

HOUSE No. 1531

The Commonwealth of Massachusetts

PRESENTED BY:

Sarah K. Peake

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to protect electronic privacy.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Timothy R. Madden</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>
<i>Ann-Margaret Ferrante</i>	<i>5th Essex</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Michael J. Rodrigues</i>	<i>First Bristol and Plymouth</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>
<i>Tackey Chan</i>	<i>2nd Norfolk</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Dennis A. Rosa</i>	<i>4th Worcester</i>

<i>Jose F. Tosado</i>	<i>9th Hampden</i>
<i>Jonathan D. Zlotnik</i>	<i>2nd Worcester</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>Paul W. Mark</i>	<i>2nd Berkshire</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>
<i>Josh S. Cutler</i>	<i>6th Plymouth</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>
<i>Steven S. Howitt</i>	<i>4th Bristol</i>
<i>Angelo M. Scaccia</i>	<i>14th Suffolk</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>Keiko M. Orrall</i>	<i>12th Bristol</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>
<i>Timothy J. Toomey, Jr.</i>	<i>26th Middlesex</i>
<i>Michael J. Finn</i>	<i>6th Hampden</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>
<i>Leonard Mirra</i>	<i>2nd Essex</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Thomas J. Calter</i>	<i>12th Plymouth</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>William M. Straus</i>	<i>10th Bristol</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>
<i>James J. Lyons, Jr.</i>	<i>18th Essex</i>
<i>Michael D. Brady</i>	<i>9th Plymouth</i>
<i>Diana DiZoglio</i>	<i>14th Essex</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>
<i>Joseph W. McGonagle, Jr.</i>	<i>28th Middlesex</i>
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>
<i>Barbara L'Italien</i>	<i>Second Essex and Middlesex</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Edward F. Coppinger</i>	<i>10th Suffolk</i>

<i>Linda Dorcena Forry</i>	<i>First Suffolk</i>
<i>Timothy R. Whelan</i>	<i>1st Barnstable</i>
<i>Patricia A. Haddad</i>	<i>5th Bristol</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Stephen Kulik</i>	<i>1st Franklin</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>
<i>Aaron Michlewitz</i>	<i>3rd Suffolk</i>
<i>Byron Rushing</i>	<i>9th Suffolk</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>John F. Keenan</i>	<i>Norfolk and Plymouth</i>
<i>Gloria L. Fox</i>	<i>7th Suffolk</i>
<i>Randy Hunt</i>	<i>5th Barnstable</i>
<i>Jeffrey N. Roy</i>	<i>10th Norfolk</i>
<i>Aaron Vega</i>	<i>5th Hampden</i>
<i>Joseph D. McKenna</i>	<i>18th Worcester</i>
<i>Denise C. Garlick</i>	<i>13th Norfolk</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>
<i>William Smitty Pignatelli</i>	<i>4th Berkshire</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Leah Cole</i>	<i>12th Essex</i>
<i>Kate Hogan</i>	<i>3rd Middlesex</i>
<i>Brian R. Mannal</i>	<i>2nd Barnstable</i>
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>Kevin J. Kuros</i>	<i>8th Worcester</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>
<i>Stephen L. DiNatale</i>	<i>3rd Worcester</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>Nicholas A. Boldyga</i>	<i>3rd Hampden</i>
<i>Michael S. Day</i>	<i>31st Middlesex</i>
<i>Brendan P. Crighton</i>	<i>11th Essex</i>
<i>John J. Mahoney</i>	<i>13th Worcester</i>
<i>Peter J. Durant</i>	<i>6th Worcester</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>

<i>David K. Muradian, Jr.</i>	<i>9th Worcester</i>
<i>Bradford R. Hill</i>	<i>4th Essex</i>
<i>Claire D. Cronin</i>	<i>11th Plymouth</i>
<i>F. Jay Barrows</i>	<i>1st Bristol</i>
<i>Harold P. Naughton, Jr.</i>	<i>12th Worcester</i>

HOUSE No. 1531

By Ms. Peake of Provincetown, a petition (accompanied by bill, House, No. 1531) of Sarah K. Peake and others for legislation to update penalties and protect electronic privacy. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act to protect electronic privacy.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to protect the privacy of personal electronic information, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public [Emergency Preamble Context].

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 1B of chapter 276 of the General Laws, as appearing in the 2010
2 Official Edition, is hereby amended by inserting after the definition of “electronic
3 communication services” the following definition:-

4 “Electronic device”, any device that enables access to, or use of, an electronic
5 communication service, remote computing service or location information service.

