

Public Health and Social Services Committee
&
Law Enforcement & Public Safety Committee
Joint Meeting Minutes

DATE & TIME: November 18, 2014, 4:45 PM

LOCATION: Karen L. Binder, 6th Floor, COB, Kingston, NY

PRESIDING OFFICERS: Chairman Thomas J. Briggs & Chairman Craig Lopez

LEGISLATIVE STAFF: Jay Mahler & Nettie Tomshaw

PRESENT: Legislators Briggs, Lopez, Provenzano, Allen, Belfiglio, Litts, Gregorius, Loughran

EXCUSED: Legislators Kenneth Ronk, MaryBeth Maio

QUORUM PRESENT: Yes

OTHER ATTENDEES: Legislators David Donaldson, Lynn Archer, Tracey Bartels, James Maloney, Richard Gerentine, Legislative Counsel, Cappy Weiner, Chris Ragucci, Erica Guerin, Ken Crannell Deputy County Executive, Bea Havranek County Attorney, Pat Doxey Freeman, Tom Kadgen LWV, Joseph Barbarito Taxpayer, Howard Baul CSEA LRS, Michael Cimorelli CSEA President 8950, James Nani Times Herald Record, Sheriff Paul J. VanBlarcum, Perry Soule Sheriff Patrol Lt., John McGovern Sheriff's Office, Burt Gulnick Commissioner of Finance, William Martin III

Chairman Thomas Briggs called the meeting to order promptly at 4:45PM. Legislator Briggs thanked both committees for coming together on such short notice.

Chairman Briggs asked Sheriff VanBlarcum to share with the committee the file ID check policy recently put into effect at the County Services Building on Ulster Avenue in the Town of Ulster, which houses the Department of Social Services and Office for the Aging.

Sheriff VanBlarcum explained back in 2007 they initiated this same process in the Corrections Facility. When the new commissioner of Social Services came on board the procedure was reviewed with his attorneys with the only concern being confidentiality. After further research, all legal concerns were vetted - no rights would be violated. There is no case law showing this as a violation. Sgt. George Goodwin is in charge of the procedure. If someone refuses to show ID they are still permitted to enter the facility. No one is denied entrance to the facility and there has not been a single issue. Sheriff VanBlarcum's office provided the attached documents for committee review. The Sheriff went on to explain in the past this same process has been done in Family Court on paper before the electronic age. The Sheriff would like to run these checks in the county office building and others as well. Funding is limited as a peace officer or police officer would be required, and a magnetometer. The Sheriff suggested the committee members go to DSS and view the process and reach out to the civilian employees which are mostly female.



ULSTER POLICE DEPARTMENT



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Anthony E. Cruise
Chief of Police

JP Gramoglia
Lieutenant

November 18, 2014

Sheriff Paul VanBlarcum
Ulster County Sheriff's Office
380 Boulevard
Kingston, NY 12401

Paul,

I just wanted to send a letter to officially let you know that I support your file check program of persons entering the County Services Building on Ulster Ave in the Town of Ulster. As another local executive of the Law Enforcement community, it is easy for me to understand the reasons why this is being done. However, I think it is important for everyone else to understand. This is not a means by Law Enforcement to negatively impact the public, but one more step in making sure the staff employed within the building and visiting public are safe. I don't think anyone in society would want their family, who maybe there seeking public assistance to be sitting next to a wanted person. Also, I think the community as a whole would have a problem with someone being sought by police on a warrant, being able to simply enter a government building, which you are held to protect. Some may argue that just because someone is a wanted person, doesn't make them guilty of anything. I agree, however most people with legal problems go through the legal process and don't become a wanted person. Persons that are wanted more than not have a criminal record and in being wanted show a disregard for the legal process, which is potentially dangerous in and of itself. If someone is willfully disregarding the legal process, what other lengths will they go to in an attempt to avoid this process? In society there are good people that make mistakes, but those same people go through the legal process without becoming wanted. Actually most warrants are obtained because the person fails to return to court or is unable to be located by police.

In today's volatile society we always have to be vigilant in protecting our citizens without violating anyone's rights. A simple, non-invasive name check through a State Network system that is used when we check driver's licenses is no violation. It supports the fact when entering a secure government facility, the protection of all should outweigh the minor inconvenience of a warrants check. Upon entering a secure government facility, it is acceptable to scan people for weapons, there should be no question of a simple name check for warrants, as the greatest danger could lie with the person themselves. They are not going shopping at the mall, they are entering a secure government building that you and the County are responsible to provide protection.

