

ELECTRONIC DEVICE LOCATION AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ryan D. Wilcox

Senate Sponsor: _____

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:

None

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



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

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

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

31 **77-23c-101. Definitions.**

32 As used in this chapter:

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

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

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

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

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

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

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

51 **77-23c-102. Location information privacy -- Warrant required for disclosure.**

52 (1) (a) Except as provided in Subsection (2), a government entity may not obtain the
53 location information, stored data, or transmitted data of an electronic device without a search
54 warrant issued by a court upon probable cause.

55 (b) A warrant issued under Subsection (1)(a) is not valid for more than 10 days after its
56 issuance. A judge or magistrate may grant an extension of the warrant upon a finding of
57 continuing probable cause and a finding that the extension is necessary to achieve the objective
58 of the initial warrant. An extension may not exceed 30 days.

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

63 (d) The data described in Subsection (1)(c) shall be destroyed in an unrecoverable
64 manner by the government entity no later than 24 hours after the data is collected.

65 (2) A government entity may obtain location information without a warrant for an
66 electronic device only in accordance with Section [53-10-104.5](#) and under the following
67 circumstances:

68 (a) the device is reported stolen by the owner; or

69 (b) with the informed, affirmative consent of the owner or user of the electronic device.

70 (3) Any evidence obtained in violation of this section is not admissible in a civil,
71 criminal, or administrative proceeding and may not be used in an affidavit of probable cause in
72 an effort to obtain a search warrant.

73 (4) An electronic communication service provider, its officers, employees, agents, or
74 other specified persons may not be held liable for providing information, facilities, or
75 assistance in accordance with the terms of the warrant issued under this section.

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

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

78 (1) Except as provided in Subsection (2), a government entity that executes a warrant
79 pursuant to Subsection [77-23c-102](#)(1)(a) shall, within 14 days after the day on which the
80 operation commences, issue a notification to the owner of the electronic device specified in the
81 warrant that states:

82 (a) that a warrant was applied for and granted;

83 (b) the kind of warrant issued;

84 (c) the period of time during which the collection of data from the electronic device
85 was authorized;

86 (d) the offense specified in the application for the warrant;

87 (e) the identity of the government entity that filed the application; and

88 (f) the identity of the judge who issued the warrant.

89 (2) A government entity seeking a warrant pursuant to Subsection [77-23c-102](#)(1)(a)

90 may submit a request, and the court may grant permission, to delay the notification required by
91 Subsection (1) for a period not to exceed 30 days, if the court determines that there is reason to
92 believe that the notification may:

93 (a) endanger the life or physical safety of an individual;

94 (b) cause a person to flee from prosecution;

95 (c) lead to the destruction of or tampering with evidence;

96 (d) intimidate a potential witness; or

97 (e) otherwise seriously jeopardize an investigation or unduly delay a trial.

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

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

103 (a) states with reasonable specificity the nature of the law enforcement inquiry; and

104 (b) contains:

105 (i) the information described in Subsections (1)(a) through (f);

106 (ii) a statement that notification of the search was delayed;

107 (iii) the name of the court that authorized the delay of notification; and

108 (iv) a reference to the provision of this chapter that allowed the delay of notification.

Legislative Review Note
as of 2-10-14 6:14 AM

Office of Legislative Research and General Counsel