

**Senator Karen Mayne** proposes the following substitute bill:

**CRIMINAL PROVISIONS MODIFICATIONS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Karen Mayne**

House Sponsor: Paul Ray

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**LONG TITLE**

**General Description:**

This bill modifies provisions relating to criminal offenses and penalties in the Utah Code.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ modifies criminal offenses and penalties relating to:
  - clandestine drug labs;
  - electronic communications harassment; and
  - return of a marriage license to a county clerk;
- ▶ repeals the offense of fornication; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:



- 26 **30-1-11**, as last amended by Laws of Utah 2018, Chapter 148
- 27 **58-37d-2**, as last amended by Laws of Utah 2013, Chapter 278
- 28 **58-37d-3**, as last amended by Laws of Utah 2013, Chapters 262 and 413
- 29 **58-37d-4**, as last amended by Laws of Utah 2008, Chapter 305
- 30 **58-37d-5**, as last amended by Laws of Utah 2003, Chapter 115
- 31 **58-37d-6**, as enacted by Laws of Utah 1992, Chapter 156
- 32 **76-9-201**, as last amended by Laws of Utah 2018, Chapter 444
- 33 **77-22-2**, as last amended by Laws of Utah 2009, Chapter 6
- 34 **77-22-2.5**, as last amended by Laws of Utah 2017, Chapter 447

35 REPEALS:

- 36 **76-7-104**, as enacted by Laws of Utah 1973, Chapter 196

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

39 Section 1. Section **30-1-11** is amended to read:

40 **30-1-11. Return of license after ceremony -- Failure -- Penalty.**

41 (1) The individual solemnizing the marriage shall within 30 days [~~thereafter~~] after  
42 solemnizing the marriage return the license to the clerk of the county [~~whence it issued~~] that  
43 issues the license, with a certificate of the marriage over the individual's signature, giving the  
44 date and place of celebration and the names of two or more witnesses present at the marriage.

45 (2) An individual described in Subsection (1) who fails to [~~make the return~~] return the  
46 license is guilty of [~~a class B misdemeanor~~] an infraction.

47 Section 2. Section **58-37d-2** is amended to read:

48 **58-37d-2. Purpose.**

49 The clandestine production of methamphetamine, other amphetamines, phencyclidine,  
50 narcotic analgesic analogs, so-called "designer drugs," various hallucinogens, concentrated  
51 tetrahydrocannabinols, counterfeit opioids, cocaine and methamphetamine, base "crack"  
52 cocaine and methamphetamine "ice" respectively, has increased dramatically throughout the  
53 western states and Utah. These highly technical illegal operations create substantial dangers to  
54 the general public and environment from fire, explosions, and the release of toxic chemicals.  
55 By their very nature these activities often involve a number of persons in a conspiratorial  
56 enterprise to bring together all necessary components for clandestine production, to thwart

57 regulation and detection, and to distribute the final product. Therefore, the Legislature enacts  
58 the following Utah Clandestine Laboratory Act for prosecution of specific illegal laboratory  
59 operations. With regard to the controlled substances specified herein, this act shall control,  
60 notwithstanding the prohibitions and penalties in Title 58, Chapter 37, Utah Controlled  
61 Substances Act.

62 Section 3. Section **58-37d-3** is amended to read:

63 **58-37d-3. Definitions.**

64 (1) As used in this chapter:

65 (a) (i) "Booby trap" means a concealed or camouflaged device designed to cause bodily  
66 injury when triggered by the action of a person making contact with the device.

67 (ii) "Booby trap" includes guns, ammunition, or explosive devices attached to trip  
68 wires or other triggering mechanisms, sharpened stakes, nails, spikes, electrical devices, lines  
69 or wires with hooks attached, and devices for the production of toxic fumes or gases.

70 (b) "Clandestine laboratory operation" means the:

71 (i) purchase or procurement of chemicals, supplies, equipment, or laboratory location  
72 for the illegal manufacture of specified controlled substances;

73 (ii) transportation or arranging for the transportation of chemicals, supplies, or  
74 equipment for the illegal manufacture of specified controlled substances;

75 (iii) setting up of equipment or supplies in preparation for the illegal manufacture of  
76 specified controlled substances;

77 (iv) activity of compounding, synthesis, concentration, purification, separation,  
78 extraction, or other physical or chemical processing of a substance, including a controlled  
79 substance precursor, or the packaging, repackaging, labeling, or relabeling of a container  
80 holding a substance that is a product of any of these activities, when the substance is to be used  
81 for the illegal manufacture of specified controlled substances;

82 (v) illegal manufacture of specified controlled substances; or

83 (vi) distribution or disposal of chemicals, equipment, supplies, or products used in or  
84 produced by the illegal manufacture of specified controlled substances.

