STATE OF NEW YORK

8183

IN SENATE

April 13, 2020

Introduced by Sen. MYRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to prohibiting the search, with or without a warrant, of geolocation data of a group of people who are under no individual suspicion of having committed a crime, but rather are defined by having been at a given location at a given time

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as the "reverse location search prohibition act".

§ 2. The criminal procedure law is amended by adding a new article 695 to read as follows:

ARTICLE 695

REVERSE LOCATION SEARCHES

Section 695.00 Definitions.
695.10 Issuance of reverse location court orders.
695.20 Execution of reverse location searches.
695.30 Reverse location searches; suppression of evidence.
695.40 Reverse location searches; private right of action.
695.50 Physical searches excluded.

§ 695.00 Definitions. As used in this article, the following terms shall have the following meanings:

1. "Reverse location court order" means any court order, including a search warrant, compelling the disclosure of records or information pertaining to electronic devices or their users or owners, whose scope extends to an unknown number of electronic devices present in a given geographic area at a given time as measured via global positioning system coordinates, cell tower connectivity, and/or any other form of location detection.

2. "Voluntary reverse location request" means any request in the absence of a court order by a law enforcement officer for records or information pertaining to electronic devices or their users or owners, whose scope extends to an unknown number of electronic devices present

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

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in a given geographic area at a given time, whether such device location is measured via global positioning system coordinates, cell tower connectivity, or any other form of location detection.

3. "Law enforcement officer" means any police officer, peace officer, or prosecutor.

§ 695.10 Issuance of reverse location court orders.

No court shall issue a reverse location court order.

§ 695.20 Execution of reverse location searches.

1. No law enforcement officer shall seek, from any court, a reverse location court order.

2. No law enforcement officer shall make a voluntary reverse location request.

§ 695.30 Reverse location searches; suppression of evidence.

1. Upon motion from a defendant, a court shall order that evidence be suppressed or excluded if the court finds that such evidence:

(a) consists of a record acquired via a reverse location court order or voluntary reverse location request; or

(b) was obtained as a result of other evidence obtained under a reverse location court order or voluntary reverse location request.

2. This section shall apply regardless of the court which issued the order and regardless of whether the issuance of the order was permissible under the procedures of that court.

§ 695.40 Reverse location searches; private right of action.

1. Any individual whose records were obtained by a law enforcement officer in violation of section 695.20 of this article may institute a civil action against the employing agency of the law enforcement officer for any of the following:

(a) One thousand dollars per violation or actual damages, whichever is greater.

(b) Punitive damages.

(c) Injunctive or declaratory relief.

(d) Any other relief the court deems proper.

2. In assessing the amount of punitive damages, the court shall consider:

(a) The number of people whose information was disclosed.

(b) The proximity of the search to locations with heightened privacy concerns, including, but not limited to, houses of worship, political protests, and medical facilities.

(c) The persistence of violations by the particular law enforcement agency and law enforcement officer.

3. In any action brought under this section, the court may award reasonable attorneys' fees to a prevailing plaintiff.

§ 695.50 Physical searches excluded.

The foregoing limitations shall not apply to the search of any electronic device lawfully seized pursuant to a search warrant issued under article six hundred ninety of this title.

§ 3. This act shall take effect immediately.