

**ADMINISTRATIVE SUBPOENA AMENDMENTS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Mark B. Madsen**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill changes the standard of proof for an administrative subpoena for electronic records to probable cause.

**Highlighted Provisions:**

This bill:

- ▶ changes the standard of proof for an administrative subpoena for electronic records from reasonable suspicion to probable cause; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**77-22-2.5**, as last amended by Laws of Utah 2015, Chapter 99

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

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

**77-22-2.5. Court orders for criminal investigations for records concerning an electronic communications system or service or remote computing service -- Content --**



28 **Fee for providing information.**

29 (1) As used in this section:

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

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

34 (A) any wire or oral communication;

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

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

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

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

41 (c) "Electronic communications system" means any wire, radio, electromagnetic,  
42 photooptical, or photoelectronic facilities for the transmission of wire or electronic  
43 communications, and any computer facilities or related electronic equipment for the electronic  
44 storage of the communication.

45 (d) "Internet service provider" [~~has the same definition as~~] means the same as that term  
46 is defined in Section 76-10-1230.

47 (e) "Prosecutor" [~~has the same definition as~~] means the same as that term is defined in  
48 Section 77-22-2.

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

51 (g) "Sexual offense against a minor" means:

52 (i) sexual exploitation of a minor as defined in Section 76-5b-201 or attempted sexual  
53 exploitation of a minor;

54 (ii) a sexual offense or attempted sexual offense committed against a minor in violation  
55 of Title 76, Chapter 5, Part 4, Sexual Offenses;

56 (iii) dealing in or attempting to deal in material harmful to a minor in violation of  
57 Section 76-10-1206; or

58 (iv) enticement of a minor or attempted enticement of a minor in violation of Section

59 76-4-401.

60 (2) When a law enforcement agency is investigating a sexual offense against a minor,  
61 an offense of stalking under Section 76-5-106.5, or an offense of child kidnapping under  
62 Section 76-5-301.1, and has [~~reasonable suspicion~~] probable cause to believe that an electronic  
63 communications system or service or remote computing service has been used in the  
64 commission of a criminal offense, a law enforcement agent shall:

65 (a) articulate specific facts showing [~~reasonable grounds~~] probable cause to believe that  
66 the records or other information sought, as designated in Subsections [~~(1)~~] (2)(c)(i) through (v),  
67 are relevant and material to an ongoing investigation;

68 (b) present the request to a prosecutor for review and authorization to proceed; and

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

76 (i) names of subscribers, service customers, and users;

77 (ii) addresses of subscribers, service customers, and users;

78 (iii) records of session times and durations;

79 (iv) length of service, including the start date and types of service utilized; and

80 (v) telephone or other instrument subscriber numbers or other subscriber identifiers,  
81 including any temporarily assigned network address.

82 (3) A court order issued under this section shall state that the electronic  
83 communications system or service or remote computing service provider shall produce any  
84 records under Subsections (2)(c)(i) through (v) that are reasonably relevant to the investigation  
85 of the suspected criminal activity or offense as described in the court order.

86 (4) (a) An electronic communications system or service or remote computing service  
87 provider that provides information in response to a court order issued under this section may  
88 charge a fee, not to exceed the actual cost, for providing the information.

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

90 (5) The electronic communications system or service or remote computing service  
91 provider served with or responding to the court order may not disclose the court order to the  
92 account holder identified pursuant to the court order for a period of 90 days.

93 (6) If the electronic communications system or service or remote computing service  
94 provider served with the court order does not own or control the Internet protocol address,  
95 websites, or email address, or provide service for the telephone number that is the subject of  
96 the court order, the provider shall notify the investigating law enforcement agency that it does  
97 not have the information.

98 (7) There is no cause of action against any provider or wire or electronic  
99 communication service, or its officers, employees, agents, or other specified persons, for  
100 providing information, facilities, or assistance in accordance with the terms of the court order  
101 issued under this section or statutory authorization.

102 (8) (a) A court order issued under this section is subject to the provisions of Title 77,  
103 Chapter 23b, Access to Electronic Communications.

104 (b) Rights and remedies for providers and subscribers under Title 77, Chapter 23b,  
105 Access to Electronic Communications, apply to providers and subscribers subject to a court  
106 order issued under this section.

107 (9) Every prosecutorial agency shall annually on or before February 15 report to the  
108 Commission on Criminal and Juvenile Justice:

109 (a) the number of requests for court orders authorized by the prosecutorial agency;

110 (b) the number of orders issued by the court and the criminal offense, pursuant to  
111 Subsection (2), each order was used to investigate; and

112 (c) if the court order led to criminal charges being filed, the type and number of  
113 offenses charged.

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**