85 (c) "Controlled substance precursor" means those chemicals designated in Title 58,  
86 Chapter 37c, Utah Controlled Substance Precursor Act, except those substances designated in  
87 Subsections **58-37c-3(1)(kk)** and (ll).

88 (d) "Counterfeit opioid" means an opioid or container or labeling of an opioid that:

89 (i) (A) without authorization bears the trademark, trade name, or other identifying  
90 mark, imprint, number, device, or any likeness of them, of a manufacturer, distributor, or  
91 dispenser other than the person or persons who in fact manufactured, distributed, or dispensed  
92 the substance which falsely purports to be an opioid distributed by another manufacturer,  
93 distributor, or dispenser; and

94 (B) a reasonable person would believe to be an opioid distributed by an authorized  
95 manufacturer, distributor, or dispenser based on the appearance of the substance as described  
96 under this Subsection (1)(d)(i) or the appearance of the container or labeling of the opioid; or

97 (ii) (A) is falsely represented to be any legally or illegally manufactured opioid; and

98 (B) a reasonable person would believe to be a legal or illegal opioid.

99 ~~[(d)]~~ (e) "Disposal" means the abandonment, discharge, deposit, injection, dumping,  
100 spilling, leaking, or placing of hazardous or dangerous material into or on property, land, or  
101 water so that the material may enter the environment, be emitted into the air, or discharged into  
102 any waters, including groundwater.

103 ~~[(e)]~~ (f) "Hazardous or dangerous material" means a substance that because of its  
104 quantity, concentration, physical characteristics, or chemical characteristics may cause or  
105 significantly contribute to an increase in mortality, an increase in serious illness, or may pose a  
106 substantial present or potential future hazard to human health or the environment when  
107 improperly treated, stored, transported, disposed of, or otherwise improperly managed.

108 ~~[(f)]~~ (g) "Illegal manufacture of specified controlled substances" means in violation of  
109 Title 58, Chapter 37, Utah Controlled Substances Act, the:

110 (i) compounding, synthesis, concentration, purification, separation, extraction, or other  
111 physical or chemical processing for the purpose of producing methamphetamine, other  
112 amphetamine compounds as listed in Schedule I of the Utah Controlled Substances Act,  
113 phencyclidine, narcotic analgesic analogs as listed in Schedule I of the Utah Controlled  
114 Substances Act, lysergic acid diethylamide, ~~or~~ mescaline, tetrahydrocannabinol, or counterfeit  
115 opioid;

116 (ii) conversion of cocaine or methamphetamine to their base forms; or

117 (iii) extraction, concentration, or synthesis of ~~[marijuana as that drug is defined in~~  
118 Section ~~58-37-2~~ tetrahydrocannabinol.

- 119 (h) "Opioid" means the same as that term is defined in Section [58-37f-303](#).
- 120 (i) "Tetrahydrocannabinol" means the same as that term is defined in Section
- 121 [58-37-3.6](#).
- 122 (2) Unless otherwise specified, the definitions in Section [58-37-2](#) also apply to this
- 123 chapter.

124 Section 4. Section **58-37d-4** is amended to read:

125 **58-37d-4. Prohibited acts -- Second degree felony.**

- 126 (1) It is unlawful for any person to knowingly or intentionally:
  - 127 (a) possess a controlled substance or a controlled substance precursor with the intent to
  - 128 engage in a clandestine laboratory operation;
  - 129 (b) possess laboratory equipment or supplies with the intent to engage in a clandestine
  - 130 laboratory operation;
  - 131 (c) sell, distribute, or otherwise supply a controlled substance, controlled substance
  - 132 precursor [~~chemical~~], laboratory equipment, or laboratory supplies, knowing or having
  - 133 reasonable cause to believe any of these items will be used for a clandestine laboratory
  - 134 operation;
  - 135 (d) evade the recordkeeping provisions of Title 58, Chapter 37c, Utah Controlled
  - 136 Substance Precursor Act, knowing or having reasonable cause to believe that the material
  - 137 distributed or received will be used for a clandestine laboratory operation;
  - 138 (e) conspire with or aid another to engage in a clandestine laboratory operation;
  - 139 (f) produce or manufacture, or possess with intent to produce or manufacture a
  - 140 controlled or counterfeit substance except as authorized under Title 58, Chapter 37, Utah
  - 141 Controlled Substances Act;
  - 142 (g) transport or convey a controlled or counterfeit substance with the intent to
  - 143 distribute or to be distributed by the person transporting or conveying the controlled or
  - 144 counterfeit substance or by [~~any other~~] another person regardless of whether the final
  - 145 destination for the distribution is within this state or [~~any other~~] another location; or
  - 146 (h) engage in compounding, synthesis, concentration, purification, separation,
  - 147 extraction, or other physical or chemical processing of any substance, including a controlled
  - 148 substance precursor, or the packaging, repackaging, labeling, or relabeling of a container
  - 149 holding a substance that is a product of any of these activities, knowing or having reasonable

