STATE OF NEW YORK

8390

IN SENATE

January 26, 2024

Introduced by Sen. COONEY -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law and the civil practice law and rules, in relation to the admissibility of evidence created or processed by artificial intelligence

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

Section 1. The criminal procedure law is amended by adding a new section 60.80 to read as follows:

§ 60.80 Rules of evidence; admissibility of evidence created or processed by artificial intelligence.

1. Evidence created, in whole or in part, by artificial intelligence shall not be received into evidence in a criminal proceeding unless the evidence is substantially supported by independent and admissible evidence and the proponent of the evidence establishes the reliability and accuracy of the specific use of the artificial intelligence in creating the evidence.

2. Evidence processed, in whole or in part, by artificial intelligence shall not be received into evidence in a criminal proceeding unless the proponent of the evidence establishes the reliability and accuracy of the specific use of the artificial intelligence in processing the evidence.

3. Evidence is created, in whole or in part, by artificial intelligence where the artificial intelligence produces new information from existing information not present in or reasonably deducible from the existing information.

4. Evidence is processed, in whole or in part, by artificial intelligence where the artificial intelligence produces a conclusion based off of its analysis, interpretation, or transformation of existing information where such conclusion is not reasonably deducible from the existing information.

5. Evidence is not reasonably deducible from the existing information where the reliability or accuracy of the information created or conclusion drawn from the existing information would be substantially compro-

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

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mised without the use of artificial intelligence as a result of the complexity, uncertainty, or subtlety of the information.

6. Evidence is substantially supported by independent and admissible evidence where:

(a) The independent evidence is separate from, and not derived from, the artificial intelligence that generated the artificially created evidence;

(b) The independent evidence is admissible under the existing rules of evidence;

(c) The independent evidence bears a close and significant relationship to the artificially created evidence in such a manner that it reinforces or corroborates the information created from the artificially created evidence.

7. The reliability and accuracy of the specific use of the artificial intelligence in creating or processing the evidence is sufficient where the proponent of the evidence has a qualified expert testify and such testimony is sufficient to prove that:

(a) The specific use of the artificial intelligence has been validated through rigorous scientific or technical testing, demonstrating that it consistently produces accurate and reliable results in varied environments;

(b) The artificial intelligence has been subjected to testing or application in environments that are similar or analogous to the specific context in which it is being used in the proceeding and such testing or application produced accurate and reliable results;

(c) The artificial intelligence has not been subjected to any variables that, based on scientific or technical testing of the system, have a substantial probability of causing a materially inaccurate or unreliable result. In assessing the probability, the court shall consider the weight of the artificially created evidence relative to other admitted evidence.

8. Where expert testimony would include trade secrets, privileged government information, or information about law enforcement techniques that, if disclosed, would unduly compromise their ability to effectively use their systems for their intended purpose, the court, in its discretion, may impose appropriate measures to protect such information.

§ 2. The civil practice law and rules is amended by adding a new section 4551 to read as follows:

§ 4551. Rules of evidence; admissibility of evidence created or processed by artificial intelligence. (a) Evidence created, in whole or in part, by artificial intelligence may not be received into evidence in a civil proceeding unless the evidence is substantially supported by independent and admissible evidence and the proponent of the evidence establishes the reliability and accuracy of the specific use of the artificial intelligence in creating the evidence.

(b) Evidence processed, in whole or in part, by artificial intelligence may not be received into evidence in a civil proceeding unless the proponent of the evidence establishes the reliability and accuracy of the specific use of the artificial intelligence in processing the evidence.

(c) Evidence is created, in whole or in part, by artificial intelligence where the artificial intelligence produces new information from existing information not present in or reasonably deducible from the existing information.

(d) Evidence is processed, in whole or in part, by artificial intelligence where the artificial intelligence produces a conclusion based off

of its analysis, interpretation, or transformation of existing information where such conclusion is not reasonably deducible from the existing information.

(e) Evidence is not reasonably deducible from the existing information where the reliability or accuracy of the information created or conclusion drawn from the existing information would be substantially compromised without the use of artificial intelligence as a result of the complexity, uncertainty, or subtlety of the information.

(f) Evidence is substantially supported by independent and admissible evidence where:

1. The independent evidence is separate from, and not derived from, the artificial intelligence that generated the artificially created evidence;

2. The independent evidence is admissible under the existing rules of evidence;

3. The independent evidence bears a close and significant relationship to the artificially created evidence in such a manner that it reinforces or corroborates the information created from the artificially created evidence.

(g) The reliability and accuracy of the specific use of the artificial intelligence in creating or processing the evidence is sufficient where the proponent of the evidence has a qualified expert testify and such testimony is sufficient to prove that:

1. The specific use of the artificial intelligence has been validated through rigorous scientific or technical testing, demonstrating that it consistently produces accurate and reliable results in varied environments;

2. The artificial intelligence has been subjected to testing or application in environments that are similar or analogous to the specific context in which it is being used in the proceeding and such testing or application produced accurate and reliable results;

3. The artificial intelligence has not been subjected to any variables that, based on scientific or technical testing of the system, have a substantial probability of causing a materially inaccurate or unreliable result. In assessing the probability, the court shall consider the weight of the artificially created evidence relative to other admitted evidence.

(h) Where expert testimony would include trade secrets, privileged government information, or information about law enforcement techniques that, if disclosed, would unduly compromise their ability to effectively use their systems for their intended purpose, the court, in its discretion, may impose appropriate measures to protect such information.

§ 3. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.