

# STATE OF NEW YORK

2828

2017-2018 Regular Sessions

## IN ASSEMBLY

January 23, 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 orders authorizing mobile phone surveillance devices or systems

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

1 Section 1. The article heading of article 705 of the criminal procedure law, as added by chapter 744 of the laws of 1988, is amended to  
2 read as follows:

3  
4 PEN REGISTERS [~~AND~~], TRAP AND TRACE  
5 DEVICES AND MOBILE PHONE SURVEILLANCE  
6 DEVICES OR SYSTEMS

7 § 2. Section 705.00 of the criminal procedure law is amended by adding  
8 a new subdivision 7 to read as follows:

9 7. "Mobile phone surveillance device or system" shall mean technology  
10 that identifies, tracks, or locates cellular devices by forcing each  
11 compatible cellular device in a given area to disconnect from its  
12 service provider cell site and establish a new connection with the  
13 device by mimicking a wireless carrier cell tower. During the process  
14 of forcing connections from all compatible cellular devices in a given  
15 area, the mobile phone surveillance device or system operator determines  
16 which device is a desired surveillance target by downloading the identi-  
17 fying data from each of the cellular devices connected to the mobile  
18 phone surveillance device or system. Identifying data is transmitted to  
19 the mobile phone surveillance device or system through radio waves.

20 § 3. Section 705.05 of the criminal procedure law, as added by chapter  
21 744 of the laws of 1988, is amended to read as follows:

22 § 705.05 Pen register [~~and~~], trap and trace and mobile phone surveil-  
23 lance authorizations; in general.

24 Under circumstances prescribed in this article, a justice may issue an  
25 order authorizing the use of a pen register [~~or~~], a trap and trace

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

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1 device, or a mobile phone surveillance device or system upon ex parte  
2 application of an applicant who is authorized by law to investigate,  
3 prosecute or participate in the prosecution of the designated crimes  
4 which are the subject of the application.

5 § 4. Section 705.10 of the criminal procedure law, as added by chapter  
6 744 of the laws of 1988, is amended to read as follows:

7 § 705.10 Orders authorizing the use of a pen register ~~[or]~~, a trap and  
8 trace device, or a mobile phone surveillance device or  
9 system; when issuable.

10 An order authorizing the use of a pen register ~~[or]~~, a trap and trace  
11 device, or a mobile phone surveillance device or system may issue only:

12 1. Upon an appropriate application made in conformity with this arti-  
13 cle; and

14 2. Upon a determination that an application sets forth specific, arti-  
15 culable facts, warranting the applicant's reasonable suspicion that a  
16 designated crime has been, is being, or is about to be committed and  
17 demonstrating that the information likely to be obtained by use of a pen  
18 register ~~[or]~~, trap and trace device, or mobile phone surveillance  
19 device or system is or will be relevant to an ongoing criminal investi-  
20 gation of such designated crime.

21 § 5. Section 705.15 of the criminal procedure law, as added by chapter  
22 744 of the laws of 1988, is amended to read as follows:

23 § 705.15 Application for an order authorizing the use of a pen register  
24 ~~[or]~~, a trap and trace device, or a mobile phone surveil-  
25 lance device or system.

26 1. An ex parte application for an order or an extension of an order  
27 authorizing the use of a pen register ~~[or]~~, a trap and trace device, or  
28 a mobile surveillance device or system must be made to a justice in  
29 writing, and must be subscribed and sworn to by the applicant.

30 2. The application must contain:

31 (a) The identity of the applicant and the identity of the law enforce-  
32 ment agency conducting the investigation; and

33 (b) A statement of facts and circumstances sufficient to justify the  
34 applicant's belief that an order authorizing the use of a pen register  
35 ~~[or]~~, a trap and trace device, or a mobile phone surveillance device or  
36 system should be issued, including (i) a statement of the specific facts  
37 on the basis of which the applicant reasonably suspects that the desig-  
38 nated crime has been, is being, or is about to be committed and demon-  
39 strating that the information likely to be obtained by use of a pen  
40 register ~~[or]~~, a trap and trace device, or a mobile phone surveillance  
41 device or system is or will be relevant to an ongoing criminal investi-  
42 gation of such designated offense, (ii) the identity, if known, of the  
43 person to whom is leased or in whose name is listed the telephone line  
44 to which the pen register or trap and trace device is to be attached,  
45 (iii) the identity, if known, of the person who is the subject of the  
46 criminal investigation, (iv) the number and, if known, the physical  
47 location of the telephone line to which the pen register or trap and  
48 trace device is to be attached and, in the case of a trap and trace  
49 device, the geographic limits of the trap and trace order, (v) a partic-  
50 ular description of the nature and location of the facilities from which  
51 or the place where the communication is to be intercepted and a partic-  
52 ular description of the type of the communications sought to be inter-  
53 cepted by the mobile phone surveillance device or system and the  
54 geographic limits of the order; and ~~[(v)]~~ (vi) a statement of the desig-  
55 nated crime or crimes to which the information likely to be obtained by

1 the use of the pen register [e], trap and trace device, or mobile phone  
2 surveillance device or system relates; and

3 (c) A statement of the period of time for which the authorization for  
4 the use of a pen register [e], a trap and trace device, or a mobile  
5 phone surveillance device or system is required; and

6 (d) A statement of the facts concerning all previous applications,  
7 known to the applicant, for an order authorizing the use of a pen regis-  
8 ter [e], a trap and trace device, or a mobile phone surveillance device  
9 or system involving any of the same persons or facilities specified in  
10 the application, and the action taken by the justice on each such appli-  
11 cation.

