

YORK-POQUOSON SHERIFF'S OFFICE	GENERAL ORDERS
SUBJECT: Search Warrants	NUMBER: GO 2-2
EFFECTIVE DATE: October 22, 2018	REVIEW DATE: October 22, 2018
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1 **INDEX WORDS**

- 2
- 3 Affidavit
- 4 Curtilage
- 5 Entry, exigent (No knock)
- 6 Force; use of in executing warrants
- 7 Inventory
- 8 Return
- 9 Search warrant
- 10 Seizure

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12 **POLICY**

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14 The Fourth Amendment to the U.S. Constitution guarantees every citizen the right to be secure in

15 their persons, houses, papers, and effects against unreasonable searches and seizures. Supreme

16 Court decisions regarding search and seizure place the responsibility on law enforcement to

17 ensure that citizens' Fourth Amendment rights are protected. Deputies shall scrupulously

18 observe constitutional guidelines when conducting searches and always remain mindful of their

19 lawful purpose.

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21 **PURPOSE**

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23 The purpose of this general order is to establish guidelines and procedures which deputies must

24 follow when conducting searches and seizures.

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26 **PROCEDURES – GENERAL**

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- 28 • Legal authority
 - 29 ○ Section [19.2-52](#) of the Code of Virginia states that a judge, magistrate or other person
 - 30 having authority may issue a search warrant if:
 - 31 ▪ There is reasonable and probable cause to do so.
 - 32 ▪ There is a complaint on oath supported by an affidavit.
 - 33
 - 34 ○ Section [19.2-53](#) of the Code of Virginia states that search warrants may be issued for
 - 35 the search of or for specified places, things or persons, and seizure there from of the
 - 36 following things as specified in the warrant:
 - 37 ▪ Weapons or other objects used in the commission of a crime.
 - 38 ▪ Articles or things the sale or possession of which is unlawful.

- 39 ▪ Stolen property or the fruits of any crime.
- 40 ▪ Any object, thing or person including documents, books, records, paper or body
- 41 fluids constituting evidence of a crime.
- 42 ▪ Any person to be arrested for whom a warrant or process for arrest has been
- 43 issued.

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45 **PROCEDURES - OBTAINING A SEARCH WARRANT**

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- 47 • Where to obtain a search warrant
 - 48 ○ A search warrant may be obtained from any of the following three sources, according
 - 49 to Section [19.2-52](#), Code of Virginia:
 - 50 ▪ Any judge;
 - 51 ▪ Any magistrate;
 - 52 ▪ Any other person having the authority to issue criminal warrants.
 - 53
 - 54 ○ Section [19.2-44](#) Code of Virginia provides that a magistrate shall be authorized to
 - 55 exercise the powers conferred on magistrates by this title only in the magisterial
 - 56 region or regions for which he is appointed, except that a magistrate may issue search
 - 57 warrants in accordance with Chapter 5 ([19.2-52](#) et seq) throughout the
 - 58 commonwealth.
 - 59
- 60 • How to obtain a search warrant
 - 61 ○ Section [19.2-54](#), Code of Virginia requires that before the issuance of a search
 - 62 warrant, an affidavit must be filed and sworn to before a judge or magistrate.
 - 63 ○ The affidavit must include the following elements:
 - 64 ▪ A description of the place, thing, or person to be searched;
 - 65 ▪ A description of the things or persons to be searched for;
 - 66 ▪ A substantial allegation of the offense in relation to which the search is to be
 - 67 made;
 - 68 ▪ An allegation that the object, thing or person to be searched constitutes evidence
 - 69 of the commission of the offense; and
 - 70 ▪ Material facts, which would show that there is probable cause for the issuing of
 - 71 the search warrant.
 - 72
- 73 • Description of place to be searched
 - 74 ○ In describing the premises to be searched, a deputy should:
 - 75 ▪ Describe the appearance of the building,
 - 76 ▪ Give its address,
 - 77 ▪ State that the search is to include the curtilage and outbuildings thereon, and
 - 78 ▪ Give the city, town or county in which it is located.
 - 79 ❖ Curtilage is defined as the piece of ground within a fenced yard.
 - 80
 - 81 ○ The affidavit must describe:
 - 82 ▪ The place,
 - 83 ▪ Thing, or
 - 84 ▪ Person to be searched with enough detail that:

