

ADMINISTRATIVE SUBPOENA REQUIREMENT

MODIFICATIONS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mark B. Madsen

House Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to administrative subpoenas.

Highlighted Provisions:

This bill:

- ▶ changes the standard of proof required for the issuance of administrative subpoenas;
- ▶ amends the reporting provisions of administrative subpoenas used for the collection of electronic records in criminal investigations of specified crimes; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-22-2.5, as last amended by Laws of Utah 2011, Chapter 320

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

Section 1. Section **77-22-2.5** is amended to read:

77-22-2.5. Administrative subpoenas for criminal investigations for records



28 **concerning an electronic communications system or service or remote computing service**
29 **-- Content -- Fee for providing information.**

30 (1) As used in this section:

31 (a) (i) "Electronic communication" means any transfer of signs, signals, writing,
32 images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire,
33 radio, electromagnetic, photoelectronic, or photooptical system.

34 (ii) "Electronic communication" does not include:

35 (A) any wire or oral communication;

36 (B) any communication made through a tone-only paging device;

37 (C) any communication from a tracking device; or

38 (D) electronic funds transfer information stored by a financial institution in a
39 communications system used for the electronic storage and transfer of funds.

40 (b) "Electronic communications service" means any service which provides for users
41 the ability to send or receive wire or electronic communications.

42 (c) "Electronic communications system" means any wire, radio, electromagnetic,
43 photooptical, or photoelectronic facilities for the transmission of wire or electronic
44 communications, and any computer facilities or related electronic equipment for the electronic
45 storage of the communication.

46 (d) "Internet service provider" has the same definition as in Section [76-10-1230](#).

47 (e) "Prosecutor" has the same definition as in Section [77-22-2](#).

48 (f) "Sexual offense against a minor" means:

49 (i) sexual exploitation of a minor as defined in Section [76-5b-201](#) or attempted sexual
50 exploitation of a minor;

51 (ii) a sexual offense or attempted sexual offense committed against a minor in violation
52 of Title 76, Chapter 5, Part 4, Sexual Offenses; or

53 (iii) dealing in or attempting to deal in material harmful to a minor in violation of
54 Section [76-10-1206](#).

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

57 (2) When a law enforcement agency is investigating a sexual offense against a minor,
58 an offense of stalking under Section [76-5-106.5](#), or an offense of child kidnapping under

59 Section 76-5-301.1, [~~and has reasonable suspicion~~] has probable cause to believe that an
60 electronic communications system or service or remote computing service has been used in the
61 commission of a criminal offense, and if exigent circumstances exist that preclude obtaining a
62 warrant from a judge, then the prosecutor may issue an administrative subpoena, consistent
63 with 18 U.S.C. 2703 and 18 U.S.C. 2702, to the electronic communications system or service
64 or remote computing service provider that owns or controls the Internet protocol address,
65 websites, email address, or service to a specific telephone number, requiring the production of
66 the following information, if available, upon providing in the subpoena the Internet protocol
67 address, email address, telephone number, or other identifier, and the dates and times the
68 address, telephone number, or other identifier was suspected of being used in the commission
69 of the offense:

- 70 (a) names;
- 71 (b) addresses;
- 72 (c) local and long distance telephone connections;
- 73 (d) records of session times and durations;
- 74 (e) length of service, including the start date and types of service utilized;
- 75 (f) telephone or other instrument subscriber numbers or other subscriber identifiers,
76 including any temporarily assigned network address; and
- 77 (g) means and sources of payment for the service, including any credit card or bank
78 account numbers.

79 (3) A subpoena issued under this section shall state that the electronic communications
80 system or service or remote computing service provider shall produce any records under
81 Subsections (2)(a) through (g) that are reasonably relevant to the investigation of the suspected
82 criminal activity or offense as described in the subpoena.

83 (4) (a) An electronic communications system or service or remote computing service
84 provider that provides information in response to a subpoena issued under this section may
85 charge a fee, not to exceed the actual cost, for providing the information.

