

STATE OF NEW YORK

84

2021-2022 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 6, 2021

Introduced by M. of A. QUART, DE LA ROSA, L. ROSENTHAL, EPSTEIN, HYNDMAN, BARRON, ABINANTI, OTIS, GOTTFRIED, SIMON -- read once and referred 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:

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

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

ARTICLE 695

REVERSE LOCATION SEARCHES

Section 695.00 Definitions.

6 695.10 Issuance of reverse location court orders.

7 695.20 Execution of reverse location searches.

8 695.30 Reverse location searches; suppression of evidence.

9 695.40 Reverse location searches; private right of action.

10 695.50 Physical searches excluded.

11 § 695.00 Definitions. As used in this article, the following terms shall
12 have the following meanings:

13 1. "Reverse location court order" means any court order, including a
14 search warrant, compelling the disclosure of records or information
15 pertaining to electronic devices or their users or owners, whose scope
16 extends to an unknown number of electronic devices present in a given
17 geographic area at a given time as measured via global positioning
18 systems.

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

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1 system coordinates, cell tower connectivity, and/or any other form of
2 location detection.

3 2. "Voluntary reverse location request" means any request in the
4 absence of a court order by a law enforcement officer for records or
5 information pertaining to electronic devices or their users or owners,
6 whose scope extends to an unknown number of electronic devices present
7 in a given geographic area at a given time, whether such device location
8 is measured via global positioning system coordinates, cell tower
9 connectivity, or any other form of location detection.

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

12 § 695.10 Issuance of reverse location court orders.

13 No court shall issue a reverse location court order.

14 § 695.20 Execution of reverse location searches.

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

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

19 § 695.30 Reverse location searches; suppression of evidence.

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

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

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

26 2. This section shall apply regardless of the court which issued the
27 order and regardless of whether the issuance of the order was permissi-
28 ble under the procedures of that court.

29 § 695.40 Reverse location searches; private right of action.

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

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

36 (b) Punitive damages.

37 (c) Injunctive or declaratory relief.

38 (d) Any other relief the court deems proper.

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

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

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

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

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

49 § 695.50 Physical searches excluded.

50 The foregoing limitations shall not apply to the search of any elec-
51 tronic device lawfully seized pursuant to a search warrant issued under
52 article six hundred ninety of this title.

53 § 3. This act shall take effect immediately.