

2015-16 NEW YORK STATE EXECUTIVE BUDGET

**EXECUTIVE CRIMINAL JUSTICE REFORM
ACT OF 2015
ARTICLE VII LEGISLATION**

Legislative Bill Drafting Commission
12576-01-5

S. -----
Senate

IN SENATE--Introduced by Sen

--read twice and ordered printed,
and when printed to be committed
to the Committee on

----- A.
Assembly

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the
Committee on

CRIMIPLA

(Relates to criminal proceedings,
the appointment of an independent
monitor, reporting requirements and
warrants)

CP L. independent monitor

AN ACT

to amend the criminal procedure law,
in relation to criminal proceedings
and the appointment of an independ-
ent monitor, to amend the executive
law, in relation to the reporting
requirements, and to amend the crim-
inal procedure law, in relation to
warrants

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

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship
of this proposal:

s15 Addabbo	s49 Farley	s63 Kennedy	s40 Murphy	s10 Sanders
s46 Amedore	s17 Felder	s34 Klein	s54 Nozzolio	s23 Savino
s11 Avella	s02 Flanagan	s28 Krueger	s58 O'Mara	s41 Serino
s42 Bonacic	s55 Funke	s24 Lanza	s62 Ortt	s29 Serrano
s04 Boyle	s59 Gallivan	s39 Larkin	s60 Panepinto	s51 Seward
s44 Breslin	s12 Gianaris	s37 Latimer	s21 Parker	s09 Skelos
s38 Carlucci	s22 Golden	s01 LaValle	s13 Peralta	s26 Squadron
s14 Comrie	s47 Griffo	s52 Libous	s30 Perkins	s16 Stavisky
s03 Croci	s20 Hamilton	s45 Little	s61 Ranzenhofer	s35 Stewart-
s50 DeFrancisco	s06 Hannon	s05 Marcellino	s48 Ritchie	Cousins
s32 Diaz	s36 Hassell-	s43 Marchione	s33 Rivera	s53 Valesky
s18 Dilan	Thompson	s07 Martins	s56 Robach	s08 Venditto
s31 Espaillat	s27 Hoylman	s25 Montgomery	s19 Sampson	s57 Young

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the
multi-sponsorship of this proposal:

a049 Abbate	a045 Cymbrowitz	a135 Johns	a003 Murray	a016 Schimel
a092 Abinanti	a053 Davila	a077 Joyner	a133 Nojay	a140 Schimminger
a084 Arroyo	a034 DenDekker	a020 Kaminsky	a037 Nolan	a076 Seawright
a035 Aubry	a054 Dilan	a094 Katz	a130 Oaks	a087 Sepulveda
a120 Barclay	a081 Dinowitz	a074 Kavanagh	a069 O'Donnell	a065 Silver
a106 Barrett	a147 DiPietro	a142 Kearns	a051 Ortiz	a027 Simanowitz
a060 Barron	a115 Duprey	a040 Kim	a091 Otis	a052 Simon
a082 Benedetto	a004 Englebright	a131 Kolb	a132 Palmesano	a036 Simotas
a042 Bichotte	a109 Fahy	a105 Lalor	a002 Palumbo	a104 Skartados
a079 Blake	a071 Farrell	a013 Lavine	a088 Paulin	a099 Skoufis
a117 Blankenbush	a126 Finch	a134 Lawrence	a141 Peoples-	a022 Solages
a062 Borelli	a008 Fitzpatrick	a050 Lentol	Stokes	a114 Stec
a098 Brabenec	a124 Friend	a125 Lifton	a058 Perry	a110 Steck
a026 Braunstein	a095 Galef	a072 Linares	a059 Persaud	a127 Stirpe
a044 Brennan	a137 Gantt	a102 Lopez	a086 Pichardo	a112 Tedisco
a119 Brindisi	a007 Garbarino	a123 Lupardo	a089 Pretlow	a101 Tenney
a138 Bronson	a148 Giglio	a010 Lupinacci	a073 Quart	a001 Thiele
a046 Brook-Krasny	a080 Gjonaj	a121 Magee	a019 Ra	a061 Titone
a093 Buchwald	a066 Glick	a129 Magnarelli	a012 Raia	a031 Titus
a118 Butler	a023 Goldfeder	a064 Malliotakis	a006 Ramos	a055 Walker
a103 Cahill	a150 Goodell	a030 Markey	a078 Rivera	a146 Walter
a043 Camara	a075 Gottfried	a090 Mayer	a128 Roberts	a041 Weinstein
a145 Ceretto	a005 Graf	a108 McDonald	a056 Robinson	a024 Weprin
a033 Clark	a100 Gunther	a014 McDonough	a068 Rodriguez	a113 Woerner
a047 Colton	a139 Hawley	a017 McKevitt	a067 Rosenthal	a143 Wozniak
a032 Cook	a083 Heastie	a107 McLaughlin	a025 Rozic	a070 Wright
a144 Corwin	a028 Hevesi	a038 Miller	a116 Russell	a096 Zebrowski
a085 Crespo	a048 Hikind	a015 Montesano	a149 Ryan	
a122 Crouch	a018 Hooper	a136 Morelle	a009 Saladino	
a021 Curran	a097 Jaffee	a057 Mosley	a111 Santabarbara	
a063 Cusick	a011 Jean-Pierre	a039 Moya	a029 Scarborough	