- 85 ❖ When the description is transferred to the search warrant, the deputy executing
86 the search warrant can find and identify what it is to be searched without an
87 unreasonable amount of effort.
88
- 89 • Description of person
 - 90 ○ A person who is to be searched must be described in the affidavit so that:
 - 91 ▪ He/she may be identified with reasonable certainty.
 - 92 ▪ His name must be given if it is known.
 - 93 ❖ If his name is not known, he may be called "John Doe," but the deputy must
94 describe what the person looks like, in sufficient detail that the person
95 searching will be able to identify the person, and the place where he can be
96 found.
 - 97
 - 98 • Description of thing to be searched for
 - 99 ○ Shall be specific language that leaves no doubt in the mind of the person executing
100 the warrant what things shall be searched or seized.
 - 101 ○ A deputy is permitted to search for and seize four kinds of property or persons under
102 Section [19.2-53](#), Code of Virginia. They are the following:
 - 103 ▪ Weapons or other objects used in committing a crime.
 - 104 ▪ Things that are unlawful to sell or possess.
 - 105 ▪ Any object, thing, or person, including without limitation, documents, books,
106 papers, records or body fluids, constituting evidence of the commission of crime;
107 or
 - 108 ▪ Any person to be arrested for whom a warrant or process for arrest has been
109 issued.
 - 110
 - 111 • Description of the offense
 - 112 ○ The affidavit must describe the offense in relation to which the search is to be made.
113 The description may be in brief, general terms.
 - 114 ○ It is not necessary to use legalistic language or to refer to any specific section of the
115 Code.
 - 116 ▪ Supplying the code section is a good procedure.
 - 117
 - 118 • Probable cause statement
 - 119 ○ The affidavit must be supported by probable cause. See [GO 2-1, Constitutional](#)
120 [Safeguards](#) for a definition.
 - 121 ○ The deputy must allege in the affidavit enough particular facts so that the magistrate
122 may decide if the search will likely result in successful seizure.
 - 123 ○ Two kinds of facts must be considered:
 - 124 ▪ The facts from which the deputy concluded that the person or thing is probably
125 located at the place to be searched; and
 - 126 ▪ The facts must be recent.
 - 127 ▪ The facts that address the reliability of the source of the deputy's information.
 - 128
 - 129 ○ The magistrate or court can consider only those facts presented in the warrant and
130 affidavit.

- 131 ○ Before a search warrant can be issued, the magistrate must be satisfied that probable
132 cause to search exists at the time the warrant is issued.
- 133 ▪ His conclusion that probable cause does exist must be based upon facts
134 reasonably related in time to the date of the issuance of the warrant.
135
- 136 • Reliability of information used to justify probable cause
- 137 ○ Judicial officers issuing search warrants may consider the following factors in
138 determining reliability of probable cause statements:
- 139 ▪ Personal observations by law enforcement officers.
- 140 ▪ Eyewitnesses
- 141 ❖ Where search warrant affidavit discloses that the information related came
142 from the victim of a crime, or from an eyewitness to the fact related, and the
143 information appears reasonable, the magistrate may infer that it is reliable
144 because it was based on first-hand knowledge.
145
- 146 ▪ Informants
- 147 ❖ If there is no reason to hide the name of an informant, a deputy should give
148 the informant's name in the affidavit.
- 149 ➤ There is no reason not to disclose the informant's name, for example, if he
150 is willing to testify in court unless other investigations concerning him or
151 her are pending or there is personal danger to him or her.
152
- 153 ❖ If the informer's name must be withheld until court, state this and that the
154 informer will testify.
- 155 ➤ Concerning unknown informants, See [GO 2-11, Informants](#).
- 156 ➤ When referring to unknown informants, law enforcement officers rely on a
157 magistrate to make a practical common sense decision whether, given all
158 the circumstances set forth in the affidavit before him including:
- 159 ✓ The "veracity" and "basis of knowledge" of persons supplying hearsay
160 information,
- 161 ✓ There is a fair probability that contraband or evidence of a crime will
162 be found in a particular place.
163
- 164 ❖ If a deputy relies on information for proving probable cause given by an
165 unknown informant, in his affidavit he shall allege the following:
- 166 ➤ The facts from which the informant concluded that the thing to be
167 searched for is probably on the person or premises to be searched (these
168 are the same kind of factors that must be alleged if they came from law
169 enforcement observation or from a named informant) and,
- 170 ➤ Based on the totality of the circumstances, facts from which the officer
171 concluded that:
- 172 ✓ The informant is credible
- 173 ✓ The information furnished by the informant is reliable.
- 174 ✓ Informant reliability may be established by:
- 175 * The informant has given reliable information in the past.

