

HB0057S01 compared with HB0057

~~{deleted text}~~ shows text that was in HB0057 but was deleted in HB0057S01.

inserted text shows text that was not in HB0057 but was inserted into HB0057S01.

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Representative Ryan D. Wilcox proposes the following substitute bill:

LAW ENFORCEMENT INVESTIGATION AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ryan D. Wilcox

Senate Sponsor: _____

LONG TITLE

~~{Committee Note:~~

~~_____ The Law Enforcement and Criminal Justice Interim Committee recommended this bill.~~

~~_____ Legislative Vote: 12 voting for 0 voting against 5 absent~~

~~{General Description:~~

This bill concerns procedures and requirements related to law enforcement investigations.

Highlighted Provisions:

This bill:

- ▶ creates and modifies definitions;
- ▶ establishes law enforcement reporting requirements for reverse-location warrants;
- ▶ requires the State Commission on Criminal and Juvenile Justice to receive, compile, and publish data concerning reverse-location warrants;

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- ▶ provides that a law enforcement agency not in compliance with reverse-location warrant reporting requirements may not receive grants from the State Commission on Criminal and Juvenile Justice;
- ▶ revises law enforcement warrant notification requirements and procedures for certain owners of devices or information;
- ▶ places restrictions on and establishes procedures for law enforcement access to reverse-location information;
- ▶ requires, with a sunset provision, a specified notice for certain warrant applications; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63A-16-1002, as enacted by Laws of Utah 2022, Chapter 390 and last amended by Coordination Clause, Laws of Utah 2022, Chapter 390

63I-2-277, as last amended by Laws of Utah 2016, Chapter 348

63M-7-204, as last amended by Laws of Utah 2022, Chapter 187

63M-7-218, as enacted by Laws of Utah 2022, Chapter 390 and last amended by Coordination Clause, Laws of Utah 2022, Chapter 390

77-23c-101.2, as last amended by Laws of Utah 2019, Chapter 479 and renumbered and amended by Laws of Utah 2019, Chapter 362 and last amended by Coordination Clause, Laws of Utah 2019, Chapter 479

77-23c-102, as last amended by Laws of Utah 2022, Chapter 274

77-23c-103, as last amended by Laws of Utah 2021, Chapter 42

77-23c-104, as last amended by Laws of Utah 2021, Chapter 42

ENACTS:

53-22-101, Utah Code Annotated 1953

77-23f-101, Utah Code Annotated 1953

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77-23f-102, Utah Code Annotated 1953

77-23f-103, Utah Code Annotated 1953

77-23f-104, Utah Code Annotated 1953

77-23f-105, Utah Code Annotated 1953

77-23f-106, Utah Code Annotated 1953

77-23f-107, Utah Code Annotated 1953

77-23f-108, Utah Code Annotated 1953

77-23f-109, Utah Code Annotated 1953

REPEALS:

77-23c-101.1, as enacted by Laws of Utah 2019, Chapter 362

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

Section 1. Section **53-22-101** is enacted to read:

CHAPTER 22. REPORTING REQUIREMENTS FOR REVERSE-LOCATION WARRANTS

53-22-101. Reporting requirements for reverse-location warrants.

(1) As used in this section:

(a) "Anonymized" means the same as that term is defined in Section 77-23f-101.

(b) "Commission" means the State Commission on Criminal and Juvenile Justice created in Section 63M-7-201.

(c) "Electronic device" means the same as that term is defined in Section 77-23f-101.

(d) "Law enforcement agency" means the same as that term is defined in Section 77-23c-101.2.

(e) "Reverse-location information" means the same as that term is defined in Section 77-23f-101.

(f) "Reverse-location warrant" means a warrant seeking reverse-location information under Section 77-23f-102, 77-23f-103, or 77-23f-104.

(2) (a) Beginning January 1, 2024, a law enforcement agency shall annually on or before April 30 submit a report to the commission with the following data for the previous calendar year:

(i) the number of reverse-location warrants requested by the law enforcement agency

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under Section 77-23f-102, 77-23f-103, or 77-23f-104;

(ii) the number of reverse-location warrants that a court or magistrate granted after a request described in Subsection (2)(a)(i);

(iii) the number of investigations that used information obtained under a reverse-location warrant to investigate a crime that was not the subject of the reverse-location warrant;

(iv) the number of times reverse-location information was obtained under an exception listed in Section 77-23f-106;

(v) the warrant identification number for each warrant described under Subsection (2)(a)(ii) or (iii); and

(vi) the number of electronic devices for which anonymized electronic device data was obtained under each reverse-location warrant described under Subsection (2)(a)(ii).

