

ELECTRONIC INFORMATION AND DATA PRIVACY

AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Craig Hall

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to the privacy of electronic data and information.

Highlighted Provisions:

This bill:

- ▶ requires, with certain exceptions, law enforcement agencies to obtain a warrant for electronic data or information transmitted through an electronic communication service;
- ▶ provides that law enforcement agencies are not required to obtain a warrant or subpoena to obtain or use data from the National Center for Missing and Exploited Children;
- ▶ requires law enforcement agencies to notify an owner within 90 days of a search warrant for an electronic device or electronic information or data;
- ▶ requires law enforcement agencies to notify an owner of an electronic device or electronic information or data that is the subject of a search warrant within three days after an investigation is concluded;
- ▶ repeals language related to an extension for a delayed notification;
- ▶ allows law enforcement agencies to delay notification of a search warrant to an owner of an electronic device or electronic information or data, which is the subject of the search warrant, if the purpose of the delayed notification is to apprehend a



28 fugitive of justice;

29 ▶ allows a law enforcement agency to obtain, use, copy, or disclose, without a
30 subpoena, certain information about subscribers and customers; and

31 ▶ makes technical and conforming changes.

32 **Money Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 None

36 **Utah Code Sections Affected:**

37 AMENDS:

38 **77-23c-102**, as last amended by Laws of Utah 2019, Chapters 362, 479 and last
39 amended by Coordination Clause, Laws of Utah 2019, Chapter 479

40 **77-23c-103**, as last amended by Laws of Utah 2019, Chapter 362

41 **77-23c-104**, as enacted by Laws of Utah 2019, Chapter 362



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

44 Section 1. Section **77-23c-102** is amended to read:

45 **77-23c-102. Electronic information or data privacy -- Warrant required for**
46 **disclosure.**

47 (1) (a) Except as provided in Subsection (2), for a criminal investigation or
48 prosecution, a law enforcement agency may not obtain, without a search warrant issued by a
49 court upon probable cause:

50 (i) the location information, stored data, or transmitted data of an electronic device; or

51 (ii) electronic information or data transmitted by the owner of the electronic

52 information or data;

53 (A) to a provider of a remote computing service [provider]; or

54 (B) through a provider of an electronic communication service.

55 (b) Except as provided in Subsection (1)(c), a law enforcement agency may not use,
56 copy, or disclose, for any purpose, the location information, stored data, or transmitted data of
57 an electronic device, or electronic information or data provided by a provider of a remote
58 computing service [provider] or an electronic communication service, that:

59 (i) is not the subject of the warrant; and

60 (ii) is collected as part of an effort to obtain the location information, stored data, or
61 transmitted data of an electronic device, or electronic information or data provided by a
62 provider of a remote computing service [provider] or an electronic communication service that
63 is the subject of the warrant in Subsection (1)(a).

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

68 (d) The electronic information or data described in Subsection (1)(b) shall be destroyed
69 in an unrecoverable manner by the law enforcement agency as soon as reasonably possible after
70 the electronic information or data is collected.

71 (2) (a) A law enforcement agency may obtain location information without a warrant
72 for an electronic device:

73 (i) in accordance with Section 53-10-104.5;

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

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

77 (iv) in accordance with a judicially recognized exception to warrant requirements;

78 (v) if the owner has voluntarily and publicly disclosed the location information; or

79 (vi) from ~~[the]~~ a provider of a remote computing service [provider if the remote
80 computing service] or an electronic communications service if the provider voluntarily
81 discloses the location information:

82 (A) under a belief that an emergency exists involving an imminent risk to an individual
83 of death, serious physical injury, sexual abuse, live-streamed sexual exploitation, kidnapping,
84 or human trafficking; or

85 (B) that is inadvertently discovered by the ~~[remote computing service]~~ provider and
86 appears to pertain to the commission of a felony, or of a misdemeanor involving physical
87 violence, sexual abuse, or dishonesty.

88 (b) A law enforcement agency may obtain stored data or transmitted data from an
89 electronic device[;] or electronic information or data transmitted by the owner of the electronic

90 information or data to a provider of a remote computing service [~~provider~~] or a provider of an
 91 electronic communication service, without a warrant:

92 (i) with the informed consent of the owner of the electronic device or electronic
 93 information or data;

94 (ii) in accordance with a judicially recognized exception to warrant requirements; or

95 [~~(iii) in connection with a report forwarded by the National Center for Missing and~~
 96 ~~Exploited Children under 18 U.S.C. Sec. 2258A; or]~~

97 [(iv)] (iii) subject to Subsection 77-23c-102(2)(a)(vi)(B), from a provider of a remote
 98 computing service [~~provider if the remote computing service~~] or an electronic communication
 99 service if the provider voluntarily discloses the stored or transmitted data as otherwise
 100 permitted under 18 U.S.C. Sec. 2702.

