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SENATE BILL NO. 1009

Offered January 14, 2009

Prefiled January 13, 2009

A BILL to amend and reenact §§ 19.2-56 and 19.2-70.3 of the Code of Virginia, relating to search warrants executed upon electronic communication service providers or remote computing service providers.

Patron—Deeds

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-56 and 19.2-70.3 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-56. To whom search warrant directed; what it shall command; warrant to show date and time of issuance; copy of affidavit to be part of warrant and served therewith; warrants not executed within 15 days.

The judge, magistrate or other official authorized to issue criminal warrants, shall issue a search warrant if he finds from the facts or circumstances recited in the affidavit that there is probable cause for the issuance thereof.

Every search warrant shall be directed to (i) the sheriff, sergeant, or any policeman of the county, city or town in which the place to be searched is located, (ii) any law-enforcement officer or agent employed by the Commonwealth and vested with the powers of sheriffs and police, or (iii) jointly to any such sheriff, sergeant, policeman or law-enforcement officer or agent and an agent, special agent or officer of the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco and Firearms of the United States Treasury, the United States Naval Criminal Investigative Service, the United States Department of Homeland Security, any inspector, law-enforcement official or police personnel of the United States Postal Inspection Service, or the Drug Enforcement Administration. The warrant shall (i) name the affiant, (ii) recite the offense in relation to which the search is to be made, (iii) name or describe the place to be searched, (iv) describe the property or person to be searched for, and (v) recite that the magistrate has found probable cause to believe that the property or person constitutes evidence of a crime (identified in the warrant) or tends to show that a person (named or described therein) has committed or is committing a crime.

The warrant shall command that the place be forthwith searched, either in day or night, and that the objects or persons described in the warrant, if found there, be seized. An inventory shall be produced before a court having jurisdiction of the offense in relation to which the warrant was issued as provided in § 19.2-57.

Any such warrant as provided in this section shall be executed by the policeman or other law-enforcement officer or agent into whose hands it shall come or be delivered. If the warrant is directed jointly to a sheriff, sergeant, policeman or law-enforcement officer or agent of the Commonwealth and a federal agent or officer as otherwise provided in this section, the warrant may be executed jointly or by the policeman, law-enforcement officer or agent into whose hands it is delivered. No other person may be permitted to be present during or participate in the execution of a warrant to search a place except (i) the owners and occupants of the place to be searched when permitted to be present by the officer in charge of the conduct of the search and (ii) persons designated by the officer in charge of the conduct of the search to assist or provide expertise in the conduct of the search.

Any search warrant for records or other information pertaining to a subscriber to, or customer of, an electronic communication service or remote computing service that is transacting or has transacted any business in the Commonwealth, including the contents of electronic communications, to be executed upon such service provider may be executed within or without the Commonwealth by mail, facsimile, or other electronic means upon the service provider. Notwithstanding the provisions of § 19.2-57, the officer executing a warrant pursuant to this paragraph 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 materials ordered to be produced are received by the officer from the service provider. The return shall be made in the circuit court clerk's office for the jurisdiction wherein the warrant was issued. Saturdays, Sundays, or any federal or state legal holiday shall not be used in computing the three-day filing period.

Every search warrant shall contain the date and time it was issued. However, the failure of any such search warrant to contain the date and time it was issued shall not render the warrant void, provided that

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SB1009

59 the date and time of issuing of said warrant is established by competent evidence.

60 The judge, magistrate, or other official authorized to issue criminal warrants shall attach a copy of  
61 the affidavit required by § 19.2-54, which shall become a part of the search warrant and served  
62 therewith. However, this provision shall not be applicable in any case in which the affidavit is made by  
63 means of a voice or videotape recording or where the affidavit has been sealed pursuant to § 19.2-54.

64 Any search warrant not executed within 15 days after issuance thereof shall be returned to, and  
65 voided by, the officer who issued such search warrant.

66 § 19.2-70.3. Obtaining records concerning electronic communication service or remote computing  
67 service.

68 A. A provider of electronic communication service or remote computing service shall disclose a  
69 record or other information pertaining to a subscriber to or customer of such service, excluding the  
70 contents of electronic communications, to an investigative or law-enforcement officer only pursuant to:

71 1. A subpoena issued by a grand jury of a court of this Commonwealth;

72 2. ~~A search warrant issued by a magistrate, general district court or a circuit court;~~

73 ~~3.~~ A court order for such disclosure issued as provided in this section; or

74 4.3. The consent of the subscriber or customer to such disclosure.

75 B. *A provider of electronic communication service or remote computing service shall disclose a*  
76 *record or other information pertaining to a subscriber to, or customer of, such service, including the*  
77 *contents of electronic communications, to an investigative or law-enforcement officer pursuant to a*  
78 *search warrant issued under § 19.2-56.*

79 ~~B.~~ C. A court shall issue an order for disclosure under this section only if the investigative or  
80 law-enforcement officer shows that there is reason to believe the records or other information sought are  
81 relevant to a legitimate law-enforcement inquiry. A court issuing an order pursuant to this section, on a  
82 motion made promptly by the service provider, may quash or modify the order, if the information or  
83 records requested are unusually voluminous in nature or compliance with such order would otherwise  
84 cause an undue burden on such provider.

85 ~~C.~~ D. No cause of action shall lie in any court against a provider of a wire or electronic  
86 communication service, its officers, employees, agents, or other specified persons for providing  
87 information, facilities, or assistance in accordance with the terms of a court order, warrant or subpoena  
88 under this section.