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HOUSE BILL NO. 2626

Offered January 13, 2025

A BILL to amend and reenact §§ 19.2-53 and 19.2-56 of the Code of Virginia, relating to search warrants; electronic records; commercial enterprise; domestic and foreign corporations.

Patron—Batten

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 19.2-53 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~~, (i) documents, (ii) books, (iii) papers, (iv) records, ~~or~~ (v) body fluids, or (vi) *electronic records stored within or outside the Commonwealth of a commercial enterprise, whether a domestic corporation or a foreign corporation, that is transacting or has transacted any business in the Commonwealth*, constituting evidence of the commission of crime; or
5. Any person to be arrested for whom a warrant or process for arrest has been issued.

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, except information for which a search warrant is prohibited by § 19.2-60.2.

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.

§ 19.2-56. 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. *If a search warrant is issued for electronic records of a foreign corporation, as described in § 19.2-53, such affidavit shall state that the complainant believes such records are actually or constructively possessed by such foreign corporation.*

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, Firearms and Explosives of the 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 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 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

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

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

Any search warrant for electronic records or other information stored outside of the Commonwealth by a commercial enterprise, whether a domestic corporation or a foreign corporation, that is transacting or has transacted any business in the Commonwealth, to be executed upon such commercial enterprise may be executed within or outside the Commonwealth by hand, United States mail, commercial delivery service, facsimile, or other electronic means upon the commercial enterprise. 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 commercial enterprise. The return shall be made in the circuit court clerk's office for the jurisdiction wherein the warrant was (I) 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 county or city where the warrant was issued or (II) issued, if executed outside the Commonwealth. Saturdays, Sundays, or any federal or state legal holiday shall not be used in computing the three-day filing period.

Notwithstanding the provisions of § 19.2-57, any search warrant for records or other information pertaining to a customer of a financial institution as defined in § 6.2-604, money transmitter as defined in § 6.2-1900, commercial business providing credit history or credit reports, or issuer as defined in § 6.2-424 may be executed within the Commonwealth by hand, United States mail, commercial delivery service, facsimile, or other electronic means upon the financial institution, money transmitter, commercial business providing credit history or credit reports, or issuer. The officer executing such warrant 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 financial institution, money transmitter, commercial business providing credit history or credit reports, or issuer. The return shall be made in the circuit court clerk's office for the jurisdiction wherein the warrant was executed. Saturdays, Sundays, or any federal or state legal holiday shall not be used in computing the three-day filing period. For the purposes of this section, the warrant will be considered executed in the jurisdiction where the entity on which the warrant is served is located.

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

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

Any search warrant not executed within 15 days after issuance thereof shall be returned to, and voided by,

120 the officer who issued such search warrant.

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

126 After entering and securing the place to be searched and prior to undertaking any search or seizure
127 pursuant to the search warrant, the executing law-enforcement officer shall give a copy of the search warrant
128 and affidavit to the person to be searched or the owner of the place to be searched or, if the owner is not
129 present, to at least one adult occupant of the place to be searched. If the place to be searched is unoccupied by
130 an adult, the executing law-enforcement officer shall leave a copy of the search warrant and affidavit in a
131 conspicuous place within or affixed to the place to be searched.

132 Search warrants authorized under this section for the search of any place of abode shall be executed by
133 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
134 magistrate, if a judge is not available, authorizes the execution of such search warrant at another time for
135 good cause shown by particularized facts in an affidavit or (ii) prior to the issuance of the search warrant,
136 law-enforcement officers lawfully entered and secured the place to be searched and remained at such place
137 continuously.

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

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

145 C. For the purposes of this section:

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

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