
MEMORANDUM

OFFICE OF THE ATTORNEY GENERAL

TO: Rep. Willem Jewett, Vice Chair,
House Committee on Judiciary

FROM: John Treadwell, AAG

RE: Proposed Alternative Language for § 8103 Regarding Notification

DATE: April 15, 2016

The Criminal Division of the Attorney General’s Office proposes the language below. The proposal is consistent with existing Vermont law regarding returns and service of search warrants for monitored conversations. See V.R.Cr.P. 41(e)(4). Search warrant practice does not generally refer to “notification.” Instead, when warrants are executed for a location a copy of the warrant is provided to the occupant at that time. See V.R.Cr.P. 41(e)(1). For warrants to monitor conversations, a copy of the warrant is provided to the persons who are subject to the warrant at the time the return is made to the issuing court. Such a process provides a practical, useful and well-understood model for warrants issued for content.

The standard of practice among service providers is to provide notification to subscribers absent a court order precluding such notification. Under current practice when obtaining search warrants for content the AGO applies for an order seeking delayed notification for a period of 90 days.

Service by the law enforcement officer of a copy of the warrant upon the subscriber under this section can be accomplished by: (1) delivering a copy to the person; (2) leaving a copy at the person’s residence; (3) delivering a copy by reliable electronic means; or, (4) by mailing a copy to the person’s last known address. The term “reliable electronic means” is defined in V.R.Cr.P. 41(i)(2) and has a well understood meaning in the context of warrant applications and process.

The provision in subdivision (c) relating to notification when the target is unknown has been deleted. Under existing law, the warrant and associated documents are publicly available at the issuing court upon the making of the return. See Rules for Public Access to Court Records § 6(b)(15). Thus, such warrants are publicly available at the same time that the State is obligated to serve the warrant.

§ 8103 Returns and Service

(a) Returns. If a warrant issued pursuant to section 8102 is executed or electronic information is obtained in an emergency under subdivision

8102(b)(4), a return shall be made within 90 days. Upon certification by a law enforcement officer, an attorney for the state, or any other person authorized by law that an investigation related to the warrant or the emergency is ongoing, a judicial officer may authorize an extension of the time for making the return for such period as the judicial officer deems reasonable. The return shall identify:

(i) the date the response was received from the service provider;

(ii) the quantity of information or data provided; and

(iii) the type of information or data provided.

(b) Service. At the time the return is made, the law enforcement officer who executed the warrant under section 8102 or obtained electronic information under subdivision 8102(b)(4) shall serve a copy of the warrant on the subscriber to the service provider if known. Service may be accomplished by delivering a copy to the known person; or by leaving a copy at the person's residence or usual place of abode with an individual of suitable age and discretion who resides at that location; or by delivering a copy by reliable electronic means; or by mailing a copy to the person's last known address. Upon certification by a law enforcement officer, an attorney for the state, or any other person authorized by law that an investigation related to the warrant is ongoing, a judicial officer may authorize an extension of the time for serving the return for such period as the judicial officer deems reasonable. Service need not be made upon any person against whom criminal charges

have been filed related to the execution of the warrant or the obtaining of electronic information under subdivision 8102(b)(4).

(c) Except as otherwise provided in this section, nothing in this chapter shall prohibit or limit a service provider or any other party from disclosing information about any request or demand for electronic information.