

Senator Mark B. Madsen proposes the following substitute bill:

ADMINISTRATIVE SUBPOENA MODIFICATIONS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mark B. Madsen

House Sponsor: Kay L. McIff

LONG TITLE

General Description:

This bill amends provisions related to administrative subpoenas.

Highlighted Provisions:

This bill:

- ▶ 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 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:

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



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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 -- 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 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

57 (iv) enticement of a minor or attempted enticement of a minor in violation of Section
58 76-4-401.

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

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

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

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

70 (c) submit the request to a district court judge for a court order, consistent with 18

71 U.S.C. 2703 and 18 U.S.C. 2702, to the electronic communications system or service or remote
72 computing service provider that owns or controls the Internet protocol address, websites, email
73 address, or service to a specific telephone number, requiring the production of the following
74 information, if available, upon providing in the ~~[subpoena]~~ court order the Internet protocol
75 address, email address, telephone number, or other identifier, and the dates and times the
76 address, telephone number, or other identifier was suspected of being used in the commission
77 of the offense:

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

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

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

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

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

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

84 identifiers, including any temporarily assigned network address[; and].

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

87 (3) A ~~[subpoena]~~ court order issued under this section shall state that the electronic

88 communications system or service or remote computing service provider shall produce any
89 records under Subsections (2)~~(a)~~(c)(i) through ~~(g)~~ (v) that are reasonably relevant to the
90 investigation of the suspected criminal activity or offense as described in the [subpoena] court
91 order.

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

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

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

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

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

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

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

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

118 (9) Every prosecutorial agency shall annually on or before ~~[June 30]~~ February 15 report

119 to the Commission on Criminal and Juvenile Justice [~~the number of administrative subpoenas~~
120 ~~issued by the agency during the previous calendar year.~~];

121 [~~(10) State and local prosecutorial and law enforcement agencies shall annually on or~~
122 ~~before June 30 report to the Commission on Criminal and Juvenile Justice the number of~~
123 ~~administrative subpoenas the agency requested that any federal law enforcement agency issue~~
124 ~~during the prior calendar year.]~~

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

126 (b) the number of orders issued by the court and the criminal offense, pursuant to

127 Subsection (2), each order was used to investigate; and

128 (c) if the court order led to criminal charges being filed, the type and number of

129 offenses charged.

130 Section 2. **Effective date.**

131 If approved by two-thirds of all the members elected to each house, this bill takes effect

132 upon approval by the governor, or the day following the constitutional time limit of Utah

133 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,

134 the date of veto override.