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:

Section 1. Subdivisions 1 and 3 of section 700.05 of the criminal procedure law, as amended by chapter 744 of the laws of 1988, are amended and two new subdivisions 11 and 12 are added 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 when authorized pursuant to article 705 of this chapter. **The term "eavesdropping" includes the use of a cell site simulator device.**

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

11. "Cell site simulator device" means a device that transmits or 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.

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following operations: (a) identifying, locating, or tracking the movements of a communications device; (b) intercepting, obtaining, accessing, or forwarding the communications, stored data, or metadata of a communications device; (c) affecting the hardware or software operations or functions of a communications device; (d) forcing transmissions from or connections to a communications device; (e) denying a communications device access to other communications devices, communications protocols, or services; or (f) spoofing or simulating a communications device, cell tower, cell site, or service, including, but not limited to, an international mobile subscriber identity catcher or other invasive cell phone or telephone surveillance or eavesdropping device that mimics a cell phone tower and sends out signals to cause cell phones in the area to transmit their locations, identifying information, and communications content, or a passive interception device or digital analyzer that does not send signals to a communications device under surveillance.

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

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

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

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

(b) A full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an eavesdropping or video surveillance warrant should be issued, including (i) a statement of facts establishing probable cause to believe that a particular designated offense has been, is being, or is about to be committed, (ii) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted or the video surveillance is to be conducted, to the extent known for a warrant authorizing use of a cell site simulator device, (iii) a particular description of the type of the communications sought to be intercepted or of the observations sought to be made, and (iv) the identity of the person, if known, committing such designated offense and whose communications are to be intercepted or who is to be the subject of the video surveillance; and

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

lator device is to be attached or used, (iv) the geographic area that will be covered by the cell site simulator device, (v) all categories of metadata, data, or information to be collected by the cell site simulator device from the device to be targeted including, but not limited to, call records and geolocation information, (vi) whether or not the cell site simulator device will incidentally collect metadata, data, or information from any parties or devices not specified in the warrant, and if so, what categories of information or metadata will be collected, and (vii) any disruptions to access or use of a communications or internet access network that may be created by use of the cell site simulator device.

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

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

7. A provision that the authorization to intercept or conduct video surveillance shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications or the making of observations not otherwise subject to eavesdropping or video surveillance under this article, and must terminate upon attainment of the authorized objective, or in any event in thirty days, or in seven days for a warrant authorizing use of a cell site simulator device; and

10. For an order authorizing use of a cell site simulator device, (i) the identity of the person, if known, who possesses the device to be targeted by the cell site simulator device, (ii) the telephone number or other unique subscriber account number identifying the wire or electronic communications service account used by the device to be targeted by the cell site simulator device and the identity of the person, if known, who is subscribed to that account, (iii) the type of device, and the communications protocols being used by the device, to which the cell site simulator device is to be attached or used, (iv) the geographic area that will be covered by the cell site simulator device, (v) all categories of metadata, data, or information to be collected by the cell site simulator device from the device to be targeted including, but not limited to, call records and geolocation information, (vi) whether or not the cell site simulator device will incidentally collect metadata, data, or information from any parties or devices not specified in the warrant, and if so, what categories of information or metadata will be collected, and (vii) any disruptions to access or use of a communications or internet access network that may be created by use of the cell site simulator device; and

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

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

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

3. The contents of any communication intercepted or of any observation made by any means authorized by this article must, if possible **and unless subject to deletion under subdivision eleven of section 700.30**, be recorded on tape or wire or other comparable device. The recording of the contents of any such communication or observation must be done in such way as will protect the recording from editing or other alterations.

§ 6. Section 700.40 of the criminal procedure law, as amended by chapter 744 of the laws of 1988, is amended to read as follows:

§ 700.40 Eavesdropping and video surveillance warrants; order of extension.

At any time prior to the expiration of an eavesdropping or video surveillance warrant, the applicant may apply to the issuing justice, or, if he is unavailable, to another justice, for an order of extension. The period of extension shall be no longer than the justice deems necessary to achieve the purposes for which it was granted and in no event longer than thirty days**, or seven days for a warrant authorizing use of a cell site simulator device**. The application for an order of extension must conform in all respects to the provisions of section 700.20 and, in addition, must contain a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results. The provisions of sections 700.15 and 700.25 are applicable in the determination of such application. The order of extension must conform in all respects to the provisions of section 700.30. In the execution of such order of extension the provisions of section 700.35 are applicable.

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

4. "Eavesdropping" means "wiretapping", "mechanical overhearing of a conversation," or "intercepting or accessing of an electronic communication," as those terms are defined in section 250.00 of the penal law. **The term "eavesdropping" includes the use of a cell site simulator device.**

§ 8. This act shall take effect immediately.