

2018 Regular Session

SENATE BILL NO. 70

BY SENATOR MIZELL

CRIMINAL PROCEDURE. Provides relative to permissible warrantless searches of the residences of defendants on probation or parole. (8/1/18)

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Article 895(A)(13)(a) and to enact R.S.
3 15:574.4.2(I), relative to probation and parole; to provide that a warrantless search
4 may be conducted of a probationer's residence under certain circumstances by either
5 the probation officer assigned to the probationer or by a probation officer assigned
6 by the Department of Public Safety and Corrections to conduct the search; to define
7 "probation and parole officer"; to provide relative to legislative intent; and to provide
8 for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Code of Criminal Procedure Article 895(A)(13)(a) is hereby amended and
11 reenacted to read as follows:

12 Art. 895. Conditions of probation

13 A. When the court places a defendant on probation, it shall require the
14 defendant to refrain from criminal conduct and to pay a supervision fee to defray the
15 costs of probation supervision, and it may impose any specific conditions reasonably
16 related to his rehabilitation, including any of the following. That the defendant shall:

17 * * *

1 (13)(a) Agree to searches of his person, his property, his place of residence,
 2 his vehicle, or his personal effects, or any or all of them, at any time, by the
 3 probation officer or the parole officer assigned to him, or by any probation officer
 4 or parole officer assigned or directed by the Department of Public Safety and
 5 Corrections to conduct the search, with or without a warrant of arrest or with or
 6 without a search warrant, when the probation officer or the parole officer has
 7 reasonable suspicion to believe that the person who is on probation is engaged in or
 8 has been engaged in criminal activity.

9 * * *

10 Section 2. R.S. 15:574.4.2(I) is hereby enacted to read as follows:

11 §574.4.2. Decisions of committee on parole; nature, order, and conditions of parole;
 12 rules of conduct; infectious disease testing

13 * * *

14 **(I) For purposes of this Section, "probation and parole officer" means:**

15 **(1) The probation and parole officer originally assigned to the parolee.**

16 **(2) Any probation and parole officer who is subsequently assigned or**
 17 **directed by the Department of Public Safety and Corrections to supervise the**
 18 **parolee, whether the assignment to the parolee is temporary or permanent.**

19 Section 3. The provisions of this Act are intended to legislatively overrule the
 20 Louisiana Supreme Court's decision in *State of Louisiana v. Kayla Brignac*, 2017-KK-0448
 21 (Sup. Ct. 10/18/17), to the extent that the court held that a warrantless search of a
 22 probationer's residence violates the provisions of Code of Criminal Procedure Article
 23 895(A)(13)(a) when the search is not conducted by the probation officer assigned to the
 24 probationer by the Department of Public Safety and Corrections.

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Alden A. Clement Jr.

Present law provides that when the court places a defendant on probation, it is to require the defendant to refrain from criminal conduct and to pay a supervision fee, and it may impose any specific conditions reasonably related to his rehabilitation, including that the defendant

agrees to searches of his person, his property, his place of residence, his vehicle, or his personal effects, or any or all of them, at any time, by the probation officer or the parole officer assigned to him, with or without a warrant of arrest or with or without a search warrant, when the probation officer or the parole officer has reasonable suspicion to believe that the person who is on probation is engaged in or has been engaged in criminal activity.

Proposed law retains present law and adds that these searches may also be conducted by any probation officer or parole officer assigned or directed by the Dept. of Public Safety and Corrections to conduct the search.

Present law provides relative to decisions of the committee on parole and the nature, order, and conditions of parole. Present law further provides that one condition that the committee on parole may impose is that the parolee must agree to visits at his residence or place of employment by the probation and parole officer at any time, and to searches of his person, property, residence, or vehicle, when reasonable suspicion exists that criminal activity has been engaged in while on parole.

Proposed law defines "probation and parole officer" as either the probation and parole officer originally assigned to the parolee or any probation and parole officer who is subsequently assigned or directed by the Dept. of Public Safety and Corrections to supervise the parolee, whether or not such assignment is temporary or permanent.

Proposed law otherwise retains present law.

Proposed law provides that the provisions of proposed law are intended to legislatively overrule the La. Supreme Court's decision in *State of Louisiana v. Kayla Brignac*, 2017-KK-0448 (Sup. Ct. 10/18/17), to the extent that the court held that a warrantless search of a probationer's residence violates the provisions of present law (C.Cr.P. Art. 895(A)(13)(a)) relative to a warrantless search of a probationer's residence when the search is not conducted by the probation officer assigned to the probationer by the Dept. of Public Safety and Corrections.

Effective August 1, 2018.

(Amends C.Cr.P. Art. 895(A)(13)(a); adds R.S. 15:574.4.2(I))