

SB0046S02 compared with SB0046

~~{deleted text}~~ shows text that was in SB0046 but was deleted in SB0046S02.

inserted text shows text that was not in SB0046 but was inserted into SB0046S02.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Senator Mark B. Madsen proposes the following substitute bill:

ADMINISTRATIVE SUBPOENA ~~{~~REQUIREMENT

~~}~~MODIFICATIONS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mark B. Madsen

House Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to administrative subpoenas.

Highlighted Provisions:

This bill:

- ▶ ~~{changes the standard of proof required for the issuance of administrative subpoenas}~~ includes enticement or attempted enticement of a minor under the definition of a sexual offense against a minor;
- ▶ requires a law enforcement agency to receive a court order to collect electronic communication records involving specified crimes;
- ▶ amends the reporting ~~{provisions of administrative subpoenas used for the~~

SB0046S02 compared with SB0046

~~collection of electronic records in~~ requirements for a court order issued for criminal investigations of specified crimes; and

- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

~~{ None }~~ This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

77-22-2.5, as last amended by Laws of Utah 2011, Chapter 320

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. ~~{Administrative subpoenas}~~ Court orders for criminal investigations for records concerning an electronic communications system or service or remote computing service -- Content -- Fee for providing information.

(1) As used in this section:

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

(ii) "Electronic communication" does not include:

(A) any wire or oral communication;

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

(C) any communication from a tracking device; or

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

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

(c) "Electronic communications system" means any wire, radio, electromagnetic, photooptical, or photoelectronic facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic

SB0046S02 compared with SB0046

storage of the communication.

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

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

(f) "Sexual offense against a minor" means:

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

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

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

(iv) enticement of a minor or attempted enticement of a minor in violation of Section 76-4-401.

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

(2) When a law enforcement agency is investigating a sexual offense against a minor, an offense of stalking under Section 76-5-106.5, or an offense of child kidnapping ~~{}~~ under Section 76-5-301.1, ~~{}~~ and has reasonable suspicion ~~{}~~ has probable cause to believe that an electronic communications system or service or remote computing service has been used in the commission of a criminal offense, ~~{and if exigent circumstances exist that preclude obtaining a warrant from a judge, then }~~ the prosecutor may issue an administrative subpoena, a law enforcement agent shall:

(a) articulate specific facts showing reasonable grounds to believe that the records or other information sought, as designated in Subsection (c)(i) through (v), are relevant and material to an ongoing investigation;

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

(c) submit the request to a district court judge for a court order, consistent with 18 U.S.C. 2703 and 18 U.S.C. 2702, to the electronic communications system or service or remote computing service provider that owns or controls the Internet protocol address, websites, email address, or service to a specific telephone number, requiring the production of the following information, if available, upon providing in the ~~[subpoena]~~ court order the Internet protocol address, email address, telephone number, or other identifier, and the dates and times the

SB0046S02 compared with SB0046

address, telephone number, or other identifier was suspected of being used in the commission of the offense:

~~[(a)] names;~~

~~[(b)] addresses;~~

~~[(a)] (i) names of subscribers, service customers, and users;~~

~~[(b)] (ii) addresses of subscribers, service customers, and users;~~

~~[(c)] local and long distance telephone connections;~~

~~[(d)] (iii) records of session times and durations;~~

~~[(e)] (iv) length of service, including the start date and types of service utilized; and~~

~~[(f)] (v) telephone or other instrument subscriber numbers or other subscriber~~

identifiers, including any temporarily assigned network address~~[-and].~~

~~[(g)] means and sources of payment for the service, including any credit card or bank account numbers.]~~

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

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

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

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

~~(f)~~(6)~~(f)(5)~~ If the electronic communications system or service or remote computing service provider served with the [subpoena] court order does not own or control the Internet protocol address, websites, or email address, or provide service for the telephone number that is the subject of the [subpoena] court order, the provider shall~~[-(a)]~~ notify the investigating law enforcement agency that it does not have the information~~[-and].~~

SB0046S02 compared with SB0046

~~[(b) provide to the investigating law enforcement agency any information the provider knows, through reasonable effort, that it has regarding how to locate the Internet service provider that does own or control the Internet protocol address, websites, or email address, or provide service for the telephone number.]~~

~~{(7)}{(6)}~~ There is no cause of action against any provider or wire or electronic communication service, or its officers, employees, agents, or other specified persons, for providing information, facilities, or assistance in accordance with the terms of the ~~[administrative subpoena]~~ court order issued under this section or statutory authorization.

~~{(8)}{(7)}~~ (a) ~~[An administrative subpoena]~~ A court order issued under this section is subject to the provisions of Title 77, Chapter 23b, Access to Electronic Communications.

(b) Rights and remedies for providers and subscribers under Title 77, Chapter 23b, Access to Electronic Communications, apply to providers and subscribers subject to ~~[an administrative subpoena]~~ a court order issued under this section.

~~{(9)}~~ Every ~~{(8) A}~~ prosecutorial agency ~~{ that issues an administrative subpoena under this section }~~ shall annually on or before ~~[June 30]~~ February 15 report to the Commission on Criminal and Juvenile Justice ~~[the number of administrative subpoenas issued by the {prosecutorial} agency { under this section } during the previous calendar year.]~~

~~[(10){(9)} State and local prosecutorial and law enforcement agencies shall annually on or before {(7) June 30} {February 15} report to the Commission on Criminal and Juvenile Justice the number of administrative subpoenas the {prosecutorial or law enforcement} agency requested that any federal law enforcement agency {(7)} issue {(7) issued pursuant to 18 U.S.C. Sec. 2703} during the prior calendar year.]~~

~~[(10)a] {For each administrative subpoena issued} the number of requests for court orders authorized by {a} the prosecutorial agency ~~{, or requested by a law enforcement agency, under this section and reported under Subsections (8) and (9), the law enforcement or prosecutorial agency shall keep record of and provide to the Commission on Criminal and Juvenile Justice:~~~~

- ~~—— (a) the contact information for the reporting individual, including:~~
- ~~—— (i) agency title;~~
- ~~—— (ii) name and position of reporting individual; and~~
- ~~—— (iii) agency telephone number;~~

SB0046S02 compared with SB0046

~~_____ (b) a description of the exigent circumstances resulting in the necessity for the issuance of the administrative subpoena rather than a warrant;~~

~~_____ (c);~~

~~_____ (b) the number of {days the agency issuing the administrative subpoena allows for the Internet service provider or electronic communication system's response;~~

~~_____ (d) the name of the Internet service provider or electronic communication system responding to the administrative subpoena;~~

~~_____ (e) }orders issued by the court and the criminal offense{ the administrative subpoena is issued}; pursuant to Subsection (2), each order was used to investigate{, as specified in Subsection (2)}; and~~

~~(~~ff~~c) if the {criminal charge or conviction, if any, resulting from the issuance of the administrative subpoena;~~

~~_____ (11) The Commission on Criminal and Juvenile Justice shall assign a unique identifying number to each administrative subpoena reported by a prosecutorial or law enforcement agency;~~

~~_____ (12) Subsections (8), (9), and (10) apply to all records collected by the Commission on Criminal and Juvenile Justice pertaining to administrative subpoenas issued under this section, including those issued or requested since 2009;~~

Legislative Review Note

~~_____ as of 1-6-14 3:15 PM~~

Office of Legislative Research and General Counsel; court order led to criminal charges being filed, the type and number of offenses charged.

Section 2. Effective date.

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

SB0046S02 compared with SB0046

the date of veto override.