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SENATE BILL NO. 247

Offered January 13, 2016

Prefiled January 6, 2016

*A BILL to amend and reenact §§ 19.2-53, 19.2-54, and 19.2-56 of the Code of Virginia, relating to search warrants; persons subject to warrant or *capias* for arrest.*

Patrons—Black, Vogel and Chafin

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-53, 19.2-54, and 19.2-56 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-53. What may be searched and seized.

A. Search warrants may be issued for the search of or for specified places, things or persons, and seizure therefrom of the following things as specified in the warrant:

1. Weapons or other objects used in the commission of crime;
2. Articles or things the sale or possession of which is unlawful;
3. Stolen property or the fruits of any crime;
4. Any object, thing, or person, including without limitation, documents, books, papers, records or body fluids, constituting evidence of the commission of crime.

A search warrant may be issued to search for and seize any person to be arrested or any person who is unlawfully restrained.

Notwithstanding any other provision in this chapter to the contrary, no search warrant may be issued as a substitute for a witness subpoena.

B. Any search warrant issued for the search and seizure of a computer, computer network, or other device containing electronic or digital information shall be deemed to include the search and seizure of the physical components and the electronic or digital information contained in any such computer, computer network, or other device.

C. Any search, including the search of the contents of any computer, computer network, or other device conducted pursuant to subsection B, may be conducted in any location and is not limited to the location where the evidence was seized.

§ 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 *or the identity of the person to be arrested or who is unlawfully restrained* 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 *or is the person to be arrested or who is unlawfully restrained*. The affidavit may be filed by electronically transmitted (i) facsimile process or (ii) electronic record as defined in § 59.1-480. Such affidavit shall be certified by the officer who issues such warrant and delivered in person; mailed by certified mail, return receipt requested; or delivered by electronically transmitted facsimile process or by use of filing and security procedures as defined in the Uniform Electronic Transactions Act (§ 59.1-479 et seq.) for transmitting signed documents, by such officer 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 clerks be preserved as a record and shall at all times be subject to inspection by the public after the warrant that is the subject of the affidavit has been executed or 15 days after issuance of the warrant, whichever is earlier; however, such affidavit, any warrant issued pursuant thereto, any return made thereon, and any order sealing the affidavit, warrant, or return may be temporarily sealed for a specific period of time 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, warrant, and return. 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

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59 omitting such essentials, and no general warrant for the search of a house, place, compartment, vehicle
60 or baggage shall be issued. The term "affidavit" as used in this section, means statements made under
61 oath or affirmation and preserved verbatim.

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

66 **§ 19.2-56. To whom search warrant directed; what it shall command; warrant to show date and**
67 **time of issuance; copy of affidavit to be part of warrant and served therewith; warrants not**
68 **executed within 15 days.**

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

72 Every search warrant shall be directed to (i) the sheriff, sergeant, or any policeman of the county,
73 city or town in which the place to be searched is located, (ii) any law-enforcement officer or agent
74 employed by the Commonwealth and vested with the powers of sheriffs and police, or (iii) jointly to
75 any such sheriff, sergeant, policeman or law-enforcement officer or agent and an agent, special agent or
76 officer of the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco and Firearms of the
77 United States Treasury, the United States Naval Criminal Investigative Service, the United States
78 Department of Homeland Security, any inspector, law-enforcement official or police personnel of the
79 United States Postal Service, or the Drug Enforcement Administration. The warrant shall ~~(i)~~ (a) name
80 the affiant, ~~(ii)~~ (b) recite the offense *or the identity of the person to be arrested or who is unlawfully*
81 *restrained* in relation to which the search is to be made, ~~(iii)~~ (c) name or describe the place to be
82 searched, ~~(iv)~~ (d) describe the property or person to be searched for, and ~~(v)~~ (e) recite that the
83 magistrate has found probable cause to believe that the property or person constitutes evidence of a
84 crime (identified in the warrant) or tends to show that a person (named or described therein) has
85 committed or is committing a crime *or that the person to be arrested or who is unlawfully restrained is*
86 *located at the place to be searched.*

87 The warrant shall command that the place be forthwith searched, either in day or night, and that the
88 objects or persons described in the warrant, if found there, be seized. An inventory shall be produced
89 before a court having jurisdiction of the offense *or over the person to be arrested or who is unlawfully*
90 *restrained* in relation to which the warrant was issued as provided in § 19.2-57.

