	Winchester City Sheriff's Office Manual of General Orders Administration 104	Effective Date: May 1, 2014 Accreditation Standards: ADM .02.02 ADM .03.05
		Original Policy: May 1, 2014 Last Review Date: October 31, 2023 Next Review Date: October 31, 2024
Subject: Search & Seizure		By Authority of: _____ William E Sales, Sheriff

Effective /Review Date	Sections Changed	Changes	Reviewed by	Approved by
09-01-16	IV	Added Section IV.	EAS	LRT
01-03-23		Removed "A deputy may execute a search warrant either during the day or at night.	BWD	WES
01-03-23	III C	Added "Generally, search warrants of homes should be executed between 8 a.m. and 5 p.m. unless (1) the court authorizes execution of the search warrant at another time for good cause, or (2) the law-enforcement officer lawfully entered and secured the location and remained there continuously.	BWD	WES
01-03-23	III C 2 (4)	Added (4) Be recognizable and identifiable as a uniformed law-enforcement officer.	BWD	WES
01-03-23	III C 1 (7)	Added (7) Prior to obtaining a search warrant supervisor notification and approval must be obtained.	BWD	WES
01-19-23	C 2 d.	Removed: a No-Knock Entry: In some circumstances a deputy may request a "no-knock" search warrant to enter the premises to be searched. The deputy then may enter without announcing his/her presence and his/her purpose. A deputy may justify a search warrant with a no-knock entry if he/she possesses facts, which make him/her reasonably believe that an announcement would:	BWD	WES
01-19-23	C 2 4 c	Removed "two" Added "four"	BWD	WES

I. PURPOSE

The purpose of this general order is to establish guidelines and procedures, which deputy sheriffs of the Winchester City Sheriff's Office will follow when conducting searches and seizures.

II. POLICY

The Fourth Amendment to the U.S. Constitution guarantees every citizen the right to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. Supreme Court decisions regarding search and seizure place the responsibility on law enforcement to ensure that citizens' Fourth Amendment rights are protected. Deputies shall scrupulously observe constitutional guidelines when conducting searches and always remain mindful of their lawful purpose.

III. PROCEDURE

A. Legal Authorities

1. Code of Virginia § 19.2-52 states that a judge or magistrate may issue a search warrant if ;
 - a. There is reasonable and probable cause to do so.
 - b. There is a complaint on oath supported by an affidavit
 - c. Exception, only a Circuit Court judge may issue a search warrant for an attorney's office.
2. Code of Virginia § 19.2-53 states that search warrants may be issued for the search of or for specified places, things or persons, and seizure there from of the following things as specified in the warrant.
 - a. Weapons or other objects used in the commission of a crime.
 - b. Articles or things the sale or possession of which is unlawful.
 - c. Stolen property or the fruits of any crime.
 - d. Any objects, thing or person including documents, books, records, paper or body fluids constituting evidence of a crime.
3. Supreme Court Decisions: The Supreme Court hands down decisions, which must be used as guidelines in conducting searches.
The court is going to consider:
 - a. Was the search reasonable?
 - b. Was there probable cause to issue the search warrant?
 - c. Was the scope of the search appropriate?

B. Procedures in Obtaining a Search Warrant

1. How to obtain a search warrant
 - a. Where to obtain a search warrant:
 - (1) Any judge;

- (2) Any magistrate;
 - (3) Any other person having the authority to issue criminal warrants.
- b. Affidavits: Code of Virginia § 19.2-54 requires that before the issuance of a search warrant, an affidavit must be filed and sworn to before a judge or magistrate. State Form DC-338, will be used for this purpose.

NOTE: THE SEARCH WARRANT MUST BE OBTAINED IN THE JUDICIAL DISTRICT WHERE THE PLACE OR PERSON TO BE SEARCHED IS LOCATED.

