S T A T E O F N E W Y O R K

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:

Section 1. Subdivision 2 of section 690.30 of the criminal procedure law is amended to read as follows:

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

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

LBD05661-01-1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(K) IF PHYSICAL OR DEADLY FORCE WAS USED:

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

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

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

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

(I) EVIDENCE WAS SEIZED; AND

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

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

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

S 690.60 SEARCH WARRANTS; MONETARY RESTITUTION.

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

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

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

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

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

S 837-S. ESTABLISH A FORM AND SYSTEM TO RECORD AND MONITOR THE ISSUANCE AND EXECUTION OF SEARCH WARRANTS. 1. THE COMMISSIONER SHALL PRESCRIBE THE FORM OF DOCUMENT TO BE USED BY EVERY LAW ENFORCEMENT AGENCY OF THE STATE AND OF EACH MUNICIPALITY, CITY, TOWN AND VILLAGE TO ACCOMPANY A REPORT TO BE PREPARED IN ACCORDANCE WITH SUBDIVISION SEVEN OF SECTION 690.50 OF THE CRIMINAL PROCEDURE LAW.

2. THE COMMISSIONER SHALL ESTABLISH A SYSTEM TO RECORD AND MONITOR THE ISSUANCE AND EXECUTION OF SEARCH WARRANTS BY EVERY LAW ENFORCEMENT AGENCY IN THE STATE OF NEW YORK. EVERY COURT THAT ISSUES SEARCH WARRANTS SHALL FILE ON OR BEFORE THE THIRTY-FIRST DAY OF DECEMBER OF EACH YEAR WITH THE COMMISSIONER, A COPY OF EACH FORM FILED WITH SUCH COURT AND PRESCRIBED IN SUBDIVISION ONE OF THIS SECTION, RETAINING THE ORIGINAL COPY OF SUCH FORM WITH THE COURT. THE COMMISSIONER SHALL COLLECT, PROCESS AND ANALYZE SUCH INFORMATION CONTAINED IN SUCH REPORTS, AND ISSUE A REPORT BY THE THIRTIETH DAY OF JUNE OF EACH YEAR WHICH SHALL BE MADE PUBLIC AND A COPY OF WHICH SHALL BE SENT TO THE OFFICE OF COURT ADMINISTRATION, EACH LAW ENFORCEMENT AGENCY, EACH CIVIL COMPLAINT REVIEW BOARD WITH JURISDICTION OVER A POLICE OR LAW ENFORCEMENT AGENCY, AND TO THE ATTORNEY GENERAL OF THE STATE OF NEW YORK.

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

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

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