

Representative Bradley M. Daw proposes the following substitute bill:

SUBPOENAS FOR RECORDS IN CERTAIN

CRIMINAL INVESTIGATIONS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Bradley M. Daw

Senate Sponsor: John L. Valentine

LONG TITLE

General Description:

This bill modifies the Criminal Code to allow investigative subpoenas of Internet service providers in the investigation of sexual offenses against minors.

Highlighted Provisions:

This bill:

- ▶ allows prosecutors to issue subpoenas regarding Internet information related to the investigation of a sexual offense against a minor;
- ▶ specifies the information that can be subpoenaed;
- ▶ allows the provider to charge a reasonable fee for providing the information and requires that the investigating law enforcement agency pay the fee;
- ▶ requires that the provider that receives the subpoena may not notify the account holder who is the subject of the subpoena; and
- ▶ provides definitions.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.



26 Utah Code Sections Affected:

27 ENACTS:

28 77-22-2.5, Utah Code Annotated 1953



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

31 Section 1. Section 77-22-2.5 is enacted to read:

32 **77-22-2.5. Subpoenas for investigation of Internet sexual offenses against minors**

33 **-- Content of the subpoena -- Fee for providing information.**

34 (1) As used in this section:

35 (a) "Internet service provider" has the same definition as in Section 76-10-1230.

36 (b) "Prosecutor" has the same definition as in Section 77-22-2.

37 (c) "Sexual offense against a minor" means:

38 (i) sexual exploitation of a minor as defined in Section 76-5a-3 or attempted sexual
39 exploitation of a minor;

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

42 (iii) dealing in or attempting to deal in material harmful to a minor in violation of
43 Section 76-10-1206.

44 (2) When a law enforcement agency is investigating a sexual offense against a minor
45 and has reasonable suspicion that an Internet protocol address has been used in the commission
46 of the offense, the prosecutor may issue an administrative subpoena, consistent with 18 U.S.C.
47 2703, to the Internet service provider that owns or controls the Internet protocol address,
48 requiring the production of the following information, if available, upon providing in the
49 subpoena the Internet protocol address and the dates and times the address was suspected of
50 being used in the commission of the offense:

51 (a) $\hat{S} \rightarrow$ [name] names $\leftarrow \hat{S}$;

52 (b) $\hat{S} \rightarrow$ [address] addresses $\leftarrow \hat{S}$;

52a $\hat{S} \rightarrow$ (c) local and long distance telephone connections;

53 ~~[(c)]~~ (d) $\leftarrow \hat{S}$ records of session times and durations;

54 $\hat{S} \rightarrow$ ~~[(d)]~~ (e) $\leftarrow \hat{S}$ length of service, including the start date and types of service utilized;

55 $\hat{S} \rightarrow$ ~~[(e)]~~ (f) $\leftarrow \hat{S}$ telephone or $\hat{S} \rightarrow$ other $\leftarrow \hat{S}$ instrument $\hat{S} \rightarrow$ [number] subscriber
55a numbers $\leftarrow \hat{S}$ or other subscriber $\hat{S} \rightarrow$ [number or identity] identifiers $\leftarrow \hat{S}$, including
56 any temporarily assigned network address; and

57 ~~§~~→ [(f)] (g) ~~←~~§ means and sources of payment for the service ~~§~~→ [~~described under this~~
57a ~~Subsection (2)~~] ~~←~~§ .

58 including any credit card or bank account numbers ~~§~~→ [~~of a subscriber to or a customer of the~~
59 ~~service~~] ~~←~~§ .

60 (3) A subpoena issued under this section shall state that the Internet service provider
61 shall produce any records under Subsection (2) that are reasonably relevant to the investigation
62 of ~~§~~→ [a] ~~the suspected~~ ~~←~~§ sexual offense against a minor ~~§~~→ ~~as described in the subpoena~~ ~~←~~§ .

63 (4) (a) An Internet service provider that provides information in response to a subpoena
64 issued under this section may charge a fee, not to exceed the actual cost, for providing the
65 information.

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

67 (5) The Internet service provider served with or responding to the subpoena may not
68 disclose the subpoena to the account holder identified pursuant to the subpoena.

69 (6) If the Internet service provider served with the subpoena does not own or control
70 the Internet protocol address that is the subject of the subpoena, the provider shall:

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

73 (b) provide to the investigating law enforcement agency any information the provider
74 may have regarding ~~§~~→ ~~how to locate~~ ~~←~~§ the Internet service provider that does own or control
74a ~~the Internet protocol~~
75 ~~address~~.

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

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

81 Section 2. **Effective date.**

82 If approved by two-thirds of all the members elected to each house, this bill takes effect
83 upon approval by the governor, or the day following the constitutional time limit of Utah
84 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
85 the date of veto override.

Fiscal Note**H.B. 59 2nd Sub. (Gray) - Subpoenas for Records in Certain Criminal
Investigations**

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals. Businesses and local governments may be impacted by reporting requirements and associated fees included in the bill.