(1) The affidavit must include the following elements

- (a) A description of the place, thing, or person to be searched;
- (b) A description of the things or persons to be searched for;
- (c) A substantial allegation of the offense in relation to which the search is to be made;
- (d) An allegation that the object, thing or person to be searched constitutes evidence of the commission of the offense; and
- (e) Material facts that would show that there is probable cause for the issuing of the search warrant.

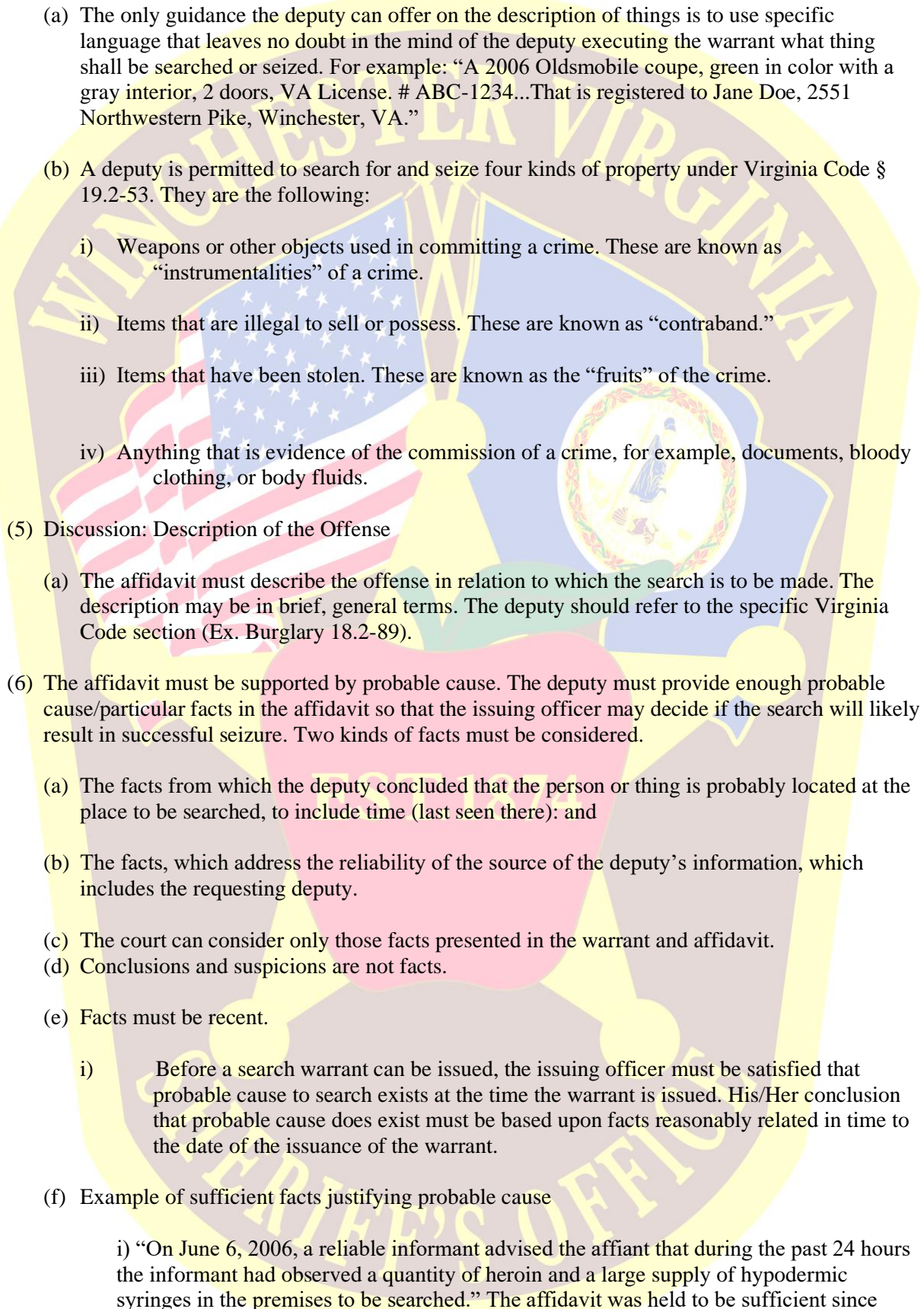
(2) Discussion: Description of place

- (a) In describing the premises to be searched, a deputy should describe the appearance of the buildings, give its address, stated that the search is to include the curtilage and outbuildings thereon, and give the city, town or county in which it is located. For example: “A two story, red brick building with a green roof and green shutters, located at 1510 Valley Mill Road, Winchester, Virginia, the property of John Doe. The search is to include the dwelling, the curtilage, vehicles, and any outbuildings thereon.”
- (b) The affidavit must describe the place; thing or person to be searched with enough detail that when the description is transferred to the search warrant, the deputy executing the search warrant can find and identify what is to be searched without an unreasonable amount of effort.

(3) Discussion: Description of person

- (a) A person who is to be searched must be described in the affidavit so that he/she may be identified with reasonable certainty. His/her name, birth date, Social Security number, and a physical description must be given, if it is known. If his/her name is not known, he/she may be called “John/Jane Doe,” but the deputy must describe what the person looks like and the place where he/she can be found. For example: “John Doe, a white male with short black hair, about 6 feet tall, a stocky build, a moustache, early 20’s living in Apartment 4-C, 5505 Main Street, Stephens City, Virginia.”

(4) Discussion: Description of thing

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- (a) The only guidance the deputy can offer on the description of things is to use specific language that leaves no doubt in the mind of the deputy executing the warrant what thing shall be searched or seized. For example: “A 2006 Oldsmobile coupe, green in color with a gray interior, 2 doors, VA License. # ABC-1234...That is registered to Jane Doe, 2551 Northwestern Pike, Winchester, VA.”