- 176 * The informant is a private citizen whom the law enforcement
- 177 officer knows or who has a reputation for truthfulness.
- 178 * The informant states that he himself has participated to some
- 179 extent in the illegal activity.
- 180 * The information that one informant gives is corroborated by
- 181 another informant.
- 182 * The information given by the informant is corroborated by law
- 183 enforcement surveillance.
- 184 * The information given could have only been known to someone
- 185 close to the crime or in a position to know details unavailable to an
- 186 outsider.

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188 **PROCEDURES - EXECUTING A SEARCH WARRANT**

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- 190 • Search warrant execution
- 191 ○ A law enforcement officer is required by Section [19.2-56](#), Code of Virginia, to
- 192 execute a search warrant within **15 days** of the date it was issued.
- 193 ▪ If it has not been executed during that time, the officer must return the warrant to
- 194 the magistrate who issued it.
- 195
- 196 ○ A copy of the affidavit must be attached to the warrant and served with it.
- 197 ▪ Section [19.2-56](#), Code of Virginia.
- 198
- 199 ○ A law enforcement officer may execute a search warrant either during the day or at
- 200 night.
- 201 ○ Copy of warrant and affidavit should be supplied to the person(s) or premises to be
- 202 searched.
- 203 ○ Section [19.2-56](#), Code of Virginia provides that no other person shall be present
- 204 during the execution of a search warrant except for:
- 205 ▪ The law enforcement officer to whom the search warrant was delivered,
- 206 ▪ The owners and occupants of the place to be searched when permitted by the
- 207 officer in charge of the search,
- 208 ▪ Persons designated by the officer in charge of the search to assist or provide
- 209 expertise in the conduct of the search.
- 210
- 211 • Search Warrant Execution for Electronic Communication, Remote Computing Service
- 212 Providers, Financial Institutions, Money Transmitters, Commercial Businesses Providing
- 213 Credit Histories or Credit Reports
- 214 ○ Section [19.2-56](#) ,Code of Virginia addresses search warrant execution to Electronic
- 215 Communication, Remote Computing Service Providers, Financial Institutions, Money
- 216 Transmitters, and Commercial Businesses Providing Credit Histories or Credit
- 217 Reports.
- 218 ○ Law enforcement officers may execute search warrants on the above listed entities by
- 219 either:
- 220 ▪ Hand/Personal delivery,
- 221 ▪ United States Mail,