91 Any such warrant as provided in this section shall be executed by the policeman or other
92 law-enforcement officer or agent into whose hands it shall come or be delivered. If the warrant is
93 directed jointly to a sheriff, sergeant, policeman or law-enforcement officer or agent of the
94 Commonwealth and a federal agent or officer as otherwise provided in this section, the warrant may be
95 executed jointly or by the policeman, law-enforcement officer or agent into whose hands it is delivered.
96 No other person may be permitted to be present during or participate in the execution of a warrant to
97 search a place except ~~(i)~~ (1) the owners and occupants of the place to be searched when permitted to be
98 present by the officer in charge of the conduct of the search and ~~(ii)~~ (2) persons designated by the
99 officer in charge of the conduct of the search to assist or provide expertise in the conduct of the search.

100 Any search warrant for records or other information pertaining to a subscriber to, or customer of, an
101 electronic communication service or remote computing service, whether a domestic corporation or
102 foreign corporation, that is transacting or has transacted any business in the Commonwealth, to be
103 executed upon such service provider may be executed within or without the Commonwealth by hand,
104 United States mail, commercial delivery service, facsimile, or other electronic means upon the service
105 provider. Notwithstanding the provisions of § 19.2-57, the officer executing a warrant pursuant to this
106 paragraph shall endorse the date of execution thereon and shall file the warrant, with the inventory
107 attached (or a notation that no property was seized) and the accompanying affidavit, unless such
108 affidavit was made by voice or videotape recording, within three days after the materials ordered to be
109 produced are received by the officer from the service provider. The return shall be made in the circuit
110 court clerk's office for the jurisdiction wherein the warrant was issued. Saturdays, Sundays, or any
111 federal or state legal holiday shall not be used in computing the three-day filing period.

112 Electronic communication service or remote computing service providers, whether a foreign or
113 domestic corporation, shall also provide the contents of electronic communications pursuant to a search
114 warrant issued under this section and § 19.2-70.3 using the same process described in the preceding
115 paragraph.

116 Every search warrant shall contain the date and time it was issued. However, the failure of any such
117 search warrant to contain the date and time it was issued shall not render the warrant void, provided that
118 the date and time of issuing of said warrant is established by competent evidence.

119 The judge, magistrate, or other official authorized to issue criminal warrants shall attach a copy of
120 the affidavit required by § 19.2-54, which shall become a part of the search warrant and served

121 therewith. However, this provision shall not be applicable in any case in which the affidavit is made by
122 means of a voice or videotape recording or where the affidavit has been sealed pursuant to § 19.2-54.

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

125 For the purposes of this section:

126 "Foreign corporation" means any corporation or other entity, whose primary place of business is
127 located outside of the boundaries of the Commonwealth, that makes a contract or engages in a terms of
128 service agreement with a resident of the Commonwealth to be performed in whole or in part by either
129 party in the Commonwealth, or a corporation that has been issued a certificate of authority pursuant to
130 § 13.1-759 to transact business in the Commonwealth. The making of the contract or terms of service
131 agreement or the issuance of a certificate of authority shall be considered to be the agreement of the
132 foreign corporation or entity that a search warrant or subpoena, which has been properly served on it,
133 has the same legal force and effect as if served personally within the Commonwealth.

134 "Properly served" means delivery of a search warrant or subpoena by hand, by United States mail, by
135 commercial delivery service, by facsimile or by any other manner to any officer of a corporation or its
136 general manager in the Commonwealth, to any natural person designated by it as agent for the service
137 of process, or if such corporation has designated a corporate agent, to any person named in the latest
138 annual report filed pursuant to § 13.1-775.