STATE OF NEW YORK

2683--A

2021-2022 Regular Sessions

IN ASSEMBLY

January 19, 2021

Introduced by M. of A. O'DONNELL, NOLAN, BARRON, ABINANTI, EPSTEIN, ANDERSON, SEAWRIGHT, ZINERMAN, TAYLOR, COOK, SIMON, DICKENS, STECK, JACKSON, FORREST, QUART, FAHY -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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. The opening paragraph of section 690.10 of the criminal procedure law is amended to read as follows:

Personal property is subject to seizure pursuant to a search warrant if **such seizure is made in connection with a lawful arrest and** there is reasonable cause to believe that it:

§ 2. 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**

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

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8:00 A.M. and 6:00 P.M. unless there is reasonable cause to believe that it cannot be executed between those hours because, 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 imminently likely to flee or commit another violent felony, or is likely to create an imminent danger to the safety of the executing police officers or another person if not seized forthwith or between the hours of 6:00 P.M. and 8:00 A.M., in which 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.

§ 3. Subdivision 1 and paragraph (b) of subdivision 4 of section 690.35 of the criminal procedure law, subdivision 1 as amended by chapter 679 of the laws of 1982, and paragraph (b) of subdivision 4 as amended by chapter 424 of the laws of 1998, are 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. In all cities with a population of less than one million, 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.

(b) A request that the search warrant authorize the executing police officer to enter premises to be searched without giving notice of [~~his~~] their authority and purpose, upon the ground that there is reasonable cause to believe that (i) [~~the property sought may be easily and quickly destroyed or disposed of, or (ii)~~] the giving of such notice [~~may endanger~~] is likely to create an imminent danger to the life or safety of the executing officer or another person, or [~~(iii)~~] (ii) in the case of an application for a search warrant as defined in paragraph (b) of subdivision two of section 690.05 for the purpose of searching for and arresting a person who is the subject of a warrant for a felony, the person sought is imminently likely to commit another violent felony, or [~~may endanger~~] is likely to create an imminent danger to the life or safety of the executing officer or another person. In order for a request that a search warrant authorizes the executing police officer to enter premises to be searched without giving notice of their authority and purpose be granted, such request shall show that extreme circumstances are involved, which for purposes of this article are when the giving of such notice is likely to create an imminent danger to the life of the executing officer or another person, only where the application pursuant to this paragraph lists specific facts that giving such notice is likely to create such imminent danger to the life of the executing officer or another person. No warrant issued under this paragraph can be used to search a residence for a controlled substance, as defined by section 220.00 of the penal law. Any controlled substance, as defined by section 220.00 of the penal law, found in a residence during a search based on a warrant issued under this paragraph can be subject to seizure.

§ 4. 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 application shall include a list containing the estimated age, gender, and physical condition of each additional occupant, any known individuals with cognitive and/or physical disabilities, and any pets known or likely to be present at the premises to be searched, 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. For all applications based either in whole or in part on paragraph (b) of subdivision four of this section, the applicant shall be a district attorney or the attorney general, or if a district attorney or the attorney general is absent or disabled, the person designated to act on their behalf and perform their official function in and during such absence or disability.

§ 5. 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. Such determination shall include evidence stating why a warrant that requires an officer to knock and announce their presence shall not be issued.

§ 6. Subdivision 6 of section 690.45 of the criminal procedure law, as renumbered by chapter 679 of the laws of 1982, is amended and a new subdivision 8-a is added 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

8-a. An intended course of action if no response is received from the intended suspect of the warrant at the time of execution within thirty seconds; and

§ 7. Section 690.50 of the criminal procedure law is amended by adding five new subdivisions 7, 8, 9, 10 and 11 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-w 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) (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.

8. Search warrants not executed within seven days of issuance shall be considered null and void.

9. An officer shall be required to present evidence and/or surveillance gathered within twenty-four hours or less before a warrant is executed which verifies that the subject of such warrant is present at the residence intended to be searched. Where the information about the location of the subject of any warrant comes from an informant or other third-party testimony, the officer applying for the warrant shall verify that an officer or agent of the police department has independently verified that there is probable cause to believe the subject of the warrant will be present at a particular location.

10. Any officer or officers who are executing a search warrant shall be required to be in official uniform and be clearly recognizable and identifiable as a police officer. All officers involved in the execution of a search warrant shall wear visible badges containing names and identification numbers.

11. (a) Any officer or officers who are executing a search warrant shall allow a minimum of thirty seconds for the occupants of the property being searched to respond and open the door before such officer or officers attempt to enter the property, except for situations where verifiable, exigent circumstances exist. For purposes of this section,

"verifiable, exigent circumstances" means any event occurring in real-time that is life-threatening to the officer or officers executing a search warrant or to the occupants of the property which is being searched.

(b) No officer involved in the execution of a search warrant shall at any point during such execution use any flash bang, stun, distraction or other similar device unless verifiable, exigent circumstances exist.

(c) No officer involved in the execution of a search warrant shall execute a warrant outside of when such warrant is allowed to be executed under this article unless verifiable, exigent circumstances exist.

§ 8. Section 690.55 of the criminal procedure law, paragraph (b) of subdivision 1 as amended by chapter 424 of the laws of 1998, is amended to read as follows:

§ 690.55 Search warrants; disposition of seized property.

1. Upon receiving property seized pursuant to a search warrant, the court [~~must~~] shall either:

(a) Retain it in the custody of the court pending further disposition thereof pursuant to subdivision two or some other provision of law; or

(b) Direct that it be held in the custody of the person who applied for the warrant, or of the police officer who executed it, or of the governmental or official agency or department by which either such public servant is employed, upon condition that upon order of such court such property be returned thereto or delivered to another court.

2. A local criminal court which retains custody of such property [~~must~~] shall, upon request of another criminal court in which a criminal action involving or relating to such property is pending, cause it to be delivered thereto.

3. A person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property's return five days after the property has been seized, or at any time thereafter. The motion may be made before any court with jurisdiction over the criminal case or, if no case has been filed, in the county in which the property was seized. The court must receive evidence on any factual issue necessary to decide such motion. After an aggrieved person has moved for the property's return, the prosecutor must establish by clear and convincing evidence, that the seized property was the proceeds of a crime, or evidence of a crime. If the court grants such motion, it must return the property to the movant, but may impose reasonable conditions to protect access to the property and its use in later proceedings.

§ 9. The criminal procedure law is amended by adding two new sections 690.60 and 690.65 to read as follows:

§ 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.

§ 690.65 Search warrants; violations.

Where a search warrant is executed in violation of this article:

1. any evidence obtained in connection with the search warrant shall be inadmissible in evidence by the prosecution; and

2. any officer involved in the execution of such search warrant shall be subject to disciplinary actions including, but not limited to, fines, suspension or termination.

§ 10. The executive law is amended by adding a new section 837-w to read as follows:

§ 837-w. 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.

§ 11. 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.

§ 12. This act shall take effect on the one hundred eightieth day after it shall have become a law. 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 to be made and completed on or before such effective date.