(b) A law enforcement agency shall compile the report described in Subsection (2)(a) for each year in the standardized format developed by the commission under Subsection (4).

(3) If a reverse-location warrant is requested by a multijurisdictional team of law enforcement officers, the reporting requirement in this section is the responsibility of the commanding agency or governing authority of the multijurisdictional team.

(4) The commission shall:

(a) develop a standardized format for reporting the data described in Subsection (2);

(b) compile the data submitted under Subsection (2); and

(c) annually on or before August 1, publish on the commission's website a report of the data described in Subsection (2).

Section 2. Section **63A-16-1002** is amended to read:

63A-16-1002. Criminal justice database.

(1) The commission shall oversee the creation and management of a [~~Criminal Justice Database~~] criminal justice database for information and data required to be reported to the commission, organized by county, and accessible to all criminal justice agencies in the state.

(2) The division shall assist with the development and management of the database.

(3) The division, in collaboration with the commission, shall create:

(a) master standards and formats for information submitted to the database;

(b) a portal, bridge, website, or other method for reporting entities to provide the

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information;

(c) a master data management index or system to assist in the retrieval of information in the database;

(d) a protocol for accessing information in the database that complies with state privacy regulations; and

(e) a protocol for real-time audit capability of all data accessed through the portal by participating data source, data use entities, and regulators.

(4) Each criminal justice agency charged with reporting information to the commission shall provide the data or information to the database in a form prescribed by the commission.

(5) The database shall be the repository for the statutorily required data described in:

(a) Section 13-53-111, recidivism reporting requirements;

(b) Section 17-22-32, county jail reporting requirements;

(c) Section 17-55-201, Criminal Justice Coordinating Councils reporting;

(d) Section 24-4-118, forfeiture reporting requirements;

(e) Section 41-6a-511, courts to collect and maintain data;

(f) Section 53-22-101, reporting requirements for reverse-location warrants;

(g) Section 63M-7-214, law enforcement agency grant reporting;

~~(g)~~ (h) Section 63M-7-216, prosecutorial data collection;

~~(h)~~ (i) Section 64-13-21, supervision of sentenced offenders placed in community;

~~(i)~~ (j) Section 64-13-25, standards for programs;

~~(j)~~ (k) Section 64-13-45, department reporting requirements;

~~(k)~~ (l) Section 64-13e-104, housing of state probationary inmates or state parole

inmates;

~~(l)~~ (m) Section 77-7-8.5, use of tactical groups;

~~(m)~~ (n) Section 77-20-103, release data requirements;

~~(n)~~ (o) Section 77-22-2.5, court orders for criminal investigations;

~~(o)~~ (p) Section 78A-2-109.5, court demographics reporting; and

~~(p)~~ (q) any other statutes which require the collection of specific data and the

reporting of that data to the commission.

(6) The commission shall report:

(a) progress on the database, including creation, configuration, and data entered, to the

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Law Enforcement and Criminal Justice Interim Committee not later than November 2022; and

(b) all data collected as of December 31, 2022, to the Law Enforcement and Criminal Justice Interim Committee, the House Law Enforcement and Criminal Justice Standing Committee, and the Senate Judiciary, Law Enforcement and Criminal Justice Standing Committee not later than January 16, 2023.

Section 3. Section **63I-2-277** is amended to read:

63I-2-277. Repeal dates: Title 77.

Subsections 77-23f-102(2)(a)(ii) and 77-23f-103(2)(a)(ii), which require a notice for certain reverse-location search warrant applications, are repealed January 1, 2033.

Section 4. Section **63M-7-204** is amended to read:

63M-7-204. Duties of commission.