- (b) A deputy is permitted to search for and seize four kinds of property under Virginia Code § 19.2-53. They are the following:
- i) Weapons or other objects used in committing a crime. These are known as “instrumentalities” of a crime.
 - ii) Items that are illegal to sell or possess. These are known as “contraband.”
 - iii) Items that have been stolen. These are known as the “fruits” of the crime.
 - iv) Anything that is evidence of the commission of a crime, for example, documents, bloody clothing, or body fluids.
- (5) Discussion: Description of the Offense
- (a) The affidavit must describe the offense in relation to which the search is to be made. The description may be in brief, general terms. The deputy should refer to the specific Virginia Code section (Ex. Burglary 18.2-89).
- (6) The affidavit must be supported by probable cause. The deputy must provide enough probable cause/particular facts in the affidavit so that the issuing officer may decide if the search will likely result in successful seizure. Two kinds of facts must be considered.
- (a) The facts from which the deputy concluded that the person or thing is probably located at the place to be searched, to include time (last seen there): and
 - (b) The facts, which address the reliability of the source of the deputy’s information, which includes the requesting deputy.
 - (c) The court can consider only those facts presented in the warrant and affidavit.
 - (d) Conclusions and suspicions are not facts.
 - (e) Facts must be recent.
 - i) Before a search warrant can be issued, the issuing officer must be satisfied that probable cause to search exists at the time the warrant is issued. His/Her conclusion that probable cause does exist must be based upon facts reasonably related in time to the date of the issuance of the warrant.
- (f) Example of sufficient facts justifying probable cause
- i) “On June 6, 2006, a reliable informant advised the affiant that during the past 24 hours the informant had observed a quantity of heroin and a large supply of hypodermic syringes in the premises to be searched.” The affidavit was held to be sufficient since

facts were alleged to show how the informant concluded that heroin and drug paraphernalia were on the premises. *Warren v. Commonwealth*, 214 Va. 600, 601, 202 S.E.2d 885, 886 (1974).