6 SECTION 2. Said section 1B of said chapter 276, as so appearing, is hereby further
7 amended by inserting after the definition of “foreign corporation” the following definitions:-

8 “Location information”, any information concerning the location of an electronic device
9 that, in whole or in part, is generated by or derived from the device or any of its applications.

10 “Location information service”, a global positioning service or other mapping, locational
11 or directional information service.

12 SECTION 3. Said section 1B of said chapter 276 is hereby amended by striking out
13 subsection (b) and inserting in place thereof the following:-

14 (b) Upon complaint on oath that the complainant believes (i) that particular identified
15 records or information hereinafter described are in the actual or constructive custody of a
16 Massachusetts or foreign corporation providing electronic communication services, remote
17 computing services, or location information services, and (ii) that such records or information
18 constitute evidence of or the means or instrumentalities of the commission of a specified criminal
19 offense under the laws of the commonwealth, a justice of the superior court may, if satisfied that
20 there is probable cause for such beliefs, issue a warrant identifying those records to be sought
21 and authorizing the person making application for the warrant to properly serve the warrant upon
22 the corporation and to take all other actions prescribed by this section:-

23 (1) records which could, alone or in combination, reveal the identity of a user of those
24 services;

25 (2) records regarding the use of those services;

26 (3) records regarding the source or recipient of user communications;

27 (4) data stored by or on behalf of a user of those services;

28 (5) any content of communications transmitted by an electronic device or stored by those
29 services; or

30 (6) location information.

31 A government office or public official may obtain records or information described in
32 clauses (4), (5), or (6) only with a valid warrant issued pursuant to this section.

33 SECTION 4. Subsection (c) of said section 1B of said chapter 276, as so appearing, is
34 hereby amended by striking out the language in lines 54 to 58, inclusive, and inserting in place
35 thereof the following:-

36 (c) The following provisions shall apply to any search warrant issued under this section
37 and to any subpoena issued in the course of a criminal investigation or proceeding directed to a
38 Massachusetts or foreign corporation that provides electronic communication services, remote
39 computing services or location information services:

40 SECTION 5. Said subsection (c) of said section 1B of said chapter 276, as so appearing,
41 is hereby further amended by striking out, in lines 61, 69, 72, and 83, the word "foreign".

42 SECTION 6. Said section 1B of said chapter 276, as so appearing, is hereby further
43 amended by adding the following:-

44 (f) Search warrants issued under this section shall designate the corporation or other
45 entity in possession of the records or data sought and shall describe, with particularity, the record
46 systems and information to be provided. They shall be issued in the form and manner prescribed
47 in sections 2A½ and 2B, in so far as they are applicable, and shall be directed to the government
48 office or public official making application for the warrant, which shall serve the warrant upon
49 the corporation or other entity.

50 (g) Not later than 7 days after information described in paragraphs (1) to (6), inclusive, of
51 subsection (b) is obtained by a government office or public official pursuant to a warrant under

52 this section, that office or official shall serve upon, or deliver by registered or first-class mail,
53 electronic mail, or other means reasonably calculated to be effective as specified by the court
54 issuing the warrant to the customer or subscriber a copy of the warrant, a copy of the application
55 for the warrant and notice that informs the customer or subscriber of the following:

56 (1) the nature of the law enforcement inquiry with reasonable specificity;

57 (2) that information maintained for the customer or subscriber by the provider of an
58 electronic communications service, remote computing service or location information service
59 was requested by or supplied to that government office or public official, and a description of
60 that information;

61 (3) the dates on which the request was made and on which the information was
62 supplied;

63 (4) whether notification of the customer or subscriber was delayed under subsection
64 (h); and

65 (5) which court made the certification or determination under which that delay was
66 made, if applicable.

67 (h) A government office or public official may include in its application for a warrant a
68 request for an order delaying the notification required under subsection (g) for a period not to
69 exceed 90 days, and the court shall issue the order if it determines there is reason to believe that
70 notification of the existence of the warrant may have an adverse result. Upon expiration of any
71 period of delay granted under this subsection, the government office or public official shall

72 provide the customer or subscriber a copy of the warrant together with notice required under, and
73 by the means described in, subsection (g).

74 (i) A government office or public official may include in its application for a warrant a
75 request for an order directing a corporation to which a warrant is directed not to notify any other
76 person of the existence of the warrant for a period of not more than 90 days, and the court shall
77 issue the order if the court determines that there is reason to believe that notification of the
78 existence of the warrant will have an adverse result.

79 (j) The court may, upon application, grant 1 or more extensions of orders granted under
80 subsections (h) and (i) for an additional 90 days if the court determines that there is reason to
81 believe that notification of the existence of the warrant will have an adverse result.