101 (c) A prosecutor may obtain a judicial order as described in Section 77-22-2.5 for the
 102 purposes [~~enumerated~~] described in Section 77-22-2.5.

103 (3) [~~Am~~] A provider of an electronic communication service [~~provider~~] or a remote
 104 computing service [~~provider~~], the provider's officers, employees, or agents, or other specified
 105 persons may not be held liable for providing information, facilities, or assistance in good faith
 106 reliance on the terms of the warrant issued under this section or without a warrant in
 107 accordance with Subsection (2).

108 (4) Nothing in this chapter:

109 (a) limits or affects the disclosure of public records under Title 63G, Chapter 2,
 110 Government Records Access and Management Act[-];

111 [(5)] (b) [~~Nothing in this chapter~~] affects the rights of an employer under Subsection
 112 34-48-202(1)(e) or an administrative rule adopted under Section 63F-1-206[-]; or

113 (c) limits the ability of a law enforcement agency to receive or use information, without
 114 a warrant or subpoena, from the National Center for Missing and Exploited Children under 18
 115 U.S.C. Sec. 2258A.

116 Section 2. Section 77-23c-103 is amended to read:

117 **77-23c-103. Notification required -- Delayed notification.**

118 (1) (a) Except as provided in Subsection [(2)] (1)(b), a law enforcement agency that
 119 executes a warrant [~~pursuant to~~] in accordance with Subsection 77-23c-102(1)(a) or
 120 77-23c-104(3) shall, within [~~14~~] 90 days after the day on which the electronic information or

121 data that is the subject of the warrant is obtained by the law enforcement agency, issue a
122 notification to the owner of the electronic device or electronic information or data specified in
123 the warrant that states:

- 124 (i) that a warrant was applied for and granted;
125 (ii) the kind of warrant issued;
126 (iii) the period of time during which the collection of the electronic information or data
127 was authorized;
128 (iv) the offense specified in the application for the warrant;
129 (v) the identity of the law enforcement agency that filed the application; and
130 (vi) the identity of the judge who issued the warrant.

131 (b) If a law enforcement agency executes a warrant on an electronic device or on
132 electronic information or data in accordance with Subsection 77-23c-102(1)(a) or
133 77-23c-104(3), the law enforcement agency shall issue a notification described in Subsection
134 (1)(a) to the owner of the device or electronic information or data no more than three days after
135 the day on which the investigation is concluded.

136 ~~[(b)] (c) [The notification requirement under Subsection (1)(a) is not triggered until]~~
137 The time periods for the notification requirements described in Subsections (1)(a) and (b) begin
138 on the day after on which the owner of the electronic device or electronic information or data
139 specified in the warrant is known, or could be reasonably identified, by the law enforcement
140 agency.

141 (2) A law enforcement agency seeking a warrant ~~[pursuant to]~~ in accordance with
142 Subsection 77-23c-102(1)(a) or 77-23c-104(3) may submit a request, and the court may grant
143 permission, to delay the notification required by Subsection (1) for a period not to exceed 30
144 days, if the court determines that there is reasonable cause to believe that the notification may:

- 145 (a) endanger the life or physical safety of an individual;
146 (b) cause a person to flee from prosecution;
147 (c) lead to the destruction of or tampering with evidence;
148 (d) intimidate a potential witness; or
149 (e) otherwise seriously jeopardize an investigation or unduly delay a trial.

150 (3) ~~[(a)]~~ When a delay of notification is granted under Subsection (2) and upon
151 application by the law enforcement agency, the court may grant additional extensions of up to

152 30 days each.

