

Representative Ryan D. Wilcox proposes the following substitute bill:

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 Requirement Modifications, by providing technical and substantive amendments.

Utah Code Sections Affected:

ENACTS:

77-23c-101, Utah Code Annotated 1953



26 77-23c-102, Utah Code Annotated 1953

27 77-23c-103, Utah Code Annotated 1953

28 Utah Code Sections Affected by Coordination Clause:

29 77-23c-102, Utah Code Annotated 1953



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

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

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

34 **77-23c-101. Definitions.**

35 As used in this chapter:

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

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

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

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

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

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

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

54 **77-23c-102. Location information privacy -- Warrant required for disclosure.**

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

57 warrant issued by a court upon probable cause.

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

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

67 (d) The data described in Subsection (1)(b) shall be destroyed in an unrecoverable
 68 manner by the government entity ~~H→~~ [no later than 24 hours] as soon as reasonably possible ~~←H~~
 68a after the data is collected.

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

71 (a) in accordance with Section 53-10-104.5;

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

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

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

74a ~~S→~~ [or] ~~←S~~

75 (e) if the owner has voluntarily and publicly disclosed the location information ~~S→~~ ; or

75a (f) if the device is state-owned or is being used by a state employee to access private
 75b data on the state network while conducting state business ~~←S~~ .

76 (3) An electronic communication service provider, its officers, employees, agents, or
 77 other specified persons may not be held liable for providing information, facilities, or
 78 assistance in accordance with the terms of the warrant issued under this section ~~H→~~ or without a
 78a warrant pursuant to Subsection (2) ~~←H~~ .

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

80 **77-23c-103. Notification required -- Delayed notification.**

81 (1) Except as provided in Subsection (2), a government entity that executes a warrant
 82 pursuant to Subsection 77-23c-102(1)(a) shall, within 14 days after the day on which the
 83 operation ~~S→~~ [commences] concludes ~~←S~~ , issue a notification to the owner of the electronic
 83a device specified in the
 84 warrant that states:

- 85 (a) that a warrant was applied for and granted;
- 86 (b) the kind of warrant issued;
- 87 (c) the period of time during which the collection of data from the electronic device

88 was authorized;

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

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

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

92 (2) A government entity seeking a warrant pursuant to Subsection 77-23c-102(1)(a)
93 may submit a request, and the court may grant permission, to delay the notification required by
94 Subsection (1) for a period not to exceed 30 days, if the court determines that there is probable
95 cause to believe that the notification may:

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

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

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

99 (d) intimidate a potential witness; or

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

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

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

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

107 (b) contains:

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

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

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

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

112 (5) A government entity is not required to notify the owner of the electronic device if
113 the owner is located outside of the United States.

114 **Section 4. Coordinating H.B. 128 with S.B. 46 -- Technical and substantive**
115 **amendments.**

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

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

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

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

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

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

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

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

128a Ĥ→ Section 5. Effective date.

128b This bill takes effect July 1, 2014. ←Ĥ