SENATE DOCKET, NO. 101 FILED ON: 1/11/2017

SENATE . . . . . No. 801

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia Stone Creem

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 relative to law-enforcement access to communications records.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Cynthia Stone Creem	*First Middlesex and Norfolk*	
Jason M. Lewis	*Fifth Middlesex*	*7/21/2017*

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By Ms. Creem, a petition (accompanied by bill, Senate, No. 801) of Cynthia S. Creem for legislation relative to law enforcement access to communications records. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *770* OF 2015-2016.]

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

An Act relative to law-enforcement access to communications records.

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

SECTION 1. Chapter 271 of the General Laws is hereby amended by striking out section 17B, as so appearing, and inserting in place thereof the following section:-

Section 17B. The Attorney General and the District Attorneys are authorized to make demand for information, as described in this section, only when his or her respective office or offices have reasonable grounds for and are actively engaged in a criminal investigation of a particular offense, in violation of one or more of the following provisions of the general laws:

(a) section 13B of chapter 265;

(b) section 13B½ of chapter 265;

(c) section 13B3/4 of chapter 265;

(d) section 22A of chapter 265;

(e) section 22B of chapter 265;

(f) section 22C of chapter 265;

(g) section 23 of chapter 265;

(h) section 23A of chapter 265;

(i) section 23B of chapter 265.

Except as otherwise prohibited under section 2703 of Title 18 of the United States Code, whenever the attorney general or a district attorney has reasonable grounds for the belief that the service of (i) a common carrier subject to the jurisdiction of the department of telecommunications and cable, as provided in paragraph (d) of section 12 of chapter 159; or (ii) a provider of electronic communication service as defined in subparagraph (15) of section 2510 of Title 18 of the United States Code; or (iii) a provider of remote computing service as defined in section 2711 of Title 18 of the United States Code, are being or may be used for an improper purpose, the attorney general or district attorney may make a demand, in writing, of such common carrier or service for the following information which the attorney general or a district attorney has reasonable grounds to believe is in the custody of a particular common carrier or service: (1) the name of the individual subscriber and (2) the billing address or other identifying information specific to the individual subscriber or customer described in the written demand from the attorney general or a district attorney.

No such common carrier or service, or employee thereof, shall be civilly or criminally responsible for furnishing any records or information in compliance with such demand. Nothing

in this section shall limit the right of the attorney general or a district attorney to otherwise obtain records from such a common carrier or service provider pursuant to a search warrant, a court order or a grand jury or trial subpoena.

No demand for records made pursuant to this section shall require the production of records that disclose the content of electronic communications or subscriber account records disclosing internet locations which have been accessed including, but not limited to, websites, chat channels and newsgroups, but excluding servers used to initially access the internet. No recipient of a demand for records made pursuant to this section shall provide any such content or records accessed, in response to such demand.

At the close of any investigation, during the course of which any records, described herein, have been sought and obtained through the process herein provided, the attorney general or a district attorney shall provide written notice to the subscriber to such a common carrier or service that such records pertaining to the subscriber have been obtained.

On the second Friday of January, each year, the attorney general and each district attorney shall submit a report to the general court and file with the offices of the clerks of the Senate and the House of Representatives stating:

(a) the number of demands and designation of the offenses made for records of a common carrier or service provider during the previous year;

(b) the common carriers or services providers required to respond and the number of demands directed to each;

(c) the time period over which such records have been requested;

(d) the number of criminal prosecutions, charged by complaint or indictment, in which records obtained through the process authorized by this section, have been used; and

(e) the number of criminal convictions obtained where records obtained through the process authorized by this section have been introduced in evidence, or information derived therefrom introduced in evidence;

This report shall be a public document and be made available to the public at the offices of the attorney general and district attorneys. In the event of failure to comply with the provisions of this reporting provision, any person may compel compliance by means of an action of mandamus.