



Association of State Criminal Investigative Agencies

June 23, 2020

The Honorable Lindsey O. Graham
United States Senate
290 Russell Senate Office Building
Washington, DC 20510

Dear Senator Graham:

I write on behalf of the Association of State Criminal Investigative Agencies (ASCIA) in support of your legislation that would ensure law enforcement investigators can obtain access to digital evidence if a search warrant is issued by a judge. Your bill would be an appropriate and much-needed update to the law for the 21st Century and would restore court-authorized access to an otherwise unavailable source of highly relevant, unbiased, irreplaceable evidence.

ASCIA has long held that elected legislators and neutral judges – not technology companies – should decide whether law enforcement may obtain certain evidence when conducting criminal investigations. An example of how Congress successfully adapted the law to evolving communications technology is the Communications Assistance for Law Enforcement Act (CALEA). CALEA has worked well for more than two decades. It created a level playing field for all communications companies – at the time – to meet minimum obligations for public safety. And companies have successfully complied with that law.

But rapidly evolving technology has limited CALEA's scope to a smaller and smaller amount of the total digital evidence that is relevant in today's cases. Today's ubiquitous communications, social media, collaboration, and storage platforms and apps are simply out of CALEA's reach. Digital evidence is free from bias and lets investigators, judges, and juries see, hear, and read for themselves what was done or said. The contents of communications allow us to evaluate threats, prove intent, and exonerate the innocent. Without any legal limits, warrant-proof systems and network designs have spread so far that a growing percentage of the available digital evidence is now beyond the reach of investigators.

State and local law enforcement agencies conduct more than 85 percent of all criminal investigations in the United States including murders, offenses against children, drug trafficking, and threats of violence. Digital information is critical in most of those cases today. In our experience, digital evidence stored on devices and in the cloud are increasingly inaccessible due to encryption that technology companies have designed to prevent access by anyone except the user, even if a judge signs a warrant based on probable cause. Your bill would help overcome those unreasonable obstacles.

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ASCIA understands that strong encryption is an essential part of modern cybersecurity. We also believe that tradeoffs have always been a part of system design. A lawful access mechanism that balances system security against the very real public safety harm caused by warrant-proof encryption is consistent with long-standing tradeoffs in other areas of system design, like the need for software updates. Your bill strikes an appropriate balance and we commend your recognition of the seriousness of this issue.

Thank you for your commitment and we look forward to working with you and your colleagues to advance this legislation.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mark Keel". The signature is fluid and cursive, with the first name "Mark" being more prominent than the last name "Keel".

Mark Keel
President, ASCIA
Chief
South Carolina Division of Law Enforcement

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