

STATE OF NEW YORK

4369

2023-2024 Regular Sessions

IN ASSEMBLY

February 14, 2023

Introduced by M. of A. O'DONNELL -- 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:

1 Section 1. The opening paragraph of section 690.10 of the criminal
2 procedure law is amended to read as follows:

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

6 § 2. Subdivision 2 of section 690.30 of the criminal procedure law is
7 amended to read as follows:

8 2. A search warrant may be executed on any day of the week. [~~It~~]
9 Except as otherwise provided in this subdivision, a search warrant may
10 be executed only between the hours of 6:00 A.M. and 9:00 P.M., unless
11 the warrant expressly authorizes execution thereof at any time of the
12 day or night, as provided in subdivision [~~five~~] six of section 690.45 of
13 this article. Notwithstanding paragraph (a) of subdivision four of
14 section 690.35 of this article, a search warrant based in whole or in
15 part on the grounds set forth in paragraph (b) of subdivision four of
16 section 690.35 of this article may be executed only between the hours of
17 8:00 A.M. and 6:00 P.M. unless there is reasonable cause to believe that
18 it cannot be executed between those hours because, in the case of an
19 application for a search warrant as defined in paragraph (b) of subdivi-

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

LBD02461-01-3

sion 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

1 other requirements for an application for a search warrant, the appli-
2 cant must ascertain, to the extent reasonably possible, whether any
3 parties other than any subject of the search warrant shall be present
4 when the warrant is executed, and if so, the application shall include a
5 list containing the estimated age, gender, and physical condition of
6 each additional occupant, any known individuals with cognitive and/or
7 physical disabilities, and any pets known or likely to be present at the
8 premises to be searched, and reasonable alternatives to executing such
9 warrant in the presence of such individuals. The results of such inves-
10 tigation shall be included in the application and conform with the
11 requirements of paragraph (c) of subdivision three of this section. For
12 all applications based either in whole or in part on paragraph (b) of
13 subdivision four of this section, the applicant shall be a district
14 attorney or the attorney general, or if a district attorney or the
15 attorney general is absent or disabled, the person designated to act on
16 their behalf and perform their official function in and during such
17 absence or disability.

18 § 5. Subdivision 1 of section 690.40 of the criminal procedure law is
19 amended to read as follows:

20 1. (a) In determining an application for a search warrant the court
21 may examine, under oath, any person whom it believes may possess perti-
22 nent information. Any such examination must be either recorded or
23 summarized on the record by the court.

24 (b) In determining an application for a search warrant based, either
25 in whole or in part, upon the grounds described in paragraph (b) of
26 subdivision four of section 690.35 of this article, the court shall
27 state, with specificity, in writing or orally on the record or in writ-
28 ing upon the application for the warrant itself, the factual basis for
29 the issuance of the warrant pursuant to such paragraph. Such determi-
30 nation shall include evidence stating why a warrant that requires an
31 officer to knock and announce their presence shall not be issued.

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

35 6. A direction that the warrant be executed between the hours of 6:00
36 A.M. and 9:00 P.M., or, where the court has specially so determined, an
37 authorization for execution thereof at any time of the day or night
38 unless the warrant has been obtained based on an application based in
39 whole or in part on paragraph (b) of subdivision four of section 690.35
40 of this article, in which event the provisions of subdivision two of
41 section 690.30 of this article relating to the time for executing such
42 warrants shall apply; and

43 8-a. An intended course of action if no response is received from the
44 intended suspect of the warrant at the time of execution within thirty
45 seconds; and

46 § 7. Section 690.50 of the criminal procedure law is amended by adding
47 five new subdivisions 7, 8, 9, 10 and 11 to read as follows:

48 7. Upon seizing property or arresting a person pursuant to a search
49 warrant issued under this article, in addition to the requirements of
50 subdivisions five and six of this section, the police officer shall file
51 a report with the court that issued such warrant in a form prescribed by
52 the division of criminal justice services pursuant to section eight
53 hundred thirty-seven-x of the executive law, specifying the following
54 information:

1 (a) if applicable, the subparagraph of paragraph (b) of subdivision
2 four of section 690.35 of this article upon which such warrant was
3 based;

4 (b) the officer and agency which obtained the warrant;

5 (c) the prosecutor and prosecuting office which drafted the warrant;

6 (d) whether the facts contained in the supporting affidavit were based
7 upon a confidential informant, or an identified citizen informant or a
8 police officer, none of whom must be named;

9 (e) the date and time the search warrant was applied for and the date
10 and time the search warrant was signed;

11 (f) the date and time the search warrant was executed;

12 (g) the judge who signed and the court that issued the warrant;

13 (h) whether the application for the warrant issued had been submitted
14 to another judge other than the judge who issued the warrant for which
15 the report is submitted and if so, when such application or applications
16 were made and the result of each such application;

17 (i) the age, sex and race of the individual to whom such warrant was
18 directed;

19 (j) whether physical force or deadly force was used in executing such
20 warrant;

21 (k) (i) whether any individual was injured or killed and if so, the
22 age, sex and race of each such person; and

23 (ii) the status of each such person, specifying whether each was the
24 subject of the search warrant, a police officer, or a third party;

25 (l) the address where the warrant was executed including the street
26 address, city or town, county and zip code;

27 (m) the result of executing the warrant, specifying whether:

28 (i) evidence was seized; and

29 (ii) any individuals were arrested, and if so, whether the subject of
30 the warrant was arrested or other individuals not named in the warrant
31 were arrested; and

32 (n) whether any property was damaged during the course of executing
33 the warrant and a description thereof.

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

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

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

50 11. (a) Any officer or officers who are executing a search warrant
51 shall allow a minimum of thirty seconds for the occupants of the proper-
52 ty being searched to respond and open the door before such officer or
53 officers attempt to enter the property, except for situations where
54 verifiable, exigent circumstances exist. For purposes of this section,
55 "verifiable, exigent circumstances" means any event occurring in real-
56 time that is life-threatening to the officer or officers executing a

1 search warrant or to the occupants of the property which is being
2 searched.

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

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

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

12 § 690.55 Search warrants; disposition of seized property.

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

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

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

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

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

38 § 9. The criminal procedure law is amended by adding two new sections
39 690.60 and 690.65 to read as follows:

40 § 690.60 Search warrants; monetary restitution.

41 1. Following the execution of a search warrant issued pursuant to
42 paragraph (b) of subdivision four of section 690.35 of this article, the
43 owner of the place or premises at which such warrant was executed and
44 the owner of any property located at such premises shall be entitled to
45 monetary restitution, paid promptly by the state or municipality employ-
46 ing the officials who executed the warrant, for a premises, or any part
47 thereof, and any items of property at such premises that were damaged or
48 destroyed as a part of the execution of such warrant upon such premises,
49 unless such owner of such premises or property is:

50 (a) convicted of a crime involving or relating to property seized
51 pursuant to such warrant; or

52 (b) convicted of a crime involving or relating to the search warrant
53 for such premises issued pursuant to paragraph (b) of subdivision two of
54 section 690.05 of this article.

55 2. Nothing in this section shall be construed as affecting any other
56 right, duty or cause of action that may exist with respect to any prem-

ises, 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-x to read as follows:

§ 837-x. 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.