

SENATE JUDICIARY COMMITTEE  
DIANE LARSON, CHAIR  
JANUARY 4, 2023

TESTIMONY BY  
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OFFICE OF ATTORNEY GENERAL  
IN SUPPORT OF  
SENATE BILL NO. 2043

Madam Chair and members of the Senate Judiciary Committee. I am Parrell Grossman, and it is my privilege to be the Director of the Attorney General's Consumer Protection and Antitrust Division. I appear on behalf of the Attorney General in support of Senate Bill 2043, with proposed amendments.

The administrative search warrant chapter has been in place for many years, and the Consumer Protection Division, as part of a law enforcement entity, has occasion to use this process in its investigations, when appropriate and necessary. In these times, in fact, it has become necessary in the public interest in order to quickly obtain and preserve evidence of wrongdoing, including consumer fraud.

This chapter and process does not contemplate and accommodate for electronically stored communications and the time involved to serve and obtain electronically stored communications from the owner or possessor of the records. In other words, neither the Attorney General's Office nor other government agencies can utilize an administrative search warrant to obtain electronically stored communications because the statute currently requires return within twenty-four hours and that requirement typically is impossible.

It is one thing to inspect two filing cabinets on location and return the warrant within 24 hours. It is completely different when the case involves thousands of business and/or hundreds of thousands of electronically stored communications including text messaging, e-mail for many years, which are becoming the more typical investigations.

**REQUIREMENTS OF N.D.C.C. CH. 29-29.1-03**

N.D.C.C. § 29-29.1-03 provides:

**29-29.1-03. Requirements for valid issuance.**

The warrant is validly issued only if it meets the following requirements:

1. It must be signed by the issuing magistrate and must bear the date and hour of its issuance above the magistrate's signature with a notation that the warrant is valid for only twenty-four hours following its issuance;
2. It must describe, either directly or by reference to the affidavit, the property where the search or inspection is to occur and be accurate enough in description so

that the executor of the warrant and the owner or the possessor of the property can reasonably determine from it what person or property the warrant authorizes an inspection of;

3. It must indicate the conditions, objects, activities, or circumstances which the inspection is intended to check or reveal; and
4. It must be attached to the affidavit required to be made in order to obtain the warrant.

N.D.C.C. § 29-29.1-03 (Copy attached).

#### **REQUIREMENTS OF N.D.C.C. CH. 29-29.1-04**

N.D.C.C. § 29-29.1-04 provides:

##### **29-29.1-04. Warrant valid for twenty-four hours.**

Any warrant issued under this chapter for a search or inspection is valid for only twenty-four hours after its issuance, must be personally served upon an owner or possessor of the property, or upon any person present on the premises if an owner or possessor cannot reasonably be found between the hours of 8:00 a.m. and 8:00 p.m., and must be returned within forty-eight hours.

N.D.C.C. § 29-29.1-04 (see attached).

#### **ATTORNEY GENERAL-CPAT ENFORCEMENT ACTIONS**

As part of enforcement actions brought by the Consumer Protection and Antitrust Division of the Attorney General's Office, our Office regularly issues subpoenas duces tecum to obtain records from individuals suspected to engaged in violation of N.D.C.C. ch. 51-15 and other laws. Communications are significant evidence of wrongdoing as perpetrators regularly communicate with their victims and others by electronic means, including by text messaging and electronic mail. For example:

1. **Photography Business X.** (Involving 500 plus consumer complaints alleging restitution owed in excess of \$1M.) The owner of this business communicated extensively by text messaging and electronic mail with government agencies, financial institutions, and other parties from whom he sought and obtained credit. His communications included false statements, including misrepresenting anticipated credit coming from the government to induce others, including banks and individuals, to give him tens or hundreds of thousands of dollars. He also circulated false or misleading financial documentation as attachments to electronic mail. 15 months after the business has closed the Attorney General is still fighting with the defendants in discovery while the defendants have spoon-fed critical information to the Attorney General, including failing to respond to many questions or provide all the records.

The public continues to demand answers for this business's consumer fraud, including why did this business close its doors keeping my money, or why do we not have our special wedding photos. With this amended statute the Attorney General could have immediately obtained much of the necessary information pursuant to this revised statute.

**2. Deceptive Charity X in Minot.** Defendant purported to raise funds for an registered charitable event when, in actuality, she was spending the donor funds she obtained on herself, including to purchase groceries and fast food. This defendant represents the most egregious example of a perpetrator engaged in fraud who destroyed evidence to frustrate her prosecution. After the Attorney General's Office subpoenaed her records, she and her attorney refused to comply with the subpoena despite multiple court orders. Subsequently, when the Attorney General commenced a consumer fraud action against this defendant, she destroyed electronic evidence of her fraudulent activities, including by altering and deleting multiple websites and fabricating electronic communications with State agencies. Despite court orders compelling her to produce records in discovery, she and her attorney failed to comply. Though the State was victorious through imposition of sanctions after more than two years of litigation, the Attorney General never obtained the substantial evidence of wrongdoing it might otherwise have obtained through an administrative search warrant.

In all these cases and many others it is easy to simply have deleted critical electronic communications in the days or months after initial fraudulent conduct was discovered.

There are many businesses that immediately and fully cooperate with a consumer fraud investigation and the standard tools are usually sufficient. The procedures of this chapter have been used very judiciously in past years and the Attorney General will continue to do so with the proposed amendments. Nonetheless, some investigations involving more egregious conduct and the circumstances relevant to those investigations will necessitate this update statute.

### **RECOMMENDED ACTION**

Ultimately, the Attorney General recommends that sections 29-29.1-03 and 29-29.1-04 extend the time for warrant validity from twenty-four hours to ten days and also recommends extending the time for return to forty-eight hours after service, except as to electronic communications. As one example only, it is likely impossible to serve and obtain return of electronic communications within twenty-four and forty-eight hours where owners or possessors of electronic communications, e.g., social media sites, are outside the State, or the information is otherwise stored outside the state.

Finally, we recommend that a section be added to N.D.C.C. ch. 29-29.1 that specifically permits the Attorney General or other State agencies to obtain electronic communications and to obtain an extension where the owner or possessor of electronic communications has not produced the requested records.

Now I will quickly address the proposed amendments. I have attached those, as well as how the revised Bill will appear with the amendments. The primary change is adding an amendment to 29-29.1-02 to provide that the conditions for obtaining a warrant for property are now the same conditions for obtaining electronic communication information.

The Attorney General respectfully recommends that the Senate Judiciary Committee give Senate Bill 2043 a “Do Pass” recommendation with the proposed amendments.

Thank you for your time and consideration. I would be pleased to try and answer any questions.