(1) The State Commission on Criminal and Juvenile Justice administration shall:

(a) promote the commission's purposes as enumerated in Section 63M-7-201;

(b) promote the communication and coordination of all criminal and juvenile justice agencies;

(c) study, evaluate, and report on the status of crime in the state and on the effectiveness of criminal justice policies, procedures, and programs that are directed toward the reduction of crime in the state;

(d) study, evaluate, and report on programs initiated by state and local agencies to address reducing recidivism, including changes in penalties and sentencing guidelines intended to reduce recidivism, costs savings associated with the reduction in the number of inmates, and evaluation of expenses and resources needed to meet goals regarding the use of treatment as an alternative to incarceration, as resources allow;

(e) study, evaluate, and report on policies, procedures, and programs of other jurisdictions which have effectively reduced crime;

(f) identify and promote the implementation of specific policies and programs the commission determines will significantly reduce crime in Utah;

(g) provide analysis and recommendations on all criminal and juvenile justice legislation, state budget, and facility requests, including program and fiscal impact on all components of the criminal and juvenile justice system;

(h) provide analysis, accountability, recommendations, and supervision for state and

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federal criminal justice grant money;

(i) provide public information on the criminal and juvenile justice system and give technical assistance to agencies or local units of government on methods to promote public awareness;

(j) promote research and program evaluation as an integral part of the criminal and juvenile justice system;

(k) provide a comprehensive criminal justice plan annually;

(l) review agency forecasts regarding future demands on the criminal and juvenile justice systems, including specific projections for secure bed space;

(m) promote the development of criminal and juvenile justice information systems that are consistent with common standards for data storage and are capable of appropriately sharing information with other criminal justice information systems by:

(i) developing and maintaining common data standards for use by all state criminal justice agencies;

(ii) annually performing audits of criminal history record information maintained by state criminal justice agencies to assess their accuracy, completeness, and adherence to standards;

(iii) defining and developing state and local programs and projects associated with the improvement of information management for law enforcement and the administration of justice; and

(iv) establishing general policies concerning criminal and juvenile justice information systems and making rules as necessary to carry out the duties under Subsection (1)(k) and this Subsection (1)(m);

(n) allocate and administer grants, from money made available, for approved education programs to help prevent the sexual exploitation of children;

(o) allocate and administer grants for law enforcement operations and programs related to reducing illegal drug activity and related criminal activity;

(p) request, receive, and evaluate data and recommendations collected and reported by agencies and contractors related to policies recommended by the commission regarding recidivism reduction, including the data described in Section 13-53-111 and Subsection 62A-15-103(2)(l);

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(q) establish and administer a performance incentive grant program that allocates funds appropriated by the Legislature to programs and practices implemented by counties that reduce recidivism and reduce the number of offenders per capita who are incarcerated;

(r) oversee or designate an entity to oversee the implementation of juvenile justice reforms;

(s) make rules and administer the juvenile holding room standards and juvenile jail standards to align with the Juvenile Justice and Delinquency Prevention Act requirements pursuant to 42 U.S.C. Sec. 5633;

(t) allocate and administer grants, from money made available, for pilot qualifying education programs;

(u) oversee the trauma-informed justice program described in Section 63M-7-209;

(v) request, receive, and evaluate the aggregate data collected from prosecutorial agencies and the Administrative Office of the Courts, in accordance with Sections 63M-7-216 and 78A-2-109.5;

(w) report annually to the Law Enforcement and Criminal Justice Interim Committee on the progress made on each of the following goals of the Justice Reinvestment Initiative:

(i) ensuring oversight and accountability;

(ii) supporting local corrections systems;

(iii) improving and expanding reentry and treatment services; and

(iv) strengthening probation and parole supervision;

(x) compile a report of findings based on the data and recommendations provided under Section 13-53-111 and Subsection 62A-15-103(2)(n) that:

(i) separates the data provided under Section 13-53-111 by each residential, vocational and life skills program; and

(ii) separates the data provided under Subsection 62A-15-103(2)(n) by each mental health or substance use treatment program; ~~and~~

(y) publish the report described in Subsection (1)(x) on the commission's website and annually provide the report to the Judiciary Interim Committee, the Health and Human Services Interim Committee, the Law Enforcement and Criminal Justice Interim Committee, and the related appropriations subcommittees~~[-]; and~~

(z) receive, compile, and publish on the commission's website the data provided under

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Section 53-22-101.

