

Senate Bill 159

By: Senators Stone of the 23rd, Mullis of the 53rd, Cowser of the 46th, Harper of the 7th and Hill of the 6th

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 the use of force in executing a search warrant; to change provisions relating to
6 quashing a search warrant or suppressing evidence due to technical deficiencies; to provide
7 for related matters; to provide for an effective date; to repeal conflicting laws; and for other
8 purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

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

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

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

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

30 (3) Stolen or embezzled property;

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

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

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

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

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

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

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

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

61 (2) No search warrant shall be issued which contains a no-knock unless:

62 (A) The law enforcement agency that employs the officer seeking such warrant has
 63 adopted written policies for using no-knock that comply with paragraph (3) of this
 64 subsection; and

65 (B) The affidavit or testimony supporting such warrant demonstrates with
 66 particularized facts a reasonable suspicion that if an officer were to knock and announce
 67 identity and purpose before entry, such act of knocking and announcing would be
 68 dangerous to human life, would inhibit the effective investigation of an alleged crime
 69 by allowing the destruction of evidence, or would be futile.

70 (3) Not later than January 1, 2016, any law enforcement agency that may seek a
 71 no-knock shall adopt guidelines and procedures that shall include, but shall not be limited
 72 to:

73 (A) Designating the rank or status of an employee who may be qualified to serve as a
 74 supervising officer;

75 (B) Requiring a supervising officer to review and approve an application for a
 76 no-knock;

77 (C) Requiring a supervising officer to be present during the execution of a search
 78 warrant which contains a no-knock;

79 (D) Having an operational plan for the execution of a search warrant which contains
 80 a no-knock; and

81 (E) Having a training program relevant to applying for a no-knock and executing a
 82 search warrant which contains a no-knock.

83 (4) Written policies adopted pursuant to this subsection shall be subject to public
 84 disclosure and inspection notwithstanding any provision to the contrary in Article 4 of
 85 Chapter 18 of Title 50."

86 **SECTION 2.**

87 Said article is further amended by revising Code Section 17-5-27, relating to the use of force
 88 in the execution of a search warrant, as follows:

89 "17-5-27.

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

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

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

- 97 (2) No individual ~~The person or persons~~ within the building or property or part thereof
 98 refuse to acknowledge and answer the verbal notice ~~or the presence of the person or~~
 99 ~~persons therein;~~
 100 (3) The presence of any individual within the building or property or part thereof is
 101 unknown to the officer; or
 102 ~~(3)(4)~~ (4) The building or property or part thereof is not then occupied by any person
 103 individual."

104 **SECTION 3.**

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

108 "17-5-31.

109 No search warrant shall be quashed or evidence suppressed because of a technical
 110 irregularity not affecting the substantial rights of the accused. The failure to comply with
 111 written policies adopted pursuant to paragraph (3) of subsection (e) of Code Section
 112 17-5-21 shall be considered a technical irregularity within the meaning of this Code
 113 section."

114 **SECTION 4.**

115 This Act shall become effective on January 1, 2016.

116 **SECTION 5.**

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