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## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

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<b>2015 Senate Bill 546</b>	<b>Assembly Amendment 2</b>
<i>Memo published: March 11, 2016</i>	<i>Contact: Michael Queensland, Staff Attorney (266-3810)</i>

### **2015 SENATE BILL 546, AS AMENDED BY THE SENATE**

Senate Bill 546, as passed by the Senate (“the bill”), transfers \$1,000,000 from an existing appropriation for drug law enforcement, crime laboratories, and genetic evidence activities to a new appropriation that may be used for criminal investigative operations and law enforcement relating to Internet crimes against children, prosecution of Internet crimes against children, and activities of state and local Internet crimes against children task forces.

The bill also authorizes the Attorney General (AG) or his or her designee to issue an administrative subpoena upon an electronic communication service or remote computing service (Internet service provider) to compel an Internet service provider to produce certain information. Specifically, the bill authorizes the AG or his or her designee to issue an administrative subpoena upon an Internet service provider to compel the production of information about a customer or subscriber if both of the following apply:

- The information likely to be obtained is relevant to an ongoing investigation of an Internet crime against a child.
- The AG or his or her designee has reasonable cause to believe that an Internet or electronic service account provided by an electronic communication service or remote computing service has been used in the crime.

Under the bill, an “Internet crime against a child” is defined as the commission of, or the solicitation, conspiracy, or attempt to commit, any of the following crimes:

- A violation of sexual exploitation of a child, use of a computer to facilitate a child sex crime, exposing a child to harmful material or harmful descriptions or narrations, or possession of child pornography.

- A violation of crimes against children under ch. 948, Stats., that involves the use of a device that permits the transmission of wire or electronic communications or images through an electronic communications service, as defined under the statutes, or a remote computing service, as defined under the statutes.

The bill requires that the subpoena describe each record or other information pertaining to a customer or subscriber of the service to be produced. The bill also requires that the subpoena prescribe a reasonable return date by which the person served with the subpoena must assemble each record or other information and make them available. The subpoena may be issued to compel the production of any of the following information about the customer or subscriber:

- Name.
- Address.
- Local and long-distance telephone connection records, satellite-based Internet service provider connection records, or records of session times and durations.
- Duration of an applicable service, including the start date for the service and the type of service used.
- Telephone or instrument number or other subscriber number or identity, including a temporarily assigned network address.
- Means and source of payment for the electronic service or remote computing service, including credit card or any bank account number.

The bill also allows the person served with a subpoena to petition a court to modify or quash the subpoena, or to prohibit disclosure of information by the court. Such a petition may be made before the return date specified in the subpoena.

If the investigation into an Internet crime against a child does not result in a prosecution or other proceeding against a person, the bill requires the AG or his or her designee to either destroy, or return to the person who produced the records and information requested by the subpoena. The bill also permits the AG or his or her designee to request that the subpoena be kept confidential until after all requested documents and records are produced.

## **ASSEMBLY AMENDMENT 2**

As stated above, the bill authorizes the AG or his or her designee to issue an administrative subpoena upon an Internet service provider to compel an Internet service provider to produce certain information about a customer or subscriber.

Assembly Amendment 2 narrows the type of information about a customer or subscriber that an Internet service provider must provide in response to an administrative subpoena. Under Assembly Amendment 2, an administrative subpoena may be issued to compel the production of any of the following information about the customer or subscriber:

- Name.
- Address.
- Duration, including the start date and end date, of the assignment of any Internet protocol address to the customer or subscriber.

## **SENATE ACTION**

The amendments described below modify the bill, as introduced in the Senate.

### **Senate Amendment 1**

The administrative subpoena power created by the bill may only be used to investigate an Internet crime against a child. Senate Amendment 1 limits the definition of “Internet crime against a child” to only crimes against children by eliminating the crimes constituting a sex offense, as defined under current law related to the sex offender registry. Under Senate Amendment 1, an “Internet crime against a child” is the commission of, or the solicitation, conspiracy, or attempt to commit, any of the following crimes:

- A violation of sexual exploitation of a child, use of a computer to facilitate a child sex crime, exposing a child to harmful material or harmful descriptions or narrations, or possession of child pornography.
- A violation of crimes against children under ch. 948, Stats., that involves the use of a device that permits the transmission of wire or electronic communications or images through an electronic communications service, as defined under the statutes, or a remote computing service, as defined under the statutes.

Senate Amendment 1 also clarifies that the only customer or subscriber information that the AG or his or her designee may request from an Internet service provider through an administrative subpoena created under the bill, is the information that the Internet service provider must produce if requested.

### **Senate Amendment 2**

The bill, as introduced, creates an Internet crimes against children surcharge to be imposed by a court in the amount of \$20 for each misdemeanor conviction and \$40 for each felony conviction. Under the bill, the funds produced by the surcharge may be used for criminal investigative operations and law enforcement relating to Internet crimes against children, prosecution of Internet crimes against children, and activities of state and local Internet crimes against children task forces.

Senate Amendment 2 eliminates the Internet crimes against children surcharge and instead transfers \$1,000,000 from an existing account for drug law enforcement, crime laboratories, and genetic evidence activities to a new account that may be used for criminal investigative operations and law enforcement relating to Internet crimes against children,

prosecution of Internet crimes against children, and activities of state and local Internet crimes against children task forces.

## **BILL HISTORY**

On January 14, 2016, Senator Wanggaard offered Senate Amendment 1.

On January 28, 2016, Senators Lasee and Wanggaard offered Senate Amendment 2.

On February 1, 2016, the Senate Committee on Judiciary and Public Safety voted to recommend adoption of Senate Amendments 1 and 2 and recommended passage of Senate Bill 546, as amended, on votes of Ayes, 5; Noes, 0.

On February 10, 2016, the Joint Committee on Finance voted to recommend adoption of Senate Amendments 1 and 2 on votes of Ayes, 15; Noes, 0; and recommended passage of Senate Bill 546, as amended, on a vote of Ayes, 14; Noes, 0.

On February 16, 2016, the Senate voted to adopt Senate Amendments 1 and 2 on voice votes and voted to pass the bill, as amended, on a vote of Ayes, 32; Noes, 0.

On February 18, 2016, Representatives Jarchow and Goyke offered Assembly Amendment 2.

On February 18, 2016, the Assembly voted to adopt Assembly Amendment 2 on a voice vote and voted to concur in the bill, as amended, on a vote of Ayes, 87; Noes, 7; and Paired, 2.

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