

SB0485



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB0485

Introduced 2/23/2021, by Sen. Cristina Castro

SYNOPSIS AS INTRODUCED:

New Act

Creates the Protecting Household Privacy Act. Provides that a law enforcement agency shall not obtain household electronic data or direct the acquisition of household electronic data from a private third party, unless (i) the law enforcement agency obtains a court order based upon probable cause, or (ii) the owner of the household electronic device consents to voluntarily provide the desired household electronic data. Provides that if a law enforcement agency obtains household electronic data, the agency within 30 days shall destroy all information obtained, except that a supervisor at that agency may retain particular information if (1) there is reasonable suspicion that the information contains evidence of criminal activity, or (2) the information is relevant to an ongoing investigation or pending criminal trial.

LRB102 13485 RLC 18832 b

A BILL FOR

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Protecting Household Privacy Act.

6 Section 5. Definitions. As used in this Act:

7 "Electronic communication" means any origination,
8 transmission, emission, transfer, or reception of signs,
9 signals, data, writings, images, video, audio, or intelligence
10 of any nature by telephone, including cellular telephones or a
11 wire, Internet, wireless, radio, electromagnetic,
12 photo-electronic or photo-optical system, cable television,
13 fiber optic, satellite, microwave, Internet-based or wireless
14 distribution network, system, facility or related technology.

15 "Household" means any single or multiple family dwelling,
16 including but not limited to a single family home, house,
17 apartment, mobile home, trailer, building, condominium,
18 duplex, townhouse, or other living quarters, used or intended
19 to be used as a dwelling place and immediately surrounding
20 area.

21 "Household electronic device" means any device intended
22 for use within a household that is capable of facilitating any
23 electronic communication.

1 "Household electronic data" means any information or input
2 provided by a person to a household electronic device.

3 "Law enforcement agency" means any agency of this State or
4 a political subdivision of this State which is vested by law
5 with the duty to maintain public order and to enforce criminal
6 laws.

7 Section 10. Prohibited use of household electronic data.
8 Except as provided in Section 15, a law enforcement agency
9 shall not obtain household electronic data or direct the
10 acquisition of household electronic data from a private third
11 party.

12 Section 15. Exceptions. This Act does not prohibit a law
13 enforcement agency from obtaining household electronic data
14 if:

15 (1) If a law enforcement agency first obtains a court
16 order under Section 108-4 of the Code of Criminal
17 Procedure of 1963 based on probable cause to believe that
18 the person whose household electronic data is sought has
19 committed, is committing, or is about to commit a crime or
20 the effect is evidence of a crime, or if the household
21 electronic data is authorized under an arrest warrant
22 issued under Section 107-9 of the Code of Criminal
23 Procedure of 1963 to aid in the apprehension or the arrest
24 of the person named in the arrest warrant. An order issued

1 under a finding of probable cause under this Section must
2 be limited to a period of 60 days, renewable by the judge
3 upon a showing of good cause for subsequent periods of 60
4 days. A court may grant a law enforcement entity's request
5 to obtain household electronic data under this Section
6 through testimony made by electronic means using a
7 simultaneous video and audio transmission between the
8 requestor and a judge, based on sworn testimony
9 communicated in the transmission. The entity making the
10 request, and the court authorizing the request shall
11 follow the procedure under subsection (c) of Section 108-4
12 of the Code of Criminal Procedure of 1963 which authorizes
13 the electronic issuance of search warrants; or

14 (2) The owner of the household electronic device
15 consents to voluntarily provide the desired household
16 electronic data.

17 Section 20. Information retention. If a law enforcement
18 agency obtains household electronic data under Section 15 of
19 this Act, the agency within 30 days shall destroy all
20 information obtained, except that a supervisor at that agency
21 may retain particular information if:

22 (1) there is reasonable suspicion that the information
23 contains evidence of criminal activity, or

24 (2) the information is relevant to an ongoing
25 investigation or pending criminal trial.

1 Section 25. Information disclosure by law enforcement
2 agencies. If a law enforcement agency obtains household
3 electronic data under Section 15 of this Act, the agency shall
4 not disclose any information obtained, except that a
5 supervisor of that agency may disclose particular information
6 to another government agency, if (1) there is reasonable
7 suspicion that the information contains evidence of criminal
8 activity, or (2) the information is relevant to an ongoing
9 investigation or pending criminal trial.

10 Section 30. Admissibility. If the court finds by a
11 preponderance of the evidence that a law enforcement agency
12 obtained household electronic data pertaining to a person or
13 his or her effects in violation of this Act, then the
14 information shall be presumed to be inadmissible in any
15 judicial or administrative proceeding. The State may overcome
16 this presumption by proving the applicability of a judicially
17 recognized exception to the exclusionary rule of the Fourth
18 Amendment to the United States Constitution or Article I,
19 Section 6 of the Illinois Constitution, or by a preponderance
20 of the evidence that the law enforcement officer was acting in
21 good faith and reasonably believed that one or more of the
22 exceptions identified in Section 15 of this Act existed at the
23 time the household electronic data was obtained.

1 Section 35. Providing household electronic data to a law
2 enforcement agency not required. Except as provided in Section
3 15, nothing in this Act shall be construed to require a person
4 or entity to provide household electronic data to a law
5 enforcement agency under this Act. If law enforcement acquires
6 information from a household electronic device under Section
7 15 of this Act, any information so acquired is subject to
8 Sections 20 and 25 of this Act.

9 Section 40. Security of Production. Any person or entity
10 that provides household electronic data in response to a
11 request from any law enforcement agency under this Act shall
12 take reasonable measures to ensure the confidentiality,
13 integrity, and security of any household electronic data
14 provided to any law enforcement agency, and to limit any
15 production of household electronic data to information
16 relevant to the law enforcement agency request.