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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

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A N A C T

RELATING COURTS AND CIVIL PROCEDURE - PROCEDURE GENERALLY -
WITNESSES

Introduced By: Representatives Knight, Shanley, Newberry, Blazejewski, and
McKiernan

Date Introduced: January 29, 2020

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 9-17 of the General Laws entitled "Witnesses" is hereby amended
2 by adding thereto the following section:

3 **9-17-5.2. Subpoena for production of documentary evidence from social media and**
4 **Internet sites.**

5 (a) Definitions. As used in this section the following terms shall have the following
6 meanings:

7 (1) "Internet" means, collectively, the myriad of computer and telecommunications
8 facilities, including equipment and operating software, that comprise the interconnected
9 worldwide network of networks that employ the transmission control protocol or Internet
10 protocol, or any predecessor or successor protocols to such protocol, to communicate information
11 of all kinds by wire or radio.

12 (2) "Social media" means any cell phone- or internet-based tools and applications that are
13 used to share and distribute information.

14 (b) Upon a motion by defense counsel in a criminal case, the court, upon finding of good
15 cause, shall order the department of attorney general and/or the investigating police department,
16 or the lead law enforcement agency involved in any investigation if more than one, to issue a
17 subpoena or subpoenas to any social media site or Internet-based company, for all records, posts,
18 submissions, statements, photographs of any person who is a witness or a potential witness in any

1 criminal proceeding. Said subpoena shall be returnable to the issuing court and all documents,
2 books, papers or any other tangible or thing contained in the response shall be reviewed in camera
3 by the court. If the court finds that the returned records are relevant to the matter before the court,
4 it shall provide defendant's counsel the records in furtherance of its investigation.

5 (c) When any subpoena under this section for the production of books, papers,
6 documents, or tangible things is served on any social media or Internet site, it shall be deemed a
7 sufficient response to the subpoena if the employee of the entity charged with the responsibility
8 of being custodian of the original records promptly provides the attorney for the party causing
9 service of the subpoena copies of all documents requested by the subpoena. All responses to the
10 subpoena shall contain a certificate which shall be signed before a notary public by the employee
11 of the entity charged with the responsibility of being custodian of the records and shall include a
12 legend substantially to the following effect: "The copies of records for which this certification is
13 made are true and complete reproductions of the original or microfilmed records which are in the
14 possession of (name of entity). This certification is given pursuant to Rhode Island general laws §
15 9-17-5.2 by the custodian of the records in lieu of his or her personal appearance."

16 (d) Documents or records of any social media or Internet site that are susceptible to
17 photostatic reproduction may be proved as to foundation, identity, and authenticity without any
18 preliminary testimony, by use of legible and durable copies, certified in the manner provided in
19 subsection (c) of this section by the employee of the entity charged with the responsibility of
20 being custodian of the originals thereof. The copies may be used in any trial, hearing, deposition,
21 or any other judicial or administrative action or proceeding, whether civil or criminal, in lieu of
22 the original documents or records which, however, the entity shall hold available for inspection
23 and comparison by the court, tribunal, or hearing officer and by the parties and their attorneys of
24 record.

25 (e) In the event any of the entities are unable to provide the documents requested in the
26 subpoena due to the timeliness of the service of the subpoena or for other legal reasons, then the
27 employee charged with the responsibility of being custodian of the records for the entity shall set
28 forth in the certificate required hereunder the specific reasons for the noncompliance, the time of
29 service of the subpoena, and if appropriate the time anticipated in complying with the subpoena.

30 SECTION 2. Chapter 12-5 of the General Laws entitled "Search Warrants" is hereby
31 amended by adding thereto the following section:

32 **12-5-11. Search warrant for production of documentary evidence from social media**
33 **and Internet sites.**

34 (a) Definitions. As used in this section the following terms shall have the following

1 meanings:

2 (1) "Internet" means, collectively, the myriad of computer and telecommunications
3 facilities, including equipment and operating software, that comprise the interconnected
4 worldwide network of networks that employ the transmission control protocol or Internet
5 protocol, or any predecessor or successor protocols to such protocol, to communicate information
6 of all kinds by wire or radio.

7 (2) "Social media" means any cell phone- or internet-based tools and applications that are
8 used to share and distribute information.

9 (b) Upon a motion by defense counsel in a criminal case, the court, upon finding of good
10 cause, shall order the department of attorney general and/or the investigating police department,
11 or the lead law enforcement agency involved in any investigation if more than one, to apply for a
12 search warrant commanding any social media site or Internet-based company, to produce all
13 records, posts, submissions, statements, photographs of any person who is witness or a potential
14 witness in any criminal proceeding. Said search warrant shall be returnable to the issuing court
15 and all documents, books, papers or any other tangible or thing contained in the response shall be
16 reviewed in camera by the court. If the court finds that the returned records are relevant to the
17 matter before the court, it shall provide defendant's counsel the records in furtherance of its
18 investigation.

19 (c) When any search warrant under this section for the production of books, papers,
20 documents, or tangible things is served on any social media or Internet site, it shall be deemed a
21 sufficient response to the search warrant if the employee of the entity charged with the
22 responsibility of being custodian of the original records promptly provides the attorney for the
23 party causing service of the search warrant copies of all documents requested by the warrant. All
24 responses to the warrant shall contain a certificate which shall be signed before a notary public by
25 the employee of the entity charged with the responsibility of being custodian of the records and
26 shall include a legend substantially to the following effect: "The copies of records for which this
27 certification is made are true and complete reproductions of the original or microfilmed records
28 which are in the possession of (name of entity). This certification is given pursuant to Rhode
29 Island general laws § 12-5-11 by the custodian of the records in lieu of his or her personal
30 appearance."

31 (d) Documents or records of any social media or internet site that are susceptible to
32 photostatic reproduction may be proved as to foundation, identity, and authenticity without any
33 preliminary testimony, by use of legible and durable copies, certified in the manner provided in
34 subsection (c) of this section by the employee of the entity charged with the responsibility of

1 being custodian of the originals thereof. The copies may be used in any trial, hearing, deposition,
2 or any other judicial or administrative action or proceeding, whether civil or criminal, in lieu of
3 the original documents or records which, however, the entity shall hold available for inspection
4 and comparison by the court, tribunal, or hearing officer and by the parties and their attorneys of
5 record.

6 (e) In the event any of the entities are unable to provide the documents requested in the
7 warrant due to the timeliness of the service of the warrant or for other legal reasons, then the
8 employee charged with the responsibility of being custodian of the records for the entity shall set
9 forth in the certificate required hereunder the specific reasons for the noncompliance, the time of
10 service of the warrant, and if appropriate the time anticipated in complying with the warrant.

11 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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1 This act would require, upon motion by defense counsel in a criminal proceeding, the
2 attorney general and/or the lead investigating law enforcement agency to issue a subpoena or
3 search warrant to social media and internet sites for production of all material posted or submitted
4 by any witness or potential witness.

5 This act would take effect upon passage.

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