

STATE OF NEW YORK

11

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sens. SANDERS, BENJAMIN -- read twice and ordered printed,
and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to the execution of a warrant of arrest; to amend the executive law, in relation to authorizing the commissioner of the division of criminal justice services to establish a system to record and monitor the issuance and execution of search warrants; and to amend the judiciary law, in relation to authorizing the chief administrator to establish educational programs for judicial personnel on the law of searches, arrests and seizures

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

1 Section 1. The opening paragraph of section 690.10 of the criminal
2 procedure law is amended to read as follows:

3 Personal property is subject to seizure pursuant to a search warrant
4 if such seizure is made in connection with a lawful arrest and there is
5 reasonable cause to believe that it:

6 § 2. Subdivision 2 of section 690.30 of the criminal procedure law is
7 amended to read as follows:

8 2. A search warrant may be executed on any day of the week. [~~It~~]
9 Except as otherwise provided in this subdivision, a search warrant may
10 be executed only between the hours of 6:00 A.M. and 9:00 P.M., unless
11 the warrant expressly authorizes execution thereof at any time of the
12 day or night, as provided in subdivision [~~five~~] six of section 690.45 of
13 this article. Notwithstanding paragraph (a) of subdivision four of
14 section 690.35 of this article, a search warrant based in whole or in
15 part on the grounds set forth in paragraph (b) of subdivision four of
16 section 690.35 of this article may be executed only between the hours of
17 9:00 A.M. and 6:00 P.M. unless there is reasonable cause to believe that
18 it cannot be executed between those hours because, in the case of an

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

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application for a search warrant as defined in paragraph (b) of subdivision two of section 690.05 of this article, the person sought is likely to flee or commit another crime, or may endanger the safety of the executing police officers or another person if not seized forthwith or between the hours of 6:00 P.M. and 9:00 A.M., in which event the request must contain facts to support such application, and the court must make a finding in writing or orally on the record or in writing upon the application itself setting forth the factual basis for the issuance of the warrant pursuant to this subdivision.

§ 3. Subdivision 1 and paragraph (b) of subdivision 4 of section 690.35 of the criminal procedure law, subdivision 1 as amended by chapter 679 of the laws of 1982, and paragraph (b) of subdivision 4 as amended by chapter 424 of the laws of 1998, are amended to read as follows:

1. An application for a search warrant may be in writing or oral. If in writing, it must be made, subscribed and sworn to by a public servant specified in subdivision one of section 690.05 of this article. If oral, it must be made by such a public servant and sworn to and recorded in the manner provided in section 690.36 of this article. An application for a search warrant based either in whole or in part on paragraph (b) of subdivision four of this section, must be made to a court between the hours of 6:00 A.M. and 9:00 P.M. unless circumstances reasonably require that such application be made at another time, in which event such circumstances shall be stated in the application for the warrant.

(b) A request that the search warrant authorize the executing police officer to enter premises to be searched without giving notice of his authority and purpose, upon the ground that there is reasonable cause to believe that (i) ~~[the property sought may be easily and quickly destroyed or disposed of, or (ii)]~~ the giving of such notice may endanger the life or safety of the executing officer or another person, or ~~[(iii)]~~ (ii) in the case of an application for a search warrant as defined in paragraph (b) of subdivision two of section 690.05 for the purpose of searching for and arresting a person who is the subject of a warrant for a felony, the person sought is likely to commit another felony, or may endanger the life or safety of the executing officer or another person. In order for a request that a search warrant authorizes the executing police officer to enter premises to be searched without giving notice of his authority and purpose be granted, such request shall show that extreme circumstances are involved, which for purposes of this article are the investigation and/or pursuing of suspected offenses or offenders that involve murder, an active-shooter, hostage-taking, kidnapping, terrorism, human trafficking or where a situation involves an individual who has barricaded himself in a specific area and has a violent history.

§ 4. Section 690.35 of the criminal procedure law is amended by adding a new subdivision 5 to read as follows:

5. When making an application based either in whole or in part on paragraph (b) of subdivision four of this section, in addition to the other requirements for an application for a search warrant, the applicant must ascertain, to the extent reasonably possible, whether any parties other than any subject of the search warrant shall be present when the warrant is executed, and if so, the application shall include a list containing the estimated age, gender, and physical condition of each additional occupant, any known individuals with cognitive and/or physical disabilities, and any pets known or likely to be present at the premises to be searched, and reasonable alternatives to executing such

1 warrant in the presence of such individuals. The results of such inves-
2 tigation shall be included in the application and conform with the
3 requirements of paragraph (c) of subdivision three of this section.

4 § 5. Subdivision 1 of section 690.40 of the criminal procedure law is
5 amended to read as follows:

6 1. (a) In determining an application for a search warrant the court
7 may examine, under oath, any person whom it believes may possess perti-
8 nent information. Any such examination must be either recorded or
9 summarized on the record by the court.

