

STATE OF NEW YORK

296--A

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sens. MYRIE, BENJAMIN, GIANARIS, GOUNARDES, HOYLMAN, JACKSON, KRUEGER, LIU, RAMOS, RIVERA, SEPULVEDA, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law, in relation to prohibiting the search, with or without a warrant, of geolocation and keyword 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 or searched particular words, phrases, character strings, or websites

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 and reverse keyword 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 AND REVERSE KEYWORD SEARCHES

Section 695.00 Definitions.

6 695.10 Issuance of reverse location court orders and reverse
7 keyword court orders.

8 695.20 Execution of reverse location and reverse keyword search-
9 es.

10 695.30 Reverse location and reverse keyword searches;
11 suppression of evidence.

12 695.40 Reverse location and reverse keyword searches; private
13 right of action.

14 695.50 Physical searches excluded.

§ 695.00 Definitions.

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

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1 As used in this article, the following terms shall have the following
2 meanings:

3 1. "Government entity" shall mean any department or agency of the
4 state or any political subdivision thereof, or any individual acting for
5 or on behalf of the state or a political subdivision thereof.

6 2. "Reverse keyword court order" means any court order, including a
7 search warrant, compelling the disclosure of records or information
8 identifying any unnamed persons, by name or other unique identifier, who
9 electronically searched for particular words, phrases, character
10 strings, or websites, or who visited a particular website through a link
11 generated by such a search, regardless of whether or not the order is
12 limited to a specific geographic area or time frame.

13 3. "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 system coordinates, cell tower connectivity, Wi-Fi data and/or any other
19 form of location detection.

20 4. "Voluntary reverse keyword request" means any request in the
21 absence of a court order, by any government entity for the provision of
22 records or information identifying any unnamed persons, by name or other
23 unique identifier, who electronically searched for particular words,
24 phrases, character strings, or websites, or who visited a particular
25 website through a link generated by such a search, regardless of whether
26 or not the order is limited to a specific geographic area or time frame.

27 5. "Voluntary reverse location request" means any request in the
28 absence of a court order by any government entity for records or infor-
29 mation pertaining to electronic devices or their users or owners, whose
30 scope extends to an unknown number of electronic devices present in a
31 given geographic area at a given time, whether such device location is
32 measured via global positioning system coordinates, cell tower connec-
33 tivity, Wi-Fi data and/or any other form of location detection.

34 6. "Law enforcement officer" means any police officer, peace officer,
35 or prosecutor.

36 § 695.10 Issuance of reverse location court orders and reverse keyword
37 court orders.

38 No court shall issue a reverse location court order or a reverse
39 keyword court order.

40 § 695.20 Execution of reverse location and reverse keyword searches.

41 1. No government entity shall seek, from any court, a reverse location
42 court order or a reverse keyword court order.

43 2. No government entity shall make a voluntary reverse location
44 request or a voluntary and reverse keyword request.

45 3. No government entity shall seek, secure, obtain, borrow, purchase,
46 use, or review any information or data obtained through a reverse
47 location request or a reverse keyword request.

48 4. No government entity shall seek the assistance of any non-govern-
49 mental entity, any agency of the federal government, or any agency of
50 the government of another state or subdivision thereof in obtaining
51 information or data from a reverse location court order, reverse keyword
52 court order, reverse location request, or reverse keyword request if the
53 government entity would be barred from directly seeking such information
54 under this article.

55 § 695.30 Reverse location and reverse keyword searches; suppression of
56 evidence.

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

3 (a) consists of a record acquired via a reverse location court order,
4 reverse keyword court order, voluntary reverse location request, or
5 voluntary reverse keyword request; or

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

9 2. This section shall apply regardless of the court which issued the
10 order and regardless of whether the issuance of the order was permissi-
11 ble under the procedures of that court.

12 3. This section shall apply regardless of any claim that the informa-
13 tion or evidence is attenuated from an unlawful order or request, would
14 inevitably have been discovered, or was simultaneously or subsequently
15 obtained or reobtained through other means.

16 § 695.40 Reverse location and reverse keyword searches; private right of
17 action.

18 1. Any individual whose records were obtained by any government entity
19 in violation of section 695.20 of this article may institute a civil
20 action against such government entity for any or all of the following:

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

23 (b) Punitive damages.

24 (c) Injunctive or declaratory relief.

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

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

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

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

32 (c) The persistence of violations by the particular government entity.

33 3. In any action brought under this section, the court shall award
34 reasonable attorneys' fees, expenses and costs to a prevailing plain-
35 tiff.

36 § 695.50 Physical searches excluded.

37 The foregoing limitations shall not apply to the search of any elec-
38 tronic device lawfully seized and/or searched pursuant to a search
39 warrant issued under article six hundred ninety of this title.

40 § 3. This act shall take effect immediately.