1) Single House Bill (introduced and printed separately in either or
both houses). Uni-Bill (introduced simultaneously in both houses and printed
as one bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2
signed copies of bill and 4 copies of memorandum in support (single house);
or 4 signed copies of bill and 8 copies of memorandum
in support (uni-bill).

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
22 disclosure under article six of the public officers law. If the inde-
23 pendent monitor determines that there were (a) substantial errors of
24 such magnitude that there exists a reasonable probability that an
25 indictment would have resulted but for these errors, and that the
26 presumption of regularity afforded to such proceedings can no longer
27 apply, or (b) there exists newly discovered evidence of such magnitude
28 that there exists a reasonable probability that had such evidence been

1 presented to the grand jury, an indictment would have resulted, then the
2 independent monitor shall refer the matter to the governor for purposes
3 of appointment of a special prosecutor pursuant to section sixty-three
4 of the executive law. For purposes of this article, the release of
5 evidentiary materials and grand jury minutes by the district attorney to
6 the independent monitor shall be considered acting within the district
7 attorney's official duties and therefore not unlawful disclosure under
8 section 215.70 of the penal law.

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

11 6. When a grand jury, pursuant to subdivision one of section 190.75 of
12 this article, dismisses the charges or declines to return an indictment
13 and the subject of a grand jury proceeding is a police officer as
14 defined in subdivision thirty-four of section 1.20 of this chapter or a
15 peace officer as defined in subdivision thirty-three of section 1.20 of
16 this chapter, acting within his or her official capacity concerning
17 criminal acts that include the use of deadly physical force against an
18 unarmed person, the district attorney may, pursuant to and in accordance
19 with the rules and requirements of this section and section 190.90 of
20 this article, regarding the creation of a grand jury report, create a
21 grand jury report. The report shall include, but not be limited to, the
22 following information: (i) charges presented; (ii) evidence presented;
23 (iii) the grand jury minutes; and (iv) the grand jury quorum. With the
24 exception of experts and public employees, the report must not contain
25 the names or any other identifying information such as dates of birth,
26 social security numbers, home addresses, telephone numbers, or any other
27 information that if disclosed may reasonably lead to the public iden-
28 tification of a witness or any other person, other than the name of the

1 victim or the subject of the investigation, who was otherwise identified
2 during the course of the grand jury presentation. The court must approve
3 the contents of the report consistent with this subdivision prior to the
4 release of the report by the district attorney to any civilian or disci-
5 plinary oversight board. For purposes of this article, the release of a
6 grand jury report by the district attorney consistent with this section
7 shall be considered acting within the district attorney's official
8 duties and therefore not unlawful disclosure under section 215.70 of the
9 penal law. In lieu of a grand jury report, the district attorney may
10 issue a letter explaining: (a) his or her decision not to present a case
11 where the subject of a grand jury proceeding is a police officer or
12 peace officer acting within his or her official capacity concerning acts
13 that include the use of deadly physical force against an unarmed person;
14 or (b) the basis for the grand jury's decision to dismiss the indict-
15 ment. For purposes of this article, the release of such a letter by the
16 district attorney in lieu of a grand jury report shall be considered
17 acting within the district attorney's official duties and therefore not
18 unlawful disclosure under section 215.70 of the penal law.