With that said, I have heard the discussion of hiring out for private security. Why would the County of Ulster want that liability? Your staff is well trained and accredited. While present at this facility, your deputies handle duties that include weapons screening and providing essential public safety, first aid and other law enforcement services. A private security firm doesn't share the same Law Enforcement intelligence, have the same training, experience or equipment. Ultimately your agency and

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ours would be tasked with responding to handle complaints at this facility because a private security firm doesn't have the training, experience and authority to do so, plain and simple.

I would agree that steps should be taken to notify the public prior to entering the building, such as signage explaining the procedure. In addition, we should never keep a formal log of the names checked, if there are no warrants, no arrest, then no record should be made.

We live in a society of identification requests, you have to produce identification to purchase cigarettes, alcohol and travel. You have to produce identification with your credit card purchases, you have to produce identification within the same facility to obtain assistance. I ask why not let the simple warrant checks be completed while persons are being checked for weapons.

Sheriff, I thank you and support you in your stance and I hope the County Legislature will support you and not just pass judgment without allowing you time to show this program is non-invasive and works.

Respectfully,



Anthony E Cruise
Chief of Police



Fw:

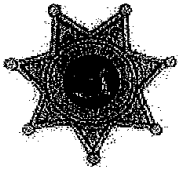
Victoria Ann Fabella to: rhetoricalstrategies, LynnArcher, traceybartels, Wedphoto2003, cbef, dbdonaldso, fabianordist4, raad24,

11/18/2014 02:33 PM

Victoria A. Fabella, Clerk
Ulster County Legislature
244 Fair Street
PO Box 1800
Kingston, NY 12402
(845) 340-3666
vfab@co.ulster.ny.us

can you please see that the legislators get a copy of this?

Thanks



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Sheriff Paul J. Van Blarcum
Ulster County Sheriff's Office
380 Boulevard
Kingston, New York 12401
Office: (845) 340-3590 Fax (845) 331-2810
e-mail: pvan@co.ulster.ny.us

----- Forwarded by Paul J Van Blarcum/Sheriff's Office/Ulster County on 11/18/2014 12:54 PM -----

From: George F Goodwin III/Sheriff's Office/Ulster County
To: Paul J Van Blarcum/Sheriff's Office/Ulster County@Ulster County
Date: 11/18/2014 09:50 AM
Subject: Re:

- 10/6 Bench Warrant C/Kingston TOT
- 10/7 Bench Warrant C/Kingston TOT
- 10/7 Bench Warrant T/Ulster Probation Violation TOT
- 10/9 Bench Warrant T/Newburgh Petit Larceny TOT
- 10/10 Bench Warrant UCSO Susp. Reg. ROR'ed by court
- 10/14 Bench Warrant T/Newburgh Petit Larceny TOT
- 10/15 Bench Warrant C/Kingston Harassment TOT
- 10/17 Bench Warrant T/Saugerties Fail pay Fine TOT
- 10/21 Bench Warrant T/Saugerties TOT
- 10/21 Bench Warrant C/Kingston Susp. Reg TOT
- 10/22 Bench Warrant C/Kingston TOT
- 10/24 Bench warrant for CPCS 7th Putnam CO SO TOT

- 10/27 Arrest warrant V/Ellenville for Stalking 4th TOT Ellenville PD
- 10/27 Bench Warrant V/Liberty for Harassment TOT Liberty PD

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10/27 Bench Warrant C/Newburgh For CPCS 7th TOT Newburgh PD

10/28 Arrest Warrant for Family Ct violation turned over to Dutchess CO SO

10/29 Arrest Warrant for Criminal Mischief 4th turned over to T/Newburgh

10/30 Bench warrant out of C/Kingston for Harassment 2nd TOT KPD

10/30 Two Felony Criminal Contempt arrests out of hits on computer. Two people with full stay aways came in together.

10/30 Investigation into another Criminal Contempt. Arrest to be made

10/31 Arrest warrant out of C/Kingston PD for Harassment 2nd TOT'ed

10/31 Bench Warrant out of T/Montgomery for Harassment 2nd declined to extradite

11/03 Bench Warrant out of City of Kingston TOT Kingston PD

11/6 Arrest Warrant for Assault 3rd out of City of Albany Extradition declined

11/7 Bench Warrant for Town of Poughkeepsie TOT T/Poughkeepsie PD

11/7 Bench Warrant out of Town of New Windsor TOT New Windsor PD

11/10 Bench Warrant TOT NYSP Wurtsboro

11/12 Bench warrant for CPSP 5th out of C/Middletown TOT Orange CO SO

11/14 Arrest warrant for CSCS 3rd and CPCS 3rd out of our agency TOT Patrol/URGENT

11/14 Probation warrant from 2003 for Petit Larceny TOT NYSP

Paul J Van Blarcum Can you send me the latest total on the number... 11/18/2014 08:54:22 AM

From: Paul J Van Blarcum/Sheriff's Office/Ulster County
To: George F Goodwin III/Sheriff's Office/Ulster County@Ulster County
Date: 11/18/2014 08:54 AM
Subject:

Can you send me the latest total on the number of arrests including charges and disposition please?

