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I N A S S E M B L Y

February 4, 2016

Introduced by M. of A. DINOWITZ, GOTTFRIED, GALEF, GJONAJ, JOYNER,
TITONE, LINARES -- Multi-Sponsored by -- M. of A. DAVILA, ENGLEBRIGHT,
GLICK, RAMOS, SKARTADOS -- read once and referred to the Committee on
Codes

AN ACT to amend the criminal procedure law, in relation to establishing
the New York electronic communications privacy act ("NYECPA")

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. The criminal procedure law is amended by adding a new arti-
2 cle 695 to read as follows:

3 ARTICLE 695

4 SEARCH AND SEIZURE OF ELECTRONIC DEVICES AND ELECTRONIC
5 COMMUNICATIONS

6 SECTION 695.05 SEARCH AND SEIZURE OF ELECTRONIC DEVICES AND ELECTRONIC
7 COMMUNICATIONS; DEFINITIONS.

8 695.10 SEARCH AND SEIZURE OF ELECTRONIC DEVICES AND ELECTRONIC
9 COMMUNICATIONS; IN GENERAL.

10 695.15 SEARCH AND SEIZURE OF ELECTRONIC DEVICES AND ELECTRONIC
11 COMMUNICATIONS; IN AN EMERGENCY.

12 695.20 SEARCH AND SEIZURE OF ELECTRONIC DEVICES AND ELECTRONIC
13 COMMUNICATIONS; WHEN EVIDENCE CAN BE SUPPRESSED.

14 695.25 SEARCH AND SEIZURE OF ELECTRONIC DEVICES AND ELECTRONIC
15 COMMUNICATIONS; ANNUAL REPORT.

16 S 695.05 SEARCH AND SEIZURE OF ELECTRONIC DEVICES AND ELECTRONIC COMMU-
17 NICATIONS; DEFINITIONS.

18 AS USED IN THIS ARTICLE, THE FOLLOWING DEFINITIONS SHALL APPLY:

19 1. "ADVERSE RESULT" MEANS ANY OF THE FOLLOWING:

20 (A) DANGER TO THE LIFE OR PHYSICAL SAFETY OF AN INDIVIDUAL;

21 (B) FLIGHT FROM PROSECUTION;

22 (C) DESTRUCTION OF OR TAMPERING WITH EVIDENCE;

23 (D) INTIMIDATION OF POTENTIAL WITNESSES; OR

24 (E) SERIOUS JEOPARDY TO AN INVESTIGATION.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 2. "AUTHORIZED POSSESSOR" MEANS THE PERSON IN POSSESSION OF AN ELEC-
2 TRONIC DEVICE WHEN THAT PERSON IS THE OWNER OF THE DEVICE OR HAS BEEN
3 AUTHORIZED TO POSSESS THE DEVICE BY THE OWNER OF THE DEVICE.

4 3. "ELECTRONIC COMMUNICATION" MEANS THE TRANSMISSION OF SIGNS,
5 SIGNALS, WRITINGS, IMAGES, SOUNDS, DATA, OR INTELLIGENCE OF ANY NATURE
6 IN WHOLE OR IN PART BY A WIRE, RADIO, ELECTROMAGNETIC, PHOTOELECTRIC, OR
7 PHOTO-OPTICAL SYSTEM.

8 4. "ELECTRONIC COMMUNICATION INFORMATION" MEANS INFORMATION RELATED TO
9 AN ELECTRONIC COMMUNICATION OR THE USE OF AN ELECTRONIC COMMUNICATION
10 SERVICE INCLUDING, BUT NOT LIMITED TO THE CONTENTS, SENDER, RECIPIENTS,
11 OR FORMAT OF AN ELECTRONIC COMMUNICATION; THE PRECISE OR APPROXIMATE
12 LOCATION OF THE SENDER OR RECIPIENTS OF AN ELECTRONIC COMMUNICATION AT
13 ANY TIME DURING SUCH COMMUNICATION; THE TIME OR DATE SUCH COMMUNICATION
14 WAS CREATED, SENT, OR RECEIVED AND INFORMATION PERTAINING TO AN INDIVID-
15 UAL OR DEVICE INVOLVED IN THE COMMUNICATION INCLUDING BUT NOT LIMITED TO
16 AN INTERNET PROTOCOL ADDRESS. ELECTRONIC COMMUNICATION INFORMATION DOES
17 NOT INCLUDE SUBSCRIBER INFORMATION AS DEFINED IN THIS ARTICLE.