150 cause to believe that the substance is a product of any of these activities and will be used in the  
151 illegal manufacture of specified controlled substances.

152 (2) A person who violates [~~any provision of~~] Subsection (1) is guilty of a second  
153 degree felony punishable by imprisonment for an indeterminate term of not less than [~~3~~] three  
154 years nor more than 15 years.

155 Section 5. Section **58-37d-5** is amended to read:

156 **58-37d-5. Prohibited acts -- First degree felony.**

157 (1) A person who violates Subsection **58-37d-4**(1)(a), (b), (e), (f), or (h) is guilty of a  
158 first degree felony if the trier of fact also finds any one of the following conditions occurred in  
159 conjunction with that violation:

160 (a) possession of a firearm;

161 (b) use of a booby trap;

162 (c) illegal possession, transportation, or disposal of hazardous or dangerous material or  
163 while transporting or causing to be transported materials in furtherance of a clandestine  
164 laboratory operation, there was created a substantial risk to human health or safety or a danger  
165 to the environment;

166 (d) intended laboratory operation was to take place or did take place within 500 feet of  
167 a residence, place of business, church, or school;

168 (e) clandestine laboratory operation actually produced any amount of a specified  
169 controlled substance or a counterfeit opioid; or

170 (f) intended clandestine laboratory operation was for the production of cocaine base or  
171 methamphetamine base.

172 (2) If the trier of fact finds that two or more of the conditions listed in Subsections  
173 (1)(a) through (f) of this section occurred in conjunction with the violation, at sentencing for  
174 the first degree felony:

175 (a) probation shall not be granted;

176 (b) the execution or imposition of sentence shall not be suspended; and

177 (c) the court shall not enter a judgment for a lower category of offense.

178 Section 6. Section **58-37d-6** is amended to read:

179 **58-37d-6. Legal inference of intent -- Illegal possession of a controlled substance**  
180 **precursor or clandestine laboratory equipment.**

181 The trier of fact may infer that [~~the~~] a defendant intended to engage in a clandestine  
182 laboratory operation if the defendant:

183 (1) is in illegal possession of a controlled substance precursor; or  
184 (2) illegally possesses or attempts to illegally possess a controlled substance or  
185 controlled substance precursor and is in possession of any one of the following pieces of  
186 equipment:

- 187 (a) glass reaction vessel;
- 188 (b) separatory funnel;
- 189 (c) glass condenser;
- 190 (d) analytical balance; [~~or~~]
- 191 (e) heating mantle[-:];
- 192 (f) pill press machine or similar device;
- 193 (g) closed loop extraction system;
- 194 (h) extraction tube; or
- 195 (i) rotary evaporator.

196 Section 7. Section **76-9-201** is amended to read:

197 **76-9-201. Electronic communication harassment -- Definitions -- Penalties.**

198 (1) As used in this section:

199 (a) "Adult" means [~~a person~~] an individual 18 years of age or older.

200 (b) "Electronic communication" means [~~any~~] a communication by electronic,  
201 electro-mechanical, or electro-optical communication device for the transmission and reception  
202 of audio, image, or text but does not include broadcast transmissions or similar  
203 communications that are not targeted at [~~any~~] a specific individual.

204 (c) "Electronic communication device" includes a telephone, a facsimile machine,  
205 electronic mail, a pager, a computer, or [~~any other~~] another device or medium that can be used  
206 to communicate electronically.

207 (d) "Minor" means [~~a person~~] an individual who is younger than 18 years of age.

208 (e) "Personal identifying information" means the same as that term is defined in  
209 Section [76-6-1102](#).

