

1508--A

Cal. No. 505

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. WRIGHT, POWELL -- Multi-Sponsored by -- M. of A. BRENNAN, FARRELL, ROBINSON -- read once and referred to the Committee on Codes -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

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. Subdivision 2 of section 690.30 of the criminal procedure
2 law is amended to read as follows:
3 2. A search warrant may be executed on any day of the week. [It]
4 EXCEPT AS OTHERWISE PROVIDED IN THIS SUBDIVISION, A SEARCH WARRANT may
5 be executed only between the hours of 6:00 A.M. and 9:00 P.M., unless
6 the warrant expressly authorizes execution thereof at any time of the
7 day or night, as provided in subdivision [five] SIX of section 690.45 OF
8 THIS ARTICLE. NOTWITHSTANDING PARAGRAPH (A) OF SUBDIVISION FOUR OF
9 SECTION 690.35 OF THIS ARTICLE, A SEARCH WARRANT BASED IN WHOLE OR IN
10 PART ON THE GROUNDS SET FORTH IN PARAGRAPH (B) OF SUBDIVISION FOUR OF
11 SECTION 690.35 OF THIS ARTICLE MAY BE EXECUTED ONLY BETWEEN THE HOURS OF
12 9:00 A.M. AND 6:00 P.M. UNLESS THERE IS REASONABLE CAUSE TO BELIEVE THAT
13 IT CANNOT BE EXECUTED BETWEEN THOSE HOURS BECAUSE (I) THE PROPERTY
14 SOUGHT SHALL BE REMOVED OR DESTROYED IF NOT SEIZED FORTHWITH, OR (II) IN
15 THE CASE OF AN APPLICATION FOR A SEARCH WARRANT AS DEFINED IN PARAGRAPH

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

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(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.

S 2. Subdivision 1 of section 690.35 of the criminal procedure law, as amended by chapter 679 of the laws of 1982, is 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.

S 3. 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 AGE AND PHYSICAL CONDITION OF THE PARTIES, AND REASONABLE ALTERNATIVES TO EXECUTING SUCH WARRANT IN THE PRESENCE OF SUCH INDIVIDUALS. THE RESULTS OF SUCH INVESTIGATION SHALL BE INCLUDED IN THE APPLICATION AND CONFORM WITH THE REQUIREMENTS OF PARAGRAPH (C) OF SUBDIVISION THREE OF THIS SECTION.

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

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

(B) IN DETERMINING AN APPLICATION FOR A SEARCH WARRANT BASED, EITHER IN WHOLE OR IN PART, UPON THE GROUNDS DESCRIBED IN PARAGRAPH (B) OF SUBDIVISION FOUR OF SECTION 690.35 OF THIS ARTICLE, THE COURT SHALL STATE, WITH SPECIFICITY, IN WRITING OR ORALLY ON THE RECORD OR IN WRITING UPON THE APPLICATION FOR THE WARRANT ITSELF, THE FACTUAL BASIS FOR THE ISSUANCE OF THE WARRANT PURSUANT TO SUCH PARAGRAPH.

S 5. Subdivision 6 of section 690.45 of the criminal procedure law, as renumbered by chapter 679 of the laws of 1982, is amended to read as follows:

6. A direction that the warrant be executed between the hours of 6:00 A.M. and 9:00 P.M., or, where the court has specially so determined, an authorization for execution thereof at any time of the day or night UNLESS THE WARRANT HAS BEEN OBTAINED BASED ON AN APPLICATION BASED IN WHOLE OR IN PART ON PARAGRAPH (B) OF SUBDIVISION FOUR OF SECTION 690.35 OF THIS ARTICLE, IN WHICH EVENT THE PROVISIONS OF SUBDIVISION TWO OF SECTION 690.30 OF THIS ARTICLE RELATING TO THE TIME FOR EXECUTING SUCH WARRANTS SHALL APPLY; and

1 S 6. Section 690.50 of the criminal procedure law is amended by adding
2 a new subdivision 7 to read as follows:

3 7. UPON SEIZING PROPERTY OR ARRESTING A PERSON PURSUANT TO A SEARCH
4 WARRANT ISSUED UNDER THIS ARTICLE, IN ADDITION TO THE REQUIREMENTS OF
5 SUBDIVISIONS FIVE AND SIX OF THIS SECTION, THE POLICE OFFICER SHALL FILE
6 A REPORT WITH THE COURT THAT ISSUED SUCH WARRANT IN A FORM PRESCRIBED BY
7 THE DIVISION OF CRIMINAL JUSTICE SERVICES PURSUANT TO SECTION EIGHT
8 HUNDRED THIRTY-SEVEN-S OF THE EXECUTIVE LAW, SPECIFYING THE FOLLOWING
9 INFORMATION:

