STATE OF NEW YORK

3310

2023-2024 Regular Sessions

IN ASSEMBLY

February 2, 2023

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

AN ACT to amend the criminal procedure law and the executive law, in relation to out-of-state investigations and warrants regarding abortions performed in New York state

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

Section 1. Section 705.00 of the criminal procedure law is amended by adding a new subdivision 7 to read as follows:

7. "Prohibited violation" means any violation of law that creates liability for, or arising out of, either of the following:

(a) Providing, facilitating, or obtaining an abortion that is lawful under New York law; or

(b) Intending or attempting to provide, facilitate, or obtain an abortion that is lawful under New York law.

§ 2. 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

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

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register or a trap and trace device for the purpose of investigating or recovering evidence of a prohibited violation.

§ 3. Section 700.05 of the criminal procedure law is amended by adding a new subdivision 11 to read as follows:

11. "Prohibited violation" means any violation of law that creates liability for, or arising out of, either of the following:

(a) Providing, facilitating, or obtaining an abortion that is lawful under New York law; or

(b) Intending or attempting to provide, facilitate, or obtain an abortion that is lawful under New York law.

§ 4. 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:

[~~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 prohibited violation.

§ 5. 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 prohibited violation. For the purposes of this subdivision, the term "prohibited violation" shall mean any violation of law that creates liability for, or arising out of, either of the following:

(a) Providing, facilitating, or obtaining an abortion that is lawful under New York law; or

(b) Intending or attempting to provide, facilitate, or obtain an abortion that is lawful under New York law.

§ 6. 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. For the purposes of this section, the term "prohibited violation" shall mean any violation of law that creates liability for, or arising out of, either of the following:

(a) Providing, facilitating, or obtaining an abortion that is lawful under New York law; or

(b) Intending or attempting to provide, facilitate, or obtain an abortion that is lawful under New York law.

2. 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 prohibited violation.

3. (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 prohibited violation.

(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 prohibited violation.

§ 7. Subdivision 3-a of section 140.10 of the criminal procedure law, as added by chapter 219 of the laws of 2022, is amended to read as follows:

3-a. A police officer [~~may~~] **shall** not arrest any person for performing or aiding in the performance of an abortion within this state, or in procuring an abortion in this state, if the abortion is performed in accordance with the provisions of article twenty-five-A of the public health law or any other applicable law of this state.

§ 8. Section 837-w of the executive law, as added by chapter 219 of the laws of 2022, is renumbered section 837-x and amended to read as follows:

§ 837-x. Cooperation with certain out-of-state investigations. No state or local law enforcement agency shall cooperate with or provide information to any individual or out-of-state agency or department**, or, to the extent permitted by federal law, to a federal law enforcement agency,** regarding the provision of a lawful abortion performed in this state. Nothing in this section shall prohibit the investigation of any criminal activity in this state which may involve the performance of an abortion, provided that no information relating to any medical procedure performed on a specific individual may be shared with an out-of-state agency or any other individual. Nothing in this section shall prohibit compliance with a valid, court-issued subpoena or warrant.

§ 9. This act shall take effect immediately.