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HOUSE BILL NO. 17

Offered January 11, 2012

Prefiled December 5, 2011

A BILL to amend and reenact § 19.2-54 of the Code of Virginia, relating to electronic filing of search warrant affidavits.

Patron—Kilgore

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 19.2-54 of the Code of Virginia is 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 (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 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 30 days. If the affidavit is filed prior to the expiration of the 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.

INTRODUCED

HB17