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:

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 read as follows:

PEN REGISTERS [~~AND~~], TRAP AND TRACE DEVICES **AND MOBILE PHONE SURVEILLANCE DEVICES OR SYSTEMS**

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

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

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

§ 705.05 Pen register [~~and~~], trap and trace **and mobile phone surveillance** authorizations; in general.

Under circumstances prescribed in this article, a justice may issue an 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.

LBD08093-01-7

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

§ 4. 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, or a mobile phone surveillance device or system; when issuable.

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

1. Upon an appropriate application made in conformity with this article; and

2. 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, or mobile phone surveillance device or system is or will be relevant to an ongoing criminal investigation of such designated crime.

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

§ 705.15 Application for an order authorizing the use of a pen register [or], a trap and trace device, or a mobile phone surveillance device or system.

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

2. The application must contain:

(a) The identity of the applicant and the identity of the law enforcement agency conducting the investigation; and

(b) A statement of facts and circumstances sufficient to justify the applicant's belief that an order authorizing the use of a pen register [or], a trap and trace device, or a mobile phone surveillance device or system should be issued, including (i) a statement of the specific facts on the basis of which the applicant reasonably suspects that the 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], a trap and trace device, or a mobile phone surveillance device or system is or will be relevant to an ongoing criminal investigation of such designated offense, (ii) the identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached, (iii) the identity, if known, of the person who is the subject of the criminal investigation, (iv) the number and, if known, the physical location of the telephone line to which the pen register or trap and trace device is to be attached and, in the case of a trap and trace device, the geographic limits of the trap and trace order, (v) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted and a particular description of the type of the communications sought to be intercepted by the mobile phone surveillance device or system and the geographic limits of the order; and [(v)] (vi) a statement of the designated crime or crimes to which the information likely to be obtained by

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

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

(d) A statement of the facts concerning all previous applications, known to the applicant, for an order authorizing the use of a pen register [~~or~~], a trap and trace device, or a mobile phone surveillance device or system involving any of the same persons or facilities specified in the application, and the action taken by the justice on each such application.

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

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

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

1. If the justice determines on the basis of the facts submitted by the applicant that grounds exist for the issue of an order authorizing the use of a pen register [~~or~~], a trap and trace device, or a mobile phone surveillance device or system pursuant to section 705.10 of this article, the justice shall grant the application and issue an order authorizing the use of a pen register [~~or~~], a trap and trace device, or a mobile phone surveillance device or system, in accordance with subdivision three of this section.

2. If the application does not conform to section 705.15 of this article, or if the justice is not satisfied that grounds exist for the issuance of an order authorizing the use of a pen register [~~or~~], a trap and trace device, or a mobile phone surveillance device or system, the application must be denied.

3. An order issued under this section must contain:

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

(b) the identity, if known, of the person to whom is leased or in whose name is listed the telephone line, or mobile phone line to which the pen register [~~or~~], trap and trace device, or mobile phone surveillance device or system is to be attached; and

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

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

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

4. An order issued under this section shall direct, upon the request of the applicant, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation or use of the

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

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

§ 705.25 Pen register [~~or~~], trap and trace device**, or mobile phone surveillance device or system** orders; time period and extensions.

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

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

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

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

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

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

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

2. the person owning or leasing the line to which the pen register or a trap and trace device is attached, **the service provider of the mobile phone to which the mobile phone surveillance device or system is identifying, tracking or locating,** or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register [~~or~~], trap and trace device**, or mobile phone surveillance device or system** or the existence of the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the court.

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

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

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