



NATIONAL DISTRICT ATTORNEYS ASSOCIATION

THE VOICE OF AMERICA'S PROSECUTORS

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Lawful Access & Encryption: Legislative Overview

History & Request

- Congress has yet to inject legislative change into warrant proof encryption for both data-at-rest and data-in-motion.
- Hearings held in the Senate Committee on the Judiciary addressed lawful access by highlighting the growing danger to children with end-to-end encryption.
- **Following the hearings, NDAA is advocating for legislative change to address both data-in-motion and data-at-rest**
 - NDAA supports drafting legislation and is calling on lawmakers to support legislation that would require technology companies to **comply with valid court orders and provide access to data-at-rest in a timely manner once an order is served.**
 - Further, NDAA supports legislative efforts to address data-in-motion and end-to-end encryption by **both studying the issue and requiring technology companies to comply with valid orders.**
 - NDAA opposes any efforts to decouple the two issues and is asking lawmakers to take action in the 116th Congress to address **lawful access.**



Congressional Testimony

- Previous efforts to pass encryption legislation by Senator Richard Burr (R-NC) and Senator Dianne Feinstein (D-CA) were defeated in 2014. The legislation would have simply required technology companies to comply with valid court orders from federal, State, local, and tribal law enforcement.
- The issue remained largely dormant in Congress, until a Senate Committee on the Judiciary Hearing on Protecting Innocence in a Digital World where current NDAA President Duffie Stone testified to the Committee that, *“if we want our law enforcement to investigate child exploitation, we must allow them to effectively execute search warrants on criminals’ smartphones as well as their houses by mandating cell phone companies comply with court orders and not evade them by refusing to provide law enforcement security codes.”*
- The Senate Judiciary Members held another committee hearing on *Going Dark: Encryption, Technology, and the Balance Between Public Safety and Privacy*. During the hearing Senate Judiciary Chairman Lindsey Graham (R-SC) and Ranking Member Dianne Feinstein (D-CA) committed to work on the issue following testimony from Manhattan District Attorney Cyrus Vance.

Educating Congress

Following the hearings, NDAA has highlighted the potential dangers to an investigation and prosecution if service providers notify customers of lawful subpoenas or court orders obtained for their records as well as the cost to victims when technology companies refuse to comply with valid court orders.