

ELECTRONIC DEVICE LOCATION AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ryan D. Wilcox

Senate Sponsor: Mark B. Madsen

LONG TITLE

General Description:

This bill requires that a governmental entity obtain a search warrant before obtaining the location information of an electronic device.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires a search warrant before requesting disclosure of the location of an electronic device;
- ▶ provides exceptions for emergencies; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2014.

This bill coordinates with S.B. 46, Administrative Subpoena Modifications, by providing technical and substantive amendments.

Utah Code Sections Affected:

ENACTS:

77-23c-101, Utah Code Annotated 1953

77-23c-102, Utah Code Annotated 1953

77-23c-103, Utah Code Annotated 1953

Utah Code Sections Affected by Coordination Clause:

30 77-23c-102, Utah Code Annotated 1953

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

33 Section 1. Section **77-23c-101** is enacted to read:

34 **CHAPTER 23c. LOCATION PRIVACY FOR ELECTRONIC DEVICES**

35 **77-23c-101. Definitions.**

36 As used in this chapter:

37 (1) "Electronic communication service" means a service that provides to users of the
38 service the ability to send or receive wire or electronic communications.

39 (2) "Electronic device" means a device that enables access to or use of an electronic
40 communication service, remote computing service, or location information service.

41 (3) "Government entity" means the state, a county, a municipality, a higher education
42 institution, a local district, a special service district, or any other political subdivision of the
43 state or an administrative subunit of any political subdivision, including a law enforcement
44 entity or any other investigative entity, agency, department, division, bureau, board, or
45 commission, or an individual acting or purporting to act for or on behalf of a state or local
46 agency.

47 (4) "Location information" means information concerning the location of an electronic
48 device that, in whole or in part, is generated or derived from or obtained by the operation of an
49 electronic device.

50 (5) "Location information service" means the provision of a global positioning service
51 or other mapping, location, or directional information service.

52 (6) "Remote computing service" means the provision of computer storage or
53 processing services by means of an electronic communications system.

54 Section 2. Section **77-23c-102** is enacted to read:

55 **77-23c-102. Location information privacy -- Warrant required for disclosure.**

56 (1) (a) Except as provided in Subsection (2), a government entity may not obtain the
57 location information, stored data, or transmitted data of an electronic device without a search

58 warrant issued by a court upon probable cause.

59 (b) Except as provided in Subsection (1)(c), a government entity may not use, copy, or
60 disclose, for any purpose, the location information, stored data, or transmitted data of an
61 electronic device that is not the subject of the warrant that is collected as part of an effort to
62 obtain the location information, stored data, or transmitted data of the electronic device that is
63 the subject of the warrant in Subsection (1)(a).

64 (c) A government entity may use, copy, or disclose the transmitted data of an electronic
65 device used to communicate with the electronic device that is the subject of the warrant if the
66 government entity reasonably believes that the transmitted data is necessary to achieve the
67 objective of the warrant.

68 (d) The data described in Subsection (1)(b) shall be destroyed in an unrecoverable
69 manner by the government entity as soon as reasonably possible after the data is collected.

70 (2) A government entity may obtain location information without a warrant for an
71 electronic device:

72 (a) in accordance with Section [53-10-104.5](#);

73 (b) if the device is reported stolen by the owner;

74 (c) with the informed, affirmative consent of the owner or user of the electronic device;

75 (d) in accordance with judicially recognized exceptions to warrant requirements;

76 (e) if the owner has voluntarily and publicly disclosed the location information; or

77 (f) if the device is state-owned or is being used by a state employee to access private
78 data on the state network while conducting state business.

79 (3) An electronic communication service provider, its officers, employees, agents, or
80 other specified persons may not be held liable for providing information, facilities, or
81 assistance in accordance with the terms of the warrant issued under this section or without a
82 warrant pursuant to Subsection (2).

83 Section 3. Section **77-23c-103** is enacted to read:

84 **77-23c-103. Notification required -- Delayed notification.**

85 (1) Except as provided in Subsection (2), a government entity that executes a warrant

86 pursuant to Subsection [77-23c-102\(1\)\(a\)](#) shall, within 14 days after the day on which the
87 operation concludes, issue a notification to the owner of the electronic device specified in the
88 warrant that states:

- 89 (a) that a warrant was applied for and granted;
- 90 (b) the kind of warrant issued;
- 91 (c) the period of time during which the collection of data from the electronic device
92 was authorized;
- 93 (d) the offense specified in the application for the warrant;
- 94 (e) the identity of the government entity that filed the application; and
- 95 (f) the identity of the judge who issued the warrant.

96 (2) A government entity seeking a warrant pursuant to Subsection [77-23c-102\(1\)\(a\)](#)
97 may submit a request, and the court may grant permission, to delay the notification required by
98 Subsection (1) for a period not to exceed 30 days, if the court determines that there is probable
99 cause to believe that the notification may:

- 100 (a) endanger the life or physical safety of an individual;
- 101 (b) cause a person to flee from prosecution;
- 102 (c) lead to the destruction of or tampering with evidence;
- 103 (d) intimidate a potential witness; or
- 104 (e) otherwise seriously jeopardize an investigation or unduly delay a trial.

105 (3) When a delay of notification is granted under Subsection (2) and upon application
106 by the government entity, the court may grant additional extensions of up to 30 days each.

107 (4) Upon expiration of the period of delayed notification granted under Subsection (2)
108 or (3), the government entity shall serve upon or deliver by first-class mail to the owner of the
109 electronic device a copy of the warrant together with notice that:

- 110 (a) states with reasonable specificity the nature of the law enforcement inquiry; and
- 111 (b) contains:
 - 112 (i) the information described in Subsections (1)(a) through (f);
 - 113 (ii) a statement that notification of the search was delayed;

114 (iii) the name of the court that authorized the delay of notification; and
115 (iv) a reference to the provision of this chapter that allowed the delay of notification.
116 (5) A government entity is not required to notify the owner of the electronic device if
117 the owner is located outside of the United States.

118 Section 4. **Effective date.**

119 This bill takes effect July 1, 2014.

120 Section 5. **Coordinating H.B. 128 with S.B. 46 -- Technical and substantive**
121 **amendments.**

122 If this H.B. 128 and S.B. 46, Administrative Subpoena Modifications, both pass and
123 become law, it is the intent of the Legislature that Subsection 77-23c-102(2) be modified to
124 read as follows:

125 "(2) (a) A government entity may obtain location information without a warrant for an
126 electronic device:

127 (i) in accordance with Section [53-10-104.5](#);

128 (ii) if the device is reported stolen by the owner;

129 (iii) with the informed, affirmative consent of the owner or user of the electronic
130 device;

131 (iv) in accordance with judicially recognized exceptions to warrant requirements; or

132 (v) if the owner has voluntarily and publicly disclosed the location information.

133 (b) A prosecutor may obtain a judicial order as defined in Section [77-22-2.5](#) for the
134 purposes enumerated in Section [77-22-2.5](#)."