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## HOUSE BILL NO. 690

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice  
on \_\_\_\_\_)

(Patrons Prior to Substitute—Delegates Zehr and Walker [HB 1028])

*A BILL to amend and reenact § 19.2-56, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to search warrant; search of place of abode; copy of affidavit to be part of warrant and served therewith; temporary sealing.*

**Be it enacted by the General Assembly of Virginia:**

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

**§ 19.2-56. (Effective until July 1, 2026) 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. In order to comply with the requirements of § 19.2-54, any search of the records of a foreign corporation, as described in § 19.2-53, shall be deemed to have been made in the same place where the search warrant was issued.

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 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, the officer who issued such search warrant.

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

After entering and securing the place to be searched and prior to undertaking any search or seizure pursuant to the search warrant, the executing law-enforcement officer shall give a copy of the search 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. *However, a copy of the affidavit shall not be given in any case where such affidavit has been sealed pursuant to § 19.2-54.*

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.

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

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

129 C. For the purposes of this section:

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

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

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144 **warrant to show date and time of issuance; copy of affidavit to be part of warrant and served**  
145 **therewith; warrants not executed within 15 days.**

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149 in § 19.2-53, such affidavit shall state that the complainant believes such records are actually or  
150 constructively possessed by such foreign corporation. In order to comply with the requirements of § 19.2-54,  
151 any search of the records of a foreign corporation, as described in § 19.2-53, shall be deemed to have been  
152 made in the same place where the search warrant was issued.

153 Every search warrant shall be directed (i) to the sheriff, sergeant, or any policeman of the county, city, or  
154 town in which the place to be searched is located; (ii) to any law-enforcement officer or agent employed by  
155 the Commonwealth and vested with the powers of sheriffs and police; or (iii) jointly to any such sheriff,  
156 sergeant, policeman, or law-enforcement officer or agent and an agent, special agent, or officer of the Federal  
157 Bureau of Investigation, the Bureau of Alcohol, Tobacco, Firearms and Explosives of the U.S. Department of  
158 Justice, the United States Naval Criminal Investigative Service, the United States Army Criminal  
159 Investigation Division, the United States Air Force Office of Special Investigations, or the U.S. Department  
160 of Homeland Security or any inspector, law-enforcement official, or police personnel of the United States  
161 Postal Service or the U.S. Drug Enforcement Administration. The warrant shall (a) name the affiant, (b)  
162 recite the offense or the identity of the person to be arrested for whom a warrant or process for arrest has been  
163 issued in relation to which the search is to be made, (c) name or describe the place to be searched, (d)  
164 describe the property or person to be searched for, and (e) recite that the magistrate has found probable cause  
165 to believe that the property or person constitutes evidence of a crime (identified in the warrant) or tends to  
166 show that a person (named or described therein) has committed or is committing a crime or that the person to  
167 be arrested for whom a warrant or process for arrest has been issued is located at the place to be searched.

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169 in the warrant, if found there, be seized. An inventory shall be produced before a court having jurisdiction of  
170 the offense or over the person to be arrested for whom a warrant or process for arrest has been issued in  
171 relation to which the warrant was issued as provided in § 19.2-57.

172 Any such warrant as provided in this section shall be executed by the policeman or other law-enforcement  
173 officer or agent into whose hands it shall come or be delivered. If the warrant is directed jointly to a sheriff,  
174 sergeant, policeman, or law-enforcement officer or agent of the Commonwealth and a federal agent or officer  
175 as otherwise provided in this section, the warrant may be executed jointly or by the policeman, law-  
176 enforcement officer, or agent into whose hands it is delivered. No other person may be permitted to be  
177 present during or participate in the execution of a warrant to search a place except (1) the owners and  
178 occupants of the place to be searched when permitted to be present by the officer in charge of the conduct of  
179 the search and (2) persons designated by the officer in charge of the conduct of the search to assist or provide  
180 expertise in the conduct of the search.

181 Any search warrant for records or other information pertaining to a subscriber to, or customer of, an  
182 electronic communication service or remote computing service, whether a domestic corporation or foreign  
183 corporation, that is transacting or has transacted any business in the Commonwealth, to be executed upon

184 such service provider may be executed within or outside the Commonwealth by hand, United States mail,  
185 commercial delivery service, facsimile, or other electronic means upon the service provider. Notwithstanding  
186 the provisions of § 19.2-57, the officer executing a warrant pursuant to this paragraph shall endorse the date  
187 of execution thereon and shall file the warrant, with the inventory attached (or a notation that no property was  
188 seized) and the accompanying affidavit, unless such affidavit was made by voice or videotape recording,  
189 within three days after the materials ordered to be produced are received by the officer from the service  
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211 three-day filing period.

212 Notwithstanding the provisions of § 19.2-57, any search warrant for records or other information  
213 pertaining to a customer of a financial institution as defined in § 6.2-604, money transmitter as defined in  
214 § 6.2-1922, commercial business providing credit history or credit reports, or issuer as defined in § 6.2-424  
215 may be executed within the Commonwealth by hand, United States mail, commercial delivery service,  
216 facsimile, or other electronic means upon the financial institution, money transmitter, commercial business  
217 providing credit history or credit reports, or issuer. The officer executing such warrant shall endorse the date  
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240 After entering and securing the place to be searched and prior to undertaking any search or seizure  
241 pursuant to the search warrant, the executing law-enforcement officer shall give a copy of the search warrant  
242 and affidavit to the person to be searched or the owner of the place to be searched or, if the owner is not  
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253 A law-enforcement officer shall make reasonable efforts to locate a judge before seeking authorization to  
254 execute the warrant at another time, unless circumstances require the issuance of the warrant after 5:00 p.m.,  
255 pursuant to the provisions of this subsection, in which case the law-enforcement officer may seek such  
256 authorization from a magistrate without first making reasonable efforts to locate a judge. Such reasonable  
257 efforts shall be documented in an affidavit and submitted to a magistrate when seeking such authorization.

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272 process, or if such corporation has designated a corporate agent, to any person named in the latest annual  
273 report filed pursuant to § 13.1-775.