

**ADMINISTRATIVE SUBPOENA AMENDMENTS**

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Mark B. Madsen**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill changes the standard of proof for an administrative subpoena for electronic records to probable cause.

**Highlighted Provisions:**

This bill:

► changes the standard of proof for an administrative subpoena from reasonable suspicion to probable cause.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**77-22-2.5**, as last amended by Laws of Utah 2014, Chapter 47

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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.**



28 (1) As used in this section:

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

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

33 (A) any wire or oral communication;

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

35 (C) any communication from a tracking device; or

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

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

40 (c) "Electronic communications system" means any wire, radio, electromagnetic,  
41 photooptical, or photoelectronic facilities for the transmission of wire or electronic  
42 communications, and any computer facilities or related electronic equipment for the electronic  
43 storage of the communication.

44 (d) "Internet service provider" [~~has the same definition as~~] means the same as that term  
45 is defined in Section 76-10-1230.

46 (e) "Prosecutor" [~~has the same definition as~~] means the same as that term is defined in  
47 Section 77-22-2.

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

50 [~~(f)~~] (g) "Sexual offense against a minor" means:

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

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

55 (iii) dealing in or attempting to deal in material harmful to a minor in violation of  
56 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 (2) When a law enforcement agency is investigating a sexual offense against a minor,  
60 an offense of stalking under Section 76-5-106.5, or an offense of child kidnapping under  
61 Section 76-5-301.1, and has ~~[reasonable suspicion]~~ probable cause to believe that an electronic  
62 communications system or service or remote computing service has been used in the  
63 commission of a criminal offense, a law enforcement agent shall:

64 (a) articulate specific facts showing ~~[reasonable grounds]~~ probable cause to believe that  
65 the records or other information sought, as designated in Subsection (2)(c)(i) through (v), are  
66 relevant and material to an ongoing investigation;

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

68 (c) submit the request to a district court judge for a court order, consistent with 18  
69 U.S.C. 2703 and 18 U.S.C. 2702, to the electronic communications system or service or remote  
70 computing service provider that owns or controls the Internet protocol address, websites, email  
71 address, or service to a specific telephone number, requiring the production of the following  
72 information, if available, upon providing in the court order the Internet protocol address, email  
73 address, telephone number, or other identifier, and the dates and times the address, telephone  
74 number, or other identifier was suspected of being used in the commission of the offense:

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

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

77 (iii) records of session times and durations;

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

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

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

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

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

89 (5) The electronic communications system or service or remote computing service

90 provider served with or responding to the court order may not disclose the court order to the  
91 account holder identified pursuant to the court order for a period of 90 days.

92 (6) If the electronic communications system or service or remote computing service  
93 provider served with the court order does not own or control the Internet protocol address,  
94 websites, or email address, or provide service for the telephone number that is the subject of  
95 the court order, the provider shall notify the investigating law enforcement agency that it does  
96 not have the information.

97 (7) There is no cause of action against any provider or wire or electronic  
98 communication service, or its officers, employees, agents, or other specified persons, for  
99 providing information, facilities, or assistance in accordance with the terms of the court order  
100 issued under this section or statutory authorization.

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

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

106 (9) Every prosecutorial agency shall annually on or before February 15 report to the  
107 Commission on Criminal and Juvenile Justice:

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

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

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

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**Legislative Review Note**  
**as of 2-10-15 1:31 PM**

**Office of Legislative Research and General Counsel**