210 (2) A person is guilty of electronic communication harassment and subject to  
211 prosecution in the jurisdiction where the communication originated or was received if with

212 intent to intimidate, abuse, threaten, harass, frighten, or disrupt the electronic communications  
213 of another, the person:

214 (a) (i) makes repeated contact by means of electronic communications, regardless of  
215 whether a conversation ensues; or

216 (ii) after the recipient has requested or informed the person not to contact the recipient,  
217 and the person repeatedly or continuously:

218 (A) contacts the electronic communication device of the recipient; or

219 (B) causes an electronic communication device of the recipient to ring or to receive  
220 other notification of attempted contact by means of electronic communication;

221 (b) makes contact by means of electronic communication and insults, taunts, or  
222 challenges the recipient of the communication or any person at the receiving location in a  
223 manner likely to provoke a violent or disorderly response;

224 (c) makes contact by means of electronic communication and threatens to inflict injury,  
225 physical harm, or damage to any person or the property of any person; or

226 (d) causes disruption, jamming, or overload of an electronic communication system  
227 through excessive message traffic or other means utilizing an electronic communication  
228 device[~~;~~ ~~or~~].

229 [~~(e) electronically publishes, posts, or otherwise discloses personal identifying~~  
230 ~~information of another person, in a public online site or forum, without that person's~~  
231 ~~permission.~~]

232 (3) A person who electronically publishes, posts, or otherwise discloses personal  
233 identifying information of another individual in a public online site or forum with the intent to  
234 abuse, threaten, or disrupt the other individual's electronic communication and without the  
235 other individual's permission is guilty of electronic communication harassment.

236 [(3)] (4) (a) (i) Electronic communication harassment committed against an adult is a  
237 class B misdemeanor, except under Subsection [(3)] (4)(a)(ii).

238 (ii) A second or subsequent offense under Subsection [(3)] (4)(a)(i) is [a]:

239 (A) a class A misdemeanor if all prior violations of this section were committed  
240 against adults; and

241 (B) a third degree felony if [any] a prior violation of this section was committed against  
242 a minor.

243 (b) (i) Electronic communication harassment committed against a minor is a class A  
244 misdemeanor, except as provided under Subsection ~~[(3)]~~ (4)(b)(i).

245 (ii) A second or subsequent offense under Subsection ~~[(3)]~~ (4)(b)(i) is a third degree  
246 felony, regardless of whether ~~[any]~~ a prior violation of this section was committed against a  
247 minor or an adult.

248 ~~[(4)]~~ (5) (a) Except as provided under Subsection ~~[(4)]~~ (5)(b), criminal prosecution  
249 under this section does not affect an individual's right to bring a civil action for damages  
250 suffered as a result of the commission of ~~[any of the offenses]~~ an offense under this section.

251 (b) This section does not create ~~[any]~~ a civil cause of action based on electronic  
252 communications made for legitimate business purposes.

253 Section 8. Section 77-22-2 is amended to read:

254 **77-22-2. Investigations -- Right to subpoena witnesses and require production of**  
255 **evidence -- Contents of subpoena -- Rights of witnesses -- Interrogation before closed**  
256 **court -- Disclosure of information.**

257 (1) As used in this section, "prosecutor" means the ~~[attorney general, county attorney,~~  
258 ~~district attorney, or municipal attorney]~~ the same as that term is defined in Section 77-22-4.5.

259 (2) (a) In any matter involving the investigation of a crime or malfeasance in office, or  
260 any criminal conspiracy or activity, the prosecutor may, upon application and approval of the  
261 district court and for good cause shown, conduct a criminal investigation.

262 (b) The application and statement of good cause shall state whether ~~[or not any other]~~  
263 another investigative order related to the investigation at issue has been filed in another court.

264 (3) (a) Subject to the conditions established in Subsection (3)(b), the prosecutor may:

265 (i) subpoena witnesses;

266 (ii) compel their attendance and testimony under oath to be recorded by a suitable  
267 electronic recording device or to be given before any certified court reporter; and

268 (iii) require the production of books, papers, documents, recordings, and any other  
269 items that ~~[constitute]~~ are evidence or may be relevant to the investigation.

270 (b) The prosecutor shall:

271 (i) apply to the district court for each subpoena; and

272 (ii) show that the requested information is reasonably related to the criminal  
273 investigation authorized by the court.

