

# STATE OF NEW YORK

3071

2017-2018 Regular Sessions

## IN ASSEMBLY

January 26, 2017

Introduced by M. of A. RYAN -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to cell site simulator devices

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivisions 1 and 3 of section 700.05 of the criminal  
2 procedure law, as amended by chapter 744 of the laws of 1988, are  
3 amended and two new subdivisions 11 and 12 are added to read as follows:

4 1. "Eavesdropping" means "wiretapping", "mechanical overhearing of  
5 conversation," or the "intercepting or accessing of an electronic commu-  
6 nication", as those terms are defined in section 250.00 of the penal  
7 law, but does not include the use of a pen register or trap and trace  
8 device when authorized pursuant to article 705 of this chapter. The  
9 term "eavesdropping" includes the use of a cell site simulator device.

10 3. "Intercepted communication" means (a) a telephonic or telegraphic  
11 communication which was intentionally overheard or recorded by a person  
12 other than the sender or receiver thereof, without the consent of the  
13 sender or receiver, by means of any instrument, device or equipment, or  
14 (b) a conversation or discussion which was intentionally overheard or  
15 recorded, without the consent of at least one party thereto, by a person  
16 not present thereat, by means of any instrument, device or equipment; or  
17 (c) an electronic communication which was intentionally intercepted or  
18 accessed, as that term is defined in section 250.00 of the penal law,  
19 including by use of a cell site simulator device. The term "contents,"  
20 when used with respect to a communication, includes any information  
21 concerning the identity of the parties to such communications, and the  
22 existence, substance, purport, or meaning of that communication. The  
23 term "communication" includes conversation and discussion.

24 11. "Cell site simulator device" means a device that transmits or  
25 receives radio waves for the purpose of conducting one or more of the

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

LBD08092-01-7

1 following operations: (a) identifying, locating, or tracking the move-  
2 ments of a communications device; (b) intercepting, obtaining, access-  
3 ing, or forwarding the communications, stored data, or metadata of a  
4 communications device; (c) affecting the hardware or software operations  
5 or functions of a communications device; (d) forcing transmissions from  
6 or connections to a communications device; (e) denying a communications  
7 device access to other communications devices, communications protocols,  
8 or services; or (f) spoofing or simulating a communications device, cell  
9 tower, cell site, or service, including, but not limited to, an interna-  
10 tional mobile subscriber identity catcher or other invasive cell phone  
11 or telephone surveillance or eavesdropping device that mimics a cell  
12 phone tower and sends out signals to cause cell phones in the area to  
13 transmit their locations, identifying information, and communications  
14 content, or a passive interception device or digital analyzer that does  
15 not send signals to a communications device under surveillance.

16 12. "Communications device" means any device that transmits or  
17 receives radio waves, and is capable of sending or receiving communi-  
18 cations. This definition includes, but is not limited to, cell phones,  
19 aircards, tablets, and laptops.

20 § 2. Subdivision 2 of section 700.10 of the criminal procedure law, as  
21 amended by chapter 744 of the laws of 1988, is amended to read as  
22 follows:

23 2. No eavesdropping or video surveillance warrant may authorize or  
24 approve the interception of any communication or the conducting of any  
25 video surveillance for any period longer than is necessary to achieve  
26 the objective of the authorization, or in any event longer than thirty  
27 days, or for a warrant authorizing use of a cell site simulator device,  
28 longer than seven days. Such thirty day or seven day period shall begin  
29 on the date designated in the warrant as the effective date, which date  
30 may be no later than ten days after the warrant is issued.

31 § 3. Paragraph (b) of subdivision 2 of section 700.20 of the criminal  
32 procedure law, as amended by chapter 744 of the laws of 1988, is amended  
33 and a new paragraph (g) is added to read as follows:

34 (b) A full and complete statement of the facts and circumstances  
35 relied upon by the applicant, to justify his belief that an eavesdrop-  
36 ping or video surveillance warrant should be issued, including (i) a  
37 statement of facts establishing probable cause to believe that a partic-  
38 ular designated offense has been, is being, or is about to be committed,  
39 (ii) a particular description of the nature and location of the facili-  
40 ties from which or the place where the communication is to be inter-  
41 cepted or the video surveillance is to be conducted, to the extent known  
42 for a warrant authorizing use of a cell site simulator device, (iii) a  
43 particular description of the type of the communications sought to be  
44 intercepted or of the observations sought to be made, and (iv) the iden-  
45 tity of the person, if known, committing such designated offense and  
46 whose communications are to be intercepted or who is to be the subject  
47 of the video surveillance; and

48 (g) For an application for a warrant authorizing use of a cell site  
49 simulator device, the application must specify: (i) the identity of the  
50 person, if known, who possesses the device to be targeted by the cell  
51 site simulator device, (ii) the telephone number or other unique  
52 subscriber account number identifying the wire or electronic communi-  
53 cations service account used by the device to be targeted by the cell  
54 site simulator device and the identity of the person, if known, who is  
55 subscribed to that account, (iii) the type of device, and the communi-  
56 cations protocols being used by the device, to which the cell site simu-

1 lator device is to be attached or used, (iv) the geographic area that  
2 will be covered by the cell site simulator device, (v) all categories of  
3 metadata, data, or information to be collected by the cell site simula-  
4 tor device from the device to be targeted including, but not limited to,  
5 call records and geolocation information, (vi) whether or not the cell  
6 site simulator device will incidentally collect metadata, data, or  
7 information from any parties or devices not specified in the warrant,  
8 and if so, what categories of information or metadata will be collected,  
9 and (vii) any disruptions to access or use of a communications or inter-  
10 net access network that may be created by use of the cell site simulator  
11 device.

