

STATE OF NEW YORK

8891

IN SENATE

August 10, 2020

Introduced by Sen. BAILEY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the criminal procedure law, in relation to conducting hearings of a grand jury proceeding during a state disaster emergency; and providing for the repeal of such provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The criminal procedure law is amended by adding a new
2 section 190.95 to read as follows:

3 **S 190.95 Hearing upon grand jury proceedings; emergency provision during**
4 **disaster emergency.**

5 During the period of the COVID-19 state disaster emergency, as
6 declared pursuant to executive order number two hundred two of two thou-
7 sand twenty and extensions thereof and article two-B of the executive
8 law, the following additional provisions shall apply to the conduct of a
9 hearing on a felony complaint pursuant to this article:

10 1. The appearance of any party and any witness at such hearing may be
11 by electronic appearance through an independent audio-visual system, as
12 such terms are defined in section 182.10 of this chapter, where the
13 court finds after hearing from the parties and any such witness, either
14 in person or by electronic appearance, that due to the person's circum-
15 stances and such disaster emergency a personal appearance by such party
16 or witness would be an unreasonable hardship to such person or witness.

17 2. At any such hearing, the jurors must be able to hear and see the
18 image of each witness clearly though the independent audio-visual system
19 and such sound and visual image shall be similar to the sound and image
20 the juror would hear and see if the witness were present together with
21 the juror testifying in the courtroom. Documents, photographs and the
22 like offered at the hearing may be exchanged among the parties by elec-
23 tronic means. A stenographic transcription or appropriate audio record-
24 ing of the proceedings shall be maintained, and the live testimony
25 received by electronic appearance, and other electronic appearances
26 where practicable, shall be video recorded.

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

LBD16763-01-0

3. The authority for an electronic appearance pursuant to this section shall be considered sufficient means to enable the court to conduct a hearing of a grand jury within the meaning of section 190.30 of this article.

§ 2. Section 190.80 of the criminal procedure law, as amended by section 27-a of part WWW of chapter 59 of the laws of 2017, is amended to read as follows:

§ 190.80 Grand jury; release of defendant upon failure of timely grand jury action.

Upon application of a defendant who on the basis of a felony complaint has been held by a local criminal court for the action of a grand jury, and who, at the time of such order or subsequent thereto, has been committed to the custody of the sheriff pending such grand jury action, and who has been confined in such custody for a period of more than forty-five days, or, in the case of a juvenile offender or adolescent offender, thirty days, without the occurrence of any grand jury action or disposition pursuant to subdivision one, two or three of section 190.60 **of this article**, the superior court by which such grand jury was or is to be impaneled must release him on his own recognizance unless:

20 (a) The lack of a grand jury disposition during such period of
21 confinement was due to the defendant's request, action or condition, or
22 occurred with his consent; [redacted]

23 (b) The people have shown good cause why such order of release should
24 not be issued. Such good cause must consist of some compelling fact or
25 circumstance which precluded grand jury action within the prescribed
26 period or rendered the same against the interest of justice; or

27 (c) In the event of a state disaster emergency, declared in accordance
28 with article two-B of the executive law, electronic appearances at a
29 hearing of a grand jury proceeding shall be governed by section 190.95
30 of this article.

31 § 3. This act shall take effect on the thirtieth day after it shall
32 have become a law and shall expire and be deemed repealed April 30,
33 2021.