12 3. Allegations of fact in the application may be based either upon the  
13 personal knowledge of the applicant or upon information and belief. If  
14 the applicant personally knows the facts alleged, it must be so stated.  
15 If the facts stated in the application are derived in whole or in part  
16 from the statements of persons other than the applicant, the sources of  
17 such facts must be either disclosed or described.

18 § 6. Section 705.20 of the criminal procedure law, as added by chapter  
19 744 of the laws of 1988, is amended to read as follows:

20 § 705.20 Orders authorizing the use of a pen register [e], a trap and  
21 trace device, or a mobile phone surveillance device or  
22 system; determination of application.

23 1. If the justice determines on the basis of the facts submitted by  
24 the applicant that grounds exist for the issue of an order authorizing  
25 the use of a pen register [e], a trap and trace device, or a mobile  
26 phone surveillance device or system pursuant to section 705.10 of this  
27 article, the justice shall grant the application and issue an order  
28 authorizing the use of a pen register [e], a trap and trace device, or  
29 a mobile phone surveillance device or system, in accordance with subdi-  
30 vision three of this section.

31 2. If the application does not conform to section 705.15 of this arti-  
32 cle, or if the justice is not satisfied that grounds exist for the issu-  
33 ance of an order authorizing the use of a pen register [e], a trap and  
34 trace device, or a mobile phone surveillance device or system, the  
35 application must be denied.

36 3. An order issued under this section must contain:

37 (a) the name of the applicant, date of issuance, and the subscription  
38 and title of the issuing justice; and

39 (b) the identity, if known, of the person to whom is leased or in  
40 whose name is listed the telephone line, or mobile phone line to which  
41 the pen register [e], trap and trace device, or mobile phone surveil-  
42 lance device or system is to be attached; and

43 (c) the identity, if known, of the person who is the subject of the  
44 criminal investigation; and

45 (d) the number and, if known, the physical location of the telephone  
46 line to which the pen register or trap and trace device is to be  
47 attached and, in the case of a trap and trace device or mobile phone  
48 surveillance device, the geographic limits of the trap and trace or  
49 mobile phone surveillance order; and

50 (e) a statement of the designated crime or crimes to which the infor-  
51 mation likely to be obtained by the pen register [e], trap and trace  
52 device, or mobile phone surveillance device or system relates.

53 4. An order issued under this section shall direct, upon the request  
54 of the applicant, the furnishing of information, facilities, and techni-  
55 cal assistance necessary to accomplish the installation or use of the

1 pen register [~~or~~], trap and trace device, or mobile phone surveillance  
2 device or system under section 705.25 of this article.

3 § 7. Section 705.25 of the criminal procedure law, as added by chapter  
4 744 of the laws of 1988, is amended to read as follows:

5 § 705.25 Pen register [~~or~~], trap and trace device, or mobile phone  
6 surveillance device or system orders; time period and exten-  
7 sions.

8 1. An order issued under this section shall authorize the installation  
9 and use of a pen register or a trap and trace device for a period not to  
10 exceed sixty days.

11 2. Extensions of such an order may be granted, but only upon an appli-  
12 cation for an order under section 705.05 of this article and upon the  
13 judicial finding required by subdivision one of section 705.10 of this  
14 article. The period of extension shall be for a period not to exceed  
15 sixty days.

16 3. No mobile phone surveillance order may authorize or approve the  
17 interception of any communication for any period longer than is neces-  
18 sary to achieve the objective of the authorization, or in any event  
19 longer than thirty days. Such thirty day period shall begin on the date  
20 designated in the order as the effective date. Extensions of such an  
21 order may be granted, but only upon an application for an order under  
22 section 705.05 of this article and upon the judicial finding required by  
23 subdivision one of section 705.10 of this article. The period of exten-  
24 sion shall be for a period not to exceed thirty days.

25 § 8. Section 705.30 of the criminal procedure law, as added by chapter  
26 744 of the laws of 1988, is amended to read as follows:

27 § 705.30 Nondisclosure of existence of pen register [~~or~~], a trap and  
28 trace device, or a mobile phone surveillance device or  
29 system.

30 An order authorizing or approving the installation and use of a pen  
31 register [~~or~~], a trap and trace device, or a mobile phone surveillance  
32 device or system shall direct that:

33 1. the order be sealed until otherwise ordered by the court; and

34 2. the person owning or leasing the line to which the pen register or  
35 a trap and trace device is attached, the service provider of the mobile  
36 phone to which the mobile phone surveillance device or system is identi-  
37 fying, tracking or locating, or who has been ordered by the court to  
38 provide assistance to the applicant, not disclose the existence of the  
39 pen register [~~or~~], trap and trace device, or mobile phone surveillance  
40 device or system or the existence of the investigation to the listed  
41 subscriber, or to any other person, unless or until otherwise ordered by  
42 the court.

43 § 9. Subdivision 1 of section 700.05 of the criminal procedure law, as  
44 amended by chapter 744 of the laws of 1988, is amended to read as  
45 follows:

46 1. "Eavesdropping" means "wiretapping", "mechanical overhearing of  
47 conversation," or the "intercepting or accessing of an electronic commu-  
48 nication", as those terms are defined in section 250.00 of the penal  
49 law, but does not include the use of a pen register [~~or~~], trap and trace  
50 device, or a mobile phone surveillance device or system when authorized  
51 pursuant to article 705 of this chapter.

52 § 10. This act shall take effect on the ninetieth day after it shall  
53 have become a law.