HOUSE . . . . . No. 1829

By Mr. Linsky of Brookline, petition of Elliot L. Richardson and Martin A. Linsky for legislation relative to searches and forfeitures. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Sixty-Eight.

AN ACT RELATING TO SEARCHES AND FORFEITURES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Sections 1 through 8 of chapter 276 of the General Laws are hereby amended as follows:—

Section 1. Complaint; warrant for designated property or articles.—A court or justice authorized to issue warrants in criminal cases may, upon complaint on oath that the complainant believes that any of the property or articles hereinafter named are kept or concealed in a house, place, vessel or vehicle or in the possession of a person anywhere within the commonwealth and territorial waters thereof, if satisfied that there is probable cause for such belief, issue a warrant identifying the property and naming or describing the person or place to be searched and commanding the person seeking such warrant to search for the following property or articles:

First, property or articles stolen, embezzled or obtained by false pretenses, or otherwise obtained in the commission of a crime;

Second, property or articles which are intended for use, or which are or have been used, as a means or instrumentality of committing a crime, including, but not in limitation of the foregoing, any property or article worn, carried or otherwise used, changed or marked in the preparation for or perpetration of or concealment of a crime;

Third, property or articles the possession or control of which is unlawful, or which are possessed or controlled for an unlawful purpose; except property subject to search and seizure under sections forty-two through fifty-six, inclusive, of chapter one hundred and thirty-eight;

Fourth, the dead body of a human being.

The word "property" as used in this section shall include books, papers, documents, records and any other tangible objects.

Nothing in this section shall be construed to abrogate, impair or limit powers of search and seizure granted under other provisions of the General Laws or under the common law.

Section 2. Requisites of warrant.—Search warrants shall designate and describe the building, house, place, vessel or vehicle to be searched and shall particularly describe the property or articles to be searched for. They shall be substantially in the form prescribed in section two A of this chapter and shall be directed to the sheriff or his deputy or to a constable or police officer, commanding him to search in the daytime, or if the warrant so directs, in the nighttime, the building, house, place, vessel or vehicle where the property or articles for which he is required to search are believed to be kept or concealed, and to bring such property or articles when found before a court having jurisdiction.

Section 2A. Form of warrant:—The warrant shall be in substantially the following form:

THE COMMONWEALTH OF MASSACHUSETTS.

(COUNTY), ss. (NAME) COURT.

To the Sheriffs of our several counties, or their deputies, any State Police Officer, or any Constable or Police Officer of any city or town, within our said Commonwealth.

Proof by affidavit having been made this day before (name of person authorized to issue warrant) by (names of person or persons whose affidavits have been taken) that there is probable cause for believing that (certain property has been stolen, embezzled, or obtained by false pretenses; certain property is intended for use or has been used as the means of committing a crime; certain property has been concealed to prevent a crime from being discovered; certain property is unlawfully possessed or kept or concealed for an unlawful purpose).

We therefore command you in the daytime (or any time of the day or night) to make an immediate search of (identify premises) (occupied by A.B.) and (of the person of A.B.) and of any person present who may be found to have such property in his possession or under his control or to whom such property may have been delivered, for the following property:

(description of property)

and if you find such property or any part thereof to bring it before (court having jurisdiction) at (name of court and location).

Dated at (city or town) this ..... day of ....., 19 .

Section 2B. Affidavit in support of application for warrant; contents and form.—A person seeking a search warrant shall appear personally before a court or justice authorized to issue search warrants in criminal cases and shall give an affidavit in substantially the form hereinafter prescribed. Such affidavit shall contain the facts, information, and circumstances upon which such person relies to establish sufficient grounds for the issuance of the warrant. The person issuing the warrant shall retain the affidavit and shall deliver it within three days after the issuance of the warrant to the court to which the warrant is returnable. Upon the return of said warrant, the affidavit shall be attached to it and shall be filed therewith, and it shall not be a public document until the warrant is returned.

The affidavit in support of the application for a search warrant shall be in substantially the following form:

THE COMMONWEALTH OF MASSACHUSETTS.

(COUNTY), ss. (NAME) COURT.

....., 19.....

I, (name of applicant) being duly sworn, despose and say:

1. I am (describe position, assignment, office, etc.).

2. I have information, based upon (describe source, facts indicating reliability of source and nature of information; if based on personal knowledge and belief, so state).

3. Based upon the foregoing reliable information (and upon my personal knowledge) there is probable cause to believe that the property hereinafter described (has been stolen, or is being concealed, etc.) and may be found (in the possession of A.B. or any other person) at premises (identify).

4. The property for which I seek the issuance of a search warrant is the following: (here describe the property as particularly as possible).

Wherefore, I respectfully request that the court issue a warrant and order of seizure, authorizing the search of (identify premises and the persons to be searched) and directing that if such property or evidence or any part thereof be found that it be seized and brought before the court; together with such other and further relief that the court may deem proper.

.....
Name.

Then personally appeared the above named ..... and made oath that the foregoing affidavit by him suscribed is true.