10 (b) In determining an application for a search warrant based, either
11 in whole or in part, upon the grounds described in paragraph (b) of
12 subdivision four of section 690.35 of this article, the court shall
13 state, with specificity, in writing or orally on the record or in writ-
14 ing upon the application for the warrant itself, the factual basis for
15 the issuance of the warrant pursuant to such paragraph. Such determi-
16 nation shall include evidence stating why a warrant that requires an
17 officer to knock and announce his or her presence shall not be issued.

18 § 6. Subdivision 6 of section 690.45 of the criminal procedure law, as
19 renumbered by chapter 679 of the laws of 1982, is amended and a new
20 subdivision 8-a is added to read as follows:

21 6. A direction that the warrant be executed between the hours of 6:00
22 A.M. and 9:00 P.M., or, where the court has specially so determined, an
23 authorization for execution thereof at any time of the day or night
24 unless the warrant has been obtained based on an application based in
25 whole or in part on paragraph (b) of subdivision four of section 690.35
26 of this article, in which event the provisions of subdivision two of
27 section 690.30 of this article relating to the time for executing such
28 warrants shall apply; and

29 8-a. An intended course of action if no response is received from the
30 intended suspect of the warrant at the time of execution within thirty
31 seconds; and

32 § 7. Section 690.50 of the criminal procedure law is amended by adding
33 five new subdivisions 7, 8, 9, 10 and 11 to read as follows:

34 7. Upon seizing property or arresting a person pursuant to a search
35 warrant issued under this article, in addition to the requirements of
36 subdivisions five and six of this section, the police officer shall file
37 a report with the court that issued such warrant in a form prescribed by
38 the division of criminal justice services pursuant to section eight
39 hundred thirty-seven-w of the executive law, specifying the following
40 information:

41 (a) if applicable, the subparagraph of paragraph (b) of subdivision
42 four of section 690.35 of this article upon which such warrant was
43 based;

44 (b) the officer and agency which obtained the warrant;

45 (c) the prosecutor and prosecuting office which drafted the warrant;

46 (d) whether the facts contained in the supporting affidavit were based
47 upon a confidential informant, or an identified citizen informant or a
48 police officer, none of whom must be named;

49 (e) the date and time the search warrant was applied for and the date
50 and time the search warrant was signed;

51 (f) the date and time the search warrant was executed;

52 (g) the judge who signed and the court that issued the warrant;

53 (h) whether the application for the warrant issued had been submitted
54 to another judge other than the judge who issued the warrant for which
55 the report is submitted and if so, when such application or applications
56 were made and the result of each such application;

1 (i) the age, sex and race of the individual to whom such warrant was
2 directed;

3 (j) whether physical force or deadly force was used in executing such
4 warrant;

5 (k) if physical or deadly force was used:

6 (i) whether any individual was injured or killed and if so, the age,
7 sex and race of each such person; and

8 (ii) the status of each such person, specifying whether each was the
9 subject of the search warrant, a police officer, or a third-party;

10 (l) the address where the warrant was executed including the street
11 address, city or town, county and zip code;

12 (m) the result of executing the warrant, specifying whether:

13 (i) evidence was seized; and

14 (ii) any individuals were arrested, and if so, whether the subject of
15 the warrant was arrested or other individuals not named in the warrant
16 were arrested; and

17 (n) whether any property was damaged during the course of executing
18 the warrant and a description thereof.

19 8. Search warrants not executed within seven days of issuance shall be
20 considered null and void.

21 9. An officer shall be required to present evidence and/or surveil-
22 lance gathered within twenty-four hours or less before a warrant is
23 executed which verifies that the suspect of such warrant is present at
24 the residence intended to be searched.

25 10. Any officer or officers who are executing a search warrant shall
26 be required to be in official uniform and be clearly recognizable and
27 identifiable as a police officer. All officers involved in the execution
28 of a search warrant shall wear visible badges containing names and iden-
29 tification numbers.

30 11. (a) Any officer or officers who are executing a search warrant
31 shall allow a minimum of thirty seconds for the occupants of the proper-
32 ty being searched to respond and open the door before such officer or
33 officers attempt to enter the property, except for situations where
34 verifiable, exigent circumstances exist. For purposes of this section,
35 "verifiable, exigent circumstances" means any event occurring in real-
36 time that is life-threatening to the officer or officers executing a
37 search warrant or to the occupants of the property which is being
38 searched.

39 (b) No officer involved in the execution of a search warrant shall at
40 any point during such execution use any flash bang, stun, distraction or
41 other similar device unless verifiable, exigent circumstances exist.

