

### **Amendment to §19.2-53:**

This proposal seeks to amend §19.2-53 which governs what may be searched and seized by adding a new paragraph (5) that provides clarifying language to address the evolution of technology. It is extremely important that all reviewers understand the proposed change in no way expands law enforcement's authority or the scope of the search; it merely clarifies that the initial search warrant which authorizes the lawful seizure of digital evidence, including the collection of such evidence from the piece of media at or away from the initial scene. Such clarity eliminates the confusion among magistrates as to whether or not a second search warrant is required.

As an analogy, imagine lawfully seizing a document written in French. The investigator does not read French and, therefore, travels to a nearby jurisdiction where someone interprets the document. In this instance, the interpretation did not constitute a second search. This scenario is no different with digital media, as the evidence is searched for and seized in accordance with a lawful search warrant; much like the French document. The investigator is often unable to interpret the digital evidence on scene and requires the assistance of someone with a unique skill set in another jurisdiction.

The below language was debated by numerous technology stakeholders and ultimately approved by the Joint Commission on Technology and Science (JCOTS):

*Any search warrant issued for the search and seizure of a computer, computer network, or other device containing electronic or digital information shall be deemed to include the search and seizure of the physical components and the electronic or digital information contained in any such device or network. The search of the contents of any such device or network may be done in any location and is not limited to the location where such device or network was seized.*

Currently, efforts include adding language in the initial search warrant that denotes the lawful search and seizure of digital evidence is deemed to include the interpretation of such evidence allowing such evidence to become visible. Some magistrates believe they lack the authority to permit such language. Other magistrates will not permit such language in the affidavit while still others require that all seized media be *imaged* within 15 days. Unfortunately, not all media can be imaged which creates even more problems. As a result, many magistrates opt for the safest option which is to require a second warrant to view evidence that was lawfully seized as part of the initial warrant. As such, this misunderstanding across the Commonwealth causes great confusion and creates an unnecessary administrative burden which adds to the over tasked digital investigator and further stagnates digital investigations.

The proposed amendment was unanimously supported by JCOTS in 2013, but the patron never brought the amendment to the designated committee for a vote.