Section 2C. Manner of issuing warrants; application of sections 2, 2A and 2B.—Search warrants issued pursuant to section two hundred and thirteen of chapter ninety-four, sections twenty and twenty-five of chapter one hundred and ten, section ten of chapter one hundred and thirty, sections twenty-three and fifty-two of chapter one hundred and thirty-one shall be issued in the manner provided in sections two, two A and two B, insofar as they are applicable.

Section 3. Seizure, custody and disposition of articles; exceptions.—If an officer in the execution of a search warrant finds property or articles therein described, or during a lawful search without a warrant finds property or articles described in clauses First through Fourth of section one, he shall seize and safely keep them, under the direction of the court or justice, so long as necessary to permit them to be produced or used as evidence on any trial. As soon as may be, thereafter, all seized property described in clause First of section one shall be restored to the owners thereof; and all other property seized shall be disposed of as the court or justice orders and may be forfeited and either delivered to the state purchasing agent as the property of the commonwealth, sold or destroyed as the public interest requires in the discretion of the court or justice, except:

(*a*) Diseased animals or carcasses thereof, or any tainted, diseased, corrupt, decayed or unwholesome meat, fish, vegetables, produce, fruit or provisions of any kind or the meat of any calf killed when less than two weeks old, or any product thereof kept or concealed with intent to kill, sell or offer the same for sale for food, shall be destroyed or disposed

of in accordance with section one hundred and forty-six of chapter ninety-four by the board of health or by an officer designated by the court or justice; and diseased animals found to have been kept or concealed in a particular building, place or enclosure shall be destroyed or disposed of by the division of livestock disease control of the department of agriculture without compensation to the owners thereof.

(*b*) Narcotics seized under clause Third of section one shall be disposed of pursuant to the provisions of section two hundred and fourteen of chapter ninety-four.

(*c*) Rifles, shotguns, pistols, knives and other dangerous weapons which have been found to have been kept, concealed or used unlawfully or for an unlawful purpose shall be forfeited to the commonwealth and delivered forthwith to the commissioner of public safety for destruction or preservation in the discretion of the commissioner of public safety.

(*d*) Money seized under clause Third of section one shall be forfeited and paid over to the state treasurer.

(*e*) Any property, the forfeiture and disposition of which is specified in any general or special law, shall be disposed of in accordance therewith.

Section 3A. Time for return of warrant.—Every officer to whom a warrant to search is issued shall return the same to the court by which it was issued as soon as it has been served and in any event not later than seven days from the date of issuance thereof, with a return of his doings thereon; provided, however, that a justice of the superior court may at any time receive complaints and issue search warrants returnable in seven days before a district court named in such warrant and in that event the officer shall make his return to such district court as directed.

Section 4. Notice before forfeiture of property.—Before a decree of forfeiture of property seized is issued, the court or justice shall, unless otherwise expressly provided, issue a notice under seal, signed by the clerk of the court or by the justice, setting forth the substance of the complaint, and commanding the persons, if any, in whose possession the articles were found, and the owner, if alleged, and all other persons who claim an interest therein, to appear at a time and place therein named to show cause why the articles seized should not be forfeited.

Section 5. Service of notice.—The notice shall, not less than fourteen days before the time appointed for trial, be served upon the person, if any, alleged to be the owner of the articles seized, by an officer authorized to serve criminal process, by leaving an attested copy thereof with him personally or at his usual place of abode and by posting an attested copy thereof on the house or building in which the articles were seized, if they were found in a house or building; otherwise, in a public place in the town where they were seized.

Section 6. Postponement of trial; further notice.—If, at the time appointed for the trial, such notice has not been duly served, or if it appears necessary that any of the articles so seized should be kept longer for the purpose of being produced or used as evidence on any trial, or if other sufficient cause appears, the trial may be postponed to another day and place and further notice issued.

Section 7. Sale or destruction of property seized; disposition of proceeds.—If upon trial the property is adjudged forfeited, it shall forthwith be disposed of as provided by law. So much thereof as is ordered to be sold by the court or justice shall be sold by the sheriff and the proceeds paid to the county. All moneys seized shall be paid over forthwith to the state treasurer. The court of justice may order any article not found to have been unlawfully used, kept or concealed or intended for unlawful use, or any article unlawfully used, kept or concealed or intended for unlawful use, without the knowledge of its owner, lessor or secured party to be delivered to the party legally entitled to its possession. A secured party who does not prior to obtaining his security interest make inquiry of a town, city or state law enforcement agency regarding the criminal record and reputation of the debtor shall be deemed to have had such knowledge.

Section 8. Appeal; Recognizance; jury trial; conformity to criminal cases; disposition of articles.—A person aggrieved by a decree of forfeiture of a district court may appeal therefrom to the superior court; but before his appeal is allowed, he shall recognize to the commonwealth in the sum of two hundred dollars, with sufficient surety or sureties, to

prosecute his appeal and to pay all such expenses as may thereafter arise, if final judgment is rendered against the articles adjudged forfeited, and to abide the judgment of the superior court thereon; and upon such appeal, any question of fact shall be tried by a jury. All proceedings in the superior court, including the right of exception, shall conform so far as may be to proceedings in criminal cases; and if, upon final judgment, the articles are adjudged forfeited, they shall be disposed of under the direction of the superior court as they might have been disposed of had no appeal been taken.