

House Bill 56

By: Representatives Tanner of the 9th, Golick of the 40th, Hugley of the 136th, Efstoration of the 104th, Gasaway of the 28th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 5 of Title 17 of the Official Code of Georgia Annotated,
2 relating to searches with warrants, so as to provide for the use of no-knock search warrants;
3 to provide for definitions; to change provisions relating to the issuance of search warrants;
4 to provide for written policies relating to no-knock search warrants; to change provisions
5 relating to when search warrants may be executed; to change provisions relating to the use
6 of force in executing a search warrant; to change provisions relating to quashing a search
7 warrant or suppressing evidence due to technical deficiencies; to provide for annual reporting
8 of search warrant information; to provide for related matters; to provide for effective dates
9 and applicability; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 style="text-align:center">**SECTION 1.**

12 Article 2 of Chapter 5 of Title 17 of the Official Code of Georgia Annotated, relating to
13 searches with warrants, is amended by revising Code Section 17-5-21, relating to grounds
14 for issuance of search warrants and scope of search pursuant to a search warrant, as follows:
15 "17-5-21.

16 (a) Except as provided in subsection (e) of this Code section, upon ~~Upon~~ the written
17 complaint of any certified peace officer of this state or its political subdivisions charged
18 with the duty of enforcing the criminal laws and otherwise as authorized in Code Section
19 17-5-20 under oath or affirmation, which states facts sufficient to show probable cause that
20 a crime is being committed or has been committed and which particularly describes the
21 place or person, or both, to be searched and things to be seized, any judicial officer
22 authorized to hold a court of inquiry to examine into an arrest of an offender against the
23 penal laws, referred to in this Code section as 'judicial officer,' may issue a search warrant
24 for the seizure of the following:

25 (1) Any instruments, articles, or things, including the private papers of any person, which
 26 are designed, intended for use, or which have been used in the commission of the offense
 27 in connection with which the warrant is issued;

28 (2) Any person who has been kidnapped in violation of the laws of this state, who has
 29 been kidnapped in another jurisdiction and is now concealed within this state, or any
 30 human fetus or human corpse;

31 (3) Stolen or embezzled property;

32 (4) Any item, substance, object, thing, or matter, the possession of which is unlawful; or

33 (5) Any item, substance, object, thing, or matter, other than the private papers of any
 34 person, which is tangible evidence of the commission of the crime for which probable
 35 cause is shown.

36 (b) When the peace officer is in the process of effecting a lawful search, nothing in this
 37 Code section shall be construed to preclude ~~him~~ such officer from discovering or seizing
 38 any stolen or embezzled property, any item, substance, object, thing, or matter, the
 39 possession of which is unlawful, or any item, substance, object, thing, or matter, other than
 40 the private papers of any person, which is tangible evidence of the commission of a crime
 41 against the laws of this state.

42 (c) Any retired judge or judge emeritus of a state court may issue search warrants as
 43 authorized by this Code section if authorized in writing to do so by an active judge of the
 44 state court of the county wherein the warrants are to be issued.

45 (d) Notwithstanding any provisions of Code Section 17-5-20 or other provisions of this
 46 Code section to the contrary, with respect to the execution of a search warrant by a certified
 47 peace officer employed by a university, college, or school, which search warrant will be
 48 executed beyond the arrest jurisdiction of a campus policeman pursuant to Code Section
 49 20-3-72, the execution of such search warrant shall be made jointly by the certified peace
 50 officer employed by a university, college, or school and a certified peace officer of a law
 51 enforcement unit of the political subdivision wherein the search will be conducted.

52 (e)(1) As used in this subsection, the term:

53 (A) 'Law enforcement agency' means a governmental unit of one or more persons
 54 employed full time or part time by this state, a state agency or department, or a political
 55 subdivision which performs as its principal function activities relating to preventing and
 56 detecting crime and enforcing state laws or local ordinances, employees of which unit
 57 are authorized to make arrests for crimes while acting within the scope of their
 58 authority.

59 (B) 'No-knock' means a provision in a search warrant that authorizes the executing
 60 officer to enter without giving audible notice of the officer's presence, authority, and
 61 purpose.