(2) If the commission designates an entity under Subsection (1)(r), the commission shall ensure that the membership of the entity includes representation from the three branches of government and, as determined by the commission, representation from relevant stakeholder groups across all parts of the juvenile justice system, including county representation.

Section 5. Section **63M-7-218** is amended to read:

63M-7-218. State grant requirements.

Beginning July 1, 2023, the commission may not award any grant of state funds to any entity subject to, and not in compliance with, the reporting requirements in Subsections 63A-16-1002(5)(a) through [(~~o~~)] (p).

Section 6. Section **77-23c-101.2** is amended to read:

CHAPTER 23c. ELECTRONIC INFORMATION PRIVACY ACT

77-23c-101.2. Definitions.

As used in this chapter:

(1) "Electronic communication service" means a service that provides to users of the service the ability to send or receive wire or electronic communications.

(2) "Electronic device" means a device that enables access to or use of an electronic communication service, remote computing service, or location information service.

(3) (a) "Electronic information [~~or data~~]" means information or data including a sign, signal, writing, image, sound, or intelligence of any nature transmitted or stored in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system.

(b) "Electronic information [~~or data~~]" includes the location information, stored data, or transmitted data of an electronic device.

(c) "Electronic information [~~or data~~]" does not include:

- (i) a wire or oral communication;
- (ii) a communication made through a tone-only paging device; or
- (iii) electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of money.

(4) "Law enforcement agency" means:

(a) an entity of the state or a political subdivision of the state that exists to primarily prevent, detect, or prosecute crime and enforce criminal statutes or ordinances; or

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(b) an individual or entity acting for or on behalf of an entity described in Subsection (4)(a).

(5) (a) "Location information" means [~~information, obtained by means of a tracking device, concerning the~~] information concerning the geographical location of an electronic device that, in whole or in part, is generated or derived from or obtained by the operation of an electronic device or the operation of a software application on an electronic device.

(b) "Location information" includes past, current, and future location information.

(6) "Location information service" means the provision of a global positioning service or other mapping, location, or directional information service.

(7) "Oral communication" means the same as that term is defined in Section 77-23a-3.

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

(9) "Transmitted data" means electronic information [~~or data~~] that is transmitted wirelessly:

(a) from an electronic device to another electronic device without the use of an intermediate connection or relay; or

(b) from an electronic device to a nearby antenna or from a nearby antenna to an electronic device.

(10) "Wire communication" means the same as that term is defined in Section 77-23a-3.

Section 7. Section **77-23c-102** is amended to read:

77-23c-102. Electronic information privacy -- Warrant required for disclosure -- Exceptions.

(1) (a) Except as provided in Subsection (2) or (4), for a criminal investigation or prosecution, a law enforcement agency may not obtain, without a search warrant issued by a court upon probable cause:

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

(ii) electronic information [~~or data~~] transmitted by the owner of the electronic information [~~or data~~]:

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

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

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

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

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

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

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

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

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

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

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

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

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

(vi) from a provider of a remote computing service or an electronic communications service if the provider voluntarily discloses the location information:

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

(B) that is inadvertently discovered by the provider and appears to pertain to the commission of a felony, or of a misdemeanor involving physical violence, sexual abuse, or

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dishonesty.

(b) A law enforcement agency may obtain stored data or transmitted data from an electronic device or electronic information [~~or data~~] transmitted by the owner of the electronic information [~~or data~~] to a provider of a remote computing service or through a provider of an electronic communication service, without a warrant:

(i) with the informed consent of the owner of the electronic device or electronic information [~~or data~~];

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

(iii) subject to Subsection (2)(a)(vi)(B), from a provider of a remote computing service or an electronic communication service if the provider voluntarily discloses the stored or transmitted data as otherwise permitted under 18 U.S.C. Sec. 2702.

(c) A prosecutor may obtain a judicial order as described in Section 77-22-2.5 for the purposes described in Section 77-22-2.5.

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

(4) Nothing in this chapter:

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

(b) affects the rights of an employer under Subsection 34-48-202(1)(e) or an administrative rule adopted under Section 63A-16-205; or

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

Section 8. Section **77-23c-103** is amended to read:

77-23c-103. Notification required -- Exceptions -- Delayed notification.