12 § 4. Subdivisions 3 and 7 of section 700.30 of the criminal procedure  
13 law, as amended by chapter 744 of the laws of 1988, are amended and two  
14 new subdivisions 10 and 11 are added to read as follows:

15 3. The nature and location of the communications facilities as to  
16 which, or the place where, authority to intercept or conduct video  
17 surveillance is granted, to the extent known for a warrant authorizing  
18 use of a cell site simulator device; and

19 7. A provision that the authorization to intercept or conduct video  
20 surveillance shall be executed as soon as practicable, shall be  
21 conducted in such a way as to minimize the interception of communi-  
22 cations or the making of observations not otherwise subject to eaves-  
23 dropping or video surveillance under this article, and must terminate  
24 upon attainment of the authorized objective, or in any event in thirty  
25 days, or in seven days for a warrant authorizing use of a cell site  
26 simulator device; and

27 10. For an order authorizing use of a cell site simulator device, (i)  
28 the identity of the person, if known, who possesses the device to be  
29 targeted by the cell site simulator device, (ii) the telephone number or  
30 other unique subscriber account number identifying the wire or electron-  
31 ic communications service account used by the device to be targeted by  
32 the cell site simulator device and the identity of the person, if known,  
33 who is subscribed to that account, (iii) the type of device, and the  
34 communications protocols being used by the device, to which the cell  
35 site simulator device is to be attached or used, (iv) the geographic  
36 area that will be covered by the cell site simulator device, (v) all  
37 categories of metadata, data, or information to be collected by the cell  
38 site simulator device from the device to be targeted including, but not  
39 limited to, call records and geolocation information, (vi) whether or  
40 not the cell site simulator device will incidentally collect metadata,  
41 data, or information from any parties or devices not specified in the  
42 warrant, and if so, what categories of information or metadata will be  
43 collected, and (vii) any disruptions to access or use of a communi-  
44 cations or internet access network that may be created by use of the  
45 cell site simulator device; and

46 11. An order authorizing eavesdropping through use of a cell site  
47 simulator device must include a provision directing that the law  
48 enforcement agency (i) take all steps necessary to limit the collection  
49 of any information or metadata to the target specified in the warrant,  
50 (ii) take all steps necessary to permanently delete any information or  
51 metadata collected from any party not specified in the applicable  
52 warrant immediately following such collection and must not transmit,  
53 use, or retain such information or metadata for any purpose whatsoever,  
54 and (iii) delete any information or metadata collected from the target  
55 specified in the warrant within thirty days if there is no longer proba-

1 ble cause to support the belief that such information or metadata is  
2 evidence of a crime.

3 § 5. Subdivision 3 of section 700.35 of the criminal procedure law, as  
4 amended by chapter 744 of the laws of 1988, is amended to read as  
5 follows:

6 3. The contents of any communication intercepted or of any observa-  
7 tion made by any means authorized by this article must, if possible and  
8 unless subject to deletion under subdivision eleven of section 700.30,  
9 be recorded on tape or wire or other comparable device. The recording  
10 of the contents of any such communication or observation must be done in  
11 such way as will protect the recording from editing or other alter-  
12 ations.

13 § 6. Section 700.40 of the criminal procedure law, as amended by chap-  
14 ter 744 of the laws of 1988, is amended to read as follows:

15 § 700.40 Eavesdropping and video surveillance warrants; order of exten-  
16 sion.

17 At any time prior to the expiration of an eavesdropping or video  
18 surveillance warrant, the applicant may apply to the issuing justice,  
19 or, if he is unavailable, to another justice, for an order of extension.  
20 The period of extension shall be no longer than the justice deems neces-  
21 sary to achieve the purposes for which it was granted and in no event  
22 longer than thirty days, or seven days for a warrant authorizing use of  
23 a cell site simulator device. The application for an order of extension  
24 must conform in all respects to the provisions of section 700.20 and, in  
25 addition, must contain a statement setting forth the results thus far  
26 obtained from the interception, or a reasonable explanation of the fail-  
27 ure to obtain such results. The provisions of sections 700.15 and  
28 700.25 are applicable in the determination of such application. The  
29 order of extension must conform in all respects to the provisions of  
30 section 700.30. In the execution of such order of extension the  
31 provisions of section 700.35 are applicable.

32 § 7. Subdivision 4 of section 710.10 of the criminal procedure law, as  
33 amended by chapter 744 of the laws of 1988, is amended to read as  
34 follows:

35 4. "Eavesdropping" means "wiretapping", "mechanical overhearing of a  
36 conversation," or "intercepting or accessing of an electronic communi-  
37 cation," as those terms are defined in section 250.00 of the penal law.  
38 The term "eavesdropping" includes the use of a cell site simulator  
39 device.

40 § 8. This act shall take effect immediately.