

STATE OF NEW YORK

3306

2023-2024 Regular Sessions

IN ASSEMBLY

February 2, 2023

Introduced by M. of A. SOLAGES, L. ROSENTHAL, EPSTEIN, HYNDMAN, OTIS, SIMON, JACKSON, SEAWRIGHT, HEVESI, WALKER, DICKENS, HUNTER, FORREST, MAMDANI, TAYLOR, AUBRY, CARROLL -- 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 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.

15 695.60 Severability.

§ 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. "Person" means a natural person or a legal entity, including but
7 not limited to a proprietorship, partnership, limited partnership,
8 corporation, company, limited liability company or corporation, associ-
9 ation, or other firm or similar body, or any unit, division, agency,
10 department, or similar subdivision thereof.

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

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

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

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

39 § 695.10 Issuance of reverse location court orders and reverse keyword
40 court orders.

41 No court shall issue a reverse location court order or a reverse
42 keyword court order.

43 § 695.20 Execution of reverse location and reverse keyword searches.

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

46 2. No government entity shall make a voluntary reverse location
47 request or a voluntary and reverse keyword request.

48 3. No government entity shall seek, secure, obtain, borrow, purchase,
49 use, or review any information or data obtained through a reverse
50 location court order, a reverse keyword court order, a voluntary reverse
51 location request, or a voluntary keyword request.

52 4. No government entity shall seek the assistance of any non-govern-
53 mental entity, any agency of the federal government, or any agency of
54 the government of another state or subdivision thereof in obtaining
55 information or data from a reverse location court order, reverse keyword
56 court order, reverse location request, or reverse keyword request if the

1 government entity would be barred from directly seeking such information
2 under this article.

3 5. Notwithstanding any state or local law, regulation, or agreement to
4 the contrary, no court or government entity of the state of New York, or
5 political subdivision thereof, shall support, assist, or enforce a
6 reverse location court order or reverse keyword court order issued by
7 the state of New York or a political subdivision thereof, or any other
8 state or a political subdivision thereof, including the domestication of
9 any such court order.

10 6. Notwithstanding any state or local law, regulation, or agreement to
11 the contrary, no person or entity in the state of New York, as a result
12 of any law, regulation, or agreement adopted by the state of New York or
13 any political subdivision thereof, shall be obligated to comply with a
14 reverse location court order or a reverse keyword court order issued by
15 the state of New York or a political subdivision thereof or any other
16 state or a political subdivision thereof.

17 § 695.30 Reverse location and reverse keyword searches; suppression of
18 evidence.

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

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

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

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

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

34 § 695.40 Reverse location and reverse keyword searches; private right of
35 action.

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

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

41 (b) Punitive damages.

42 (c) Injunctive or declaratory relief.

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

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

46 (a) the number of people whose information was disclosed;

47 (b) whether the violation directly or indirectly targeted persons
48 engaged in the exercise of activities protected by the constitution of
49 the United States of America or the constitution of the state of New
50 York; and

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

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

55 § 695.50 Physical searches excluded.

1 The foregoing limitations shall not apply to the search of any elec-
2 tronic device lawfully seized and/or searched pursuant to a search
3 warrant issued under article six hundred ninety of this title.
4 § 695.60 Severability.

5 The provisions of this article are severable. If any part or provision
6 of this article, or the application of this article to any person, enti-
7 ty, or circumstance, is held invalid, the remainder of this article,
8 including the application of such part or provision to other persons,
9 entities, or circumstances, shall not be affected by such holding and
10 shall continue to have force and effect.

11 § 3. This act shall take effect immediately.