



SPONSOR: Rep. Wilson-Anton & Sen. Pinkney
Reps. Burns, Morrison, Gorman, Harris

HOUSE OF REPRESENTATIVES
153rd GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1
FOR
HOUSE BILL NO. 145
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO REVERSE LOCATION AND
REVERSE KEYWORD SEARCHES AND COURT ORDERS.

WHEREAS, since our Nation's founding, general warrants, which permit government officials to conduct broad searches without identifying a specific crime or specific suspect that is being investigated, have been deemed a significant threat to personal freedom, privacy, and liberty; and

WHEREAS, the United States Supreme Court has repeatedly held that the Fourth Amendment to the United States Constitution prohibits the use of general warrants; and

WHEREAS, reverse-keyword court orders enable the government to precisely identify an unspecified and unlimited number of persons who have sought information about a specific word or phrase, without identifying any specific person as to which there is probable cause to believe they have committed or will imminently commit a crime; and

WHEREAS, the mass surveillance that is effectuated by reverse-keyword court orders severely undermines the right to privacy and can adversely impact and chill the exercise of the freedom of speech, association, religion, assembly, movement, and the press; and

WHEREAS, the government's ability to obtain the same mass surveillance information that can be obtained using reverse-keyword court orders through voluntary compliance-based reverse-keyword requests can produce the same adverse impacts and chilling effects upon personal freedom, privacy, and liberty as their court-ordered counterparts.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 23, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2312. Reverse-keyword searches prohibited.

(a) For purposes of this section:

(1) "Class A violent felony" means those felonies designated as class A that appear in § 4201(c) of this title.

(2) “Data” means a digital representation of information, whether such data is stored in raw, unstructured, semi-structured, or structured formats.

(3) “Database” means a repository of information or data.

(4) “Government entity” means 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.

(5) “Reverse-keyword court order” means any court order, including a search warrant or subpoena, compelling the disclosure of records or information identifying any unnamed persons, by name or other unique identifier, who electronically searched for a particular word, phrase, or website, 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) Reverse-keyword designated felony” means any of the following crimes or an offense under the law of another jurisdiction that, if the act had taken place in Delaware, would be eligible to be charged as one of the following crimes:

a. A class A violent felony.

b. Strangulation or suffocation; § 607 of this title.

c. Assault in the first degree; § 613 of this title.

d. Promoting suicide; § 645 of this title.

e. Unlawful sexual contact in the first degree; § 769 of this title.

f. Rape in the third degree; § 771 of this title.

g. Rape in the second degree; § 772 of this title.

h. Sexual extortion; § 774 of this title.

i. Continuous sexual abuse of a child; § 776 of this title.

j. Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree; § 778 of this title.

k. Kidnapping in the second degree; § 783 of this title.

l. Kidnapping in the first degree; § 784 of this title.

m. Trafficking of an individual, forced labor and sexual servitude; § 787 of this title.

n. Arson in the first degree; § 803 of this title.

o. Burglary in the first degree; § 826 of this title.

p. Robbery in the first degree; § 832 of this title.

q. Extortion; § 846 of this title.

r. Sexual exploitation of a child; § 1108 of this title.

s. Dealing in child pornography; § 1109 of this title.

t. Sexual solicitation of a child; § 1112A of this title.

u. Promoting sexual solicitation of a child; § 1112B of this title.

v. Stalking; § 1312 of this title.

x. Bombs, incendiary devices, Molotov cocktails and explosive devices; § 1338 of this title.

y. Adulteration; § 1339 of this title.

z. Aggravated act of intimidation; § 3533 of this title.

aa. Abuse, neglect, exploitation, or mistreatment of an adult who is impaired or incapacitated causing bodily harm, permanent disfigurement, permanent disability or death; § 3913(c) of Title 31.