82 (k) Notwithstanding any general or special law to the contrary, a government office or
83 public official may obtain information described in paragraphs (1) to (6), inclusive, of subsection
84 (b):

85 (1) with the specific contemporaneous consent of the owner or user of the electronic
86 communications device concerned;

87 (2) in order to respond to the user's call for emergency services; or

88 (3) if it reasonably believes that an emergency involving immediate danger of death
89 or serious physical injury to any person requires obtaining without delay information relating to
90 the emergency; provided, however, that the request is narrowly tailored to address the emergency
91 and subject to the following limitations:

92 (i) the request shall document the factual basis for believing that an emergency
93 involving immediate danger of death or serious physical injury to a person requires obtaining
94 without delay of the information relating to the emergency; and

95 (ii) not later than 48 hours after the government office obtains access to records, it
96 shall file with the appropriate court a signed, sworn statement of a supervisory official of a rank
97 designated by the head of the office setting forth the grounds for the emergency access.

98 (1) On the second Friday of January of each calendar year, any judge issuing or denying a
99 warrant under this section during the preceding calendar year shall report on each such warrant
100 to the office of court management within the trial court:

101 (1) the fact that the warrant was applied for;

102 (2) the identity of the agency making the application;

103 (3) the offense specified in the warrant or application therefor;

104 (4) the nature of the facilities from which or the place where the information was to
105 be obtained;

106 (5) the fact that the warrant was granted as applied for, was modified or was denied;

107 (6) the period of disclosures authorized by the warrant, and the number and duration
108 of any extensions of the warrant; and

109 (7) any order directing delayed notification of the warrant's existence.

110 In June of each year, beginning in 2016, the court administrator in the office of court
111 management within the trial court shall transmit to the legislature a full and complete report

112 concerning the number of applications for warrants authorizing or requiring the disclosure of
113 information described in paragraphs (1) to (6), inclusive, of subsection (b) under this act. The
114 reports shall include a summary and analysis of the data required to be filed with that office. The
115 reports shall be filed with the offices of the clerk of the house and the senate and shall be public
116 records. The court administrator in the office of court management within the trial court shall
117 issue guidance regarding the form of the reports.

118 (m) Except in a judicial proceeding alleging a violation of this section, no information
119 obtained in violation of this section and no information provided beyond the scope of the
120 materials authorized to be obtained shall be admissible in any criminal, civil, administrative or
121 other proceeding.

122 SECTION 7. Chapter 276 is hereby amended by inserting after section 2A the following
123 section:-

124 Section 2A½. A warrant for records or data from a corporation providing electronic
125 communication services, remote computing services or location information services shall be in
126 substantially the following form:

127 THE COMMONWEALTH OF MASSACHUSETTS.

128 (COUNTY), ss. (NAME) COURT.

129 To the Sheriffs of our several counties, or their deputies, any State Police Officer, or any
130 Constable or Police Officer of any city or town, within our said Commonwealth.

131 Proof by affidavit having been made this day before (name of person authorized to issue
132 warrant) by (names of person or persons whose affidavits have been taken) that there is probable

133 cause for believing that certain records or data in the possession of (identify corporation)
134 constitute evidence of or the means or instrumentalities of the commission of (specified criminal
135 offense under the laws of the commonwealth).

136 We therefore command you to present this warrant to (identify corporation), which
137 warrant shall operate as an order for immediate disclosure of the following records or data:

138 (description of records or data),

139 and if any such records or data are disclosed to bring it before (court having jurisdiction)
140 at (name of court and location).

141 Dated at (city or town) this _____ day of _____, (insert year).

142 Clerk.

143 SECTION 8. Section 2B of said chapter 276, as appearing in the 2010 Official Edition,
144 is hereby amended by striking clauses 3 and 4 of the model affidavit and inserting in place
145 thereof the following:-

146 3. Based upon the foregoing reliable information (and upon my personal knowledge)
147 there is probable cause to believe that the property, records or data hereinafter described (has
148 been stolen, or is being concealed, or constitutes evidence of a particular offense, etc.) and may
149 be found (in the possession of A. B. or any other person or corporation) at premises (identify).

150 4. The (property, records, or data) for which I seek issuance of a search warrant is the
151 following: (here describe the property, records, or data as particularly as possible).

152 SECTION 9. Section 3A of said chapter 276, as so appearing, is hereby amended by
153 inserting after the word “search”, in line 1, the following words:- or to obtain electronic
154 communication, remote computing or location information records.

155 SECTION 10. Said section 3A of said chapter 276, as so appearing, is hereby further
156 amended by striking out, in line 6, the word “search”.