(g) Example of insufficient facts

- i) “Information received from reliable informant Herb Hicks (indicated) that marijuana was kept in an apartment.” The affidavit was held to be insufficient. The deputy stipulated where the information came from, but did not allege any facts showing how the informant knew that it was in fact marijuana and when it was in defendant’s apartment. *Stallworth v. Commonwealth*, 213 Va. 313, 191 S.E. 2d 738 (1972).

(7) Reliability of facts

(a) Personal observation by a law enforcement officer is considered reliable.

(b) Eyewitnesses: Where search warrant affidavit discloses that the information related came from the victim of a crime, or from an eyewitness to the fact related, and the information appears reasonable, the issuing officer may infer that it is reliable because it is based on first-hand knowledge.

(c) Informants

- i) If there is no reason to hide the name of an informant, a deputy should give the informant’s name in the affidavit. There is no reason not to disclose the informant’s name, for example, if he is willing to testify in court.
- ii) Concerning unnamed informants, deputies rely on the issuing officer to make a practical common sense decision whether, given all the circumstances set forth in the affidavit before him/her including the “veracity” and “basis of knowledge” of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place, *Illinois v. Gates*, 462 U.S. 213 (1983). If a deputy relies on information for proving probable cause given by an unnamed informant, in his affidavit he shall allege the following.

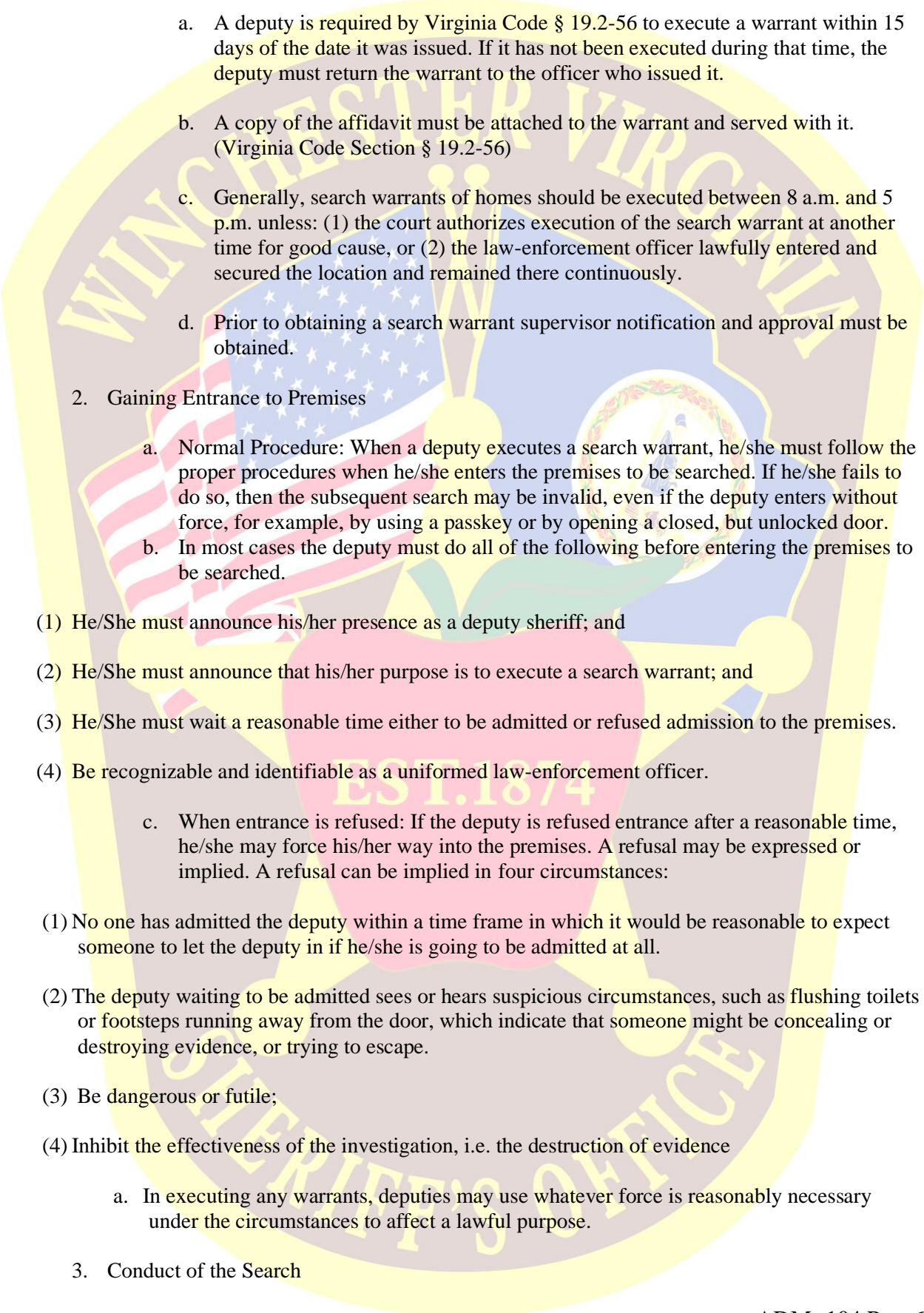
a) The facts from which the informant concluded that the thing to be searched for is probably on the person or premises to be searched (these are the same kind of factors that must be alleged if they came from law enforcement observation or from a named informant) and