Thanks



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Sheriff Paul J. Van Blarcum
Ulster County Sheriff's Office
380 Boulevard
Kingston, New York 12401
Office: (845) 340-3590 Fax (845) 331-2810
e-mail: pvan@co.ulster.ny.us

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James Vautour, 2nd V.P.
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Cattaraugus County

Barry Virts, Secretary
Wayne County

Robert Maciel, Treasurer
Onelida County

Michael Sposato, Sgt at Arms
Nassau County



New York State Sheriffs' Association, Inc.

27 Elk Street, Albany, New York 12207
Phone: 518-434-9091 Fax: 518-434-9093
E-mail: sheriff@nysheriffs.org

Peter R. Kehoe, Executive Director
Thomas A. Mitchell, Counsel

November 18, 2014

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Sheriff Paul VanBlarcum
Ulster County Sheriff's Office
380 Boulevard
Kingston NY, 12401

Sheriff VanBlarcum,

As per your request, I have looked into the relevant statutory and case law which may apply to your current practice of conducting warrant checks on persons seeking admission to the County Department of Social Services.

It is my understanding that there have been some allegations that this practice is improper, or perhaps even illegal. *I have found nothing in my research to indicate that this is the case.* On the contrary, it is my belief that this practice does not constitute an unreasonable "search and seizure" which would be governed by the 4th Amendment or the litany of cases which interpret it. Furthermore, since this practice applies to all persons seeking entrance to DSS, I do not believe it can be argued that conducting of warrant checks in this manner is discriminatory in its application.

A. Does the practice of requesting identification from persons seeking entrance to DSS, and using that information to conduct a warrant check, constitute an unreasonable search and seizure?

No, the voluntary proffering of pedigree identification information to law enforcement in this circumstance does not, in my opinion, constitute an unreasonable search or seizure.

Unfortunately, there is no controlling precedent which applies precisely to the instant case. However, the Supreme Court has reiterated ad nauseum that, "the ultimate touchstone of the Fourth Amendment is reasonableness." Riley v. California, 134 S.Ct. 2473 (2014). While it can be debated whether a voluntary encounter with law enforcement which results in the consensual release of identification information can be considered a search at all, at the very most it is an encounter which is governed by the first tier of De Bour.

Your Sheriff: The People's Choice for Public Safety



People v. De Bour was a seminal case in New York State that, along with its progeny, continues to control when it is appropriate for a police officer to approach a citizen and solicit information. 40 N.Y. 2d 210 (1976). In this case the Court of Appeals stated; "The minimal intrusion of approaching to request information is permissible when there is some objective, credible reason for that interference not necessarily indicative of criminality." Id. at 223. This principle was reiterated by the Court of Appeals in People v. Hoffman, where they wrote that, "[t]o approach an individual for information, a police officer need only have an objective, articulable reason..." 79 N.Y.2d 181, 194 (1992).

Taking together both the Federal Constitutional test (reasonableness), along with the De Bour test (objective, articulable justification), it appears to me that the practice at issue is legal. As the Sheriff, you are responsible for providing building security for DSS, pursuant to your contract with the agency. In furtherance of providing that security, it is only natural to want to have an accurate accounting of the building's occupants and their identities. This in addition to the physical screening process you administer, which is arguably more intrusive than a mere request for information. Even disregarding the fact that the police encounter in this situation is instigated by a member of the public, rather than a Sheriff Deputy, I believe this policy still passes muster under De Bour.

Even assuming, arguendo, that the encounter is a search governed by the 4th Amendment, I believe that such a search would be reasonable under the circumstances. In the instant case, citizens initiate the police encounter by seeking entrance to DSS. They are solicited for identification and asked to go through a brief physical screening process. The citizen is not detained in any way or made to feel that they cannot terminate the encounter and freely leave. Any disclosure of information or any physical search that may take place is either done upon informed consent or upon reasonable suspicion (such as triggering the magnetometer, or a deputy observing the conspicuous bulge of a weapon). Under these circumstances, I do not believe that it can be alleged that the current practice violates the 4th Amendment as a warrantless search and seizure.

