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HOUSE BILL NO. 2258

Offered January 12, 2005

Prefiled January 11, 2005

A BILL to amend and reenact §§ 19.2-54 and 19.2-72 of the Code of Virginia, relating to process for issuance of search and arrest warrants.

Patron—Bell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 19.2-54 and 19.2-72 of the Code of Virginia are amended and reenacted as follows:**

§ 19.2-54. Affidavit preliminary to issuance of search warrant; general search warrant prohibited; effect of failure to file affidavit.

No search warrant shall be issued until there is filed with the officer authorized to issue the same an affidavit of some person reasonably describing the place, thing, or person to be searched, the things or persons to be searched for thereunder, alleging briefly material facts, constituting the probable cause for the issuance of such warrant and alleging substantially the offense in relation to which such search is to be made and that the object, thing, or person searched for constitutes evidence of the commission of such offense. *A person who seeks a search warrant may confer with the issuing officer by telephone or radio prior to filing the affidavit for a preliminary determination from the officer as to the sufficiency of probable cause.* Such affidavit shall be certified by the officer who issues such warrant and delivered by such officer or other officer authorized to certify such warrants to the clerk of the circuit court of the county or city wherein the search is made within seven days after the issuance of such warrant and shall by such clerk be preserved as a record and shall at all times be subject to inspection by the public; however such affidavit may be temporarily sealed by the appropriate court upon application of the attorney for the Commonwealth for good cause shown in an ex parte hearing. Any individual arrested and claiming to be aggrieved by such search and seizure or any person who claims to be entitled to lawful possession of such property seized may move the appropriate court for the unsealing of such affidavit, and the burden of proof with respect to continued sealing shall be upon the Commonwealth. Each such clerk shall maintain an index of all such affidavits filed in his office in order to facilitate inspection. No such warrant shall be issued on an affidavit omitting such essentials, and no general warrant for the search of a house, place, compartment, vehicle or baggage shall be issued. The term "affidavit" as used in this section, means statements made under oath or affirmation and preserved verbatim.

Failure of the officer issuing such warrant to file the required affidavit shall not invalidate any search made under the warrant unless such failure shall continue for a period of ~~thirty~~ 30 days. If the affidavit is filed prior to the expiration of the ~~thirty~~ 30-day period, nevertheless, evidence obtained in any such search shall not be admissible until a reasonable time after the filing of the required affidavit.

§ 19.2-72. When it may issue; what to recite and require.

On complaint of a criminal offense to any officer authorized to issue criminal warrants he shall examine on oath the complainant and any other witnesses, or when such officer shall suspect that an offense punishable otherwise than by a fine has been committed he may, without formal complaint, issue a summons for witnesses and shall examine such witnesses. If upon such examination such officer finds that there is probable cause to believe the accused has committed an offense, such officer shall issue a warrant for his arrest. *A person who seeks an arrest warrant may confer with the issuing officer by telephone or radio, prior to appearing before the issuing officer, for a preliminary determination from the officer as to the sufficiency of probable cause.* The warrant shall (i) be directed to an appropriate officer or officers; (ii) name the accused or, if his name is unknown, set forth a description by which he can be identified with reasonable certainty; (iii) describe the offense charged with reasonable certainty; (iv) command that the accused be arrested and brought before a court of appropriate jurisdiction in the county, city or town in which the offense was allegedly committed; and (v) be signed by the issuing officer. The warrant shall require the officer to whom it is directed to summon such witnesses as shall be therein named to appear and give evidence on the examination. But in a city or town having a police force, the warrant shall be directed "To any policeman, sheriff or his deputy sheriff of such city (or town)," and shall be executed by the policeman, sheriff or his deputy sheriff into whose hands it shall come or be delivered. A sheriff or his deputy may execute an arrest warrant throughout the county in which he serves and in any city surrounded thereby.

INTRODUCED

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