18 5. "ELECTRONIC COMMUNICATION SERVICE" MEANS A SERVICE THAT PROVIDES
19 SUBSCRIBERS TO OR USERS OF SUCH SERVICE THE ABILITY TO SEND OR RECEIVE
20 AN ELECTRONIC COMMUNICATION AS DEFINED IN THIS ARTICLE, INCLUDING A
21 SERVICE THAT ACTS AS AN INTERMEDIARY IN THE TRANSMISSION OF ELECTRONIC
22 COMMUNICATIONS, OR THAT STORES ELECTRONIC COMMUNICATION INFORMATION.

23 6. "ELECTRONIC DEVICE" MEANS A DEVICE THAT STORES, GENERATES, OR TRAN-
24 SMITS INFORMATION IN ELECTRONIC FORM.

25 7. "ELECTRONIC DEVICE INFORMATION" MEANS INFORMATION STORED IN OR
26 GENERATED THROUGH THE OPERATION OF AN ELECTRONIC DEVICE, INCLUDING
27 INFORMATION RELATED TO THE LOCATION OF SUCH DEVICE AT ANY TIME.

28 8. "ELECTRONIC INFORMATION" MEANS ELECTRONIC COMMUNICATION INFORMATION
29 OR ELECTRONIC DEVICE INFORMATION.

30 9. "LAW ENFORCEMENT AGENCY" MEANS ANY AGENCY WHICH IS EMPOWERED BY LAW
31 TO CONDUCT AN INVESTIGATION OR TO MAKE AN ARREST FOR AN OFFENSE UNDER
32 THE PENAL LAW, AND AN AGENCY WHICH IS AUTHORIZED BY LAW TO PROSECUTE OR
33 PARTICIPATE IN THE PROSECUTION OF AN OFFENSE UNDER THE PENAL LAW.

34 10. "LAW ENFORCEMENT OFFICER" MEANS ANY PUBLIC SERVANT WHO IS
35 EMPOWERED BY LAW TO CONDUCT AN INVESTIGATION OF OR TO MAKE AN ARREST FOR
36 AN OFFENSE UNDER THE PENAL LAW, AND ANY ATTORNEY AUTHORIZED BY LAW TO
37 PROSECUTE OR PARTICIPATE IN THE PROSECUTION OF AN OFFENSE UNDER THE
38 PENAL LAW.

39 11. "LOCATION INFORMATION" MEANS INFORMATION REGARDING THE GENERAL OR
40 SPECIFIC LOCATION OF AN ELECTRONIC DEVICE.

41 12. "SERVICE PROVIDER" MEANS A PERSON OR ENTITY THAT PROVIDES AN ELEC-
42 TRONIC COMMUNICATION SERVICE.

43 13. "SPECIFIC CONSENT" MEANS CONSENT PROVIDED DIRECTLY TO A LAW
44 ENFORCEMENT AGENCY OR LAW ENFORCEMENT OFFICER SEEKING INFORMATION
45 REGARDING AN ELECTRONIC COMMUNICATION, INCLUDING BUT NOT LIMITED TO
46 CIRCUMSTANCES IN WHICH A LAW ENFORCEMENT AGENCY OR LAW ENFORCEMENT OFFI-
47 CER IS THE ADDRESSEE OR INTENDED RECIPIENT OR A MEMBER OF THE INTENDED
48 AUDIENCE FOR SUCH COMMUNICATION.

49 14. "SUBSCRIBER INFORMATION" MEANS THE NAME, STREET ADDRESS, TELEPHONE
50 NUMBER, EMAIL ADDRESS, OR SIMILAR CONTACT INFORMATION PROVIDED BY A
51 SUBSCRIBER TO THE SERVICE PROVIDER IN ORDER TO ESTABLISH OR MAINTAIN A
52 COMMUNICATION CHANNEL OR AN ACCOUNT FOR ELECTRONIC COMMUNICATION
53 SERVICES, AS WELL AS A SUBSCRIBER IDENTIFIER OR ACCOUNT NUMBER, THE
54 PERIOD OF TIME IN WHICH THE SUBSCRIBER RECEIVES SERVICE; AND THE TYPES
55 OF SERVICES USED BY A USER OF OR SUBSCRIBER TO A SERVICE PROVIDER.

S 695.10 SEARCH AND SEIZURE OF ELECTRONIC DEVICES AND ELECTRONIC COMMUNICATIONS; IN GENERAL.