274 (4) (a) The prosecutor shall state in each subpoena:  
275 (i) the time and place of the examination;  
276 (ii) that the subpoena is issued in aid of a criminal investigation; and  
277 (iii) the right of the person subpoenaed to have counsel present.  
278 (b) The examination may be conducted anywhere within the jurisdiction of the  
279 prosecutor issuing the subpoena.  
280 (c) The subpoena need not disclose the names of possible defendants.  
281 (d) Witness fees and expenses shall be paid as in a civil action.  
282 (5) (a) At the beginning of each compelled interrogation, the prosecutor shall  
283 personally inform each witness:  
284 (i) of the general subject matter of the investigation;  
285 (ii) of the privilege to, at any time during the proceeding, refuse to answer any question  
286 or produce any evidence of a communicative nature that may result in self-incrimination;  
287 (iii) that any information provided may be used against the witness in a subsequent  
288 criminal proceeding; and  
289 (iv) of the right to have counsel present.  
290 (b) If the prosecutor has substantial evidence that the subpoenaed witness has  
291 committed a crime that is under investigation, the prosecutor shall:  
292 (i) inform the witness in person before interrogation of that witness's target status; and  
293 (ii) inform the witness of the nature of the charges under consideration against the  
294 witness.  
295 (6) (a) (i) The prosecutor may make written application to any district court showing a  
296 reasonable likelihood that publicly releasing information about the identity of a witness or the  
297 substance of the evidence resulting from a subpoena or interrogation would pose a threat of  
298 harm to a person or otherwise impede the investigation.  
299 (ii) Upon a finding of reasonable likelihood, the court may order the:  
300 (A) interrogation of a witness be held in secret;  
301 (B) occurrence of the interrogation and other subpoenaing of evidence, the identity of  
302 the person subpoenaed, and the substance of the evidence obtained be kept secret; and  
303 (C) record of testimony and other subpoenaed evidence be kept secret unless the court  
304 for good cause otherwise orders.

305 (b) After application, the court may by order exclude from any investigative hearing or  
306 proceeding any persons except:

307 (i) the attorneys representing the state and members of their staffs;

308 (ii) persons who, in the judgment of the attorneys representing the state, are reasonably  
309 necessary to assist in the investigative process;

310 (iii) the court reporter or operator of the electronic recording device; and

311 (iv) the attorney for the witness.

312 (c) This chapter does not prevent attorneys representing the state or members of their  
313 staff from disclosing information obtained pursuant to this chapter for the purpose of furthering  
314 any official governmental investigation.

315 (d) (i) If a secrecy order has been granted by the court regarding the interrogation or  
316 disclosure of evidence by a witness under this subsection, and if the court finds a further  
317 restriction on the witness is appropriate, the court may order the witness not to disclose the  
318 substance of the witness's testimony or evidence given by the witness to others.

319 (ii) Any order to not disclose made under this subsection shall be served with the  
320 subpoena.

321 (iii) In an appropriate circumstance the court may order that the witness not disclose  
322 the existence of the investigation to others.

323 (iv) Any order under this Subsection (6)(d) must be based upon a finding by the court  
324 that one or more of the following risks exist:

325 (A) disclosure by the witness would cause destruction of evidence;

326 (B) disclosure by the witness would taint the evidence provided by other witnesses;

327 (C) disclosure by the witness to a target of the investigation would result in flight or  
328 other conduct to avoid prosecution;

329 (D) disclosure by the witness would damage a person's reputation; or

330 (E) disclosure by the witness would cause a threat of harm to any person.

331 (e) (i) If the court imposes an order under Subsection (6)(d) authorizing an instruction  
332 to a witness not to disclose the substance of testimony or evidence provided and the  
333 prosecuting agency proves by a preponderance of the evidence that a witness has violated that  
334 order, the court may hold the witness in contempt.

335 (ii) An order of secrecy imposed on a witness under this Subsection (6)(e) may not

336 infringe on the attorney-client relationship between the witness and the witness's attorney or on  
337 [~~any other~~] another legally recognized privileged relationship.

338 (7) (a) (i) The prosecutor may submit to any district court a separate written request  
339 that the application, statement of good cause, and the court's order authorizing the investigation  
340 be kept secret.

341 (ii) The request for secrecy is a public record under Title 63G, Chapter 2, Government  
342 Records Access and Management Act, but need not contain any information that would  
343 compromise any of the interest listed in Subsection (7)(c).

344 (b) With the court's permission, the prosecutor may submit to the court, in camera, any  
345 additional information to support the request for secrecy if necessary to avoid compromising  
346 the interests listed in Subsection (7)(c).

