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HOUSE BILL NO. 2151

Offered January 13, 2021

Prefiled January 12, 2021

A BILL to amend and reenact § 19.2-56, as it shall become effective, of the Code of Virginia, relating to search warrants; daytime execution; exceptions.

Patron—Adams, L.R.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-56, as it shall become effective, of the Code of Virginia is amended and reenacted as follows:

§ 19.2-56. (Effective March 1, 2021) 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.

A. 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 (i) to the sheriff, sergeant, or any policeman of the county, city, or town in which the place to be searched is located; (ii) to 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 Service, or the Drug Enforcement Administration. The warrant shall (a) name the affiant, (b) recite the offense or the identity of the person to be arrested for whom a warrant or process for arrest has been issued in relation to which the search is to be made, (c) name or describe the place to be searched, (d) describe the property or person to be searched for, and (e) 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 or that the person to be arrested for whom a warrant or process for arrest has been issued is located at the place to be searched.

The warrant shall command that the place be forthwith searched 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 or over the person to be arrested for whom a warrant or process for arrest has been issued 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 (1) 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 (2) 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, whether a domestic corporation or foreign corporation, that is transacting or has transacted any business in the Commonwealth, to be executed upon such service provider may be executed within or outside the Commonwealth by hand, United States mail, commercial delivery service, 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 (A) executed, if executed within the Commonwealth, and a copy of the return shall also be delivered to the clerk of the circuit court of the

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59 county or city where the warrant was issued or (B) issued, if executed outside the Commonwealth.  
60 Saturdays, Sundays, or any federal or state legal holiday shall not be used in computing the three-day  
61 filing period.

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

66 Notwithstanding the provisions of § 19.2-57, any search warrant for records or other information  
67 pertaining to a customer of a financial institution as defined in § 6.2-604, money transmitter as defined  
68 in § 6.2-1900, commercial business providing credit history or credit reports, or issuer as defined in  
69 § 6.2-424 may be executed within the Commonwealth by hand, United States mail, commercial delivery  
70 service, facsimile, or other electronic means upon the financial institution, money transmitter,  
71 commercial business providing credit history or credit reports, or issuer. The officer executing such  
72 warrant shall endorse the date of execution thereon and shall file the warrant, with the inventory  
73 attached (or a notation that no property was seized) and the accompanying affidavit, unless such  
74 affidavit was made by voice or videotape recording, within three days after the materials ordered to be  
75 produced are received by the officer from the financial institution, money transmitter, commercial  
76 business providing credit history or credit reports, or issuer. The return shall be made in the circuit court  
77 clerk's office for the jurisdiction wherein the warrant was executed. Saturdays, Sundays, or any federal  
78 or state legal holiday shall not be used in computing the three-day filing period. For the purposes of this  
79 section, the warrant will be considered executed in the jurisdiction where the entity on which the  
80 warrant is served is located.

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

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

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

90 B. No law-enforcement officer shall seek, execute, or participate in the execution of a no-knock  
91 search warrant. A search warrant authorized under this section shall require that a law-enforcement  
92 officer be recognizable and identifiable as a uniformed law-enforcement officer and provide audible  
93 notice of his authority and purpose reasonably expected to be heard by occupants of such place to be  
94 searched prior to the execution of such search warrant.

95 After entering and securing the place to be searched and prior to undertaking any search or seizure  
96 pursuant to the search warrant, the executing law-enforcement officer shall read and give a copy of the  
97 search warrant to the person to be searched or the owner of the place to be searched or, if the owner is  
98 not present, to any occupant of the place to be searched. If the place to be searched is unoccupied, the  
99 executing law-enforcement officer shall leave a copy of the search warrant suitably affixed to the place  
100 to be searched.

101 Search warrants authorized under this section shall be executed only in the daytime unless (i) a  
102 judge, or a magistrate; if a judge is not available *or if the search warrant was issued after 5 p.m.*,  
103 authorizes the execution of such search warrant at another time for good cause shown ~~or~~; (ii) *prior to*  
104 *the issuance of the search warrant, law-enforcement officers lawfully entered and secured the place to*  
105 *be searched and subsequently have remained at such place continuously; or (iii) the search warrant is*  
106 *for the withdrawal of blood. A search warrant for the withdrawal of blood that meets the exception in*  
107 *clause (ii) or (iii) may be executed at any time of day without authorization from a judge or magistrate.*

108 A law-enforcement officer shall make reasonable efforts to locate a judge before seeking  
109 authorization to execute the warrant at another time, *unless the warrant was issued after 5 p.m., in*  
110 *which case the law-enforcement officer may seek such authorization from a magistrate without first*  
111 *making reasonable efforts to locate a judge.* Such reasonable efforts shall be documented in an affidavit  
112 and submitted to a magistrate when seeking such authorization.

113 Any evidence obtained from a search warrant in violation of this subsection shall not be admitted  
114 into evidence for the Commonwealth in any prosecution.

115 C. For the purposes of this section:

116 "Foreign corporation" means any corporation or other entity, whose primary place of business is  
117 located outside of the boundaries of the Commonwealth, that makes a contract or engages in a terms of  
118 service agreement with a resident of the Commonwealth to be performed in whole or in part by either  
119 party in the Commonwealth, or a corporation that has been issued a certificate of authority pursuant to  
120 § 13.1-759 to transact business in the Commonwealth. The making of the contract or terms of service

121 agreement or the issuance of a certificate of authority shall be considered to be the agreement of the  
122 foreign corporation or entity that a search warrant or subpoena, which has been properly served on it,  
123 has the same legal force and effect as if served personally within the Commonwealth.  
124 "Properly served" means delivery of a search warrant or subpoena by hand, by United States mail, by  
125 commercial delivery service, by facsimile or by any other manner to any officer of a corporation or its  
126 general manager in the Commonwealth, to any natural person designated by it as agent for the service  
127 of process, or if such corporation has designated a corporate agent, to any person named in the latest  
128 annual report filed pursuant to § 13.1-775.

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