1. EXCEPT AS PROVIDED IN THIS SECTION, A LAW ENFORCEMENT AGENCY OR LAW ENFORCEMENT OFFICER SHALL NOT:

(A) COMPEL, INDUCE OR OFFER INCENTIVES FOR THE PRODUCTION OF OR ACCESS TO ELECTRONIC COMMUNICATION INFORMATION FROM A SERVICE PROVIDER;

(B) COMPEL THE PRODUCTION OF OR ACCESS TO ELECTRONIC DEVICE INFORMATION FROM ANY PERSON OR ENTITY OTHER THAN THE AUTHORIZED POSSESSOR OF THE DEVICE; OR

(C) ACCESS ELECTRONIC DEVICE INFORMATION BY MEANS OF PHYSICAL INTERACTION OR ELECTRONIC COMMUNICATION WITH THE ELECTRONIC DEVICE.

2. A LAW ENFORCEMENT AGENCY OR LAW ENFORCEMENT OFFICER MAY COMPEL THE PRODUCTION OF OR ACCESS TO ELECTRONIC COMMUNICATION INFORMATION FROM A SERVICE PROVIDER, OR COMPEL THE PRODUCTION OF OR ACCESS TO ELECTRONIC DEVICE INFORMATION FROM ANY PERSON OR ENTITY OTHER THAN THE AUTHORIZED POSSESSOR OF THE DEVICE ONLY UNDER THE FOLLOWING CIRCUMSTANCES:

(A) PURSUANT TO A WARRANT ISSUED IN ACCORDANCE WITH ARTICLE SIX HUNDRED NINETY OF THIS TITLE AND SUBJECT TO SUBDIVISION THREE OF THIS SECTION, UNLESS THE LAW ENFORCEMENT AGENCY OR LAW ENFORCEMENT OFFICER IS REQUIRED UNDER SECTION 250.00 OF THE PENAL LAW AND ARTICLE SEVEN HUNDRED OF THIS TITLE TO OBTAIN A WARRANT ISSUED PURSUANT TO ARTICLE SEVEN HUNDRED OF THIS TITLE; OR

(B) PURSUANT TO A WARRANT ISSUED IN ACCORDANCE WITH ARTICLE SEVEN HUNDRED OF THIS TITLE.

3. A LAW ENFORCEMENT AGENCY OR LAW ENFORCEMENT OFFICER MAY ACCESS ELECTRONIC DEVICE INFORMATION BY MEANS OF PHYSICAL INTERACTION OR ELECTRONIC COMMUNICATION WITH THE DEVICE ONLY AS FOLLOWS:

(A) PURSUANT TO A WARRANT IN ACCORDANCE WITH ARTICLE SIX HUNDRED NINETY OF THIS TITLE AND SUBJECT TO SUBDIVISION THREE OF THIS SECTION, UNLESS THE LAW ENFORCEMENT AGENCY OR LAW ENFORCEMENT OFFICER IS REQUIRED UNDER SECTION 250.00 OF THE PENAL LAW AND ARTICLE SEVEN HUNDRED OF THIS TITLE TO OBTAIN A WARRANT ISSUED PURSUANT TO ARTICLE SEVEN HUNDRED OF THIS TITLE;

(B) PURSUANT TO A WARRANT ISSUED IN ACCORDANCE WITH ARTICLE SEVEN HUNDRED OF THIS TITLE;

(C) WITH THE SPECIFIC CONSENT OF THE AUTHORIZED POSSESSOR OF THE DEVICE;

(D) WITH THE SPECIFIC CONSENT OF THE OWNER OF THE DEVICE, ONLY WHEN THE DEVICE HAS BEEN REPORTED AS LOST OR STOLEN; OR

(E) IF THE LAW ENFORCEMENT AGENCY OR LAW ENFORCEMENT OFFICER, IN GOOD FAITH, BELIEVES THE DEVICE TO BE LOST, STOLEN, OR ABANDONED, PROVIDED THAT THE LAW ENFORCEMENT AGENCY OR LAW ENFORCEMENT OFFICER SHALL ACCESS ELECTRONIC DEVICE INFORMATION ONLY FOR THE PURPOSE OF ATTEMPTING TO IDENTIFY, VERIFY, OR CONTACT THE OWNER OR AUTHORIZED POSSESSOR OF THE DEVICE.

