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Joint Committee on the Judiciary
Sen. James Eldridge & Rep. Claire Cronin, Chairs

SUPPORT FOR S.889/H.1567

TRANSPARENCY FOR WARRANTLESS ACCESS TO PERSONAL COMMUNICATION RECORDS

Dear Senator Eldridge, Representative Cronin, and members of the committee:

The ACLU of Massachusetts offers our strong support for S.889 and H.1567, *An Act Relative to the Use of Administrative Subpoenas to Obtain Telephone and Internet Records Without Judicial Review*. This legislation will enable prosecutors, policymakers, and the public to better understand and evaluate the use of "administrative subpoenas," warrantless requests for personal phone and internet communication records.

The problem: administrative subpoenas are issued in the dark

Since 2008, prosecutors in Massachusetts have exercised broad powers to obtain records showing who you communicate with, how you use online services, and key details about your financial life—all without probable cause or judicial oversight, and entirely in the dark. The tool that allows prosecutors to conduct this secretive surveillance is called the "administrative subpoena." We know very little about how district attorneys have used this tool, because no state law requires them to keep track of how many subpoenas they issue, or for what reasons. In response to public records requests, some DAs refuse to disclose even the number of subpoenas they have issued. And if a subpoena is used against you, to obtain your private records, you may never learn about the secret surveillance.

Administrative subpoenas are demand letters from prosecutors to communications and internet providers like Verizon, Google, Facebook, and Twitter, seeking our private records. Prosecutors simply fill out a form and companies turn over our private information; no judge or other independent arbiter even needs to review them, let alone authorize them.

Under Section 17B of chapter 271, prosecutors may issue administrative subpoenas when the information sought may be "relevant and material" to an investigation, even when the subjects are not suspected of criminal activity. No probable cause is required, and no one keeps track of how prosecutors use this authority. With these unreviewed subpoenas, prosecutors can obtain records such as: the phone numbers people call, when, and how long calls last; banking and credit card information; records of each time someone logged in to a service like Facebook or Gmail, including time, date, and IP address; and more.

Call records can be highly revealing. Are you seeking treatment for addiction or mental health issues? Having an affair? Speaking to a journalist? All of this information and more can be discovered.

The proposal: a modicum of transparency

This legislation would require prosecutors to report to the legislature basic, aggregate information about how they use administrative subpoenas, including:

- The number of demands filed by each office per year, in what types of investigations;
- The number of demands seeking sensitive information like who has called whom, when, and for how long the calls lasted;
- The number of demands for specific categories of information like physical location of a subscriber, or a person's banking, credit card, or other financial records; and
- The results of this surveillance, like the number of prosecutions initiated and convictions secured based on information derived from such demands.

Reporting on the use of administrative subpoenas will in no way interfere with legitimate criminal investigations, or result in the publication of any personal information.

The ACLU strongly supports this simple transparency legislation as a means to shine much-needed light on how prosecutors use an invasive surveillance authority. We urge the committee to give S.889/H.1567 a swift favorable report. Thank you.