

1 **SENATE FLOOR VERSION**

2 February 26, 2019

3 **AS AMENDED**

4 SENATE BILL NO. 389

5 By: Dahm

6 **[ electronic data - prohibiting obtaining of certain**  
7 **data without a court order or search warrant -**  
8 **exceptions - codification - effective date ]**

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10 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

11 SECTION 1. NEW LAW A new section of law to be codified  
12 in the Oklahoma Statutes as Section 178 of Title 13, unless there is  
13 created a duplication in numbering, reads as follows:

14 As used in this act:

15 1. "Electronic communication service" means a service that  
16 provides to users of the service the ability to send or receive wire  
17 or electronic communications;

18 2. "Electronic device" means a device that enables access to or  
19 use of an electronic communication service or remote computing  
20 service or location information service;

21 3. "Government entity" means the state, a county, a  
22 municipality, a higher education institution, a local district, a  
23 special service district or any other political subdivision of the  
24 state or an administrative subunit of any political subdivision

1 including a law enforcement entity or any other investigative  
2 entity, agency, department, division, bureau, board or commission,  
3 or an individual acting or purporting to act for or on behalf of a  
4 state or local agency;

5 4. "Location information" means information concerning the  
6 location of an electronic device that, in whole or in part, is  
7 generated or derived from or obtained by the operation of an  
8 electronic device;

9 5. "Location information service" means the provision of a  
10 global positioning service or other mapping, locational or  
11 directional information service;

12 6. "Metadata" means the structural information of an electronic  
13 file that contains data about the file itself rather than the  
14 content of the file. The term includes, but is not limited to,  
15 hidden text, formatting codes and formulae, and includes all  
16 contextual, processing and use information necessary to identify and  
17 certify the scope, authenticity and integrity of active or archival  
18 electronic information or records;

19 7. "Remote computing service" means the provision of computer  
20 storage or processing services by means of an electronic  
21 communications system;

22 8. "Stored data" means data or records that are stored on an  
23 electronic device that contains:

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- a. information revealing the identity of users of the applicable service, device or program,
  - b. information about a user's use of the applicable service, device or program,
  - c. information that identifies the recipient or destination of a wire communication or electronic communication sent to or by the user,
  - d. the content of a wire communication or electronic communication sent to or by the user, or
  - e. any data, documents, files, or communications stored by or on behalf of the user with the applicable service provider or on the user's electronic device;
- and

9. "Transmitted data" means data or records that are in the possession, care, custody or control of a provider of a location information service, an electronic communications service or a remote computing service, which contains:

- a. information revealing the identity of users of the applicable service, device or program,
- b. information about a user's use of the applicable service, device or program,
- c. information that identifies the recipient or destination of a wire communication or electronic communication sent to or by the user,

1 d. the content of a wire communication or electronic  
2 communication sent to or by the user, or

3 e. any data, documents, files or communications stored by  
4 or on behalf of the user with the applicable service  
5 provider or on the user's electronic device.

6 SECTION 2. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 179 of Title 13, unless there is  
8 created a duplication in numbering, reads as follows:

9 A. Except as provided in subsection B of this section, a  
10 government entity may not obtain the metadata, stored data or  
11 transmitted data of an electronic device without a court order or  
12 search warrant issued by a court upon probable cause. A government  
13 entity may not use, copy or disclose for any purpose location  
14 information, metadata, stored data or transmitted data of an  
15 electronic device that is not the subject of the court order or  
16 warrant that is collected as part of an effort to obtain the  
17 location information, metadata, stored data or transmitted data of  
18 the electronic device that is the subject of the court order or  
19 warrant. Such data shall be destroyed in an unrecoverable manner by  
20 the government entity no later than twenty-four (24) hours after the  
21 data is collected.

22 B. 1. A government entity shall not obtain the location  
23 information, metadata, stored data or transmitted data of an  
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1 electronic device without a court order or search warrant issued by  
2 a duly authorized court, unless:

- 3 a. the device is reported stolen by the owner,
- 4 b. in response to the user's call for emergency services,
- 5 c. the entity has the informed and affirmative consent of  
6 the owner or user of the electronic device, or
- 7 d. there exists a possible life-threatening situation.

8 2. Any evidence obtained in violation of paragraph 1 of this  
9 subsection shall not be admissible in any civil, criminal or  
10 administrative proceeding and shall not be used in an affidavit of  
11 probable cause in an effort to obtain a search warrant.

12 C. Notice shall be given to the user whose location  
13 information, metadata, stored data, transmitted data or electronic  
14 device was searched or obtained by a government entity.

15 SECTION 3. This act shall become effective November 1, 2019.

16 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY  
17 February 26, 2019 - DO PASS AS AMENDED

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