4. ANY WARRANT FOR ELECTRONIC INFORMATION SHALL:

(A) DESCRIBE WITH PARTICULARITY THE INFORMATION TO BE SEIZED BY SPECIFYING THE TIME PERIODS FOR WHICH SUCH INFORMATION IS SOUGHT AND, AS APPROPRIATE AND REASONABLE, THE TARGET INDIVIDUALS OR ACCOUNTS, THE APPLICATIONS OR SERVICES COVERED, AND THE TYPES OF INFORMATION SOUGHT; AND

(B) COMPLY WITH ALL APPLICABLE PROVISIONS OF STATE AND FEDERAL LAW, INCLUDING SUCH PROVISIONS THAT PROHIBIT OR LIMIT THE USE OF SEARCH WARRANTS, OR THAT IMPOSE ADDITIONAL REQUIREMENTS, BEYOND THE SCOPE OF THIS ARTICLE, REGARDING SEARCH WARRANTS.

1 5. A SERVICE PROVIDER MAY VOLUNTARILY DISCLOSE ELECTRONIC COMMUNI-
2 CATION INFORMATION OR SUBSCRIBER INFORMATION WHEN THAT DISCLOSURE IS NOT
3 OTHERWISE PROHIBITED BY THIS ARTICLE OR BY OTHER PROVISIONS OF STATE LAW
4 OR BY FEDERAL LAW.

5 6. A LAW ENFORCEMENT AGENCY OR LAW ENFORCEMENT OFFICER THAT RECEIVES
6 ELECTRONIC COMMUNICATION INFORMATION PROVIDED VOLUNTARILY SHALL DESTROY
7 THAT INFORMATION WITHIN NINETY DAYS EXCEPT IN ONE OR MORE OF THE FOLLOW-
8 ING CIRCUMSTANCES:

9 (A) A LAW ENFORCEMENT OFFICER OR AGENCY OBTAINS SPECIFIC CONSENT FROM
10 THE SENDER OR RECIPIENT OF THE ELECTRONIC COMMUNICATIONS ABOUT WHICH
11 INFORMATION HAS BEEN DISCLOSED; OR

12 (B) A LAW ENFORCEMENT OFFICER OR AGENCY OBTAINS A COURT ORDER AUTHOR-
13 IZING THE RETENTION OF THE ELECTRONIC COMMUNICATION INFORMATION. A COURT
14 SHALL ISSUE A RETENTION ORDER UPON A FINDING THAT THE CONDITIONS ON
15 WHICH THE INITIAL VOLUNTARY DISCLOSURE WAS BASED PERSIST, IN WHICH CASE
16 THE COURT SHALL AUTHORIZE THE RETENTION OF SUCH INFORMATION ONLY FOR SO
17 LONG AS THOSE CONDITIONS PERSIST, OR WHERE THERE IS PROBABLE CAUSE TO
18 BELIEVE THAT SUCH INFORMATION CONSTITUTES EVIDENCE THAT A CRIME HAS BEEN
19 COMMITTED.

20 (C) INFORMATION RETAINED BY A LAW ENFORCEMENT OFFICER OR AGENT THAT IS
21 SUBJECT TO THIS PROVISION SHALL NOT BE SHARED WITH:

22 (I) PERSONS OR ENTITIES THAT DO NOT AGREE TO LIMIT THE USE OF THE
23 PROVIDED INFORMATION TO THOSE PURPOSES IDENTIFIED IN THE COURT AUTHORI-
24 ZATION; AND

25 (II) PERSONS OR ENTITIES THAT:

26 (A) ARE NOT LEGALLY OBLIGATED TO DESTROY THE PROVIDED INFORMATION UPON
27 THE EXPIRATION OR RESCINDMENT OF THE COURT'S RETENTION ORDER; OR

28 (B) DO NOT VOLUNTARILY AGREE TO DESTROY THE PROVIDED INFORMATION UPON
29 THE EXPIRATION OR RESCINDMENT OF THE COURT'S RETENTION ORDER.

