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

S. 2011 A. 3011

S E N A T E - A S S E M B L Y

January 21, 2015

IN SENATE -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

IN ASSEMBLY -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read once and referred to the Committee on Ways and Means

AN ACT to amend the criminal procedure law, in relation to criminal proceedings and the appointment of an independent monitor, to amend the executive law, in relation to the reporting requirements, and to amend the criminal procedure law, in relation to warrants

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 190.75 of the criminal procedure law is amended by adding a new subdivision 5 to read as follows:

5. WHEN THE SUBJECT OF A GRAND JURY PROCEEDING IS A POLICE OFFICER AS DEFINED IN SUBDIVISION THIRTY-FOUR OF SECTION 1.20 OF THIS CHAPTER OR A PEACE OFFICER AS DEFINED IN SUBDIVISION THIRTY-THREE OF SECTION 1.20 OF THIS CHAPTER, ACTING WITHIN HIS OR HER OFFICIAL CAPACITY CONCERNING CRIMINAL ACTS THAT INCLUDE THE USE OF DEADLY PHYSICAL FORCE AGAINST AN UNARMED PERSON, AND THE DISTRICT ATTORNEY DECLINES TO INITIATE A GRAND JURY PROCEEDING AGAINST SUCH A POLICE OFFICER OR PEACE OFFICER, DECLINES TO REQUEST THAT A GRAND JURY CONSIDER CHARGES, DOES NOT PRESENT EVIDENCE TO THE GRAND JURY, OR THE GRAND JURY DISMISSES THE CHARGES OR DECLINES TO RETURN AN INDICTMENT, THE DISTRICT ATTORNEY SHALL WITHIN SIXTY DAYS PROVIDE ALL EVIDENTIARY MATERIALS GATHERED DURING THE COURSE OF THE INVESTIGATION AND, WHERE APPLICABLE, THE DISTRICT ATTORNEY SHALL PROVIDE THE GRAND JURY MINUTES, ALL EVIDENCE PRESENTED TO THE GRAND JURY, ALL GRAND JURY EXHIBITS, AS WELL AS ANY RECORDS AND OTHER EVIDENCE IN THE POSSESSION, CUSTODY AND CONTROL OF THE DISTRICT ATTORNEY, TO THE "INDEPENDENT MONITOR" WHO SHALL BE APPOINTED BY THE GOVERNOR FOR A TERM OF THREE YEARS AND WHO SHALL REVIEW THE GRAND JURY PROCEEDINGS AND ALL EVIDENTIARY MATERIALS GATHERED. THE PRESENTED MATERIALS AS DESCRIBED IN THIS SECTION SHALL REMAIN CONFIDENTIAL AND SHALL NOT BE SUBJECT TO

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

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DISCLOSURE UNDER ARTICLE SIX OF THE PUBLIC OFFICERS LAW. IF THE INDEPENDENT MONITOR DETERMINES THAT THERE WERE (A) SUBSTANTIAL ERRORS OF SUCH MAGNITUDE THAT THERE EXISTS A REASONABLE PROBABILITY THAT AN INDICTMENT WOULD HAVE RESULTED BUT FOR THESE ERRORS, AND THAT THE PRESUMPTION OF REGULARITY AFFORDED TO SUCH PROCEEDINGS CAN NO LONGER APPLY, OR (B) THERE EXISTS NEWLY DISCOVERED EVIDENCE OF SUCH MAGNITUDE THAT THERE EXISTS A REASONABLE PROBABILITY THAT HAD SUCH EVIDENCE BEEN PRESENTED TO THE GRAND JURY, AN INDICTMENT WOULD HAVE RESULTED, THEN THE INDEPENDENT MONITOR SHALL REFER THE MATTER TO THE GOVERNOR FOR PURPOSES OF APPOINTMENT OF A SPECIAL PROSECUTOR PURSUANT TO SECTION SIXTY-THREE OF THE EXECUTIVE LAW. FOR PURPOSES OF THIS ARTICLE, THE RELEASE OF EVIDENTIARY MATERIALS AND GRAND JURY MINUTES BY THE DISTRICT ATTORNEY TO THE INDEPENDENT MONITOR SHALL BE CONSIDERED ACTING WITHIN THE DISTRICT ATTORNEY'S OFFICIAL DUTIES AND THEREFORE NOT UNLAWFUL DISCLOSURE UNDER SECTION 215.70 OF THE PENAL LAW.

