STATE OF NEW YORK

2210

2025-2026 Regular Sessions

IN ASSEMBLY

January 15, 2025

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

AN ACT to amend the criminal procedure law, in relation to out-of-state investigations and warrants regarding legally protected health activity in New York state

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

Section 1. Section 705.10 of the criminal procedure law, as added by chapter 744 of the laws of 1988, is amended to read as follows:

§ 705.10 Orders authorizing the use of a pen register or a trap and trace device; when issuable.

1. An order authorizing the use of a pen register or a trap and trace device may issue only:

[~~1.~~] **(a)** Upon an appropriate application made in conformity with this article; and

[~~2.~~] **(b)** Upon a determination that an application sets forth specific, articulable facts, warranting the applicant's reasonable suspicion that a designated crime has been, is being, or is about to be committed and demonstrating that the information likely to be obtained by use of a pen register or trap and trace device is or will be relevant to an ongoing criminal investigation of such designated crime.

2. Notwithstanding any other provision in this article, no court shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device for the purpose of investigating or recovering evidence of a legally protected health activity, as defined in section 570.17 of this article.

§ 2. Section 700.15 of the criminal procedure law, as amended by chapter 744 of the laws of 1988, is amended to read as follows:

§ 700.15 Eavesdropping and video surveillance warrants; when issuable.

1. An eavesdropping or video surveillance warrant may issue only:

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

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[~~1.~~] (a) Upon an appropriate application made in conformity with this article; and

[~~2.~~] (b) Upon probable cause to believe that a particularly described person is committing, has committed, or is about to commit a particular designated offense; and

[~~3.~~] (c) Upon probable cause to believe that particular communications concerning such offense will be obtained through eavesdropping, or upon probable cause to believe that particular observations concerning such offense will be obtained through video surveillance; and

[~~4.~~] (d) Upon a showing that normal investigative procedures have been tried and have failed, or reasonably appear to be unlikely to succeed if tried, or to be too dangerous to employ; and

[~~5.~~] (e) Upon probable cause to believe that the facilities from which, or the place where, the communications are to be intercepted or the video surveillance is to be conducted, are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by such person.

2. Notwithstanding any other provision in this article, no court shall enter an ex parte order authorizing interception of a telephonic communication or electronic communications for the purpose of investigating or recovering evidence of a legally protected health activity, as defined in section 570.17 of this article.

§ 3. Section 690.40 of the criminal procedure law is amended by adding a new subdivision 4 to read as follows:

4. No warrant shall be issued under this article for any item or items that pertain to an investigation into a legally protected health activity, as defined in section 570.17 of this article.

§ 4. The criminal procedure law is amended by adding a new section 690.60 to read as follows:

§ 690.60 Search warrants; certain requirements for corporations.

1. A corporation domiciled in New York state, when served with a warrant issued by another state to produce records shall not produce such records when such corporation knows or should know that such warrant relates to an investigation into, or enforcement of, a legally protected health activity, as defined in section 570.17 of this article.

2. (a) No warrant issued upon a corporation domiciled in New York state shall be enforceable unless such warrant includes, or is accompanied by, an attestation that the evidence sought is not related to an investigation into, or enforcement of, a legally protected health activity, as defined in section 570.17 of this article.

(b) A corporation domiciled in New York state that is served with a warrant shall be entitled to rely on the representations made in an attestation described in paragraph (a) of this subdivision in determining whether such warrant relates to an investigation into, or enforcement of, a legally protected health activity, as defined in section 570.17 of this article.

§ 5. This act shall take effect immediately.