10 (A) IF APPLICABLE, THE SUBPARAGRAPH OF PARAGRAPH (B) OF SUBDIVISION
11 FOUR OF SECTION 690.35 OF THIS ARTICLE UPON WHICH SUCH WARRANT WAS
12 BASED;

13 (B) THE OFFICER AND AGENCY WHICH OBTAINED THE WARRANT;

14 (C) THE PROSECUTOR AND PROSECUTING OFFICE WHICH DRAFTED THE WARRANT;

15 (D) WHETHER THE FACTS CONTAINED IN THE SUPPORTING AFFIDAVIT WERE BASED
16 UPON A CONFIDENTIAL INFORMANT, OR AN IDENTIFIED CITIZEN INFORMANT OR A
17 POLICE OFFICER, NONE OF WHOM MUST BE NAMED;

18 (E) THE DATE AND TIME THE SEARCH WARRANT WAS APPLIED FOR AND THE DATE
19 AND TIME THE SEARCH WARRANT WAS SIGNED;

20 (F) THE DATE AND TIME THE SEARCH WARRANT WAS EXECUTED;

21 (G) THE JUDGE WHO SIGNED AND THE COURT THAT ISSUED THE WARRANT;

22 (H) WHETHER THE APPLICATION FOR THE WARRANT ISSUED HAD BEEN SUBMITTED
23 TO ANOTHER JUDGE OTHER THAN THE JUDGE WHO ISSUED THE WARRANT FOR WHICH
24 THE REPORT IS SUBMITTED AND IF SO, WHEN SUCH APPLICATION OR APPLICATIONS
25 WERE MADE AND THE RESULT OF EACH SUCH APPLICATION;

26 (I) THE AGE, SEX AND RACE OF THE INDIVIDUAL TO WHOM SUCH WARRANT WAS
27 DIRECTED;

28 (J) WHETHER PHYSICAL FORCE OR DEADLY FORCE WAS USED IN EXECUTING SUCH
29 WARRANT;

30 (K) IF PHYSICAL OR DEADLY FORCE WAS USED:

31 (I) WHETHER ANY INDIVIDUAL WAS INJURED OR KILLED AND IF SO, THE AGE,
32 SEX AND RACE OF EACH SUCH PERSON; AND

33 (II) THE STATUS OF EACH SUCH PERSON, SPECIFYING WHETHER EACH WAS THE
34 SUBJECT OF THE SEARCH WARRANT, A POLICE OFFICER, OR A THIRD-PARTY;

35 (L) THE ADDRESS WHERE THE WARRANT WAS EXECUTED INCLUDING THE STREET
36 ADDRESS, CITY OR TOWN, COUNTY AND ZIP CODE;

37 (M) THE RESULT OF EXECUTING THE WARRANT, SPECIFYING WHETHER:

38 (I) EVIDENCE WAS SEIZED; AND

39 (II) ANY INDIVIDUALS WERE ARRESTED, AND IF SO, WHETHER THE SUBJECT OF
40 THE WARRANT WAS ARRESTED OR OTHER INDIVIDUALS NOT NAMED IN THE WARRANT
41 WERE ARRESTED; AND

42 (N) WHETHER ANY PROPERTY WAS DAMAGED DURING THE COURSE OF EXECUTING
43 THE WARRANT AND A DESCRIPTION THEREOF.

44 S 7. The criminal procedure law is amended by adding a new section
45 690.60 to read as follows:

46 S 690.60 SEARCH WARRANTS; MONETARY RESTITUTION.

47 1. FOLLOWING THE EXECUTION OF A SEARCH WARRANT ISSUED PURSUANT TO
48 PARAGRAPH (B) OF SUBDIVISION FOUR OF SECTION 690.35 OF THIS ARTICLE, THE
49 OWNER OF THE PLACE OR PREMISES AT WHICH SUCH WARRANT WAS EXECUTED AND
50 THE OWNER OF ANY PROPERTY LOCATED AT SUCH PREMISES SHALL BE ENTITLED TO
51 MONETARY RESTITUTION, PAID PROMPTLY BY THE STATE OR MUNICIPALITY EMPLOY-
52 ING THE OFFICIALS WHO EXECUTED THE WARRANT, FOR A PREMISES, OR ANY PART
53 THEREOF, AND ANY ITEMS OF PROPERTY AT SUCH PREMISES THAT WERE DAMAGED OR
54 DESTROYED AS A PART OF THE EXECUTION OF SUCH WARRANT UPON SUCH PREMISES,
55 UNLESS SUCH OWNER OF SUCH PREMISES OR PROPERTY IS:

1 (A) CONVICTED OF A CRIME INVOLVING OR RELATING TO PROPERTY SEIZED
2 PURSUANT TO SUCH WARRANT; OR

3 (B) CONVICTED OF A CRIME INVOLVING OR RELATING TO THE SEARCH WARRANT
4 FOR SUCH PREMISES ISSUED PURSUANT TO PARAGRAPH (B) OF SUBDIVISION TWO OF
5 SECTION 690.05 OF THIS ARTICLE.

