

HOUSE BILL NO. 81

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on _____)

(Patron Prior to Substitute--Delegate Simon)

A BILL to amend and reenact §§ 19.2-53, 19.2-54, and 19.2-56 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-16.1, relating to abolishing the common-law crime of suicide.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-53, 19.2-54, and 19.2-56 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-16.1 as follows:

§ 18.2-16.1. Common-law crime of suicide abolished.

The common-law crime of suicide is hereby abolished.

§ 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, documents, books, papers, records or body fluids, 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.

A search warrant may be issued for the search of or for specified places, things, or persons in connection with the commission of suicide, and seizure therefrom.

27 B. Any search warrant issued for the search and seizure of a computer, computer network, or other
28 device containing electronic or digital information shall be deemed to include the search and seizure of
29 the physical components and the electronic or digital information contained in any such computer,
30 computer network, or other device.

31 C. Any search, including the search of the contents of any computer, computer network, or other
32 device conducted pursuant to subsection B, may be conducted in any location and is not limited to the
33 location where the evidence was seized.

34 **§ 19.2-54. Affidavit preliminary to issuance of search warrant; general search warrant**
35 **prohibited; effect of failure to file affidavit.**

36 No search warrant shall be issued until there is filed with the officer authorized to issue the same
37 an affidavit of some person reasonably describing the place, thing, or person to be searched, the things or
38 persons to be searched for thereunder, alleging briefly material facts, constituting the probable cause for
39 the issuance of such warrant and alleging substantially the offense, the suicide, or the identity of the person
40 to be arrested for whom a warrant or process for arrest has been issued in relation to which such search is
41 to be made and that the object, thing, or person searched for constitutes evidence of the commission of
42 such offense or suicide or is the person to be arrested for whom a warrant or process for arrest has been
43 issued. The affidavit may be filed by electronically transmitted (i) facsimile process or (ii) electronic
44 record as defined in § 59.1-480. Such affidavit shall be certified by the officer who issues such warrant
45 and delivered in person; mailed by certified mail, return receipt requested; or delivered by electronically
46 transmitted facsimile process or by use of filing and security procedures as defined in the Uniform
47 Electronic Transactions Act (§ 59.1-479 et seq.) for transmitting signed documents, by such officer or his
48 designee or agent, to the clerk of the circuit court of the county or city wherein the search is made, within
49 seven days after the issuance of such warrant and shall by such clerk be preserved as a record and shall at
50 all times be subject to inspection by the public after the warrant that is the subject of the affidavit has been
51 executed or 15 days after issuance of the warrant, whichever is earlier; however, such affidavit, any
52 warrant issued pursuant thereto, any return made thereon, and any order sealing the affidavit, warrant, or
53 return may be temporarily sealed for a specific period of time by the appropriate court upon application

54 of the attorney for the Commonwealth for good cause shown in an ex parte hearing. Any individual
55 arrested and claiming to be aggrieved by such search and seizure or any person who claims to be entitled
56 to lawful possession of such property seized may move the appropriate court for the unsealing of such
57 affidavit, warrant, and return. The burden of proof with respect to continued sealing shall be upon the
58 Commonwealth. Each such clerk shall maintain an index of all such affidavits filed in his office in order
59 to facilitate inspection. No such warrant shall be issued on an affidavit omitting such essentials, and no
60 general warrant for the search of a house, place, compartment, vehicle or baggage shall be issued. The
61 term "affidavit" as used in this section, means statements made under oath or affirmation and preserved
62 verbatim.

63 Failure of the officer issuing such warrant to file the required affidavit shall not invalidate any
64 search made under the warrant unless such failure shall continue for a period of 30 days. If the affidavit
65 is filed prior to the expiration of the 30-day period, nevertheless, evidence obtained in any such search
66 shall not be admissible until a reasonable time after the filing of the required affidavit.

67 **§ 19.2-56. To whom search warrant directed; what it shall command; warrant to show date**
68 **and time of issuance; copy of affidavit to be part of warrant and served therewith; warrants not**
69 **executed within 15 days.**

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

73 Every search warrant shall be directed (i) to the sheriff, sergeant, or any policeman of the county,
74 city, or town in which the place to be searched is located; (ii) to any law-enforcement officer or agent
75 employed by the Commonwealth and vested with the powers of sheriffs and police; or (iii) jointly to any
76 such sheriff, sergeant, policeman, or law-enforcement officer or agent and an agent, special agent, or
77 officer of the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco, Firearms and Explosives
78 of the U.S. Department of Justice, the United States Naval Criminal Investigative Service, the United
79 States Army Criminal Investigation Division, the United States Air Force Office of Special Investigations,
80 or the U.S. Department of Homeland Security or any inspector, law-enforcement official, or police

81 personnel of the United States Postal Service or the U.S. Drug Enforcement Administration. The warrant
82 shall (a) name the affiant, (b) recite the offense, the suicide, or the identity of the person to be arrested for
83 whom a warrant or process for arrest has been issued in relation to which the search is to be made, (c)
84 name or describe the place to be searched, (d) describe the property or person to be searched for, and (e)
85 recite that the magistrate has found probable cause to believe that the property or person constitutes
86 evidence of a crime or of suicide (identified in the warrant) or tends to show that a person (named or
87 described therein) has committed or is committing a crime or has committed suicide or that the person to
88 be arrested for whom a warrant or process for arrest has been issued is located at the place to be searched.

