

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 19.2-56 of the Code of Virginia, relating to search warrants; provide*
 3 *notice of authority.*

[H 5099]

Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 19.2-56 of the Code of Virginia is amended and reenacted as follows:**

8 **§ 19.2-56. To whom search warrant directed; what it shall command; warrant to show date and**
 9 **time of issuance; copy of affidavit to be part of warrant and served therewith; warrants not**
 10 **executed within 15 days.**

11 A. The judge, magistrate, or other official authorized to issue criminal warrants, shall issue a search
 12 warrant if he finds from the facts or circumstances recited in the affidavit that there is probable cause
 13 for the issuance thereof.

14 Every search warrant shall be directed ~~to~~ (i) to the sheriff, sergeant, or any policeman of the county,
 15 city, or town in which the place to be searched is located; (ii) to any law-enforcement officer or agent
 16 employed by the Commonwealth and vested with the powers of sheriffs and police; or (iii) jointly to
 17 any such sheriff, sergeant, policeman, or law-enforcement officer or agent and an agent, special agent, or
 18 officer of the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco and Firearms of the
 19 United States Treasury, the United States Naval Criminal Investigative Service, the United States
 20 Department of Homeland Security, any inspector, law-enforcement official, or police personnel of the
 21 United States Postal Service, or the Drug Enforcement Administration. The warrant shall (a) name the
 22 affiant, (b) recite the offense or the identity of the person to be arrested for whom a warrant or process
 23 for arrest has been issued in relation to which the search is to be made, (c) name or describe the place
 24 to be searched, (d) describe the property or person to be searched for, and (e) recite that the magistrate
 25 has found probable cause to believe that the property or person constitutes evidence of a crime
 26 (identified in the warrant) or tends to show that a person (named or described therein) has committed or
 27 is committing a crime or that the person to be arrested for whom a warrant or process for arrest has
 28 been issued is located at the place to be searched.

29 The warrant shall command that the place be forthwith searched, ~~either in day or night~~, and that the
 30 objects or persons described in the warrant, if found there, be seized. An inventory shall be produced
 31 before a court having jurisdiction of the offense or over the person to be arrested for whom a warrant or
 32 process for arrest has been issued in relation to which the warrant was issued as provided in § 19.2-57.

33 Any such warrant as provided in this section shall be executed by the policeman or other
 34 law-enforcement officer or agent into whose hands it shall come or be delivered. If the warrant is
 35 directed jointly to a sheriff, sergeant, policeman, or law-enforcement officer or agent of the
 36 Commonwealth and a federal agent or officer as otherwise provided in this section, the warrant may be
 37 executed jointly or by the policeman, law-enforcement officer, or agent into whose hands it is delivered.
 38 No other person may be permitted to be present during or participate in the execution of a warrant to
 39 search a place except (1) the owners and occupants of the place to be searched when permitted to be
 40 present by the officer in charge of the conduct of the search and (2) persons designated by the officer in
 41 charge of the conduct of the search to assist or provide expertise in the conduct of the search.

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

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

61 Notwithstanding the provisions of § 19.2-57, any search warrant for records or other information
62 pertaining to a customer of a financial institution as defined in § 6.2-604, money transmitter as defined
63 in § 6.2-1900, commercial business providing credit history or credit reports, or issuer as defined in
64 § 6.2-424 may be executed within the Commonwealth by hand, United States mail, commercial delivery
65 service, facsimile, or other electronic means upon the financial institution, money transmitter,
66 commercial business providing credit history or credit reports, or issuer. The officer executing such
67 warrant shall endorse the date of execution thereon and shall file the warrant, with the inventory
68 attached (or a notation that no property was seized) and the accompanying affidavit, unless such
69 affidavit was made by voice or videotape recording, within three days after the materials ordered to be
70 produced are received by the officer from the financial institution, money transmitter, commercial
71 business providing credit history or credit reports, or issuer. The return shall be made in the circuit court
72 clerk's office for the jurisdiction wherein the warrant was executed. Saturdays, Sundays, or any federal
73 or state legal holiday shall not be used in computing the three-day filing period. For the purposes of this
74 section, the warrant will be considered executed in the jurisdiction where the entity on which the
75 warrant is served is located.

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

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

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

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

90 *After entering and securing the place to be searched and prior to undertaking any search or seizure*
91 *pursuant to the search warrant, the executing law-enforcement officer shall read and give a copy of the*
92 *search warrant to the person to be searched or the owner of the place to be searched or, if the owner*
93 *is not present, to any occupant of the place to be searched. If the place to be searched is unoccupied,*
94 *the executing law-enforcement officer shall leave a copy of the search warrant suitably affixed to the*
95 *place to be searched.*

96 *Search warrants authorized under this section shall be executed only in the daytime unless (i) a*
97 *judge or magistrate, if a judge is not available, authorizes the execution of such search warrant at*
98 *another time for good cause shown or (ii) the search warrant is for the withdrawal of blood. A search*
99 *warrant for the withdrawal of blood may be executed at any time of day.*

100 *A law-enforcement officer shall make reasonable efforts to locate a judge before seeking*
101 *authorization to execute the warrant at another time. Such reasonable efforts shall be documented in an*
102 *affidavit and submitted to a magistrate when seeking such authorization.*

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

105 C. For the purposes of this section:

106 "Foreign corporation" means any corporation or other entity, whose primary place of business is
107 located outside of the boundaries of the Commonwealth, that makes a contract or engages in a terms of
108 service agreement with a resident of the Commonwealth to be performed in whole or in part by either
109 party in the Commonwealth, or a corporation that has been issued a certificate of authority pursuant to
110 § 13.1-759 to transact business in the Commonwealth. The making of the contract or terms of service
111 agreement or the issuance of a certificate of authority shall be considered to be the agreement of the
112 foreign corporation or entity that a search warrant or subpoena, which has been properly served on it,
113 has the same legal force and effect as if served personally within the Commonwealth.

114 "Properly served" means delivery of a search warrant or subpoena by hand, by United States mail, by
115 commercial delivery service, by facsimile or by any other manner to any officer of a corporation or its
116 general manager in the Commonwealth, to any natural person designated by it as agent for the service
117 of process, or if such corporation has designated a corporate agent, to any person named in the latest

118 annual report filed pursuant to § 13.1-775.

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