(1) (a) Except as provided in [~~Subsection (2), if~~] Subsection (1)(b) or (2), a law enforcement agency that executes a warrant [~~in accordance with~~] under Subsection 77-23c-102(1) or 77-23c-104(3) [~~, the law enforcement agency shall notify~~] shall serve the owner of the electronic device or electronic information [~~or data~~] specified in the warrant with

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a notice described in Subsection (3):

~~(i) within 90 days after the day on which the electronic device or the electronic [data or] information is obtained by the law enforcement agency but in no case [shall the law enforcement agency notify the owner] more than three days after the day on which the investigation is concluded[-]; or~~

~~[(b) The notification described in Subsection (1)(a) shall state:]~~

~~[(i) that a warrant was applied for and granted;]~~

~~[(ii) the kind of warrant issued;]~~

~~[(iii) the period of time during which the collection of the electronic information or data was authorized;]~~

~~[(iv) the offense specified in the application for the warrant;]~~

~~[(v) the identity of the law enforcement agency that filed the application; and]~~

~~[(vi) the identity of the judge who issued the warrant.]~~

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

(ii) if the owner of the electronic device or electronic information specified in the warrant is unknown to the law enforcement agency, within 90 days after the day on which the law enforcement agency identifies, or reasonably could identify, the owner.

(b) A law enforcement agency is not required to serve a notice described in Subsection (1)(a) to the owner of the electronic device or electronic information if the owner is located outside of the United States.

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

~~[(a)]~~ (A) endanger the life or physical safety of an individual;

~~[(b)]~~ (B) cause a person to flee from prosecution;

~~[(c)]~~ (C) lead to the destruction of or tampering with evidence;

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~~[(d)]~~ (D) intimidate a potential witness; or

~~[(e)]~~ (E) otherwise seriously jeopardize an investigation or unduly delay a trial.

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

~~[(4)(a)]~~ (b)(i) A law enforcement agency that seeks a warrant for an electronic device or electronic information ~~[or data]~~ in accordance with Subsection 77-23c-102(1)(a) or 77-23c-104(3) may submit a request to the court, and the court may grant permission, to delay ~~[a notification under Subsection (2)]~~ service of the notice required under Subsection (1), if the purpose of delaying the notification is to apprehend an individual:

~~[(i)]~~ (A) who is a fugitive from justice under Section 77-30-13; and

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

~~[(b)]~~ (i) (A) The court may grant the request under Subsection ~~[(4)(a)]~~ (2)(b)(i) to delay notification until the individual who is a fugitive from justice under Section 77-30-13 is apprehended by the law enforcement agency.

~~[(c)]~~ (B) A law enforcement agency shall ~~[issue a notification described in Subsection (5)]~~ serve the notice required under Subsection (1) to the owner of the electronic device or electronic information ~~[or data]~~ within 14 days after the day on which the law enforcement agency apprehends the individual described in Subsection ~~[(4)(a)]~~ (2)(b)(i).

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

~~[(a)]~~ states with reasonable specificity the nature of the law enforcement inquiry; and]

~~[(b)]~~ contains:]

~~[(i)]~~ the information described in Subsection (1)(b);]

~~[(ii)]~~ a statement that notification of the search was delayed;]

~~[(iii)]~~ the name of the court that authorized the delay of notification; and]

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

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

(3) A notice required under Subsection (1) shall include:

(a) a copy of the warrant; and

(b) a written statement identifying:

(i) the offense specified in the warrant application;

(ii) the identity of the law enforcement agency that filed the application;

(iii) the date on which the electronic information was obtained; and

(iv) the number and length of any authorized delays in serving the notice required under Subsection (1), including, if applicable, the name of the court that authorized the delay and a reference to the provision of this chapter that permitted the delay.

(4) A law enforcement agency shall serve the notice required under Subsection (1) to the owner of the electronic device or electronic information by:

(a) personal service on the owner;

(b) first-class mail to the owner's last-known address; or

(c) other reasonable means if the owner's last-known address is unknown.

Section 9. Section **77-23c-104** is amended to read:

77-23c-104. Third-party electronic information.

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

(a) name;

(b) address;

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

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

(e) type of service used;

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

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

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(2) Except as provided in Chapter 22, Subpoena Powers for Aid of Criminal Investigation and Grants of Immunity or Section 77-23f-105, a law enforcement agency may not obtain, use, copy, or disclose a subscriber record.