- 222 ▪ Commercial Delivery Service,
223 ▪ Facsimile,
224 ▪ Other Electronic Means.
225
- 226 • Gaining entrance to premises
 - 227 ○ When a law enforcement officer executes a search warrant, he must follow the proper
228 procedures when he enters the premises to be searched.
 - 229 ○ If he fails to do so, then the subsequent search may be ruled invalid, even if the law
230 enforcement officer enters without force, for example, by using a passkey or by
231 opening a closed but unlocked door.
 - 232 ○ In most cases the law enforcement officer must do all of the following before entering
233 the premises to be searched:
 - 234 ▪ He or she must announce his presence as a law enforcement officer; and,
 - 235 ▪ He or she must announce that his purpose is to execute a search warrant; and
 - 236 ▪ He or she must wait a reasonable time either to be admitted or refused admission
237 to the premises.
 - 238
 - 239 • When entrance is refused
 - 240 ○ If the law enforcement officer is refused entrance after a reasonable time, he or she
241 may force his way into the premises.
 - 242 ○ A refusal may be expressed or implied.
 - 243 ○ A refusal can be implied in two circumstances:
 - 244 ▪ No one has admitted the law enforcement officer within a time in which it would
245 be reasonable to expect someone to let the officer in if he is going to be admitted
246 at all.
 - 247 ▪ The law enforcement officer waiting to be admitted sees or hears suspicious
248 circumstances, such as flushing toilets or footsteps running away from the door,
249 which indicates that someone might be concealing or destroying evidence or
250 trying to escape.
 - 251
 - 252 • No-knock entry
 - 253 ○ In some circumstances a law enforcement officer may enter the premises to be
254 searched without announcing his presence and his purpose.
 - 255 ○ Although not required by the Code of Virginia, a best practice is to justify a no-knock
256 entry in the search warrant affidavit and have the judicial officer issuing the search
257 warrant to include that provision as part of the warrant.
 - 258 ○ A law enforcement officer may make a no-knock entry if he possesses facts, which
259 make him reasonably believe that an announcement would result in:
 - 260 ▪ The escape of the person to be searched or arrested; or
 - 261 ▪ The destruction of evidence; or
 - 262 ▪ Bodily harm either to the law enforcement officer or to someone within the
263 premises to be searched if unannounced immediate entry is not made.
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 - 265 ○ In executing any warrants, law enforcement officers may use whatever force is
266 reasonably necessary under the circumstances to effect a lawful purpose.
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- Conduct of the search
 - Once the evidence being searched for is located, the search must cease.
 - Law enforcement officers may not use a search warrant to conduct a fishing expedition, i.e., if the search warrant is for a television, or large item, small places such as jewelry boxes may not be searched.
 - A law enforcement officer may seize only the property listed in the warrant. There are two exceptions to this rule. A law enforcement officer may seize other property if:
 - It is other evidence reasonably related to the offense for which the search warrant was issued.
 - It is property, which the law enforcement officer knows or has probable cause to believe is evidence of another crime and found during the search and within the scope of search warrant.
 - ❖ Items in and of itself which are illegal by its own nature, (i.e., bongs, drugs, switchblade knife, brass knuckles, etc.) either observed in plain view or,
 - ❖ Items in of itself which are illegal by its own nature found while searching for evidence named in the search warrant in a location the named searched for items could be reasonably found.
 - A law enforcement officer, however, cannot seize evidence under these exceptions if:
 - His discovery of it is not inadvertent, that is, he knows before the search begins that the evidence is probably on the property, and he intends to seize it; or
 - His discovery of it is made after he has found all the property listed on the warrant to be seized, unless it is in plain view.
 - The property is in a place he cannot legally search.
 - Searches of persons found on premises
 - The Supreme Court has ruled that a person's presence on the premises to be searched with a warrant does not, without more, give rise to probable cause to search that person.
 - If the law enforcement officer has a reasonable belief that the person is armed and dangerous, then the law enforcement officer may pat down or frisk the person for weapons.
 - Absent that belief, the law enforcement officer must have probable cause to support the search of a person on the premises without a warrant.
 - A law enforcement officer is permitted to search a person found on the premises if:
 - The person makes a "furtive movement" which the deputy would reasonably interpret to be an indication of being armed and dangerous.
 - ❖ A furtive movement is defined as an action performed by stealth.
 - Deputies shall not document a person's behavior as "furtive movements" but shall specifically describe the person's actions.
 - The deputy has probable cause to believe that items, which are the subject of the search warrant, are concealed on the person.
 - Mere presence of a person on premises does not constitute probable cause to search.

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- Detention of persons on the premises
 - A warrant to search a premises for contraband does not carry with it the authority to detain the occupants of the premises while a search is being conducted unless the deputy can articulate facts and reasons, if the person was released, it would have jeopardized officer safety or resulted in destruction of evidence.
 - If a person being detained at a premises being searched is questioned about evidence being searched for or the crime associated with the search warrant, Miranda warning shall be given.
 - See [GO 2-1, Constitutional Safeguards](#).
 - If the search of the premises gives rise to probable cause to arrest the detainee, he may be arrested and his person searched incident to arrest.
- Personal possessions
 - A search of a person's personal possessions is not considered a search of the person if they are outside his physical possession.
 - Such possessions, then, would fall within the definition of things or places specifically to be searched, as set forth in the warrant.