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

21 1. When a court makes an order accepting a report of a grand jury
22 pursuant to paragraph (a) of subdivision one of section 190.85[,] or
23 subdivision six of section 190.85 any public servant named therein may
24 appeal the order; and when a court makes an order sealing a report of a
25 grand jury pursuant to subdivision five of section 190.85, the district
26 attorney or other attorney designated by the grand jury may appeal the
27 order.

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

3 5. Any party aggrieved by an order of the appellate division concern-
4 ing a motion made pursuant to subdivision two of this section may seek
5 leave to appeal from such order to the court of appeals, pursuant to
6 subdivision three of section 450.90 of this chapter.

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

9 3. Provided that a certificate granting leave to appeal is issued
10 pursuant to section 460.20 of this title, an appeal may be taken to the
11 court of appeals by any party aggrieved by an order of the appellate
12 division concerning a motion made pursuant to subdivision two of section
13 230.20 of this chapter. Upon the request of either party, the hearing
14 and determination of an appeal granted pursuant to this subdivision
15 shall be conducted in an expeditious manner. The chief administrator of
16 the courts, with the advice and consent of the administrative board of
17 the courts, shall adopt rules for the expeditious briefing, hearing and
18 determination of such appeals.

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

21 (c) Establish a model law enforcement use of force policy suitable for
22 adoption by any law enforcement agency throughout the state. The use of
23 force policy shall include, but not be limited to, information on
24 current law as it relates to use of force and acts or techniques a
25 police officer or peace officer may not use in the course of acting in
26 his or her official capacity. The chief of every local police depart-
27 ment, each county sheriff, and the superintendent of state police must
28 implement a use of force policy. The use of force policy should be

1 consistent with the model law enforcement policy as required by this
2 section except that a department shall not be limited from imposing
3 further restrictions on the use of force.

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

6 § 837-u. Reporting duties of law enforcement departments with respect
7 to enforcement of violations and misdemeanors. 1. The chief of every
8 police department, each county sheriff, and the superintendent of state
9 police shall report, annually, to the division with respect to the total
10 number of arrests made for non-criminal violations and misdemeanors.
11 Such reports shall be in the form and manner prescribed by the division
12 and shall contain such information as the division deems necessary.

13 2. The chief of every police department, each county sheriff, and the
14 superintendent of state police shall report, annually, to the division
15 with respect to the number of instances where a police officer as
16 defined in subdivision thirty-four of section 1.20 of the criminal
17 procedure law or a peace officer as defined in subdivision thirty-three
18 of section 1.20 of this chapter, engages in conduct that was a possible
19 factor in the death of another during the enforcement of a violation or
20 misdemeanor. Such reports shall be in the form and manner prescribed by
21 the division and shall contain such information as the division deems
22 necessary.

23 3. The chief of every police department, each county sheriff, and the
24 superintendent of state police shall report, annually, to the division
25 with respect to the total number of appearance tickets as defined in
26 subdivision twenty-six of section 1.20 of the criminal procedure law and
27 summonses as defined in subdivision twenty-seven of section 1.20 of the
28 criminal procedure law. Such reports shall be in the form and manner

1 prescribed by the division and shall contain information about the
2 subject of each appearance ticket or summons including but not limited
3 to his or her age, sex, race and ethnicity.

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

6 (f) A statement whether the application for the warrant had been
7 previously submitted to another judge, and if so, the statement must
8 include the name of the judge or judges to whom the application was
9 previously submitted, the result of such application or applications,
10 and when such application or applications were made.

11 § 9. Severability clause. If any clause, sentence, paragraph, subdivi-
12 sion, section or part of this act shall be adjudged by any court of
13 competent jurisdiction to be invalid, such judgment shall not affect,
14 impair, or invalidate the remainder thereof, but shall be confined in
15 its operation to the clause, sentence, paragraph, subdivision, section
16 or part thereof directly involved in the controversy in which such judg-
17 ment shall have been rendered. It is hereby declared to be the intent of
18 the legislature that this act would have been enacted even if such
19 invalid provisions had not been included herein.

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