

BILL AS INTRODUCED
2014

[INSERT BILL NO.]

Introduced by:

Subject: Crimes; Foreign Entities; Service of Process.

Statement of purpose: This bill has two purposes. First, it recognizes the Vermont Superior Court's authority to issue criminal process directed at a foreign entity when that entity would be subject to personal jurisdiction within the State. Second, it obligates a Vermont entity to respond to criminal process issued by other states when the entity would be subject to personal jurisdiction within those states.

AN ACT RELATING TO SERVICE OF PROCESS

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 13 V.S.A. §§ 4704–4707 are added to read:

Chapter 155. Search Warrants.

§ 4704. Production of records.

- (a) Criminal process, including subpoenas, search warrants, and other court orders, authorizing or commanding the seizure or production of papers, documents, records, or other things may be issued to a recipient, regardless of whether those papers, documents, records, or other things are in the actual or constructive possession of the recipient and regardless of whether the recipient or the papers, documents, records, or things are located within Vermont, if it appears that the recipient's contact with Vermont, activity in the Vermont, or any contact or activity imputable to it is sufficient to support personal jurisdiction over it.
- (b) The seizure or production of the contents of or records pertaining to wire or electronic communications that are in electronic storage shall be in accordance with 18 U.S.C. Ch. 121 and courts may issue any process required therein to facilitate such seizure or production.
- (c) Criminal process issued to pursuant to this section shall be served as follows:
 - (1) On an individual, by delivering a copy personally within the State or in accordance with 12 V.S.A. § 913.

- (2) On an entity, by delivering a copy to that entity's registered agent in the State or if the entity has no registered agent in the State to the Secretary of State's Office in accordance with 12 V.S.A. §§ 851–858.
 - (3) If the recipient agrees, by sending a copy by certified or registered mail return receipt requested, express mail, or facsimile or electronic transmission if the copy is sent in a manner that provides proof of delivery.
- (d) Upon proper service, the recipient shall provide all of the papers, documents, records, or other things described in the criminal process within 20 business days from the date the criminal process is received, unless;
- (1) The court, for good cause shown, includes in the criminal process a requirement for production within a period of time that is less than 20 business days;
 - (2) The court, for good cause shown, extends the time for production to a period of time that is more than 20 business days; or
 - (3) The applicant for the criminal process consents to a request from the recipient for additional time to comply with the process.
- (e) A recipient who seeks to quash or otherwise challenge the criminal process must seek relief from the court that issued the process within the time required for production. The court shall hear and decide the issue as soon as practicable. The consent of the applicant to additional time to comply with the process under subsection (d)(c) of this section does not extend the date by which a recipient must seek relief under this subsection.
- (f) Criminal process issued under this section must contain a notice that indicates:
- (1) That the criminal process was issued under this section;
 - (2) The date by which the recipient must respond to the process;
 - (3) Directions to whom and how to produce any papers, documents, records, or other things responsive to the criminal process.
- (g) Upon order of the court or the written request of the applicant for the criminal process, the recipient shall verify the authenticity of the papers, documents, records, or other things that the recipient produces in response to the criminal process by providing an affidavit or declaration that complies with Vermont Rule of Evidence 902.
- (h) A governmental entity may apply to the court for an order commanding a recipient to whom criminal process is directed not to notify any other person of the existence of the criminal process for such period as the court deems appropriate. The court shall issue the

order if it determines that there is reason to believe that notification of the existence of the criminal process will result in:

- (1) Endangering the life or physical safety of an individual;
 - (2) Flight from prosecution;
 - (3) Destruction of or tampering with evidence;
 - (4) Intimidation of potential witnesses; or
 - (5) Otherwise seriously jeopardizing and investigation or unduly delaying a trial.
- (i) Nothing in this section limits the authority of a court to issue criminal process under any other provision of law.

§ 4705. Service of process issued by or in another State.

- (a) When a Vermont recipient is properly served with process, including subpoenas, search warrants, and other court orders, issued by or in another state that authorizes or commands the seizure or production of papers, documents, records, or other things in the recipient's actual or constructive possession and such process on its face purports to be a valid process based on a pending criminal investigation or prosecution in that other state, the Vermont recipient shall comply with that process as if that process had been issued by a Vermont court provided that:
- (1) The issuing state has statutes authorizing or commanding the seizure or production of papers, documents, records, or other things held by out-of-state persons or entities; and
 - (2) The issuing state has statutes recognizing criminal process from other states that authorize or command the seizure or production of papers, documents, records, or other things held by persons or entities in the issuing state.

§ 4706. Limitation on actions.

No cause of action shall lie against any recipient, located in or out of Vermont, for complying with process issued under sections 4705 or 4706 of this chapter or for any failure to provide notice of any disclosure to a person who is the subject of or identified in the disclosure.

§ 4707. Effective date.

This bill shall be effective upon passage.