

Utah Legislature seeks input on whether to promote digital and data privacy

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SALT LAKE CITY — Utah's House of Representatives met Thursday to discuss HB0057, a bill in the legislative session which will determine how law enforcement can utilize electronic information and data from Utah citizens.

The House Judiciary Standing Committee decided to approve the bill to move forward in the legislative process, however, they suggested that further changes will be made to it in order to accommodate for the needs of law enforcement.

What is HB0057: Electronic Information or Data Privacy?

HB0057, submitted by Rep. Craig Hall, R-Utah, seeks to make changes to the law in relation to the privacy of citizens' electronic information and data. This information could include anything from the owner's location to text messages and emails.

Primarily, its focus is to ensure that law enforcement obtains a search warrant before accessing certain electronic information and data from a suspected criminal. Such information may include IP addresses, personal details, text messages, emails, phone calls, and more.

In a country where technological development advances more quickly than the law regulating it, this bill seeks to define the rights of information owners.

The law favors that police officers need probable cause or reason to believe that incriminating evidence is present before they are able to obtain a search warrant. Generally, this is applied to homes and property, but legislators seek to also define electronic information and data as property "owned" by an individual.

The bill suggests that law enforcement won't be able to access any of this information without a warrant, and it adds that if a warrant is obtained, the information will need to be destroyed as soon as possible after it's been accessed.

Lastly, the bill points out that information can be collected about the location of a device from a third party (like a cell phone or Wi-Fi company) as long as it doesn't include the individual's identity and is never used for investigative purposes.

Rep. Hall's bill seeks to establish a reasonable expectation of privacy in the electronic information or data stored by a digital device or server.

Where do YOU come in?

Living in a world dominated by data and electronics presents a unique host of concerns for U.S. citizens. Data is undeniably being collected about everyone, whether about their location, their search history, or their IP address. Most of that information is aggregated and utilized for statistics and marketing, but in the case of this particular bill, that information could also be used by members of law enforcement to catch people in criminal acts.

Whether the use of data in society is a good or bad thing is up for debate. Companies like Facebook and Skype make a majority of their income from data, according to Forbes. As the information is aggregated, they argue that it doesn't harm anyone. Data has tremendous usefulness in business and can be utilized in ways that may even improve the advertising experiences of a consumer. Still, questions have been raised as to whether those people ought to be paid for that data.

In the case of HB0057, what's at stake is the access law enforcement has to potentially incriminating online information without a warrant. Should they be able to access databases, IP addresses, and potentially personal accounts without probable cause? Is the need to deliver justice to criminals greater than the need for privacy?

What are the legal dimensions?

Numerous legal concerns have sparked the bill itself, as well as the controversies that have arisen from it.

As a motivator for the bill, Rep. Hall referenced the Fourth Amendment to the U.S. Constitution, which states that citizens are free from unreasonable search and seizure at the hands of law enforcement. A search of that nature must be incited by a legitimate reason (probable cause) and officers must have a search warrant.

Rep. Hall believes that rather than waiting for a civil rights case about unreasonable search and seizure of digital information, the Legislature ought to pass guidelines ensuring that it also be considered property protected by the Fourth Amendment.

In addition to legal references like the Constitution, Rep. Hall and other proponents of this bill cited prior court cases which have helped set a legal precedent for how to handle digital privacy.

Privacy court cases kicked off with United States v. Jones, which is a 2012 case in which Antoine Jones was arrested on drug possession after police attached a tracking device to his jeep without judicial approval. They followed him for a month and later lost to him in an appeals court case for using 24-hour surveillance without a warrant. This set a precedent that people cannot be tracked digitally without judicial approval.

The next case, Riley v. California, occurred in 2014. The U.S. Supreme Court upheld that the search and seizure of the digital contents of a cell phone without a warrant during an arrest is unconstitutional. In this case, the search occurred after David Riley was pulled over on a traffic violation and the officer scanned Riley's phone until he discovered references to gang activity.

In June of 2017, U.S. v. Carpenter ruled that tracking someone's movements through extensive cell phone records was a violation of the Fourth Amendment. It also pointed out that third-party information should be considered to have a reasonable expectation of privacy and shouldn't be used to incriminate someone without a search warrant.

The Utah House of Representatives' Thursday meeting revealed varying opinions on how well the courts have kept up with the ever-evolving digital climate. During citizen input, multiple individuals stated that courts were keeping up well with the issues, but that the Legislature was better suited to be enacting law on the subject. Others disagree, pointing out that the slow nature of courts may mean that cases will be multiple years behind each potential new privacy concern.

Marina Lowe, a legislative counsel with the American Civil Liberties Union of Utah, said, "We are always stuck in a moment where technology advances faster than our courts can."

Hall thinks that now is the perfect time to make these changes as technology changes. He referenced the Riley v. California Supreme Court case in which Justice Solito said, "It would be very unfortunate if privacy protection in the 21st century were left primarily to the federal courts using the blunt instrument of the 4th Amendment. Legislatures, elected by the people, are in a better position than we are to assess and respond to the changes that have already occurred and those that almost certainly will take place in the future."

What are the law enforcement concerns?

Other concerns regarding the nature of the bill have been how significantly it will impact law enforcement in Utah. Dave Carlson, the director of the Child Protection Division at the Utah Attorney General's Office, believes the bill as it stood during the meeting would, "Cripple our ability to look into internet crimes against children."

He added that the bill as written would seriously hinder their ability to investigate crimes. "The internet gives anonymity to criminals," he explained. "We have to know who we are dealing with here." Lowe pointed out that there are two ways of looking at it. The bill would reduce police access to certain information, but perhaps those situations are ones in which a warrant should have been sought. She believes it might help reduce abuse of power in the police force.

The results of the meeting

The motion to move the bill forward to further revision and processing by the Legislature passed unanimously, though with a promise of further revision to make it more to the liking of law enforcement before a final vote is given.

Further public input will be taken, and citizens are encouraged to come to meetings for public comment and contact their representatives with opinions.