

Representative Craig Hall proposes the following substitute bill:

ELECTRONIC INFORMATION AND DATA PRIVACY

AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Craig Hall

Senate Sponsor: Todd Weiler

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

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26 owner of an electronic device or electronic information or data, which is the subject of the
27 search warrant, if the purpose of the delayed notification is to apprehend a fugitive of justice;

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

30 ▶ makes technical and conforming changes.

31 **Money Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 None

35 **Utah Code Sections Affected:**

36 AMENDS:

37 **77-23c-102**, as last amended by Laws of Utah 2019, Chapters 362, 479 and last
38 amended by Coordination Clause, Laws of Utah 2019, Chapter 479

39 **77-23c-103**, as last amended by Laws of Utah 2019, Chapter 362

40 **77-23c-104**, as enacted by Laws of Utah 2019, Chapter 362



41
42 *Be it enacted by the Legislature of the state of Utah:*

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

44 **77-23c-102. Electronic information or data privacy -- Warrant required for**
45 **disclosure.**

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

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

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

51 information or data:

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

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

54 (b) Except as provided in Subsection (1)(c), a law enforcement agency may not use,
55 copy, or disclose, for any purpose, the location information, stored data, or transmitted data of
56 an electronic device, or electronic information or data provided by a provider of a remote

57 computing service [~~provider~~] or an electronic communication service, that:

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

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

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

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

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

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

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

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

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

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

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

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

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

87 (b) A law enforcement agency may obtain stored data or transmitted data from an

88 electronic device[-] or electronic information or data transmitted by the owner of the electronic
89 information or data to a provider of a remote computing service [provider] or through a
90 provider of an electronic communication service, without a warrant:

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

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

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

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

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

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

107 (4) Nothing in this chapter:

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

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

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

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

116 **77-23c-103. Notification required -- Delayed notification.**

117 [(1) (a) Except as provided in Subsection (2), a law enforcement agency that executes a
118 warrant pursuant to Subsection 77-23c-102(1)(a) or 77-23c-104(3) shall, within 14 days after

119 ~~the day on which the electronic information or data that is the subject of the warrant is obtained~~
120 ~~by the law enforcement agency, issue a notification to the owner of the electronic device or~~
121 ~~electronic information or data specified in the warrant that states:]~~

122 (1) (a) Except as provided in Subsection (2), if a law enforcement agency executes a
123 warrant in accordance with Subsection 77-23c-102(1) or 77-23c-104(3), the law enforcement
124 agency shall notify the owner of the electronic device or electronic information or data
125 specified in the warrant within 90 days after the day on which the electronic device or the
126 electronic data or information is obtained by the law enforcement agency but in no case shall
127 the law enforcement agency notify the owner more than three days after the day on which the
128 investigation is concluded.

129 (b) The notification described in Subsection (1)(a) shall state:

130 (i) that a warrant was applied for and granted;

131 (ii) the kind of warrant issued;

132 (iii) the period of time during which the collection of the electronic information or data
133 was authorized;

134 (iv) the offense specified in the application for the warrant;

135 (v) the identity of the law enforcement agency that filed the application; and

136 (vi) the identity of the judge who issued the warrant.

137 ~~[(b)] (c) [The notification requirement under Subsection (1)(a) is not triggered until]~~

138 For the notification requirement described in Subsection (1)(a), a time period under Subsection
139 (1)(a) begins on the day after the day on which the owner of the electronic device or electronic
140 information or data specified in the warrant is known, or could be reasonably identified, by the
141 law enforcement agency.

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

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

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

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

149 (d) intimidate a potential witness; or

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

151 (3) [(a)] When a delay of notification is granted under Subsection (2) and upon
152 application by the law enforcement agency, the court may grant additional extensions of up to
153 30 days each.

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

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

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

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

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

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

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

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

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

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

179 (b) contains:

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

- 181 (ii) a statement that notification of the search was delayed;
- 182 (iii) the name of the court that authorized the delay of notification; and
- 183 (iv) a reference to the provision of this chapter that allowed the delay of notification.

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

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

187 **77-23c-104. Third-party electronic information or data.**

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

- 191 (a) name;
- 192 (b) address;
- 193 (c) local and long distance telephone connection record, or record of session time and
194 duration;
- 195 (d) length of service, including the start date;
- 196 (e) type of service used;
- 197 (f) telephone number, instrument number, or other subscriber or customer number or
198 identification, including a temporarily assigned network address; and
- 199 (g) means and source of payment for the service, including a credit card or bank
200 account number.

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

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

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

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

- 212 (b) in accordance with a judicially recognized exception to warrant requirements;
- 213 (c) if the subscriber or customer voluntarily discloses the record in a manner that is
- 214 publicly accessible; or
- 215 (d) if the provider of an electronic communication service or remote computing service
- 216 voluntarily discloses the record:
- 217 (i) under a belief that an emergency exists involving the imminent risk to an individual
- 218 of:
- 219 (A) death;
- 220 (B) serious physical injury;
- 221 (C) sexual abuse;
- 222 (D) live-streamed sexual exploitation;
- 223 (E) kidnapping; or
- 224 (F) human trafficking;
- 225 (ii) that is inadvertently discovered by the provider, if the record appears to pertain to
- 226 the commission of:
- 227 (A) a felony; or
- 228 (B) a misdemeanor involving physical violence, sexual abuse, or dishonesty; or
- 229 (iii) subject to Subsection [77-23c-104\(4\)\(d\)\(ii\)](#), as otherwise permitted under 18 U.S.C.
- 230 Sec. 2702.
- 231 (5) A provider of an electronic communication service or remote computing service, or
- 232 the provider's officers, employees, agents, or other specified persons may not be held liable for
- 233 providing information, facilities, or assistance in good faith reliance on the terms of a warrant
- 234 issued under this section, or without a warrant in accordance with Subsection (3).