b) Based on the totality of the circumstances, facts from which the deputy concluded that

- 1) The informant is credible; or
- 2) The that information furnished by the informant is reliable.

C. Procedures - Executing A Search Warrant

1. When a Search Warrant must be executed

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- a. A deputy is required by Virginia Code § 19.2-56 to execute a warrant within 15 days of the date it was issued. If it has not been executed during that time, the deputy must return the warrant to the officer who issued it.
 - b. A copy of the affidavit must be attached to the warrant and served with it. (Virginia Code Section § 19.2-56)
 - c. Generally, search warrants of homes should be executed between 8 a.m. and 5 p.m. unless: (1) the court authorizes execution of the search warrant at another time for good cause, or (2) the law-enforcement officer lawfully entered and secured the location and remained there continuously.
 - d. Prior to obtaining a search warrant supervisor notification and approval must be obtained.

2. Gaining Entrance to Premises

- a. Normal Procedure: When a deputy executes a search warrant, he/she must follow the proper procedures when he/she enters the premises to be searched. If he/she fails to do so, then the subsequent search may be invalid, even if the deputy enters without force, for example, by using a passkey or by opening a closed, but unlocked door.
- b. In most cases the deputy must do all of the following before entering the premises to be searched.

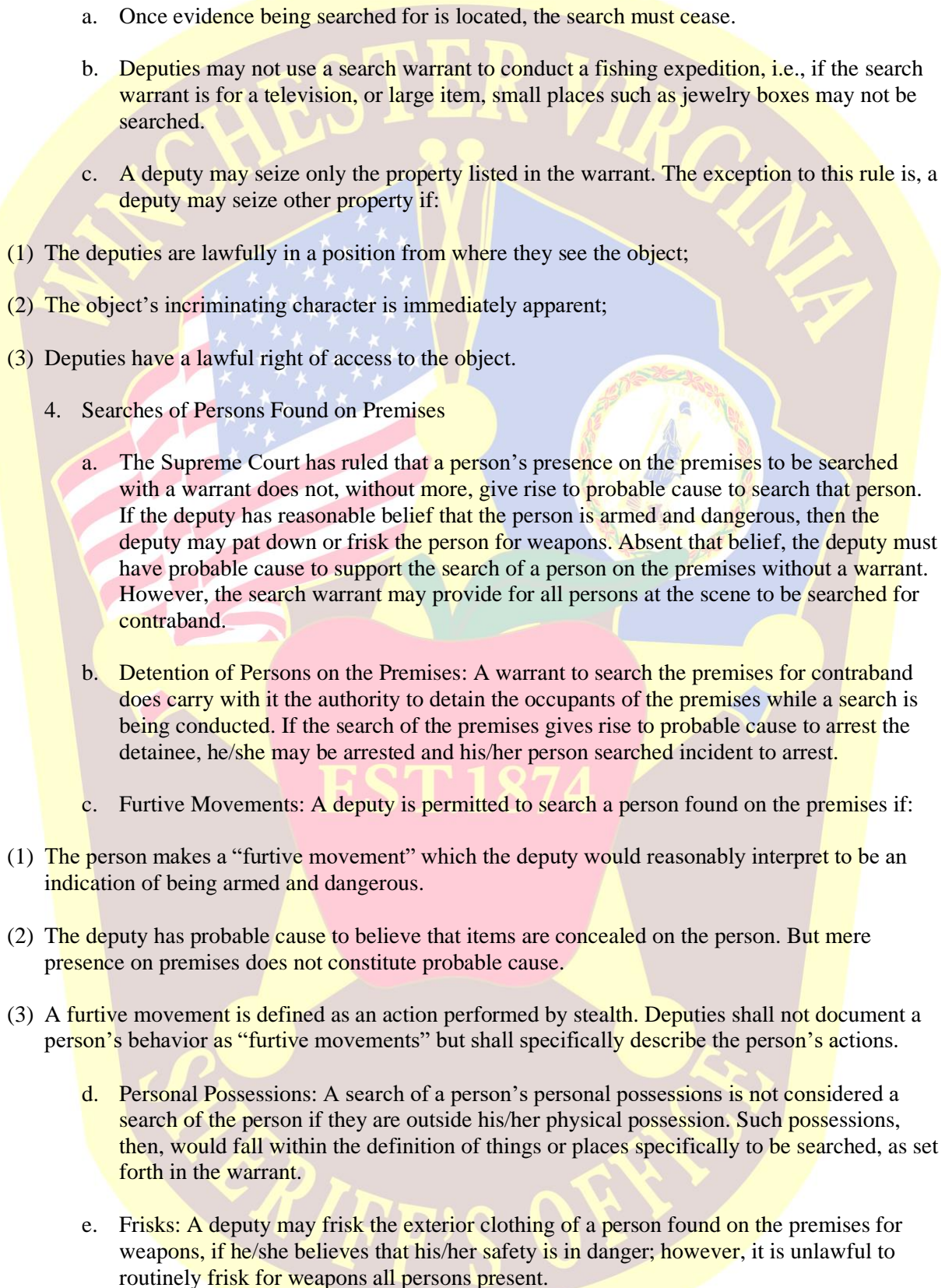
- (1) He/She must announce his/her presence as a deputy sheriff; and