As to the contention that these warrant checks are impermissible because they constitute a search scheme to "detect evidence of ordinary criminal wrongdoing," this is simply not the case. City of Indianapolis v. Edmond, 531 U.S. 32, 41 (2000). In the instant case, some modicum of criminality has already been alleged, sufficient for the issuance of a warrant. Sheriff's deputies who run a warrant check are not searching for evidence of a new crime, but whether a person is wanted for an alleged crime, supported by sufficient probable cause. And, just as police are under no obligation to ignore evidence of criminality when presented to them in plain view, they should not be restrained from acting upon information which leads them to believe that a person they are engaged with has a warrant sworn out against them.

Finally, at least one Federal Circuit Court has opined that; "It is well established that searches conducted as part of a general regulatory scheme, done in furtherance of administrative goals rather than to secure evidence of a new crime, may be permissible under the 4th Amendment without a particularized showing of probable cause." U.S. v. Bulacan, 156, F. 3d 963 (9th Cir., 1998).

A. Does the practice of requesting identification from persons seeking entrance to DSS, and using that information to conduct a warrant check, constitute an impermissible discriminatory practice?

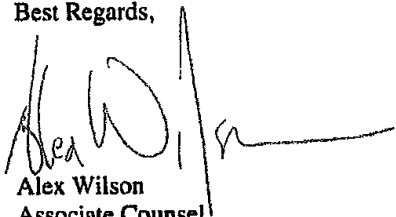
No, this practice is non-discriminatory in its application as all persons seeking entrance to DSS are screened in this fashion. Also, this practice is employed at other county facilities such as the Department of Probation and the County Jail.

Any argument that the practice is discriminatory is without merit as it is neutrally applied to all persons seeking entrance to DSS. Therefore, there is no group which can be said to be disadvantaged by this practice. Any claim that this practice will disproportionately affect the poor must fail, as the Supreme Court has stated that economic status does not qualify as a "suspect class" which warrants any level of scrutiny.

Furthermore, the fear that this practice will produce a "chilling effect" which will deter some citizens from receiving government assistance to which they are entitled is equally unsubstantiated. Even if a person was arrested as a result of this type of screening, this would not function as an automatic termination of their access to benefits. This occurs only upon incarceration. They would still be afforded due process by the criminal justice system and access to any benefits in the meantime. To assert that this is a Hobson's choice for scofflaws (take your continued freedom or nothing at all), is simply not true.

Please do not hesitate to contact me if you have any questions or concerns.

Best Regards,

A handwritten signature in black ink, appearing to read "Alex Wilson", with a long horizontal flourish extending to the right.

Alex Wilson
Associate Counsel
New York State Sheriffs' Association

Chairman Briggs opened the floor to discussion, whereas Legislator Belfiglio shared his personal experience entering the facility today. Legislator Belfiglio stated he experienced a very professional and cordial atmosphere. He felt there was nothing intimidating about the process. What he observed was everyone had to empty their pockets, provide their license and go through a magnetometer which took less than 20 seconds. Warrant checks were not being done that day due to HEAP signups. Leg. Belfiglio was told if the check results in an outstanding warrant, they call the agency and ask what they would like to have done.

Legislator Loughran was under the impression from years past that it was illegal to find out even what town or county the applicants came from. The Sheriff explained his office is different than DSS.

Legislator Provenzano expressed she has received an incredible amount of opposition to the process and feels it's against the applicants civil rights. Leg. Provenzano also agreed with Leg. Belfiglio noting the officers are professional.

Legislator Allen feels part of the problem stems from the Office for the Aging being housed in the same building.

Legislator Gregorius finds this process disconcerting – not the right thing to do.

Legislator Litts shared his daily work routine whereas ID checks and random drug testing is an accepted practice.

Legislator Donaldson feels its unfortunate personal opinions can't be voiced without going into executive session.

Ongoing discussion ensued and Counsel made the suggestion the committee go into Executive Session due to pending litigation.

MOTION NO. 1	Request to go into Executive Session
Motion Made By:	Legislator Jeanette Provenzano
Motion Seconded By:	Legislator Carl Belfiglio
Discussion:	Legal Counsel recommended Executive Session
Voting In Favor:	Legislators Lopez, Allen, Belfiglio, Litts, Provenzano, Briggs, Gregorius & Loughran
Voting Against:	None
No. of Votes in Favor:	7
No. of Votes Against:	1 (Gregorius)
Disposition:	Carried

Adjournment There being no further business, a motion to adjourn was made by Legislator Loughran and seconded by Legislator Belfiglio, all were in favor, and Chairman Briggs and Lopez declared the meeting duly adjourned at 7:23 PM upon completing the Executive Session period. No further business was discussed.

Dated the 25th Day of November, 2014 Nettie Tomshaw, Legislative Employee

Minutes Approved in Law Enforcement & Public Safety Committee on: December 4, 2014