30 7. A LAW ENFORCEMENT AGENCY OR LAW ENFORCEMENT OFFICER THAT OBTAINS
31 ELECTRONIC INFORMATION PURSUANT TO AN EMERGENCY INVOLVING DANGER OF
32 DEATH OR SERIOUS PHYSICAL INJURY TO A PERSON, WHICH REQUIRES ACCESS TO
33 THE ELECTRONIC INFORMATION WITHOUT DELAY, SHALL WITHIN THREE DAYS AFTER
34 OBTAINING THE ELECTRONIC INFORMATION FILE WITH THE APPROPRIATE COURT AN
35 APPLICATION FOR A WARRANT OR ORDER THAT AUTHORIZES ACCESS TO SUCH ELEC-
36 TRONIC INFORMATION, OR A MOTION SEEKING APPROVAL OF THE EMERGENCY
37 DISCLOSURES THAT SETS FORTH THE FACTS GIVING RISE TO THE EMERGENCY, AND
38 IF APPLICABLE, A REQUEST SUPPORTED BY A SWORN AFFIDAVIT FOR AN ORDER
39 DELAYING NOTIFICATION TO THE COURT AS REQUIRED UNDER PARAGRAPH (A) OF
40 SUBDIVISION TWO OF SECTION 695.15 OF THIS ARTICLE. THE COURT SHALL
41 PROMPTLY RULE ON SUCH APPLICATION OR MOTION, AND SHALL ORDER THE IMMEDI-
42 ATE DESTRUCTION OF ALL INFORMATION OBTAINED, AND IMMEDIATE NOTIFICATION
43 TO THE TARGETS OF A WARRANT OR EMERGENCY REQUEST, PURSUANT TO SUBDIVI-
44 SION ONE OF SECTION 695.15 OF THIS ARTICLE, IF SUCH NOTICE HAS NOT
45 ALREADY BEEN GIVEN, UPON A FINDING THAT THE FACTS DID NOT GIVE RISE TO
46 AN EMERGENCY, OR UPON A RULING THAT REJECTS THE WARRANT OR ORDER APPLI-
47 CATION ON ANY OTHER GROUND.

48 8. THIS SECTION DOES NOT LIMIT THE AUTHORITY OF A LAW ENFORCEMENT
49 AGENCY OR LAW ENFORCEMENT OFFICER TO USE AN ADMINISTRATIVE, GRAND JURY,
50 TRIAL, OR CIVIL DISCOVERY SUBPOENA TO DO ANY OF THE FOLLOWING:

51 (A) REQUIRE AN ORIGINATOR, ADDRESSEE, OR INTENDED RECIPIENT OF AN
52 ELECTRONIC COMMUNICATION TO DISCLOSE ANY ELECTRONIC COMMUNICATION INFOR-
53 MATION ASSOCIATED WITH THAT COMMUNICATION;

54 (B) REQUIRE AN ENTITY THAT PROVIDES ELECTRONIC COMMUNICATIONS SERVICES
55 TO ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS FOR THE PURPOSE OF
56 CARRYING OUT THEIR DUTIES, TO DISCLOSE ELECTRONIC COMMUNICATION INFORMA-

1 TION ASSOCIATED WITH AN ELECTRONIC COMMUNICATION TO OR FROM AN OFFICER,
2 DIRECTOR, EMPLOYEE, OR AGENT OF THE ENTITY; OR

3 (C) REQUIRE A SERVICE PROVIDER TO PROVIDE SUBSCRIBER INFORMATION.

4 9. THIS SECTION DOES NOT PROHIBIT THE INTENDED RECIPIENT OF AN ELEC-
5 TRONIC COMMUNICATION FROM VOLUNTARILY DISCLOSING ELECTRONIC COMMUNI-
6 CATION INFORMATION CONCERNING THAT COMMUNICATION TO A LAW ENFORCEMENT
7 AGENCY OR LAW ENFORCEMENT OFFICER.

8 10. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO EXPAND ANY AUTHORITY
9 UNDER STATE LAW TO COMPEL THE PRODUCTION OF OR ACCESS TO ELECTRONIC
10 INFORMATION.

11 S 695.15 SEARCH AND SEIZURE OF ELECTRONIC DEVICES AND ELECTRONIC COMMU-
12 NICATIONS; IN AN EMERGENCY.

13 1. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A LAW ENFORCEMENT
14 AGENCY OR LAW ENFORCEMENT OFFICER THAT EXECUTES A WARRANT, OR OBTAINS
15 ELECTRONIC INFORMATION IN AN EMERGENCY PURSUANT TO SECTION 695.10 OF
16 THIS ARTICLE, SHALL SERVE UPON OR DELIVER TO THE TARGET OF A WARRANT OR
17 EMERGENCY REQUEST BY REGISTERED OR FIRST-CLASS MAIL, ELECTRONIC MAIL, OR
18 BY OTHER MEANS REASONABLY CALCULATED TO BE EFFECTIVE, A NOTICE THAT
19 INFORMS THE RECIPIENT THAT INFORMATION ABOUT THE RECIPIENT HAS BEEN
20 COMPELLED OR REQUESTED. SUCH NOTICE SHALL STATE WITH REASONABLE SPECIF-
21 ICITY THE NATURE OF THE GOVERNMENT INVESTIGATION PURSUANT TO WHICH THE
22 INFORMATION IS SOUGHT. THE NOTICE SHALL INCLUDE A COPY OF THE WARRANT OR
23 A WRITTEN STATEMENT SETTING FORTH FACTS GIVING RISE TO THE EMERGENCY.
24 THE NOTICE SHALL BE PROVIDED CONTEMPORANEOUSLY WITH THE EXECUTION OF A
25 WARRANT, OR, IN THE CASE OF AN EMERGENCY, WITHIN THREE DAYS AFTER
26 OBTAINING THE ELECTRONIC INFORMATION. NOTICE SHALL BE SUPPLEMENTED WITH
27 COPIES OF ELECTRONIC INFORMATION OBTAINED IN THE SAME FORM IT WAS
28 RECEIVED WITHIN THREE DAYS OF OBTAINING THE ELECTRONIC INFORMATION.

