

# STATE OF NEW YORK

217

2023-2024 Regular Sessions

## IN SENATE

(Prefiled)

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Introduced by Sens. MYRIE, BRISPORT, COONEY, 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

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.

16 § 695.00 Definitions.  
17  
18

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

LBD01981-01-3

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.