S 2. Section 190.85 of the criminal procedure law is amended by adding a new subdivision 6 to read as follows:

6. WHEN A GRAND JURY, PURSUANT TO SUBDIVISION ONE OF SECTION 190.75 OF THIS ARTICLE, DISMISSES THE CHARGES OR DECLINES TO RETURN AN INDICTMENT AND THE SUBJECT OF A GRAND JURY PROCEEDING IS A POLICE OFFICER AS DEFINED IN SUBDIVISION THIRTY-FOUR OF SECTION 1.20 OF THIS CHAPTER OR A PEACE OFFICER AS DEFINED IN SUBDIVISION THIRTY-THREE OF SECTION 1.20 OF THIS CHAPTER, ACTING WITHIN HIS OR HER OFFICIAL CAPACITY CONCERNING CRIMINAL ACTS THAT INCLUDE THE USE OF DEADLY PHYSICAL FORCE AGAINST AN UNARMED PERSON, THE DISTRICT ATTORNEY MAY, PURSUANT TO AND IN ACCORDANCE WITH THE RULES AND REQUIREMENTS OF THIS SECTION AND SECTION 190.90 OF THIS ARTICLE, REGARDING THE CREATION OF A GRAND JURY REPORT, CREATE A GRAND JURY REPORT. THE REPORT SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING INFORMATION: (I) CHARGES PRESENTED; (II) EVIDENCE PRESENTED; (III) THE GRAND JURY MINUTES; AND (IV) THE GRAND JURY QUORUM. WITH THE EXCEPTION OF EXPERTS AND PUBLIC EMPLOYEES, THE REPORT MUST NOT CONTAIN THE NAMES OR ANY OTHER IDENTIFYING INFORMATION SUCH AS DATES OF BIRTH, SOCIAL SECURITY NUMBERS, HOME ADDRESSES, TELEPHONE NUMBERS, OR ANY OTHER INFORMATION THAT IF DISCLOSED MAY REASONABLY LEAD TO THE PUBLIC IDENTIFICATION OF A WITNESS OR ANY OTHER PERSON, OTHER THAN THE NAME OF THE VICTIM OR THE SUBJECT OF THE INVESTIGATION, WHO WAS OTHERWISE IDENTIFIED DURING THE COURSE OF THE GRAND JURY PRESENTATION. THE COURT MUST APPROVE THE CONTENTS OF THE REPORT CONSISTENT WITH THIS SUBDIVISION PRIOR TO THE RELEASE OF THE REPORT BY THE DISTRICT ATTORNEY TO ANY CIVILIAN OR DISCIPLINARY OVERSIGHT BOARD. FOR PURPOSES OF THIS ARTICLE, THE RELEASE OF A GRAND JURY REPORT BY THE DISTRICT ATTORNEY CONSISTENT WITH THIS SECTION SHALL BE CONSIDERED ACTING WITHIN THE DISTRICT ATTORNEY'S OFFICIAL DUTIES AND THEREFORE NOT UNLAWFUL DISCLOSURE UNDER SECTION 215.70 OF THE PENAL LAW. IN LIEU OF A GRAND JURY REPORT, THE DISTRICT ATTORNEY MAY ISSUE A LETTER EXPLAINING: (A) HIS OR HER DECISION NOT TO PRESENT A CASE WHERE THE SUBJECT OF A GRAND JURY PROCEEDING IS A POLICE OFFICER OR PEACE OFFICER ACTING WITHIN HIS OR HER OFFICIAL CAPACITY CONCERNING ACTS THAT INCLUDE THE USE OF DEADLY PHYSICAL FORCE AGAINST AN UNARMED PERSON; OR (B) THE BASIS FOR THE GRAND JURY'S DECISION TO DISMISS THE INDICTMENT. FOR PURPOSES OF THIS ARTICLE, THE RELEASE OF SUCH A LETTER BY THE DISTRICT ATTORNEY IN LIEU OF A GRAND JURY REPORT SHALL BE CONSIDERED ACTING WITHIN THE DISTRICT ATTORNEY'S OFFICIAL DUTIES AND THEREFORE NOT UNLAWFUL DISCLOSURE UNDER SECTION 215.70 OF THE PENAL LAW.

