

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:

1 Section 1. Section 190.75 of the criminal procedure law is amended by  
2 adding a new subdivision 5 to read as follows:  
3 5. WHEN THE SUBJECT OF A GRAND JURY PROCEEDING IS A POLICE OFFICER AS  
4 DEFINED IN SUBDIVISION THIRTY-FOUR OF SECTION 1.20 OF THIS CHAPTER OR A  
5 PEACE OFFICER AS DEFINED IN SUBDIVISION THIRTY-THREE OF SECTION 1.20 OF  
6 THIS CHAPTER, ACTING WITHIN HIS OR HER OFFICIAL CAPACITY CONCERNING  
7 CRIMINAL ACTS THAT INCLUDE THE USE OF DEADLY PHYSICAL FORCE AGAINST AN  
8 UNARMED PERSON, AND THE DISTRICT ATTORNEY DECLINES TO INITIATE A GRAND  
9 JURY PROCEEDING AGAINST SUCH A POLICE OFFICER OR PEACE OFFICER, DECLINES  
10 TO REQUEST THAT A GRAND JURY CONSIDER CHARGES, DOES NOT PRESENT EVIDENCE  
11 TO THE GRAND JURY, OR THE GRAND JURY DISMISSES THE CHARGES OR DECLINES  
12 TO RETURN AN INDICTMENT, THE DISTRICT ATTORNEY SHALL WITHIN SIXTY DAYS  
13 PROVIDE ALL EVIDENTIARY MATERIALS GATHERED DURING THE COURSE OF THE  
14 INVESTIGATION AND, WHERE APPLICABLE, THE DISTRICT ATTORNEY SHALL PROVIDE  
15 THE GRAND JURY MINUTES, ALL EVIDENCE PRESENTED TO THE GRAND JURY, ALL  
16 GRAND JURY EXHIBITS, AS WELL AS ANY RECORDS AND OTHER EVIDENCE IN THE  
17 POSSESSION, CUSTODY AND CONTROL OF THE DISTRICT ATTORNEY, TO THE "INDE-  
18 PENDENT MONITOR" WHO SHALL BE APPOINTED BY THE GOVERNOR FOR A TERM OF  
19 THREE YEARS AND WHO SHALL REVIEW THE GRAND JURY PROCEEDINGS AND ALL  
20 EVIDENTIARY MATERIALS GATHERED. THE PRESENTED MATERIALS AS DESCRIBED IN  
21 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.

