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:

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

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

ARTICLE 695

REVERSE LOCATION AND REVERSE KEYWORD SEARCHES

Section 695.00 Definitions.

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

695.20 Execution of reverse location and reverse keyword searches.

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

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

695.50 Physical searches excluded.

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

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

2. "Person" means a natural person or a legal entity, including but not limited to a proprietorship, partnership, limited partnership, corporation, company, limited liability company or corporation, association, or other firm or similar body, or any unit, division, agency, department, or similar subdivision thereof.

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

4. "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, Wi-Fi data and/or any other form of location detection.

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

6. "Voluntary reverse location request" means any request in the absence of a court order by any government entity for 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, whether such device location is measured via global positioning system coordinates, cell tower connectivity, Wi-Fi data and/or any other form of location detection.

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

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

§ 695.20 Execution of reverse location and reverse keyword searches.

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

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

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

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

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

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

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

§ 695.30 Reverse location and reverse keyword 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, reverse keyword court order, voluntary reverse location request, or voluntary reverse keyword request; or

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

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

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

1. Any individual whose records were obtained by any government entity in violation of section 695.20 of this article may institute a civil action against such government entity for any or all 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) whether the violation directly or indirectly targeted persons engaged in the exercise of activities protected by the constitution of the United States of America or the constitution of the state of New York; and

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

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

§ 695.50 Physical searches excluded.

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

§ 695.60 Severability.

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

§ 3. This act shall take effect immediately.