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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

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A N A C T

RELATING COURTS AND CIVIL PROCEDURE - PROCEDURE GENERALLY -  
WITNESSES

Introduced By: Representative Jason Knight

Date Introduced: January 22, 2021

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 worldwide  
9 network of networks that employ the transmission control protocol or Internet protocol, or any  
10 predecessor or successor protocols to such protocol, to communicate information of all kinds by  
11 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, or  
16 the lead law enforcement agency involved in any investigation if more than one, to issue a subpoena  
17 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, documents,  
6 or tangible things is served on any social media or Internet site, it shall be deemed a sufficient  
7 response to the subpoena if the employee of the entity charged with the responsibility of being  
8 custodian of the original records promptly provides the attorney for the party causing service of the  
9 subpoena copies of all documents requested by the subpoena. All responses to the subpoena shall  
10 contain a certificate which shall be signed before a notary public by the employee of the entity  
11 charged with the responsibility of being custodian of the records and shall include a legend  
12 substantially to the following effect: "The copies of records for which this certification is made are  
13 true and complete reproductions of the original or microfilmed records which are in the possession  
14 of (name of entity). This certification is given pursuant to Rhode Island general laws § 9-17-5.2 by  
15 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 being  
20 custodian of the originals thereof. The copies may be used in any trial, hearing, deposition, or any  
21 other judicial or administrative action or proceeding, whether civil or criminal, in lieu of the original  
22 documents or records which, however, the entity shall hold available for inspection and comparison  
23 by the court, tribunal, or hearing officer and by the parties and their attorneys of record.

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

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

31 **12-5-11. Search warrant for production of documentary evidence from social media**  
32 **and Internet sites.**

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

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

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

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

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

29           (d) Documents or records of any social media or internet site that are susceptible to  
30 photostatic reproduction may be proved as to foundation, identity, and authenticity without any  
31 preliminary testimony, by use of legible and durable copies, certified in the manner provided in  
32 subsection (c) of this section by the employee of the entity charged with the responsibility of being  
33 custodian of the originals thereof. The copies may be used in any trial, hearing, deposition, or any  
34 other judicial or administrative action or proceeding, whether civil or criminal, in lieu of the original

1 documents or records which, however, the entity shall hold available for inspection and comparison  
2 by the court, tribunal, or hearing officer and by the parties and their attorneys of record.

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

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

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T  
RELATING COURTS AND CIVIL PROCEDURE - PROCEDURE GENERALLY -  
WITNESSES

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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 search  
3 warrant to social media and internet sites for production of all material posted or submitted by any  
4 witness or potential witness.

5           This act would take effect upon passage.

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