

Bill targets how police use info showing where you've been and what internet searches you make

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SALT LAKE CITY — A new tool in wide use by law enforcement agencies across the country can draw a circle on any map and seek out, through chilling data search techniques, who was in or near that area at any specific time.

That's all thanks to the signals your cellphone is constantly receiving and emitting, whether you're using it or not.

So if you happened to be walking your dog through that search zone at the same time a crime was committed, you could end up as part of an investigation based on nothing more substantial than easily obtainable records showing everywhere you've been with that cellphone in your pocket.

Now, a bill that could have created landmark restrictions on these type of dragnet-style law enforcement searches, ones that can access databases showing not only where you've been but what searches you've conducted on your browser — even if you're not a suspect — has been toned down by Utah lawmakers but could still lead to some new privacy protections for residents.

So-called reverse location and reverse keyword searches are possible thanks to data stored by Google and other digital platforms that include historical information about where a cellphone user has traveled, through built-in location tracking abilities in mobile devices, and every search term you've used on some browsers.

And law enforcement agencies across the country have been accessing that information since at least 2016, according to recent reports and continue to do so in rising numbers.

[A 2019 New York Times story](#) also offered details of an incident in which reverse location data used from one of these searches led to the arrest and incarceration of a man later found to be innocent.

Rep. Ryan Wilcox, R-Ogden, helped shepherd new rules in 2014 that placed limits on the use by law enforcement investigators of devices that could indiscriminately capture cellphone communications using "cell site simulators," also sometimes called "stingrays."

Now Wilcox is looking to create legal curbs on access to stored information that can be wrangled via a type of general warrant that allows investigators to get packages of information, sometimes anonymized but not always, that can reveal who has searched for what in a certain time period or who has been to a certain location during a specified time frame.

Typically, that information is used by law enforcement agencies to drill down to specific potential suspects, at which point they can request personally identifying information to continue investigations. But those initial packages sometimes include information on hundreds of people who have no connection to a crime or incident.

A cell tower in Salt Lake City is pictured on Thursday, Feb. 25, 2021. *Spenser Heaps, Deseret News*

In its initial form, Wilcox's [HB251](#) would have created an outright ban on law enforcement access to that stored data without a much more specific and narrow warrant from the outset. But a revised version, passed unanimously by a Utah legislative committee this week, has dropped the attempt at a ban and removed any new stipulations on reverse keyboard searches.

But Wilcox says he still has hope to address both types of data gathering, and even in its current form, HB251 would create some new law enforcement boundaries where none previously existed when it comes to the scope of location data searches.

He said it's a constant challenge for policymakers to keep up with fast-evolving technology to ensure that, as best they can, new tools don't infringe on personal rights.

"In the absence of boundaries, law enforcement does what any of us would do and uses new technology in all the ways they can to solve crimes," Wilcox said. "Our role from the policy side is have those discussions to determine where new boundaries should be drawn."

In the revised proposal, the original prohibition is now softened to include stipulations about those location search warrants that include a requirement that the accessed data be anonymized, or scrubbed of any personally identifying information, that the areas to be "searched" for location data be appropriately minimized, and that the number of "targets" be limited in scope.

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Wilcox said additional parameters could be added as he continues to evolve the bill.

Marina Lowe, legislative and policy counsel for the American Civil Liberties Union of Utah, said her organization preferred the original prohibition language applied to reverse location and reverse keyboard searches and that Fourth Amendment protections call for specificity when it comes to issuing warrants. She also highlighted that reverse location warrants don't "see" the boundaries of buildings and private spaces. That means location data can, and is, gathered on people who are simply in their homes, their places of worship, or anywhere.

"The Fourth Amendment requires an officer or agency to say, 'This is the person we're seeking information on and this is why' when obtaining a warrant, but with reverse warrants, that specificity doesn't play a role."

Lowe noted the judicial review and approval process for law enforcement warrants would still be a critical element in assessing warrant requests, and even with new legislation, would serve as a mechanism under which inappropriate searches could be halted.

But she also believes Wilcox is on the right track in at least raising conversations about the access to, and use of personal digital information and sees the effort moving in the right direction.

"Rep. Wilcox is very committed to these issues and has experience in the area with work he did previously on stingray legislation," Lowe said. "I don't know where this goes, but the commitment to working on these important issue is there."

Wilcox said he sees the current bill as the beginning to a larger body of work and hasn't given up at all on also trying to address reverse keyword searches. But he said it's an even more complex task than the one at hand.

"Really, we're at a starting point on both these issues," Wilcox said. "The issues around reverse keyword searches gets us into an area of law that is even more complicated than the location challenges.

"I'm hoping we can move the current bill forward and continue discussing these issues during our interim session."

HB251 passed the House Law Enforcement and Criminal Justice Committee on a unanimous vote on Wednesday and now moves to the full House for further consideration.