

**ELECTRONIC INFORMATION AND DATA PRIVACY**

**AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Craig Hall**

Senate Sponsor: \_\_\_\_\_

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**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



fugitive of justice;

- ▶ allows a law enforcement agency to obtain, use, copy, or disclose, without a subpoena, certain information about subscribers and customers; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

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

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

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

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

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

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

(1) (a) Except as provided in Subsection (2), 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 [provider.]; or

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

(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 [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

information or data to a provider of a remote computing service [~~provider~~] or 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) in connection with a report forwarded by the National Center for Missing and Exploited Children under 18 U.S.C. Sec. 2258A; or]~~

~~[(iv)]~~ (iii) subject to Subsection 77-23c-102(2)(a)(vi)(B), from a provider of a remote computing service [~~provider if the 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 ~~[enumerated]~~ described in Section 77-22-2.5.

(3) ~~[An]~~ A provider of an electronic communication service [~~provider~~] or a remote computing service [~~provider~~], 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[-];

~~[(5)]~~ (b) ~~[Nothing in this chapter]~~ affects the rights of an employer under Subsection 34-48-202(1)(e) or an administrative rule adopted under Section 63F-1-206[-]; 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 2. Section 77-23c-103 is amended to read:

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

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

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

- (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.

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

~~[(b)] (c) [The notification requirement under Subsection (1)(a) is not triggered until]~~  
The time periods for the notification requirements described in Subsections (1)(a) and (b) begin on the day after 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.

(2) A law enforcement agency seeking a warrant ~~[pursuant to]~~ 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 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.

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

30 days each.

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

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

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

(4) (a) 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 to delay a notification under Subsection (1) if the purpose of delaying the notification is to apprehend an individual:

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

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

(b) The court may grant the request under Subsection (4)(a) 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) A law enforcement agency shall issue a notification described in Subsection (5) 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).

~~[(4)]~~ (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 [Subsections (1)(a)(i) through (vi)] Subsection (1)(a);

(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.

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

(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 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).