86 (b) The law enforcement agency conducting the investigation shall pay the fee.

87 [~~(5) The electronic communications system or service or remote computing service~~
88 ~~provider served with or responding to the subpoena may not disclose the subpoena to the~~
89 ~~account holder identified pursuant to the subpoena.]~~

90 ~~[(6)]~~ (5) If the electronic communications system or service or remote computing
91 service provider served with the subpoena does not own or control the Internet protocol
92 address, websites, or email address, or provide service for the telephone number that is the
93 subject of the subpoena, the provider shall~~[(a)]~~ notify the investigating law enforcement
94 agency that it does not have the information~~[, and]~~.

95 ~~[(b) provide to the investigating law enforcement agency any information the provider~~
96 ~~knows, through reasonable effort, that it has regarding how to locate the Internet service~~
97 ~~provider that does own or control the Internet protocol address, websites, or email address, or~~
98 ~~provide service for the telephone number.]~~

99 ~~[(7)]~~ (6) There is no cause of action against any provider or wire or electronic
100 communication service, or its officers, employees, agents, or other specified persons, for
101 providing information, facilities, or assistance in accordance with the terms of the
102 administrative subpoena issued under this section or statutory authorization.

103 ~~[(8)]~~ (7) (a) An administrative subpoena issued under this section is subject to the
104 provisions of Title 77, Chapter 23b, Access to Electronic Communications.

105 (b) Rights and remedies for providers and subscribers under Title 77, Chapter 23b,
106 Access to Electronic Communications, apply to providers and subscribers subject to an
107 administrative subpoena issued under this section.

108 ~~[(9) Every]~~ (8) A prosecutorial agency that issues an administrative subpoena under
109 this section shall annually on or before ~~[June 30]~~ February 15 report to the Commission on
110 Criminal and Juvenile Justice the number of administrative subpoenas issued by the
111 prosecutorial agency under this section during the previous calendar year.

112 ~~[(10)]~~ (9) State and local prosecutorial and law enforcement agencies shall annually on
113 or before ~~[June 30]~~ February 15 report to the Commission on Criminal and Juvenile Justice the
114 number of administrative subpoenas the prosecutorial or law enforcement agency requested
115 that any federal law enforcement agency ~~[issue]~~ issued pursuant to 18 U.S.C. Sec. 2703 during
116 the prior calendar year.

117 (10) For each administrative subpoena issued by a prosecutorial agency, or requested
118 by a law enforcement agency, under this section and reported under Subsections (8) and (9), the
119 law enforcement or prosecutorial agency shall keep record of and provide to the Commission
120 on Criminal and Juvenile Justice:

- 121 (a) the contact information for the reporting individual, including:
122 (i) agency title;
123 (ii) name and position of reporting individual; and
124 (iii) agency telephone number;
125 (b) a description of the exigent circumstances resulting in the necessity for the issuance
126 of the administrative subpoena rather than a warrant;
127 (c) the number of days the agency issuing the administrative subpoena allows for the
128 Internet service provider or electronic communication system's response;
129 (d) the name of the Internet service provider or electronic communication system
130 responding to the administrative subpoena;
131 (e) the criminal offense the administrative subpoena is issued to investigate, as
132 specified in Subsection (2); and
133 (f) the criminal charge or conviction, if any, resulting from the issuance of the
134 administrative subpoena.
135 (11) The Commission on Criminal and Juvenile Justice shall assign a unique
136 identifying number to each administrative subpoena reported by a prosecutorial or law
137 enforcement agency.
138 (12) Subsections (8), (9), and (10) apply to all records collected by the Commission on
139 Criminal and Juvenile Justice pertaining to administrative subpoenas issued under this section,
140 including those issued or requested since 2009.

Legislative Review Note
as of 1-6-14 3:15 PM

Office of Legislative Research and General Counsel