29 2. (A) WHEN A WARRANT IS SOUGHT OR ELECTRONIC INFORMATION IS OBTAINED
30 IN AN EMERGENCY UNDER SECTION 695.10 OF THIS ARTICLE, THE LAW ENFORCE-
31 MENT AGENCY OR LAW ENFORCEMENT OFFICER MAY SUBMIT A REQUEST TO A COURT
32 SUPPORTED BY A SWORN AFFIDAVIT FOR AN ORDER DELAYING NOTIFICATION AND
33 PROHIBITING ANY PARTY PROVIDING INFORMATION FROM NOTIFYING ANY OTHER
34 PARTY THAT INFORMATION HAS BEEN SOUGHT. THE COURT SHALL ISSUE THE ORDER
35 IF THE COURT DETERMINES THAT THERE IS REASON TO BELIEVE THAT NOTIFICA-
36 TION MAY HAVE AN ADVERSE RESULT, BUT ONLY FOR THE PERIOD OF TIME THAT
37 THE COURT FINDS THERE IS REASON TO BELIEVE THAT THE NOTIFICATION MAY
38 HAVE THAT ADVERSE RESULT, AND NOT TO EXCEED NINETY DAYS.

39 (B) THE COURT MAY GRANT EXTENSIONS OF THE DELAY OF UP TO NINETY DAYS
40 EACH ON THE SAME GROUNDS AS PROVIDED IN PARAGRAPH (A) OF THIS SUBDIVI-
41 SION.

42 (C) UPON EXPIRATION OF THE PERIOD IN WHICH NOTIFICATION IS DELAYED, A
43 LAW ENFORCEMENT AGENCY OR LAW ENFORCEMENT OFFICER SHALL SERVE UPON THE
44 IDENTIFIED TARGETS OF A WARRANT OR DELIVER TO THOSE TARGETS BY REGIS-
45 TERED OR FIRST-CLASS MAIL, ELECTRONIC MAIL, OR OTHER MEANS REASONABLY
46 CALCULATED TO BE EFFECTIVE AS SPECIFIED BY THE COURT ISSUING THE ORDER
47 AUTHORIZING DELAYED NOTIFICATION, A DOCUMENT THAT INCLUDES THE INFORMA-
48 TION DESCRIBED IN SUBDIVISION ONE OF THIS SECTION, ALONG WITH A COPY OF
49 ALL ELECTRONIC INFORMATION OBTAINED IN THE SAME FORM IT WAS RECEIVED,
50 AND A STATEMENT OF THE GROUNDS FOR THE COURT'S DETERMINATION TO GRANT A
51 DELAY IN NOTIFYING THE INDIVIDUAL.

52 3. IF THERE IS NO IDENTIFIED TARGET OF A WARRANT OR EMERGENCY REQUEST
53 AT THE TIME OF ITS ISSUANCE, THE LAW ENFORCEMENT AGENCY OR LAW ENFORCE-
54 MENT OFFICER SHALL SUBMIT TO THE ATTORNEY GENERAL OF THIS STATE WITHIN
55 THREE DAYS OF THE EXECUTION OF THE WARRANT OR ISSUANCE OF THE REQUEST A
56 REPORT REGARDING THE INFORMATION REQUIRED IN SUBDIVISION ONE OF THIS

SECTION. IF AN ORDER DELAYING NOTICE IS OBTAINED PURSUANT TO SUBDIVISION TWO OF THIS SECTION, THE LAW ENFORCEMENT AGENCY OR LAW ENFORCEMENT OFFICER SHALL SUBMIT TO THE ATTORNEY GENERAL UPON THE EXPIRATION OF THE PERIOD OF DELAY OF THE NOTIFICATION A REPORT REGARDING THE INFORMATION REQUIRED IN PARAGRAPH (C) OF SUBDIVISION TWO OF THIS SECTION. THE ATTORNEY GENERAL'S OFFICE SHALL PUBLISH SUCH REPORTS ON ITS INTERNET WEBSITE WITHIN NINETY DAYS OF RECEIPT. THE ATTORNEY GENERAL SHALL REDACT NAMES AND OTHER PERSONAL IDENTIFYING INFORMATION FROM THE REPORTS.

4. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, NOTHING IN THIS ARTICLE SHALL PROHIBIT OR LIMIT A SERVICE PROVIDER OR ANY OTHER PARTY FROM DISCLOSING INFORMATION ABOUT ANY REQUEST OR DEMAND FOR ELECTRONIC INFORMATION.

S 695.20 SEARCH AND SEIZURE OF ELECTRONIC DEVICES AND ELECTRONIC COMMUNICATIONS; WHEN EVIDENCE CAN BE SUPPRESSED.

1. PERSONS WHO ARE PARTY TO OR OTHERWISE SUBJECT TO A TRIAL, HEARING, OR OTHER LEGAL OR ADMINISTRATIVE PROCEEDING MAY MOVE TO SUPPRESS ELECTRONIC INFORMATION OBTAINED OR RETAINED IN VIOLATION OF THIS ARTICLE, THE UNITED STATES CONSTITUTION, STATE CONSTITUTION, THE NEW YORK STATE CONSTITUTION OR THE PROVISIONS OF THE CRIMINAL PROCEDURE LAW. THE MOTION SHALL BE MADE AND SHALL BE SUBJECT TO REVIEW BY A COURT IN ACCORDANCE WITH THE PROCEDURES SET FORTH IN ARTICLE SEVEN HUNDRED TEN OF THIS TITLE.

2. THE ATTORNEY GENERAL OF THIS STATE MAY COMMENCE A CIVIL ACTION TO COMPEL A LAW ENFORCEMENT AGENCY OR LAW ENFORCEMENT OFFICER TO COMPLY WITH THE PROVISIONS OF THIS ARTICLE.

3. AN INDIVIDUAL, SERVICE PROVIDER OR OTHER RECIPIENT OF A WARRANT, ORDER, OR OTHER LEGAL PROCESS THAT IS INCONSISTENT WITH THIS ARTICLE, THE UNITED STATES CONSTITUTION, OR THE NEW YORK STATE CONSTITUTION MAY PETITION THE ISSUING COURT TO VOID OR MODIFY THE WARRANT, ORDER, OR PROCESS, OR TO ORDER THE DESTRUCTION OF INFORMATION THAT IS SOUGHT PURSUANT TO SUCH A WARRANT, ORDER OR OTHER LEGAL PROCESS.

4. A STATE, TERRITORY OR COMMONWEALTH OF THE UNITED STATES AND FOREIGN CORPORATIONS AS WELL AS OFFICERS, EMPLOYEES, AND AGENTS OF THESE ENTITIES SHALL NOT BE SUBJECT TO A CAUSE OF ACTION FOR PROVIDING RECORDS, INFORMATION, FACILITIES, OR OTHER FORMS OF ASSISTANCE IN ACCORDANCE WITH THE TERMS OF A WARRANT, COURT ORDER, STATUTORY AUTHORIZATION, EMERGENCY CERTIFICATION, OR WIRETAP ORDER ISSUED PURSUANT TO THIS ARTICLE.

S 695.25 SEARCH AND SEIZURE OF ELECTRONIC DEVICES AND ELECTRONIC COMMUNICATIONS; ANNUAL REPORT.

1. A LAW ENFORCEMENT AGENCY OR LAW ENFORCEMENT OFFICER THAT OBTAINS ELECTRONIC COMMUNICATION INFORMATION PURSUANT TO THIS ARTICLE SHALL MAKE AN ANNUAL REPORT TO THE ATTORNEY GENERAL OF THIS STATE REGARDING SUCH INFORMATION. THE REPORT SHALL BE MADE ON OR BEFORE FEBRUARY FIRST, TWO THOUSAND EIGHTEEN, AND ON FEBRUARY FIRST OF EACH YEAR THEREAFTER. TO THE EXTENT SUCH INFORMATION CAN BE REASONABLY DETERMINED, THE REPORT SHALL INCLUDE THE FOLLOWING:

(A) THE TOTAL NUMBER OF TIMES ELECTRONIC INFORMATION WAS SOUGHT OR OBTAINED PURSUANT TO THIS ARTICLE;

(B) FOR EACH OF THE FOLLOWING CATEGORIES THE TYPES OF ELECTRONIC INFORMATION, THE NUMBER OF TIMES SUCH INFORMATION WAS SOUGHT OR OBTAINED, AND THE NUMBER OF RECORDS OBTAINED:

(I) ELECTRONIC COMMUNICATION CONTENT;

(II) LOCATION INFORMATION;

(III) ELECTRONIC DEVICE INFORMATION (NOT INCLUDING LOCATION INFORMATION); AND

(IV) OTHER ELECTRONIC COMMUNICATION INFORMATION.