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

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

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

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

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

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

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

(A) death;

(B) serious physical injury;

(C) sexual abuse;

(D) live-streamed sexual exploitation;

(E) kidnapping; or

(F) human trafficking;

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

(A) a felony; or

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

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

(5) A provider of an electronic communication service or remote computing service, or

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the provider's officers, employees, agents, or other specified persons may not be held liable for providing information, facilities, or assistance in good faith reliance on the terms of a warrant issued under this section, or without a warrant in accordance with Subsection (3).

Section 10. Section **77-23f-101** is enacted to read:

CHAPTER 23f. ACCESS TO REVERSE-LOCATION INFORMATION

77-23f-101. Definitions.

As used in this chapter:

(1) "Anonymized" means that the identifying information connected to an electronic device has been rendered anonymous in a manner such that the subject, including an individual, household, device, or Internet protocol address, is not identifiable to a law enforcement agency.

(2) "Cell site" means transmission or reception equipment, including a base-station antenna, that connects an electronic device to a network.

(3) "Cell site record" means the cell site location information of an electronic device that corresponds to a specific cell site and time frame.

(4) "Electronic device" means a device that enables access to or use of a location information service or can otherwise create or provide location information.

(5) "Geofence" means a specified geographic area defined by a virtual perimeter or geographic coordinates.

(6) "Identifying information" means information tied to an electronic device that identifies the user's or owner's:

(a) name;

(b) address;

(c) phone number;

(d) email; or

(e) other identifying information that would identify the owner or user of the electronic device.

(7) "Law enforcement agency" means the same as that term is defined in Section 77-23c-101.2.

(8) "Location information" means the same as that term is defined in Section 77-23c-101.2.

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(9) "Reverse-location information" means historical location information for:

(a) a defined time period;

(b) a defined or undefined area; and

(c) a defined or undefined number of electronic devices, for which the identities of the owners or users of the electronic devices are unknown to law enforcement.

Section 11. Section **77-23f-102** is enacted to read:

77-23f-102. Obtaining reverse-location information within a geofence -- Warrant required for disclosure -- Procedure.

(1) Except as provided in Section 77-23f-106, for a criminal investigation or prosecution, a law enforcement agency may not obtain reverse-location information for electronic devices within a geofence unless:

(a) the law enforcement agency obtains a search warrant as provided under this section;
and

(b) (i) the investigation or prosecution involves:

(A) a felony;

(B) a class A misdemeanor that involves harm or a risk of harm to a person, ~~the wanton destruction~~ a violation of ~~a trophy animal or protected wildlife~~ Title 23, Wildlife Resources Code of Utah, or is part of a pattern of criminal activity; or

(C) a class B misdemeanor that involves harm or a risk of harm to a person, the ~~wanton destruction~~ unlawful taking of ~~a trophy animal or~~ protected wildlife, or is part of a pattern of criminal activity; or

(ii) the law enforcement agency can demonstrate an imminent, ongoing threat to public safety.

(2) To obtain reverse-location information inside of a geofence, a law enforcement agency shall:

(a) include with the sworn warrant application:

(i) a map or other visual depiction that represents the geofence for which the warrant is seeking information; and

(ii) the following language at the beginning of the application in a legible font no smaller than other text appearing in the application:

"NOTICE: This warrant application seeks judicial authorization for the disclosure of

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reverse-location information of electronic devices near a crime at or near the time of the crime. If authorized, the warrant allows law enforcement to obtain historical location information of all devices within the area described in the warrant during the specified time from entities in possession of the relevant data. The electronic devices captured in the warrant may be owned or used by both alleged criminal perpetrators and individuals not involved in the commission of a crime. For this reason, any warrant issued must require the anonymization of all devices associated with the reverse-location information."; and

(b) establish probable cause to believe that evidence of a crime will be found within the geofence and within a specified period of time.

(3) If a court grants a warrant under Subsection (2), the court shall require that all electronic device data provided pursuant to the warrant be anonymized before the reverse-location information is released to the law enforcement agency.

Section 12. Section **77-23f-103** is enacted to read:

77-23f-103. Obtaining reverse-location information based on cell site records --

Warrant required for disclosure -- Procedure.