(7) “Reverse-keyword request” means any request, in the absence of a court order, by any government entity for the voluntary provision of records or information identifying any unnamed persons, by name or other unique identifier, who electronically searched for a particular word, phrase, or website, or who visited a particular website through a link generated by such a search, regardless of whether or not the request is limited to a specific geographic area or time frame. A “reverse-keyword request” includes an offer to purchase such records or information.

(8) “Search hit” means a search result that identifies an individual device location or keyword entry that, upon querying of a database that is the subject of a reverse-keyword court order, precisely matches the criteria of the court order’s search query.

(b) Reverse-keyword court orders prohibited.

(1) A government entity may not seek, from any court, a reverse-keyword court order.

(2) A government entity may not seek, secure, obtain, borrow, purchase, or review any information or data obtained through a reverse-keyword court order.

(3) No court of this State may issue a reverse-keyword court order.

(4) No court or government entity of the State or a political subdivision thereof, may support, assist, or enforce a reverse-keyword court order issued by the State of Delaware or a political subdivision thereof, or any other state or a political subdivision thereof, including the domestication of any such court order.

(c) Reverse-keyword requests prohibited.

(1) A government entity may not make a reverse-keyword request.

(2) A government entity may not seek, secure, obtain, borrow, purchase, or review any information or data obtained through a reverse-keyword request.

(d) Notwithstanding the prohibition in subsection (b) of this section, a government entity may seek, and a court may grant, a reverse-keyword court order in the investigation of a reverse-keyword designated felony, subject to all of the following conditions:

(1) If a database query undertaken pursuant to a reverse-keyword court order issued under this subsection results in 5 or fewer search hits, the entity to whom the order was directed must respond to the order by fully producing the information sought by the order.

(2) If a database query that was undertaken pursuant to a reverse-keyword court order issued under this subsection results in more than 5 search hits, the entity to whom the order was directed must respond to the order by only providing the number of search hits produced by the query without any further information. The government entity may not seek, view, or accept any additional information generated by the search. A government entity may seek a new reverse-keyword court order with narrower search terms that meets the requirements of paragraph (d)(1) of this section.

(3) A reverse-keyword court order issued under this subsection must prominently state the required limited response mandated under paragraph (d)(2) of this section in the event the search query returns more than 5 search hits.

(4) A return received in response to a reverse-keyword court order must be kept under seal with the Court and any evidence unrelated to the case must be immediately destroyed, unless otherwise required to be retained and provided to the defendant as potentially exculpatory evidence as required by law.

(e) A government entity may not seek the assistance of 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-keyword court order or reverse-keyword request if the government entity would be barred from directly seeking such information under this section.

(f) Suppression of evidence.

(1) Except as proof of a violation of this section, no record or information obtained, accessed, or otherwise secured in violation of this section, nor any evidence derived therefrom, is admissible in any criminal, civil, administrative, or other proceeding.

(2) For purposes of this subsection, a record, information, or evidence is “derived from” a reverse-keyword court order or reverse-keyword request where the government entity would not have originally possessed the information or evidence but for the violative court order or request, and regardless of any claim that the record,

information, or evidence is attenuated from the unlawful order or request, would inevitably have been discovered, or was subsequently reobtained through other means.

§ 2313. Notice and enforcement.

(a) A person whose name or other identifying information was obtained by a government entity in violation of § 2312 of this title must be notified of the violation, in writing, by the government entity who committed the violation and of the legal recourse available to that person under this section.

(b) A violation of § 2312 of this title constitutes an injury and a person injured by a violation may institute proceedings in a court of competent jurisdiction for any of the following:

(1) Injunctive relief.

(2) Declaratory relief.

(3) A writ of mandamus.

(4) Reasonable attorneys' fees and costs.

(c) Any data or other information acquired in violation of § 2312 of this title must be immediately deleted and destroyed.

(d) Any officer, employee, or agent of the State or a political subdivision thereof who violates § 2312 of this title is subject to appropriate disciplinary action.