PROCEDURES - RETURN OF THE SEARCH WARRANT

- Filing of search warrant with the Courts
 - After a law enforcement officer has finished a search, he/she is required by Section [19.2-57](#) Code of Virginia to follow the following procedures with exceptions for Electronic Communication and Remote Computing Services information:
 - He must note the date and time of execution on the search warrant; and
 - Under oath, he must make an inventory of all the property he has seized; and
 - Within three days of the date of the search (excluding Saturdays, Sundays, or legal holidays) he must file in the circuit court clerk's office in the presence of the clerk (of the jurisdiction wherein the search was made):
 - The search warrant and attached copy of the affidavit; and
 - The inventory and return of articles seized (which must be sworn to) or a notation that nothing was seized during the search; and
 - The affidavit (unless affidavit was made by voice or video recording).
- Search Warrants Pertaining to Electronic Communication and Remote Computing Services
 - After a law enforcement officer has received the materials order to be produced he/she is required by Section [19.2-56](#) Code of Virginia to follow the following procedures:
 - He must note the date and time of execution on the search warrant; and
 - Under oath, he must make an inventory of all the property he has received; and
 - Within three days of receipt of the materials (excluding Saturdays, Sundays, or legal holidays) file the search warrant along with a copy of the affidavit in the Clerk of the Circuit Court's Office where the warrant was executed and

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- Deliver a copy of the same to the Clerk of the Circuit Court in the jurisdiction where the warrant was issued if the warrant was served within the Commonwealth.
 - Within three days of receipt of the materials (excluding Saturdays, Sundays, or legal holidays) file the search warrant along with a copy of the affidavit in the Clerk of the Circuit Court’s Office where the warrant was issued if the warrant was served outside the Commonwealth.
- Search Warrants Pertaining to Financial Institutions, Money Transmitters Commercial Businesses Providing Credit Histories or Credit Reports
 - After a law enforcement officer has received the materials order to be produced he/she is required by Section [19.2-56](#) Code of Virginia to follow the following procedures:
 - He must note the date and time of execution on the search warrant; and
 - Under oath, he must make an inventory of all the property he has received; and
 - Within three days of receipt of the materials (excluding Saturdays, Sundays, or legal holidays) file the search warrant along with a copy of the affidavit in the Clerk of the Circuit Court’s Office where the warrant was executed.
 - ❖ For the purpose of Section [19.2-56](#) Code of Virginia, the warrant will be considered executed in the jurisdiction where the entity on which the warrant is served is located.
 - Responsibility for property seized
 - All property seized must follow a rigorous chain-of-custody procedure.
 - Documentation must appear in all narrative reports pertaining to the chain of custody of any items seized.
 - A Sheriff’s Office evidence tag (or mark thereon) shall be used to mark all seizures.
 - If at all possible the evidence should be photographed in its original location, then seized and then packaged.
 - In court, proof may need to be established how the item was moved from person to person from the time of seizure to the time of trial.
 - The standard the court applies is one of reasonable certainty that no alterations or substitutions have occurred.
 - All evidence shall be handled according to [GO 2-15, Evidence Procedures](#).

PROCEDURES

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- Searches of persons
 - A law enforcement officer should get a search warrant for the search of a person whenever there is enough time to get one.
 - A warrantless search of a person may take place under the conditions specified in [GO 2-1, Constitutional Safeguards](#), [GO 2-4, Arrests](#), [GO 2-5, Search Incident to Arrest](#).
 - If probable cause exists just the same as would be stated in an affidavit, but, there is not enough time to obtain a search warrant due to the person’s mobile nature.

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- Scope of search
 - If a search warrant authorizes the search of a person only, a deputy may only search the following places:
 - The entirety of the person named in the warrant;
 - The area in immediate control of the person being searched from which he could reach for a weapon or for evidence so as to:
 - ❖ Protect the deputy;
 - ❖ Prevent escape; and
 - ❖ Prevent the destruction of evidence.
 - A warrant to search one person does not justify the search of a companion.
- What can be seized
 - Under a warrant authorizing the search of a person, a law enforcement officer may seize the following things:
 - Anything in the permissible area which the warrant authorizes to be seized;
 - Any other evidence in the permissible area reasonably related to the offense listed in the warrant; and
 - Anything else that is evidence of an illegal act if:
 - ❖ The evidence is in plain view of the place where the deputy makes the search of the person; and
 - ❖ The deputy's discovery of the evidence is inadvertent, that is, the deputy does not know the location of the evidence and does not intend to seize it before he goes to execute the search warrant.