(1) Except as provided in Section 77-23f-106, for a criminal investigation or prosecution, a law enforcement agency may not obtain reverse-location information based on cell site records unless:

(a) the law enforcement agency obtains a search warrant as provided under this section;

and

(b) (i) the investigation or prosecution involves:

(A) a felony;

(B) a class A misdemeanor that involves harm or risk of harm to a person, ~~the wanton destruction~~ a violation of ~~a trophy animal or protected wildlife~~ [Title 23, Wildlife Resources Code of Utah](#), or is part of a pattern of criminal activity; or

(C) a class B misdemeanor that involves harm or risk of harm to a person, the ~~wanton destruction~~ unlawful taking of ~~a trophy animal or~~ protected wildlife, or is part of a pattern of criminal activity; or

(ii) the law enforcement agency can demonstrate an imminent, ongoing threat to public safety.

(2) To obtain cell-site based reverse-location information, a law enforcement agency

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shall:

(a) include with the sworn warrant application:

(i) a visual depiction or written description that identifies:

(A) the crime scene location and any other areas of interest related to the crime;

(B) the location of cell sites from which the reverse-location information is sought; and

(C) the distance between the locations described in Subsections (2)(a)(i)(A) and (B);

and

(ii) the following language at the beginning of the application in a legible font no smaller than other text appearing in the application:

"NOTICE: This warrant application seeks judicial authorization for the disclosure of reverse-location information of electronic devices near a crime at or near the time of the crime. If authorized, the warrant allows law enforcement to obtain historical location information of all devices within the area described in the warrant during the specified time from entities in possession of the relevant data. The electronic devices captured in the warrant may be owned or used by both alleged criminal perpetrators and individuals not involved in the commission of a crime. For this reason, any warrant issued must require the anonymization of all devices associated with the reverse-location information."; and

(b) establish probable cause to believe that evidence of a crime will be found within the cell site records described in Subsection (2)(a)(i) and within a specified period of time.

(3) If a court grants a warrant under Subsection (2), the court shall require that all electronic device data provided pursuant to the warrant be anonymized before the reverse-location information is released to the law enforcement agency.

Section 13. Section **77-23f-104** is enacted to read:

77-23f-104. Obtaining additional reverse-location information -- Warrant required for disclosure -- Procedure.

(1) If, after executing a warrant described in Section 77-23f-102 or 77-23f-103, a law enforcement agency seeks to obtain reverse-location information beyond the parameters of the warrant obtained under Section 77-23f-102 or 77-23f-103, the law enforcement agency shall:

(a) include in the sworn warrant application the specific electronic devices identified in the anonymized data for which the law enforcement agency seeks additional reverse-location information;

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(b) establish probable cause to believe that evidence of a crime will be found within a specified period of time; and

(c) affirm that the crime described in Subsection (1)(b) is:

(i) the same crime or directly related to the crime that was the subject of the warrant obtained under Section 77-23f-102 or 77-23f-103; or

(ii) a crime subject to the judicially recognized plain view exception to the warrant requirement.

(2) If a court grants a warrant under Subsection (1), the court shall require that all electronic device data provided pursuant to the warrant be anonymized before the reverse-location information is released to the law enforcement agency.

Section 14. Section **77-23f-105** is enacted to read:

77-23f-105. Obtaining identifying information connected to reverse-location information -- Warrant required for disclosure -- Procedure.

To obtain identifying information for an electronic device identified pursuant to a warrant obtained under Section 77-23f-102, 77-23f-103, or 77-23f-104, a law enforcement agency shall establish in the sworn warrant application probable cause to believe that the electronic device was used or otherwise implicated in a crime.

Section 15. Section **77-23f-106** is enacted to read:

77-23f-106. Exceptions to reverse-location warrant requirements.

(1) Notwithstanding any other provision in this chapter, a law enforcement agency may obtain reverse-location information without a warrant:

(a) in accordance with Section 53-10-104.5; or

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

(2) Nothing in this chapter:

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

(b) affects the rights of an employer under Subsection 34-48-202(1)(e) or an administrative rule adopted under Section 63A-16-205; or

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

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Section 16. Section **77-23f-107** is enacted to read:

77-23f-107. Use, disclosure, and destruction of reverse-location information -- Anonymization.