347 (c) The court shall consider all information in the application and order authorizing the  
348 investigation and any information received in camera and shall order that all information be  
349 placed in the public file except information that, if disclosed, would pose:

350 (i) a substantial risk of harm to a person's safety;

351 (ii) a clearly unwarranted invasion of or harm to a person's reputation or privacy; or

352 (iii) a serious impediment to the investigation.

353 (d) Before granting an order keeping secret documents and other information received  
354 under this section, the court shall narrow the secrecy order as much as reasonably possible in  
355 order to preserve the openness of court records while protecting the interests listed in  
356 Subsection (7)(c).

357 Section 9. Section ~~77-22-2.5~~ is amended to read:

358 **77-22-2.5. Court orders for criminal investigations for records concerning an**  
359 **electronic communications system or service or remote computing service -- Content --**  
360 **Fee for providing information.**

361 (1) As used in this section:

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

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

366 (A) any wire or oral communication;

- 367 (B) any communication made through a tone-only paging device;
- 368 (C) any communication from a tracking device; or
- 369 (D) electronic funds transfer information stored by a financial institution in a  
370 communications system used for the electronic storage and transfer of funds.
- 371 (b) "Electronic communications service" means any service which provides for users  
372 the ability to send or receive wire or electronic communications.
- 373 (c) "Electronic communications system" means any wire, radio, electromagnetic,  
374 photooptical, or photoelectronic facilities for the transmission of wire or electronic  
375 communications, and any computer facilities or related electronic equipment for the electronic  
376 storage of the communication.
- 377 (d) "Internet service provider" has the same definition as in Section [76-10-1230](#).
- 378 (e) "Prosecutor" has the same definition as in Section ~~[77-22-2]~~ [77-22-4.5](#).
- 379 (f) "Remote computing service" means the provision to the public of computer storage  
380 or processing services by means of an electronic communications system.
- 381 (g) "Sexual offense against a minor" means:
  - 382 (i) sexual exploitation of a minor ~~[as defined in Section 76-5b-201]~~ or attempted sexual  
383 exploitation of a minor in violation of Section [76-5b-201](#);
  - 384 (ii) a sexual offense or attempted sexual offense committed against a minor in violation  
385 of Title 76, Chapter 5, Part 4, Sexual Offenses;
  - 386 (iii) dealing in or attempting to deal in material harmful to a minor in violation of  
387 Section [76-10-1206](#);
  - 388 (iv) enticement of a minor or attempted enticement of a minor in violation of Section  
389 [76-4-401](#); or
  - 390 (v) human trafficking of a child in violation of Section [76-5-308.5](#).
- 391 (2) When a law enforcement agency is investigating a sexual offense against a minor,  
392 an offense of stalking under Section [76-5-106.5](#), or an offense of child kidnapping under  
393 Section [76-5-301.1](#), and has reasonable suspicion that an electronic communications system or  
394 service or remote computing service has been used in the commission of a criminal offense, a  
395 law enforcement agent shall:
  - 396 (a) articulate specific facts showing reasonable grounds to believe that the records or  
397 other information sought, as designated in Subsections (2)(c)(i) through (v), are relevant and

398 material to an ongoing investigation;

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

400 (c) submit the request to a magistrate for a court order, consistent with 18 U.S.C. Sec.  
401 2703 and 18 U.S.C. Sec. 2702, to the electronic communications system or service or remote  
402 computing service provider that owns or controls the Internet protocol address, websites, email  
403 address, or service to a specific telephone number, requiring the production of the following  
404 information, if available, upon providing in the court order the Internet protocol address, email  
405 address, telephone number, or other identifier, and the dates and times the address, telephone  
406 number, or other identifier [~~was~~] is suspected of being used in the commission of the offense:

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

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

409 (iii) records of session times and durations;

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

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

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

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

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

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

424 (6) If the electronic communications system or service or remote computing service  
425 provider served with the court order does not own or control the Internet protocol address,  
426 websites, or email address, or provide service for the telephone number that is the subject of  
427 the court order, the provider shall notify the investigating law enforcement agency that [~~it~~] the  
428 provider does not have the information.

429 (7) There is no cause of action against any provider or wire or electronic  
430 communication service, or [its] the provider or service's officers, employees, agents, or other  
431 specified persons, for providing information, facilities, or assistance in accordance with the  
432 terms of the court order issued under this section or statutory authorization.

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

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

438 (9) [Every] A prosecutorial agency shall annually on or before February 15 report to  
439 the Commission on Criminal and Juvenile Justice:

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

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

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

445 Section 10. **Repealer.**

446 This bill repeals:

447 Section **76-7-104, Fornication.**