6 2. NOTHING IN THIS SECTION SHALL BE CONSTRUED AS AFFECTING ANY OTHER
7 RIGHT, DUTY OR CAUSE OF ACTION THAT MAY EXIST WITH RESPECT TO ANY PREM-
8 ISES, OR PART THEREOF, OR ANY PROPERTY THAT MAY BE DAMAGED OR DESTROYED
9 AS A RESULT OF ANY SUCH ARREST OR SEARCH.

10 S 8. The executive law is amended by adding a new section 837-s to
11 read as follows:

12 S 837-S. ESTABLISH A FORM AND SYSTEM TO RECORD AND MONITOR THE ISSU-
13 ANCE AND EXECUTION OF SEARCH WARRANTS. 1. THE COMMISSIONER SHALL
14 PRESCRIBE THE FORM OF DOCUMENT TO BE USED BY EVERY LAW ENFORCEMENT AGEN-
15 CY OF THE STATE AND OF EACH MUNICIPALITY, CITY, TOWN AND VILLAGE TO
16 ACCOMPANY A REPORT TO BE PREPARED IN ACCORDANCE WITH SUBDIVISION SEVEN
17 OF SECTION 690.50 OF THE CRIMINAL PROCEDURE LAW.

18 2. THE COMMISSIONER SHALL ESTABLISH A SYSTEM TO RECORD AND MONITOR THE
19 ISSUANCE AND EXECUTION OF SEARCH WARRANTS BY EVERY LAW ENFORCEMENT AGEN-
20 CY IN THE STATE OF NEW YORK. EVERY COURT THAT ISSUES SEARCH WARRANTS
21 SHALL FILE ON OR BEFORE THE THIRTY-FIRST DAY OF DECEMBER OF EACH YEAR
22 WITH THE COMMISSIONER, A COPY OF EACH FORM FILED WITH SUCH COURT AND
23 PRESCRIBED IN SUBDIVISION ONE OF THIS SECTION, RETAINING THE ORIGINAL
24 COPY OF SUCH FORM WITH THE COURT. THE COMMISSIONER SHALL COLLECT, PROC-
25 ESS AND ANALYZE SUCH INFORMATION CONTAINED IN SUCH REPORTS, AND ISSUE A
26 REPORT BY THE THIRTIETH DAY OF JUNE OF EACH YEAR WHICH SHALL BE MADE
27 PUBLIC AND A COPY OF WHICH SHALL BE SENT TO THE OFFICE OF COURT ADMINIS-
28 TRATION, EACH LAW ENFORCEMENT AGENCY, EACH CIVIL COMPLAINT REVIEW BOARD
29 WITH JURISDICTION OVER A POLICE OR LAW ENFORCEMENT AGENCY, AND TO THE
30 ATTORNEY GENERAL OF THE STATE OF NEW YORK.

31 S 9. Section 212 of the judiciary law is amended by adding a new
32 subdivision 3 to read as follows:

33 3. THE CHIEF ADMINISTRATOR SHALL ALSO FORMULATE, ESTABLISH AND MAIN-
34 TAIN EDUCATIONAL PROGRAMS, SEMINARS AND INSTITUTES FOR THE JUDICIAL
35 PERSONNEL OF THE UNIFIED COURT SYSTEM, TO BE SCHEDULED ON AN ANNUAL
36 BASIS, OR IF THE CIRCUMSTANCES WARRANT, MORE FREQUENTLY, ON THE LAW OF
37 SEARCHES, ARRESTS AND SEIZURES UNDER THE LAWS OF THE STATE OF NEW YORK,
38 WITH EMPHASIS ON THE APPROPRIATE STANDARDS FOR THE ISSUANCE OF ALL
39 WARRANTS AUTHORIZED UNDER THE CRIMINAL PROCEDURE LAW.

40 S 10. This act shall take effect on the one hundred eightieth day
41 after it shall have become a law; provided, however, that effective
42 immediately, the addition, amendment and/or repeal of any rule or regu-
43 lation necessary for the implementation of this act on its effective
44 date are authorized and directed to be made and completed on or before
45 such effective date.