(C) FOR EACH TYPE OF INFORMATION IDENTIFIED IN PARAGRAPH (B) OF THIS SUBDIVISION:

(I) THE NUMBER OF TIMES THE INFORMATION WAS SOUGHT OR OBTAINED PURSUANT TO:

(1) WIRETAP ORDERS OBTAINED PURSUANT TO THIS ARTICLE;

(2) SEARCH WARRANTS OBTAINED PURSUANT TO THIS ARTICLE; AND

(3) EMERGENCY REQUESTS SUBJECT TO SUBDIVISION EIGHT OF SECTION 695.10 OF THIS ARTICLE.

(II) THE TOTAL NUMBER OF INDIVIDUALS WHOSE INFORMATION WAS SOUGHT OR OBTAINED;

(III) THE TOTAL NUMBER OF INSTANCES IN WHICH INFORMATION WAS SOUGHT OR OBTAINED THAT DID NOT SPECIFY A TARGET INDIVIDUAL FROM WHOM OR ABOUT WHOM THE INFORMATION WAS REQUESTED;

(IV) FOR DEMANDS OR REQUESTS ISSUED UPON A SERVICE PROVIDER, THE NUMBER OF SUCH DEMANDS OR REQUESTS COMPLIED WITH IN FULL, PARTIALLY COMPLIED WITH, AND NOT COMPLIED WITH;

(V) THE NUMBER OF TIMES NOTICE TO TARGETED INDIVIDUALS OF A WARRANT, COURT ORDER, STATUTORY AUTHORIZATION, EMERGENCY CERTIFICATION, OR WIRETAP ORDER ISSUED PURSUANT TO THIS ARTICLE WAS DELAYED AND THE AVERAGE LENGTH OF THE DELAY;

(VI) THE NUMBER OF TIMES RECORDS OBTAINED PURSUANT TO A WARRANT, COURT ORDER, STATUTORY AUTHORIZATION, EMERGENCY CERTIFICATION, OR WIRETAP ORDER ISSUED PURSUANT TO THIS ARTICLE WERE SHARED WITH OTHER GOVERNMENT ENTITIES OR ANY DEPARTMENT OR AGENCY OF THE FEDERAL GOVERNMENT, AND THE AGENCIES WITH WHICH SUCH RECORDS WERE SHARED;

(VII) THE AVERAGE PERIOD OF TIME FOR WHICH LOCATION INFORMATION WAS OBTAINED OR RECEIVED; AND

(VIII) THE NUMBER OF INSTANCES IN WHICH ELECTRONIC INFORMATION SOUGHT OR OBTAINED PURSUANT TO THIS ARTICLE WAS RELEVANT TO A CRIMINAL PROCEEDING THAT LED TO A CONVICTION.

2. ON OR BEFORE APRIL FIRST, TWO THOUSAND EIGHTEEN, AND EACH APRIL FIRST THEREAFTER, THE ATTORNEY GENERAL'S OFFICE SHALL PUBLISH ON ITS INTERNET WEBSITE THE FOLLOWING:

(A) INDIVIDUAL REPORTS FROM EACH LAW ENFORCEMENT AGENCY OR LAW ENFORCEMENT OFFICER THAT REQUESTS OR COMPELS THE PRODUCTION OF CONTENTS OR RECORDS PERTAINING TO AN ELECTRONIC COMMUNICATION OR LOCATION INFORMATION; AND

(B) A SUMMARY AGGREGATING DATA RELATED TO EACH TYPE OF ELECTRONIC COMMUNICATION IDENTIFIED IN PARAGRAPHS (A), (B) AND (C) OF SUBDIVISION ONE OF THIS SECTION.

3. NOTHING IN THIS ARTICLE SHALL PROHIBIT OR RESTRICT A SERVICE PROVIDER FROM PRODUCING AN ANNUAL REPORT SUMMARIZING THE DEMANDS OR REQUESTS IT RECEIVES UNDER THIS ARTICLE.

S 2. This act shall take effect immediately.