42 (c) No officer involved in the execution of a search warrant shall
43 execute a warrant outside of when such warrant is allowed to be executed
44 under this article unless verifiable, exigent circumstances exist.

45 § 8. Section 690.55 of the criminal procedure law, paragraph (b) of
46 subdivision 1 as amended by chapter 424 of the laws of 1998, is amended
47 to read as follows:

48 § 690.55 Search warrants; disposition of seized property.

49 1. Upon receiving property seized pursuant to a search warrant, the
50 court ~~must~~ shall either:

51 (a) Retain it in the custody of the court pending further disposition
52 thereof pursuant to subdivision two or some other provision of law; or

53 (b) Direct that it be held in the custody of the person who applied
54 for the warrant, or of the police officer who executed it, or of the
55 governmental or official agency or department by which either such

1 public servant is employed, upon condition that upon order of such court
2 such property be returned thereto or delivered to another court.

3 2. A local criminal court which retains custody of such property
4 ~~[must]~~ shall, upon request of another criminal court in which a criminal
5 action involving or relating to such property is pending, cause it to be
6 delivered thereto.

7 3. Where the arrestee connected to the seizure is not convicted of any
8 crimes connected to the seizure, all seized property connected to the
9 arrestee's arrest shall be immediately returned to the arrestee upon the
10 arrestee no longer being charged with a crime connected to the seizure.

11 § 9. The criminal procedure law is amended by adding two new sections
12 690.60 and 690.65 to read as follows:

13 § 690.60 Search warrants; monetary restitution.

14 1. Following the execution of a search warrant issued pursuant to
15 paragraph (b) of subdivision four of section 690.35 of this article, the
16 owner of the place or premises at which such warrant was executed and
17 the owner of any property located at such premises shall be entitled to
18 monetary restitution, paid promptly by the state or municipality employ-
19 ing the officials who executed the warrant, for a premises, or any part
20 thereof, and any items of property at such premises that were damaged or
21 destroyed as a part of the execution of such warrant upon such premises,
22 unless such owner of such premises or property is:

23 (a) convicted of a crime involving or relating to property seized
24 pursuant to such warrant; or

25 (b) convicted of a crime involving or relating to the search warrant
26 for such premises issued pursuant to paragraph (b) of subdivision two of
27 section 690.05 of this article.

28 2. Nothing in this section shall be construed as affecting any other
29 right, duty or cause of action that may exist with respect to any prem-
30 ises, or part thereof, or any property that may be damaged or destroyed
31 as a result of any such arrest or search.

32 § 690.65 Search warrants; violations.

33 Where a search warrant is executed in violation of this article:

34 1. any evidence obtained in connection with the search warrant shall
35 be inadmissible in evidence by the prosecution; and

36 2. any officer involved in the execution of such search warrant shall
37 be subject to disciplinary actions including, but not limited to, fines,
38 suspension or termination.

39 § 10. The executive law is amended by adding a new section 837-w to
40 read as follows:

41 § 837-w. Establish a form and system to record and monitor the issu-
42 ance and execution of search warrants. 1. The commissioner shall
43 prescribe the form of document to be used by every law enforcement agen-
44 cy of the state and of each municipality, city, town and village to
45 accompany a report to be prepared in accordance with subdivision seven
46 of section 690.50 of the criminal procedure law.

47 2. The commissioner shall establish a system to record and monitor the
48 issuance and execution of search warrants by every law enforcement agen-
49 cy in the state of New York. Every court that issues search warrants
50 shall file on or before the thirty-first day of December of each year
51 with the commissioner, a copy of each form filed with such court and
52 prescribed in subdivision one of this section, retaining the original
53 copy of such form with the court. The commissioner shall collect, proc-
54 ess and analyze such information contained in such reports, and issue a
55 report by the thirtieth day of June of each year which shall be made
56 public and a copy of which shall be sent to the office of court adminis-

1 tration, each law enforcement agency, each civil complaint review board
2 with jurisdiction over a police or law enforcement agency, and to the
3 attorney general of the state of New York.

4 § 11. Section 212 of the judiciary law is amended by adding a new
5 subdivision 3 to read as follows:

6 3. The chief administrator shall also formulate, establish and main-
7 tain educational programs, seminars and institutes for the judicial
8 personnel of the unified court system, to be scheduled on an annual
9 basis, or if the circumstances warrant, more frequently, on the law of
10 searches, arrests and seizures under the laws of the state of New York,
11 with emphasis on the appropriate standards for the issuance of all
12 warrants authorized under the criminal procedure law.

13 § 12. This act shall take effect on the one hundred eightieth day
14 after it shall have become a law. Effective immediately, the addition,
15 amendment and/or repeal of any rule or regulation necessary for the
16 implementation of this act on its effective date are authorized and
17 directed to be made and completed on or before such effective date.