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SENATE BILL NO. 801

Offered January 11, 2023

Prefiled December 4, 2022

A BILL to amend and reenact §§ 19.2-12 and 19.2-56 of the Code of Virginia, relating to conservators of the peace; search warrants; military criminal investigative organizations.

Patrons—Surovell; Delegate: Coyner

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-12 and 19.2-56 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-12. Who are conservators of the peace.

Every judge and attorney for the Commonwealth throughout the Commonwealth and every magistrate within the geographical area for which he is appointed or elected, shall be a conservator of the peace. In addition, every commissioner in chancery, while sitting as such commissioner; any special agent or law-enforcement officer of the ~~United States~~ U.S. Department of Justice, National Marine Fisheries Service of the ~~United States~~ U.S. Department of Commerce, U.S. Department of the Treasury, U.S. Department of Agriculture, U.S. Department of Defense, U.S. Department of State, Office of the Inspector General of the U.S. Department of Transportation, U.S. Department of Homeland Security, and U.S. Department of the Interior; any inspector, law-enforcement official, or police personnel of the United States Postal Service; any United States marshal or deputy United States marshal whose duties involve the enforcement of the criminal laws of the United States; any officer of the Virginia Marine Police; any criminal investigator of the Department of Professional and Occupational Regulation; who meets the minimum law-enforcement training requirements established by the Department of Criminal Justice Services for in-service training; any criminal investigator of the ~~United States~~ U.S. Department of Labor; any special agent of the United States Naval Criminal Investigative Service, *United States Army Criminal Investigation Division, or United States Air Force Office of Special Investigations*; any special agent of the National Aeronautics and Space Administration; ~~and~~; any sworn municipal park ranger; who has completed all requirements under § 15.2-1706; ~~and~~ any investigator employed by an attorney for the Commonwealth; who within 10 years immediately prior to being employed by the attorney for the Commonwealth was an active law-enforcement officer as defined in § 9.1-101 in the Commonwealth and retired or resigned from his position as a law-enforcement officer in good standing; shall be a conservator of the peace; while engaged in the performance of ~~their~~ *his* official duties.

§ 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.

A. The judge, magistrate, or other official authorized to issue criminal warrants shall issue a search warrant only 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 ~~and~~ Explosives of the ~~United States Treasury~~ U.S. Department of Justice, the United States Naval Criminal Investigative Service, *the United States Army Criminal Investigation Division, the United States Air Force Office of Special Investigations, or the United States* U.S. Department of Homeland Security; or any inspector, law-enforcement official, or police personnel of the United States Postal Service; or the U.S. 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

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59 jurisdiction of the offense or over the person to be arrested for whom a warrant or process for arrest has
60 been issued in relation to which the warrant was issued as provided in § 19.2-57.

61 Any such warrant as provided in this section shall be executed by the policeman or other
62 law-enforcement officer or agent into whose hands it shall come or be delivered. If the warrant is
63 directed jointly to a sheriff, sergeant, policeman, or law-enforcement officer or agent of the
64 Commonwealth and a federal agent or officer as otherwise provided in this section, the warrant may be
65 executed jointly or by the policeman, law-enforcement officer, or agent into whose hands it is delivered.
66 No other person may be permitted to be present during or participate in the execution of a warrant to
67 search a place except (1) the owners and occupants of the place to be searched when permitted to be
68 present by the officer in charge of the conduct of the search and (2) persons designated by the officer in
69 charge of the conduct of the search to assist or provide expertise in the conduct of the search.

70 Any search warrant for records or other information pertaining to a subscriber to, or customer of, an
71 electronic communication service or remote computing service, whether a domestic corporation or
72 foreign corporation, that is transacting or has transacted any business in the Commonwealth, to be
73 executed upon such service provider may be executed within or outside the Commonwealth by hand,
74 United States mail, commercial delivery service, facsimile, or other electronic means upon the service
75 provider. Notwithstanding the provisions of § 19.2-57, the officer executing a warrant pursuant to this
76 paragraph shall endorse the date of execution thereon and shall file the warrant, with the inventory
77 attached (or a notation that no property was seized) and the accompanying affidavit, unless such
78 affidavit was made by voice or videotape recording, within three days after the materials ordered to be
79 produced are received by the officer from the service provider. The return shall be made in the circuit
80 court clerk's office for the jurisdiction wherein the warrant was (A) executed, if executed within the
81 Commonwealth, and a copy of the return shall also be delivered to the clerk of the circuit court of the
82 county or city where the warrant was issued or (B) issued, if executed outside the Commonwealth.
83 Saturdays, Sundays, or any federal or state legal holiday shall not be used in computing the three-day
84 filing period.

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

89 Notwithstanding the provisions of § 19.2-57, any search warrant for records or other information
90 pertaining to a customer of a financial institution as defined in § 6.2-604, money transmitter as defined
91 in § 6.2-1900, commercial business providing credit history or credit reports, or issuer as defined in
92 § 6.2-424 may be executed within the Commonwealth by hand, United States mail, commercial delivery
93 service, facsimile, or other electronic means upon the financial institution, money transmitter,
94 commercial business providing credit history or credit reports, or issuer. The officer executing such
95 warrant shall endorse the date of execution thereon and shall file the warrant, with the inventory
96 attached (or a notation that no property was seized) and the accompanying affidavit, unless such
97 affidavit was made by voice or videotape recording, within three days after the materials ordered to be
98 produced are received by the officer from the financial institution, money transmitter, commercial
99 business providing credit history or credit reports, or issuer. The return shall be made in the circuit court
100 clerk's office for the jurisdiction wherein the warrant was executed. Saturdays, Sundays, or any federal
101 or state legal holiday shall not be used in computing the three-day filing period. For the purposes of this
102 section, the warrant will be considered executed in the jurisdiction where the entity on which the
103 warrant is served is located.

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

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

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

113 B. No law-enforcement officer shall seek, execute, or participate in the execution of a no-knock
114 search warrant. A search warrant for any place of abode authorized under this section shall require that a
115 law-enforcement officer be recognizable and identifiable as a uniformed law-enforcement officer and
116 provide audible notice of his authority and purpose reasonably designed to be heard by the occupants of
117 such place to be searched prior to the execution of such search warrant.

118 After entering and securing the place to be searched and prior to undertaking any search or seizure
119 pursuant to the search warrant, the executing law-enforcement officer shall give a copy of the search
120 warrant and affidavit to the person to be searched or the owner of the place to be searched or, if the

owner is not present, to at least one adult occupant of the place to be searched. If the place to be searched is unoccupied by an adult, the executing law-enforcement officer shall leave a copy of the search warrant and affidavit in a conspicuous place within or affixed to the place to be searched.

Search warrants authorized under this section for the search of any place of abode shall be executed by initial entry of the abode only in the daytime hours between 8:00 a.m. and 5:00 p.m. unless (i) a judge or a magistrate, if a judge is not available, authorizes the execution of such search warrant at another time for good cause shown by particularized facts in an affidavit or (ii) prior to the issuance of the search warrant, law-enforcement officers lawfully entered and secured the place to be searched and remained at such place continuously.

A law-enforcement officer shall make reasonable efforts to locate a judge before seeking authorization to execute the warrant at another time, unless circumstances require the issuance of the warrant after 5:00 p.m., pursuant to the provisions of this subsection, in which case the law-enforcement officer may seek such authorization from a magistrate without first making reasonable efforts to locate a judge. Such reasonable efforts shall be documented in an affidavit and submitted to a magistrate when seeking such authorization.

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

C. For the purposes of this section:

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

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