

ELECTRONIC INFORMATION OR DATA PRIVACY ACT

AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler

House Sponsor: _____

LONG TITLE

General Description:

This bill concerns the ability of law enforcement to obtain certain information or data without a search warrant.

Highlighted Provisions:

This bill:

- ▶ amends the ability of law enforcement to obtain certain information or data without a search warrant; 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 2022, Chapter 274

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



28 **disclosure.**

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

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

33 (ii) electronic information or data transmitted by the owner of the electronic
34 information or data:

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

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

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

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

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

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

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

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

55 (i) in accordance with Section [53-10-104.5](#);

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

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

59 (iv) except for the automobile exception to the warrant requirement, in accordance with
60 a judicially recognized exception to warrant requirements;

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

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

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

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

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

74 (i) with the informed consent of the owner of the electronic device or electronic
75 information or data;

76 (ii) except for the automobile exception to the warrant requirement, in accordance with
77 a judicially recognized exception to warrant requirements; or

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

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

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

87 (4) Nothing in this chapter:

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

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

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