153 ~~[(b) Notwithstanding Subsection (3)(a), when a delay of notification is granted under~~
154 ~~Subsection (2), and upon application by a law enforcement agency, the court may grant an~~
155 ~~additional extension of up to 60 days if the court determines that a delayed notification is~~
156 ~~justified because the investigation involving the warrant:]~~

157 ~~[(i) is interstate in nature and sufficiently complex; or]~~

158 ~~[(ii) is likely to extend up to or beyond an additional 60 days.]~~

159 (4) (a) A law enforcement agency that seeks a warrant for an electronic device or
160 electronic information or data in accordance with Subsection 77-23c-102(1)(a) or
161 77-23c-104(3) may submit a request to the court to delay a notification under Subsection (1) if
162 the purpose of delaying the notification is to apprehend an individual:

163 (i) who is a fugitive from justice under Section 77-30-13; and

164 (ii) for whom an arrest warrant has been issued for a violent felony offense as defined
165 in Section 76-3-203.5.

166 (b) The court may grant the request under Subsection (4)(a) to delay notification until
167 the individual who is a fugitive from justice under Section 77-30-13 is apprehended by the law
168 enforcement agency.

169 (c) A law enforcement agency shall issue a notification described in Subsection (5) to
170 the owner of the electronic device or electronic information or data within 14 days after the day
171 on which the law enforcement agency apprehends the individual described in Subsection (4)(a).

172 ~~[(4)]~~ (5) Upon expiration of the period of delayed notification granted under
173 Subsection (2) or (3), or upon the apprehension of an individual described in Subsection (4)(a),
174 the law enforcement agency shall serve upon or deliver by first-class mail, or by other means if
175 delivery is impracticable, to the owner of the electronic device or electronic information or data
176 a copy of the warrant together with notice that:

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

178 (b) contains:

179 (i) the information described in ~~[Subsections (1)(a)(i) through (vi)]~~ Subsection (1)(a);

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

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

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

183 [~~5~~] (6) A law enforcement agency is not required to notify the owner of the electronic
184 device or electronic information or data if the owner is located outside of the United States.

185 Section 3. Section **77-23c-104** is amended to read:

186 **77-23c-104. Third-party electronic information or data.**

187 (1) As used in this section, "subscriber record" means a record or information of a
188 provider of an electronic communication service or remote computing service that reveals the
189 subscriber's or customer's:

190 (a) name;

191 (b) address;

192 (c) local and long distance telephone connection record, or record of session time and
193 duration;

194 (d) length of service, including the start date;

195 (e) type of service used;

196 (f) telephone number, instrument number, or other subscriber or customer number or
197 identification, including a temporarily assigned network address; and

198 (g) means and source of payment for the service, including a credit card or bank
199 account number.

200 (2) Except as provided in Chapter 22, Subpoena Powers for Aid of Criminal
201 Investigation and Grants of Immunity, a law enforcement agency may not obtain, use, copy, or
202 disclose a subscriber record.

203 (3) A law enforcement agency may not obtain, use, copy, or disclose, for a criminal
204 investigation or prosecution, any record or information, other than a subscriber record, of a
205 provider of an electronic communication service or remote computing service related to a
206 subscriber or customer without a subpoena or a warrant.

207 (4) Notwithstanding Subsections (2) and (3), a law enforcement agency may obtain,
208 use, copy, or disclose a subscriber record, or other record or information related to a subscriber
209 or customer, without a subpoena or a warrant:

210 (a) with the informed, affirmed consent of the subscriber or customer;

211 (b) in accordance with a judicially recognized exception to warrant requirements;

212 (c) if the subscriber or customer voluntarily discloses the record in a manner that is
213 publicly accessible; or

214 (d) if the provider of an electronic communication service or remote computing service
215 voluntarily discloses the record:

216 (i) under a belief that an emergency exists involving the imminent risk to an individual
217 of:

218 (A) death;

219 (B) serious physical injury;

220 (C) sexual abuse;

221 (D) live-streamed sexual exploitation;

222 (E) kidnapping; or

223 (F) human trafficking;

224 (ii) that is inadvertently discovered by the provider, if the record appears to pertain to
225 the commission of:

226 (A) a felony; or

227 (B) a misdemeanor involving physical violence, sexual abuse, or dishonesty; or

228 (iii) subject to Subsection [77-23c-104\(4\)\(d\)\(ii\)](#), as otherwise permitted under 18 U.S.C.
229 Sec. 2702.

230 (5) A provider of an electronic communication service or remote computing service, or
231 the provider's officers, employees, agents, or other specified persons may not be held liable for
232 providing information, facilities, or assistance in good faith reliance on the terms of a warrant
233 issued under this section, or without a warrant in accordance with Subsection (3).