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SENATE BILL NO. 229

Offered January 9, 2008

Prefiled January 7, 2008

A BILL to amend and reenact §§ 19.2-54 and 19.2-57 of the Code of Virginia, relating to search warrants; affidavits, inventories, etc.

Patron—McDougle

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 19.2-54 and 19.2-57 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. The affidavit may be filed by electronically transmitted facsimile process. Such affidavit shall be certified by the officer who issues such warrant and delivered in person ~~or~~, mailed by certified mail, return receipt requested, ~~or delivered by electronically transmitted facsimile process~~ by such officer ~~or other officer authorized to certify such warrants or his designee or agent~~ to the clerk of the circuit court of the county or city wherein the search is made, ~~with a copy of the affidavit also being delivered to the clerk of the circuit court of the county or city where the warrant is issued, if in a different county or city,~~ within seven days after the issuance of such warrant and shall by such ~~clerk~~ ~~clerks~~ 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.

§ 19.2-57. Execution and return of warrant; list of property seized.

The warrant shall be executed by the search of the place described in the warrant and, if property described in the warrant ~~be~~ is found there, by the seizure of the property. The officer who seizes any property shall prepare an inventory thereof, under oath. An inventory of any seized property shall be produced before the ~~circuit court designated in the warrant~~ of the county or city where the search was conducted. The officer executing the warrant shall endorse the date of execution thereon and shall file the warrant, with the inventory attached (or a notation that no property was seized) and the accompanying affidavit, unless such affidavit was made by voice or videotape recording, within three days after the execution of such search warrant in the circuit court clerk's office, wherein the search was made, as provided in § 19.2-54. Saturdays, Sundays, or any federal or state legal holiday shall not be used in computing the three-day filing period. ~~The officer, or his designee or agent, may file the warrant, inventory, and accompanying affidavit by delivering them in person, or by mailing them certified mail, return receipt requested, or delivering them by electronically transmitted facsimile process.~~

INTRODUCED

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