

117TH CONGRESS  
1ST SESSION

# S. 3231

To amend title 18, United States Code, to require law enforcement officials to obtain a warrant before accessing data stored in cars, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 18, 2021

Mr. WYDEN (for himself and Ms. LUMMIS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend title 18, United States Code, to require law enforcement officials to obtain a warrant before accessing data stored in cars, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Closing the  
5 Warrantless Digital Car Search Loophole Act of 2021”.

6 **SEC. 2. VEHICLE DATA.**

7 (a) IN GENERAL.—Part I of title 18, United States  
8 Code, is amended by adding at the end the following:

1       **“CHAPTER 124—ACCESSING VEHICLE**  
 2                               **DATA.**

“Sec.

“2730. Definitions.

“2731. Prohibition on access to vehicle data.

“2732. Prohibition on use of acquired information as evidence.

3       **“§ 2730. Definitions**

4                “In this chapter:

5                       “(1) ACCESS.—The term ‘access’—

6                               “(A) means any retrieval of covered vehicle  
 7                               data, regardless of—

8                                       “(i) whether the data is obtained as  
 9                               the information is being produced or from  
 10                               digital storage; and

11                                       “(ii) where the vehicle data is stored  
 12                               or transmitted, including by wire or radio;  
 13                               and

14                               “(B) does not include data covered by  
 15                               chapter 119 of this title or section 104 of the  
 16                               Foreign Intelligence Surveillance Act of 1978  
 17                               (50 U.S.C. 1804).

18                       “(2) CONSENT.—The term ‘consent’—

19                               “(A) means an affirmative, express, and  
 20                               voluntary agreement that—

21                                       “(i) states that the person providing  
 22                               the consent is providing consent to a gov-  
 23                               ernment official to access the digital con-

1 tents, access credential, or online account  
2 information, or other information being  
3 sought;

4 “(ii) specifies the type of content, ac-  
5 cess credential, or online account informa-  
6 tion the person is providing access to;

7 “(iii) specifies the time period of the  
8 covered vehicle data to be accessed;

9 “(iv) informs the person providing  
10 consent that consent is optional and that  
11 the government official attempting to ob-  
12 tain consent must otherwise acquire a war-  
13 rant if consent is not obtained;

14 “(v) does not involve sanctions or the  
15 threat of sanctions for withholding consent;  
16 and

17 “(vi) uses clear, simple, and com-  
18 prehensible language that is presented in a  
19 way that is accessible to the person pro-  
20 viding consent; and

21 “(B) does not include consent obtained  
22 through agreement to a generic privacy policy.

23 “(3) COVERED VEHICLE DATA.—The term ‘cov-  
24 ered vehicle data’—

1           “(A) means all onboard and telematics  
2 data generated by, processed by, or stored on a  
3 noncommercial vehicle using computing, storage  
4 and communication systems installed, attached  
5 to, or carried in the vehicle, including diagnostic  
6 data, entertainment system data, navigation  
7 data, images or data captured by onboard sen-  
8 sors, or cameras, including images or data used  
9 to support automated features or autonomous  
10 driving, internet access, and communication to  
11 and from vehicle occupants;

12           “(B) includes data gathered by event data  
13 recorders; and

14           “(C) does not include—

15           “(i) automotive software installed by  
16 the manufacturer, as defined by applicable  
17 industry standards or regulations;

18           “(ii) any data subject to chapter 119  
19 of this title or section 104 of the Foreign  
20 Intelligence Surveillance Act of 1978 (50  
21 U.S.C. 1804); or

22           “(iii) data that is collected from out-  
23 side the vehicle, including speed data and  
24 geolocation data, for purposes of traffic,  
25 law enforcement, or toll collection.

1           “(4) EVENT DATA RECORDER.—The term  
2           ‘event data recorder’ has the meaning given the term  
3           in section 563.5 of title 49, Code of Federal Regula-  
4           tions (as in effect on March 5, 2019).

5           “(5) INVESTIGATIVE OR LAW ENFORCEMENT  
6           OFFICER.—The term ‘investigative or law enforce-  
7           ment officer’ means any officer of the United States  
8           or of a State or political subdivision thereof and any  
9           Tribal justice official, who is empowered by law to  
10          execute searches, to seize evidence, or to make ar-  
11          rests for a violation of Federal or State law.

12          “(6) NONCOMMERCIAL VEHICLE.—The term  
13          ‘noncommercial vehicle’ has the meaning given the  
14          term ‘non-CMV’ in section 383.5 of title 49, Code of  
15          Federal Regulations.

16          “(7) STATE.—The term ‘State’ means any  
17          State of the United States, the District of Columbia,  
18          and any territory or possession of the United States.

19          “(8) VEHICLE OPERATOR.—The term ‘vehicle  
20          operator’ means—

21                 “(A) a person who controls the operation  
22                 of a vehicle at the time consent is sought; and

23                 “(B) with respect to a vehicle that is not  
24                 classified as a highly autonomous vehicle by the

1 Secretary of Transportation, the driver of the  
2 vehicle.

3 **“§ 2731. Prohibition on access to vehicle data**

4 “(a) IN GENERAL.—Except as provided in subsection  
5 (b), an investigative or law enforcement officer may not  
6 access covered vehicle data unless pursuant to a warrant  
7 issued in accordance with the procedures described in rule  
8 41 of the Federal Rules of Criminal Procedure (or, in the  
9 case of a State court, issued using State warrant proce-  
10 dures) by a court of competent jurisdiction, or as other-  
11 wise provided in this chapter or sections 104 and 303 of  
12 the Foreign Intelligence Surveillance Act of 1978 (50  
13 U.S.C. 1804, 1823).

