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SENATE BILL NO. 577

Offered January 11, 2006

Prefiled January 11, 2006

A BILL to amend and reenact § 19.2-59 of the Code of Virginia, relating to warrantless searches of the person, vehicle, and residence of a probationer.

Patron—McDougle

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-59 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-59. Search without warrant prohibited; when search without warrant lawful.

A.~~No~~ *Except as provided in subsection B and C, no* officer of the law or any other person shall search any place, thing or person, except by virtue of and under a warrant issued by a proper officer. Any officer or other person searching any place, thing or person otherwise than by virtue of and under a search warrant, shall be guilty of malfeasance in office. Any officer or person violating the provisions of this section shall be liable to any person aggrieved thereby in both compensatory and punitive damages. Any officer found guilty of a second offense under this section shall, upon conviction thereof, immediately forfeit his office, and such finding shall be deemed to create a vacancy in such office to be filled according to law.

B.~~Provided, however, that any~~ *Any* officer empowered to enforce the game laws or marine fisheries laws as set forth in Title 28.2 may without a search warrant enter for the purpose of enforcing such laws, any freight yard or room, passenger depot, baggage room or warehouse, storage room or warehouse, train, baggage car, passenger car, express car, Pullman car or freight car of any common carrier, or any boat, automobile or other vehicle; but nothing in this proviso contained shall be construed to permit a search of any occupied berth or compartment on any passenger car or boat or any baggage, bag, trunk, box or other closed container without a search warrant.

C. Any law-enforcement officer may, for the purpose of enforcing the laws of the Commonwealth, search without a warrant a person who has been placed on probation by a judge as all or part of the sentence in a felony criminal case against him, and the law-enforcement officer may enter and search, without a warrant, any residence of and any vehicle owned or operated by such probationer. This provision shall only apply, however, when the probationer waived his right to be secure from, and agreed to submit to, such warrantless searches as a condition of his probation, and such waiver and agreement are signed by the probationer and entered in the record of the proceeding by the sentencing court.