(1) (a) A law enforcement agency may not use, copy, or disclose, for any purpose, reverse-location information obtained under a warrant under Section 77-23f-102, 77-23f-103, or 77-23f-104 that:

(i) is not related to the crime that is the subject of the warrant; and

(ii) is collected as part of an effort to obtain the reverse-location information of an electronic device that is related to the crime that is the subject of the warrant obtained under Section 77-23f-102, 77-23f-103, or 77-23f-104.

(b) The law enforcement agency shall destroy in an unrecoverable manner the reverse-location information described in Subsection (1)(a) as soon as reasonably possible after the criminal case is declined for prosecution or, if criminal charges are filed, the final disposition of the criminal case.

(2) (a) Reverse-location information obtained under Section 77-23f-102, 77-23f-103, or 77-23f-104 may not be:

(i) compared with, merged with, linked to, or in any way electronically or otherwise connected to a source of electronic data, including a database or file, containing one or more points of data that includes the location information provided by an electronic device; or

(ii) used in any other criminal investigation or prosecution.

(b) Subsection (2)(a)(i) does not apply if all the electronic data, including the reverse-location information, is obtained for the purpose of investigating the same criminal incident.

(3) A person or entity that provides reverse-location information under this chapter shall ensure that the reverse-location information is anonymized before the reverse-location information is provided to a law enforcement agency.

Section 17. Section **77-23f-108** is enacted to read:

77-23f-108. Notifications required -- Exceptions --Delayed notification.

(1) (a) Except as provided in Subsection (1)(b) or (2), a law enforcement agency that executes a warrant under Section 77-23f-105 shall serve a notice described in Subsection (3) on the owner of the electronic device for which identifying information was obtained:

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(i) within 90 days after the day on which the identifying information is obtained by the law enforcement agency, but in no case more than three days after the day on which the investigation is concluded; or

(ii) if the owner of the electronic device for which the identifying information specified in the warrant is unknown to the law enforcement agency, within 90 days after the day on which the law enforcement agency identifies, or reasonably could identify, the owner.

(b) A law enforcement agency is not required to serve a notice described in Subsection (1)(a) to the owner of the electronic device for which identifying information was obtained if the owner is located outside of the United States.

(2) (a) (i) A law enforcement agency seeking a warrant in accordance with Section 77-23f-105 may submit a request, and the court may grant permission, to delay service of the notice required under Subsection (1) for a period not to exceed 30 days, if the court determines that there is reasonable cause to believe that the notification may:

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

(B) cause a person to flee from prosecution;

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

(D) intimidate a potential witness; or

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

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

(b) (i) A law enforcement agency that seeks a warrant in accordance with Section 77-23f-105 may submit a request to the court, and the court may grant permission, to delay service of the notice required under Subsection (1), if the purpose of delaying the notification is to apprehend an individual:

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

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

(ii) (A) The court may grant the request under Subsection (2)(b)(i) to delay notification until the individual who is a fugitive from justice under Section 77-30-13 is apprehended by the law enforcement agency.

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(B) A law enforcement agency shall service the notice required under Subsection (1) to the owner of the electronic device within 14 days after the day on which the law enforcement agency apprehends the individual described in Subsection (2)(b)(i).

(3) A notice required under Subsection (1) shall include:

(a) a copy of the warrant; and

(b) a written statement identifying:

(i) the offense specified in the warrant application;

(ii) the identity of the law enforcement agency that filed the application;

(iii) the date on which the location information or identifying information was obtained; and

(iv) the number and length of any authorized delays in serving the notice required under Subsection (1), including, if applicable, the name of the court that authorized the delay and a reference to the provision of this chapter that permitted the delay.

(4) A law enforcement agency shall serve the notice required under Subsection (1) to the owner of the electronic device by:

(a) personal service on the owner;

(b) first-class mail to the owner's last-known address; or

(c) other reasonable means if the owner's last-known address is unknown.

Section 18. Section **77-23f-109** is enacted to read:

77-23f-109. Exclusion of records.

Reverse-location information or identifying information obtained in violation of the provisions of this chapter shall be subject to the rules governing exclusion as if the records were obtained in violation of the Fourth Amendment to the United States Constitution and Utah Constitution, Article I, Section 14.

Section 19. **Repealer.**

This bill repeals:

Section **77-23c-101.1, Title.**