

2196

2011-2012 Regular Sessions

I N A S S E M B L Y

January 14, 2011

Introduced by M. of A. WRIGHT -- Multi-Sponsored by -- M. of A. BRENNAN,
FARRELL, ROBINSON -- read once and referred 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. 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
16 (B) OF SUBDIVISION TWO OF SECTION 690.05 OF THIS ARTICLE, THE PERSON
17 SOUGHT IS LIKELY TO FLEE OR COMMIT ANOTHER CRIME, OR MAY ENDANGER THE
18 SAFETY OF THE EXECUTING POLICE OFFICERS OR ANOTHER PERSON IF NOT SEIZED
19 FORTHWITH OR BETWEEN THE HOURS OF 6:00 P.M. AND 9:00 A.M., IN WHICH

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

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1 EVENT THE REQUEST MUST CONTAIN FACTS TO SUPPORT SUCH APPLICATION, AND
2 THE COURT MUST MAKE A FINDING IN WRITING OR ORALLY ON THE RECORD OR IN
3 WRITING UPON THE APPLICATION ITSELF SETTING FORTH THE FACTUAL BASIS FOR
4 THE ISSUANCE OF THE WARRANT PURSUANT TO THIS SUBDIVISION.

5 S 2. Subdivision 1 of section 690.35 of the criminal procedure law, as
6 amended by chapter 679 of the laws of 1982, is amended to read as
7 follows:

8 1. An application for a search warrant may be in writing or oral. If
9 in writing, it must be made, subscribed and sworn to by a public servant
10 specified in subdivision one of section 690.05 OF THIS ARTICLE. If
11 oral, it must be made by such a public servant and sworn to and recorded
12 in the manner provided in section 690.36 OF THIS ARTICLE. AN APPLICA-
13 TION FOR A SEARCH WARRANT BASED EITHER IN WHOLE OR IN PART ON PARAGRAPH
14 (B) OF SUBDIVISION FOUR OF THIS SECTION, MUST BE MADE TO A COURT BETWEEN
15 THE HOURS OF 6:00 A.M. AND 9:00 P.M. UNLESS CIRCUMSTANCES REASONABLY
16 REQUIRE THAT SUCH APPLICATION BE MADE AT ANOTHER TIME, IN WHICH EVENT
17 SUCH CIRCUMSTANCES SHALL BE STATED IN THE APPLICATION FOR THE WARRANT.

18 S 3. Section 690.35 of the criminal procedure law is amended by
19 adding a new subdivision 5 to read as follows:

20 5. WHEN MAKING AN APPLICATION BASED EITHER IN WHOLE OR IN PART ON
21 PARAGRAPH (B) OF SUBDIVISION FOUR OF THIS SECTION, IN ADDITION TO THE
22 OTHER REQUIREMENTS FOR AN APPLICATION FOR A SEARCH WARRANT, THE APPLI-
23 CANT MUST ASCERTAIN, TO THE EXTENT REASONABLY POSSIBLE, WHETHER ANY
24 PARTIES OTHER THAN ANY SUBJECT OF THE SEARCH WARRANT SHALL BE PRESENT
25 WHEN THE WARRANT IS EXECUTED, AND IF SO, THE AGE AND PHYSICAL CONDITION
26 OF THE PARTIES, AND REASONABLE ALTERNATIVES TO EXECUTING SUCH WARRANT IN
27 THE PRESENCE OF SUCH INDIVIDUALS. THE RESULTS OF SUCH INVESTIGATION
28 SHALL BE INCLUDED IN THE APPLICATION AND CONFORM WITH THE REQUIREMENTS
29 OF PARAGRAPH (C) OF SUBDIVISION THREE OF THIS SECTION.

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

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

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

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

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

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

55 7. UPON SEIZING PROPERTY OR ARRESTING A PERSON PURSUANT TO A SEARCH
56 WARRANT ISSUED UNDER THIS ARTICLE, IN ADDITION TO THE REQUIREMENTS OF

1 SUBDIVISIONS FIVE AND SIX OF THIS SECTION, THE POLICE OFFICER SHALL FILE
2 A REPORT WITH THE COURT THAT ISSUED SUCH WARRANT IN A FORM PRESCRIBED BY
3 THE DIVISION OF CRIMINAL JUSTICE SERVICES PURSUANT TO SECTION EIGHT
4 HUNDRED THIRTY-SEVEN-S OF THE EXECUTIVE LAW, SPECIFYING THE FOLLOWING
5 INFORMATION:

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

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

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

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

14 (E) THE DATE AND TIME THE SEARCH WARRANT WAS APPLIED FOR AND THE DATE
15 AND TIME THE SEARCH WARRANT WAS SIGNED;

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

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

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

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

24 (J) WHETHER PHYSICAL FORCE OR DEADLY FORCE WAS USED IN EXECUTING SUCH
25 WARRANT;

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

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

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

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

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

34 (I) EVIDENCE WAS SEIZED; AND

35 (II) ANY INDIVIDUALS WERE ARRESTED, AND IF SO, WHETHER THE SUBJECT OF
36 THE WARRANT WAS ARRESTED OR OTHER INDIVIDUALS NOT NAMED IN THE WARRANT
37 WERE ARRESTED; AND

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

40 S 7. The criminal procedure law is amended by adding a new section
41 690.60 to read as follows:

42 S 690.60 SEARCH WARRANTS; MONETARY RESTITUTION.

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

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

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

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

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

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

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

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

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

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