- 62 (2) No search warrant shall be issued which contains a no-knock unless:
- 63 (A) The law enforcement agency that employs the officer seeking such warrant has
- 64 adopted written policies for using no-knock that comply with paragraph (3) of this
- 65 subsection;
- 66 (B) It requires execution between 6:00 A.M. and 10:00 P.M., unless the judge for good
- 67 cause expressly authorizes execution at another time; and
- 68 (C) The affidavit or testimony supporting such warrant establishes by probable cause
- 69 that if an officer were to knock and announce identity and purpose before entry, such
- 70 act of knocking and announcing would likely pose a significant and imminent danger
- 71 to human life or imminent danger of evidence being destroyed.
- 72 (3) Not later than September 1, 2015, any law enforcement agency that may seek a
- 73 no-knock shall adopt guidelines and procedures that shall include, but shall not be limited
- 74 to:
- 75 (A) Designating the rank or status of an employee who may be qualified to serve as a
- 76 supervising officer;
- 77 (B) Requiring a supervising officer to review and approve an application for a
- 78 no-knock;
- 79 (C) Requiring a supervising officer to be present during the execution of a search
- 80 warrant which contains a no-knock;
- 81 (D) Having an operational plan for the execution of a search warrant which contains
- 82 a no-knock; and
- 83 (E) Having a training program relevant to applying for a no-knock and executing a
- 84 search warrant which contains a no-knock.
- 85 (4) Written policies adopted pursuant to this subsection shall be subject to public
- 86 disclosure and inspection notwithstanding any provision to the contrary in Article 4 of
- 87 Chapter 18 of Title 50."

88 **SECTION 2.**

89 Said article is further amended by revising Code Section 17-5-26, relating to when a search

90 warrant may be executed, as follows:

91 "17-5-26.

92 Except as provided in subsection (e) of Code Section 17-5-21, a search warrant may

93 be executed at any reasonable time."

94 **SECTION 3.**

95 Said article is further amended by revising Code Section 17-5-27, relating to the use of force

96 in the execution of a search warrant, as follows:

97 "17-5-27.

98 (a) As used in this Code section, the term 'no-knock' shall have the same meaning as set
 99 forth in Code Section 17-5-21.

100 (b) When a search warrant does not contain a no-knock, all ~~All~~ necessary and reasonable
 101 force may be used to effect an entry into any building or property or part thereof to execute
 102 a such search warrant if, after verbal notice or an attempt in good faith to give verbal notice
 103 by the officer directed to execute the same of his or her authority and purpose:

104 (1) The officer ~~He~~ is refused admittance;

105 (2) No individual ~~The person or persons~~ within the building or property or part thereof
 106 refuse to acknowledge and answer the verbal notice ~~or the presence of the person or~~
 107 ~~persons therein;~~

108 (3) The presence of any individual within the building or property or part thereof is
 109 unknown to the officer; or

110 ~~(3)~~(4) The building or property or part thereof is not then occupied by any ~~person~~
 111 individual."

112 SECTION 4.

113 Said article is further amended by revising Code Section 17-5-31, relating to quashing a
 114 warrant or suppressing evidence because of a technical irregularity not affecting substantial
 115 rights of the accused, as follows:

116 "17-5-31.

117 No search warrant shall be quashed or evidence suppressed because of a technical
 118 irregularity not affecting the substantial rights of the accused. The failure to comply with
 119 written policies adopted pursuant to paragraph (3) of subsection (e) of Code Section
 120 17-5-21 shall be considered a technical irregularity within the meaning of this Code
 121 section."

122 SECTION 5.

123 Said article is further amended by adding a new Code section to read as follows:

124 "17-5-33.

125 (a) As used in this Code section, the term:

126 (1) 'Judicial officer' shall have the same meaning as set forth in Code Section 17-5-21.

127 (2) 'No-knock' shall have the same meaning as set forth in Code Section 17-5-21.

128 (b) On a monthly basis, each judicial officer shall make a report to the Administrative
 129 Office of the Courts which shall include:

130 (1) The number of search warrants sought;

131 (2) The number of search warrants sought which contained a request for a no-knock;

- 132 (3) The number of search warrants issued;
133 (4) The number of search warrants issued which contained a request for a no-knock;
134 (5) The number of search warrants executed; and
135 (6) The number of search warrants executed which contained a request for a no-knock.
136 (c) The Administrative Office of the Courts shall prepare and publish in print or
137 electronically an annual report to the Governor, Lieutenant Governor, and Speaker of the
138 House of Representatives by March 1 of each year on the use of search warrants during the
139 previous calendar year which includes all of the information set forth in subsection (b) of
140 this Code section."

141 **SECTION 6.**

- 142 (a) Sections 1, 2, 3, 4, and 7 and this section of this Act shall become effective on September
143 1, 2015; provided, however, that for the purpose of developing the written guidelines and
144 training programs required by this Act, Sections 1, 2, 3, 4, and 7 and this section of this Act
145 shall become effective upon its approval by the Governor or upon its becoming law without
146 such approval.
147 (b) Section 5 of this Act shall become effective on January 1, 2017; provided, however, that
148 for the purpose of collecting and transmitting information, Section 5 of this Act shall become
149 effective on January 1, 2016.

150 **SECTION 7.**

151 All laws and parts of laws in conflict with this Act are repealed.