14 “(b) EXCEPTIONS.—

15 “(1) CONSENT.—

16 “(A) IN GENERAL.—An investigative or  
17 law enforcement officer may access covered ve-  
18 hicle data if—

19 “(i) the vehicle operator provides prior  
20 consent to such access; and

21 “(ii) no passenger 14 years of age or  
22 older objects to the access.

23 “(B) VEHICLE OWNER.—If the vehicle op-  
24 erator cannot be located with reasonable effort,  
25 the vehicle owner or, in the case of a leased ve-

1           hicle, the lessee, may provide consent under this  
2           paragraph.

3           “(C) UNLAWFUL POSSESSION.—No indi-  
4           vidual may provide or withhold consent under  
5           this paragraph or object to another individual  
6           accessing covered vehicle data if the indi-  
7           vidual—

8                   “(i) is the vehicle operator who is in  
9                   unlawful possession of the vehicle; or

10                   “(ii) is a passenger who unlawfully  
11                   obtained access to the vehicle.

12           “(D) ORAL CONSENT.—Consent provided  
13           under this paragraph shall be in writing un-  
14           less—

15                   “(i) the person providing the consent  
16                   requests that the consent be made orally;  
17                   and

18                   “(ii) the request for consent and the  
19                   consent are recorded.

20           “(E) CONSENT OF VEHICLE OPERATOR.—  
21           If the vehicle operator is not the owner of the  
22           vehicle and provides consent under this para-  
23           graph, the consent is valid only with respect to  
24           covered vehicle data generated during the lawful

1 possession and use of the vehicle by the vehicle  
2 operator.

3 “(2) EMERGENCY.—

4 “(A) IN GENERAL.—An investigative or  
5 law enforcement officer, the Attorney General,  
6 the Deputy Attorney General, the Associate At-  
7 torney General, or the principal prosecuting at-  
8 torney of any State or subdivision thereof act-  
9 ing pursuant to a statute of that State, may ac-  
10 cess covered vehicle data if—

11 “(i) such officer reasonably deter-  
12 mines that an emergency situation exists  
13 that—

14 “(I) involves immediate danger of  
15 death or serious physical injury to any  
16 person; and

17 “(II) requires access to covered  
18 vehicle data before such officer can,  
19 with due diligence, obtain a warrant;

20 “(ii) there are grounds upon which a  
21 warrant could be granted to authorize such  
22 access; and

23 “(iii) an application for a warrant ap-  
24 proving such access is submitted to a court



1           within 48 hours after the access has oc-  
2           curred or begins to occur.

3           “(B) DENIAL.—If an application for a  
4           warrant submitted pursuant to subparagraph  
5           (A)(iii) is denied, any covered vehicle data  
6           accessed under this paragraph shall be treated  
7           as having been obtained in violation of this  
8           chapter.

9           “(3) EVENT DATA RECORDER FOR MOTOR VE-  
10          HICLE SAFETY.—In addition to the exceptions in  
11          paragraphs (1) and (2), data recorded or trans-  
12          mitted by an event data recorder may be accessed  
13          from a noncommercial vehicle if authorized by para-  
14          graph (3), (4), or (5) of section 24302(b) of the  
15          Driver Privacy Act of 2015 (49 U.S.C. 30101 note).

16          “(4) RULE OF CONSTRUCTION.—Nothing in  
17          this section shall be interpreted to require the trans-  
18          mission or storage of data that is not otherwise  
19          transmitted or stored, or the retrieval of data that  
20          is not generally retrievable.

21       **“§ 2732. Prohibition on use of acquired information**  
22               **as evidence**

23          “(a) IN GENERAL.—If any covered vehicle data has  
24          been acquired in violation of this chapter, no part of such  
25          information and no evidence derived therefrom may be re-

1 ceived in evidence in any trial, hearing, or other pro-  
 2 ceeding in or before any court, grand jury, department,  
 3 officer, agency, regulatory body, legislative committee, or  
 4 other authority of the United States, a State, or a political  
 5 subdivision thereof.

6 “(b) PROBABLE CAUSE.—No data described in sec-  
 7 tion 2731(b)(3) may be used to establish probable cause.”.

8 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

9 (1) DRIVER PRIVACY ACT OF 2015.—Section  
 10 24302 of the Driver Privacy Act of 2015 (49 U.S.C.  
 11 30101 note) is amended—

12 (A) in subsection (b), in the matter pre-  
 13 ceding paragraph (1), by striking “Data” and  
 14 inserting “Except as provided in subsection (c),  
 15 data”; and

16 (B) by adding at the end the following:

17 “(c) INVESTIGATIVE OR LAW ENFORCEMENT OFFI-  
 18 CERS.—An investigative or law enforcement officer may  
 19 only access or retrieve data recorded or transmitted by an  
 20 event data recorder described in subsection (a) in accord-  
 21 ance with chapter 124 of title 18, United States Code.”.

22 (2) TABLE OF CHAPTERS.—The table of chap-  
 23 ters for part 1 of title 18, United States Code, is  
 24 amended by adding at the end the following:

“124. Accessing vehicle data ..... 2730”.