LBD12576-01-5

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

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

18 6. WHEN A GRAND JURY, PURSUANT TO SUBDIVISION ONE OF SECTION 190.75 OF  
19 THIS ARTICLE, DISMISSES THE CHARGES OR DECLINES TO RETURN AN INDICTMENT  
20 AND THE SUBJECT OF A GRAND JURY PROCEEDING IS A POLICE OFFICER AS  
21 DEFINED IN SUBDIVISION THIRTY-FOUR OF SECTION 1.20 OF THIS CHAPTER OR A  
22 PEACE OFFICER AS DEFINED IN SUBDIVISION THIRTY-THREE OF SECTION 1.20 OF  
23 THIS CHAPTER, ACTING WITHIN HIS OR HER OFFICIAL CAPACITY CONCERNING  
24 CRIMINAL ACTS THAT INCLUDE THE USE OF DEADLY PHYSICAL FORCE AGAINST AN  
25 UNARMED PERSON, THE DISTRICT ATTORNEY MAY, PURSUANT TO AND IN ACCORDANCE  
26 WITH THE RULES AND REQUIREMENTS OF THIS SECTION AND SECTION 190.90 OF  
27 THIS ARTICLE, REGARDING THE CREATION OF A GRAND JURY REPORT, CREATE A  
28 GRAND JURY REPORT. THE REPORT SHALL INCLUDE, BUT NOT BE LIMITED TO, THE  
29 FOLLOWING INFORMATION: (I) CHARGES PRESENTED; (II) EVIDENCE PRESENTED;  
30 (III) THE GRAND JURY MINUTES; AND (IV) THE GRAND JURY QUORUM. WITH THE  
31 EXCEPTION OF EXPERTS AND PUBLIC EMPLOYEES, THE REPORT MUST NOT CONTAIN  
32 THE NAMES OR ANY OTHER IDENTIFYING INFORMATION SUCH AS DATES OF BIRTH,  
33 SOCIAL SECURITY NUMBERS, HOME ADDRESSES, TELEPHONE NUMBERS, OR ANY OTHER  
34 INFORMATION THAT IF DISCLOSED MAY REASONABLY LEAD TO THE PUBLIC IDEN-  
35 TIFICATION OF A WITNESS OR ANY OTHER PERSON, OTHER THAN THE NAME OF THE  
36 VICTIM OR THE SUBJECT OF THE INVESTIGATION, WHO WAS OTHERWISE IDENTIFIED  
37 DURING THE COURSE OF THE GRAND JURY PRESENTATION. THE COURT MUST APPROVE  
38 THE CONTENTS OF THE REPORT CONSISTENT WITH THIS SUBDIVISION PRIOR TO THE  
39 RELEASE OF THE REPORT BY THE DISTRICT ATTORNEY TO ANY CIVILIAN OR DISCI-  
40 PLINARY OVERSIGHT BOARD. FOR PURPOSES OF THIS ARTICLE, THE RELEASE OF A  
41 GRAND JURY REPORT BY THE DISTRICT ATTORNEY CONSISTENT WITH THIS SECTION  
42 SHALL BE CONSIDERED ACTING WITHIN THE DISTRICT ATTORNEY'S OFFICIAL  
43 DUTIES AND THEREFORE NOT UNLAWFUL DISCLOSURE UNDER SECTION 215.70 OF THE  
44 PENAL LAW. IN LIEU OF A GRAND JURY REPORT, THE DISTRICT ATTORNEY MAY  
45 ISSUE A LETTER EXPLAINING: (A) HIS OR HER DECISION NOT TO PRESENT A CASE  
46 WHERE THE SUBJECT OF A GRAND JURY PROCEEDING IS A POLICE OFFICER OR  
47 PEACE OFFICER ACTING WITHIN HIS OR HER OFFICIAL CAPACITY CONCERNING ACTS  
48 THAT INCLUDE THE USE OF DEADLY PHYSICAL FORCE AGAINST AN UNARMED PERSON;  
49 OR (B) THE BASIS FOR THE GRAND JURY'S DECISION TO DISMISS THE INDICT-  
50 MENT. FOR PURPOSES OF THIS ARTICLE, THE RELEASE OF SUCH A LETTER BY THE  
51 DISTRICT ATTORNEY IN LIEU OF A GRAND JURY REPORT SHALL BE CONSIDERED  
52 ACTING WITHIN THE DISTRICT ATTORNEY'S OFFICIAL DUTIES AND THEREFORE NOT  
53 UNLAWFUL DISCLOSURE UNDER SECTION 215.70 OF THE PENAL LAW.

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

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

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

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

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

16 3. PROVIDED THAT A CERTIFICATE GRANTING LEAVE TO APPEAL IS ISSUED  
17 PURSUANT TO SECTION 460.20 OF THIS TITLE, AN APPEAL MAY BE TAKEN TO THE  
18 COURT OF APPEALS BY ANY PARTY AGGRIEVED BY AN ORDER OF THE APPELLATE  
19 DIVISION CONCERNING A MOTION MADE PURSUANT TO SUBDIVISION TWO OF SECTION  
20 230.20 OF THIS CHAPTER. UPON THE REQUEST OF EITHER PARTY, THE HEARING  
21 AND DETERMINATION OF AN APPEAL GRANTED PURSUANT TO THIS SUBDIVISION  
22 SHALL BE CONDUCTED IN AN EXPEDITIOUS MANNER. THE CHIEF ADMINISTRATOR OF  
23 THE COURTS, WITH THE ADVICE AND CONSENT OF THE ADMINISTRATIVE BOARD OF  
24 THE COURTS, SHALL ADOPT RULES FOR THE EXPEDITIOUS BRIEFING, HEARING AND  
25 DETERMINATION OF SUCH APPEALS.

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

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

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

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

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

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

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

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

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

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

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