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

93 Any such warrant as provided in this section shall be executed by the policeman or other law-
94 enforcement officer or agent into whose hands it shall come or be delivered. If the warrant is directed
95 jointly to a sheriff, sergeant, policeman, or law-enforcement officer or agent of the Commonwealth and a
96 federal agent or officer as otherwise provided in this section, the warrant may be executed jointly or by
97 the policeman, law-enforcement officer, or agent into whose hands it is delivered. No other person may
98 be permitted to be present during or participate in the execution of a warrant to search a place except (1)
99 the owners and occupants of the place to be searched when permitted to be present by the officer in charge
100 of the conduct of the search and (2) persons designated by the officer in charge of the conduct of the search
101 to assist or provide expertise in the conduct of the search.

102 Any search warrant for records or other information pertaining to a subscriber to, or customer of,
103 an electronic communication service or remote computing service, whether a domestic corporation or
104 foreign corporation, that is transacting or has transacted any business in the Commonwealth, to be
105 executed upon such service provider may be executed within or outside the Commonwealth by hand,
106 United States mail, commercial delivery service, facsimile, or other electronic means upon the service
107 provider. Notwithstanding the provisions of § 19.2-57, the officer executing a warrant pursuant to this

108 paragraph shall endorse the date of execution thereon and shall file the warrant, with the inventory attached
109 (or a notation that no property was seized) and the accompanying affidavit, unless such affidavit was made
110 by voice or videotape recording, within three days after the materials ordered to be produced are received
111 by the officer from the service provider. The return shall be made in the circuit court clerk's office for the
112 jurisdiction wherein the warrant was (A) executed, if executed within the Commonwealth, and a copy of
113 the return shall also be delivered to the clerk of the circuit court of the county or city where the warrant
114 was issued or (B) issued, if executed outside the Commonwealth. Saturdays, Sundays, or any federal or
115 state legal holiday shall not be used in computing the three-day filing period.

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

120 Notwithstanding the provisions of § 19.2-57, any search warrant for records or other information
121 pertaining to a customer of a financial institution as defined in § 6.2-604, money transmitter as defined in
122 § 6.2-1900, commercial business providing credit history or credit reports, or issuer as defined in § 6.2-
123 424 may be executed within the Commonwealth by hand, United States mail, commercial delivery service,
124 facsimile, or other electronic means upon the financial institution, money transmitter, commercial business
125 providing credit history or credit reports, or issuer. The officer executing such warrant shall endorse the
126 date of execution thereon and shall file the warrant, with the inventory attached (or a notation that no
127 property was seized) and the accompanying affidavit, unless such affidavit was made by voice or
128 videotape recording, within three days after the materials ordered to be produced are received by the
129 officer from the financial institution, money transmitter, commercial business providing credit history or
130 credit reports, or issuer. The return shall be made in the circuit court clerk's office for the jurisdiction
131 wherein the warrant was executed. Saturdays, Sundays, or any federal or state legal holiday shall not be
132 used in computing the three-day filing period. For the purposes of this section, the warrant will be
133 considered executed in the jurisdiction where the entity on which the warrant is served is located.

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

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

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

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

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

154 Search warrants authorized under this section for the search of any place of abode shall be executed
155 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
156 or a magistrate, if a judge is not available, authorizes the execution of such search warrant at another time
157 for good cause shown by particularized facts in an affidavit or (ii) prior to the issuance of the search
158 warrant, law-enforcement officers lawfully entered and secured the place to be searched and remained at
159 such place continuously.

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

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

168 C. For the purposes of this section:

169 "Foreign corporation" means any corporation or other entity, whose primary place of business is
170 located outside of the boundaries of the Commonwealth, that makes a contract or engages in a terms of
171 service agreement with a resident of the Commonwealth to be performed in whole or in part by either
172 party in the Commonwealth, or a corporation that has been issued a certificate of authority pursuant to §
173 13.1-759 to transact business in the Commonwealth. The making of the contract or terms of service
174 agreement or the issuance of a certificate of authority shall be considered to be the agreement of the foreign
175 corporation or entity that a search warrant or subpoena, which has been properly served on it, has the same
176 legal force and effect as if served personally within the Commonwealth.

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

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