S 3. Subdivision 1 of section 190.90 of the criminal procedure law is amended to read as follows:

1. When a court makes an order accepting a report of a grand jury pursuant to paragraph (a) of subdivision one of section 190.85[,] OR SUBDIVISION SIX OF SECTION 190.85 any public servant named therein may appeal the order; and when a court makes an order sealing a report of a grand jury pursuant to subdivision five of section 190.85, the district attorney or other attorney designated by the grand jury may appeal the order.

S 4. Section 230.20 of the criminal procedure law is amended by adding a new subdivision 5 to read as follows:

5. ANY PARTY AGGRIEVED BY AN ORDER OF THE APPELLATE DIVISION CONCERNING A MOTION MADE PURSUANT TO SUBDIVISION TWO OF THIS SECTION MAY SEEK LEAVE TO APPEAL FROM SUCH ORDER TO THE COURT OF APPEALS, PURSUANT TO SUBDIVISION THREE OF SECTION 450.90 OF THIS CHAPTER.

S 5. Section 450.90 of the criminal procedure law is amended by adding a new subdivision 3 to read as follows:

3. PROVIDED THAT A CERTIFICATE GRANTING LEAVE TO APPEAL IS ISSUED PURSUANT TO SECTION 460.20 OF THIS TITLE, AN APPEAL MAY BE TAKEN TO THE COURT OF APPEALS BY ANY PARTY AGGRIEVED BY AN ORDER OF THE APPELLATE DIVISION CONCERNING A MOTION MADE PURSUANT TO SUBDIVISION TWO OF SECTION 230.20 OF THIS CHAPTER. UPON THE REQUEST OF EITHER PARTY, THE HEARING AND DETERMINATION OF AN APPEAL GRANTED PURSUANT TO THIS SUBDIVISION SHALL BE CONDUCTED IN AN EXPEDITIOUS MANNER. THE CHIEF ADMINISTRATOR OF THE COURTS, WITH THE ADVICE AND CONSENT OF THE ADMINISTRATIVE BOARD OF THE COURTS, SHALL ADOPT RULES FOR THE EXPEDITIOUS BRIEFING, HEARING AND DETERMINATION OF SUCH APPEALS.

S 6. Subdivision 4 of section 840 of the executive law is amended by adding a new paragraph (c) to read as follows:

(C) ESTABLISH A MODEL LAW ENFORCEMENT USE OF FORCE POLICY SUITABLE FOR ADOPTION BY ANY LAW ENFORCEMENT AGENCY THROUGHOUT THE STATE. THE USE OF FORCE POLICY SHALL INCLUDE, BUT NOT BE LIMITED TO, INFORMATION ON CURRENT LAW AS IT RELATES TO USE OF FORCE AND ACTS OR TECHNIQUES A POLICE OFFICER OR PEACE OFFICER MAY NOT USE IN THE COURSE OF ACTING IN HIS OR HER OFFICIAL CAPACITY. THE CHIEF OF EVERY LOCAL POLICE DEPARTMENT, EACH COUNTY SHERIFF, AND THE SUPERINTENDENT OF STATE POLICE MUST IMPLEMENT A USE OF FORCE POLICY. THE USE OF FORCE POLICY SHOULD BE CONSISTENT WITH THE MODEL LAW ENFORCEMENT POLICY AS REQUIRED BY THIS SECTION EXCEPT THAT A DEPARTMENT SHALL NOT BE LIMITED FROM IMPOSING FURTHER RESTRICTIONS ON THE USE OF FORCE.

