available, upon  
73 providing in the subpoena the Internet protocol address, email address, telephone number, or  
74 other identifier, and the dates and times the address, telephone number, or other identifier was  
75 suspected of being used in the commission of the offense:

76 (a) names;

77 (b) addresses;

78 (c) local and long distance telephone connections;

79 (d) records of session times and durations;

80 (e) length of service, including the start date and types of service utilized;

81 (f) telephone or other instrument subscriber numbers or other subscriber identifiers,  
82 including any temporarily assigned network address; and

83 (g) means and sources of payment for the service, including any credit card or bank  
84 account numbers.

85 (3) A subpoena issued under this section shall state that the ~~[Internet service]~~  
86 electronic communications system or service or remote computing service provider shall  
87 produce any records under ~~Ĥ→ [Subsection]~~ Subsections ←Ĥ (2) ~~Ĥ→~~ (a) through (g) ←Ĥ that  
87a are reasonably relevant to the investigation of

88 the suspected ~~[sexual offense against a minor]~~ ~~Ĥ→~~ [criminal activity or] felony ←Ĥ offense

88a ~~Ĥ→~~ , or the offense of stalking under Section 76-5-106.5 or electronic communication

88b harassment under Section 76-9-201, ←Ĥ as described in the

89 subpoena.

90 (4) (a) An [~~Internet~~] electronic communications system or service or remote computing  
91 service provider that provides information in response to a subpoena issued under this section  
92 may charge a fee, not to exceed the actual cost, for providing the information.

93 (b) The law enforcement agency conducting the investigation shall pay the fee.

94 (5) The [~~Internet~~] electronic communications system or service or remote computing  
95 service provider served with or responding to the subpoena may not disclose the subpoena to  
96 the account holder identified pursuant to the subpoena.

97 (6) If the [~~Internet~~] electronic communications system or service or remote computing  
98 service provider served with the subpoena does not own or control the Internet protocol  
99 address, websites, email address, or provide service for the telephone number that is the subject  
100 of the subpoena, the provider shall:

101 (a) notify the investigating law enforcement agency that it does not have the  
102 information; and

103 (b) provide to the investigating law enforcement agency any information the provider  
104 [~~may have~~] knows, through reasonable effort, that it has regarding how to locate the Internet  
105 service provider that does own or control the Internet protocol address, websites, email address,  
106 or provide service for the telephone number.

107 (7) (a) Every prosecutorial agency that has issued any subpoenas under this section  
108 shall prepare a written report each year on or before June 30 listing the number of  
109 administrative subpoenas issued.

110 (b) The report shall be submitted to the Utah Commission on Criminal and Juvenile  
111 Justice on or before August 31 of the same year.

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**Legislative Review Note**  
as of **2-10-10 9:12 AM**

**Office of Legislative Research and General Counsel**

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**H.B. 150 - Administrative Subpoena Amendments**

**Fiscal Note**

2010 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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