S 7. The executive law is amended by adding a new section 837-u to read as follows:

S 837-U. REPORTING DUTIES OF LAW ENFORCEMENT DEPARTMENTS WITH RESPECT TO ENFORCEMENT OF VIOLATIONS AND MISDEMEANORS. 1. THE CHIEF OF EVERY POLICE DEPARTMENT, EACH COUNTY SHERIFF, AND THE SUPERINTENDENT OF STATE POLICE SHALL REPORT, ANNUALLY, TO THE DIVISION WITH RESPECT TO THE TOTAL NUMBER OF ARRESTS MADE FOR NON-CRIMINAL VIOLATIONS AND MISDEMEANORS. SUCH REPORTS SHALL BE IN THE FORM AND MANNER PRESCRIBED BY THE DIVISION AND SHALL CONTAIN SUCH INFORMATION AS THE DIVISION DEEMS NECESSARY.

2. THE CHIEF OF EVERY POLICE DEPARTMENT, EACH COUNTY SHERIFF, AND THE SUPERINTENDENT OF STATE POLICE SHALL REPORT, ANNUALLY, TO THE DIVISION WITH RESPECT TO THE NUMBER OF INSTANCES WHERE A POLICE OFFICER AS DEFINED IN SUBDIVISION THIRTY-FOUR OF SECTION 1.20 OF THE CRIMINAL PROCEDURE LAW OR A PEACE OFFICER AS DEFINED IN SUBDIVISION THIRTY-THREE OF SECTION 1.20 OF THIS CHAPTER, ENGAGES IN CONDUCT THAT WAS A POSSIBLE FACTOR IN THE DEATH OF ANOTHER DURING THE ENFORCEMENT OF A VIOLATION OR MISDEMEANOR. SUCH REPORTS SHALL BE IN THE FORM AND MANNER PRESCRIBED BY

THE DIVISION AND SHALL CONTAIN SUCH INFORMATION AS THE DIVISION DEEMS NECESSARY.

3. THE CHIEF OF EVERY POLICE DEPARTMENT, EACH COUNTY SHERIFF, AND THE SUPERINTENDENT OF STATE POLICE SHALL REPORT, ANNUALLY, TO THE DIVISION WITH RESPECT TO THE TOTAL NUMBER OF APPEARANCE TICKETS AS DEFINED IN SUBDIVISION TWENTY-SIX OF SECTION 1.20 OF THE CRIMINAL PROCEDURE LAW AND SUMMONSES AS DEFINED IN SUBDIVISION TWENTY-SEVEN OF SECTION 1.20 OF THE CRIMINAL PROCEDURE LAW. SUCH REPORTS SHALL BE IN THE FORM AND MANNER PRESCRIBED BY THE DIVISION AND SHALL CONTAIN INFORMATION ABOUT THE SUBJECT OF EACH APPEARANCE TICKET OR SUMMONS INCLUDING BUT NOT LIMITED TO HIS OR HER AGE, SEX, RACE AND ETHNICITY.

S 8. Subdivision 3 of section 690.35 of the criminal procedure law is amended by adding a new paragraph (f) to read as follows:

(F) A STATEMENT WHETHER THE APPLICATION FOR THE WARRANT HAD BEEN PREVIOUSLY SUBMITTED TO ANOTHER JUDGE, AND IF SO, THE STATEMENT MUST INCLUDE THE NAME OF THE JUDGE OR JUDGES TO WHOM THE APPLICATION WAS PREVIOUSLY SUBMITTED, THE RESULT OF SUCH APPLICATION OR APPLICATIONS, AND WHEN SUCH APPLICATION OR APPLICATIONS WERE MADE.

S 9. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

S 10. This act shall take effect on the thirtieth day after it shall have become a law.