- (2) He/She must announce that his/her purpose is to execute a search warrant; and
- (3) He/She must wait a reasonable time either to be admitted or refused admission to the premises.
- (4) Be recognizable and identifiable as a uniformed law-enforcement officer.

- c. When entrance is refused: If the deputy is refused entrance after a reasonable time, he/she may force his/her way into the premises. A refusal may be expressed or implied. A refusal can be implied in four circumstances:

- (1) No one has admitted the deputy within a time frame in which it would be reasonable to expect someone to let the deputy in if he/she is going to be admitted at all.
- (2) The deputy waiting to be admitted sees or hears suspicious circumstances, such as flushing toilets or footsteps running away from the door, which indicate that someone might be concealing or destroying evidence, or trying to escape.
- (3) Be dangerous or futile;
- (4) Inhibit the effectiveness of the investigation, i.e. the destruction of evidence

- a. In executing any warrants, deputies may use whatever force is reasonably necessary under the circumstances to affect a lawful purpose.

3. Conduct of the Search

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- a. Once evidence being searched for is located, the search must cease.
 - b. Deputies 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.
 - c. A deputy may seize only the property listed in the warrant. The exception to this rule is, a deputy may seize other property if:
 - (1) The deputies are lawfully in a position from where they see the object;
 - (2) The object's incriminating character is immediately apparent;
 - (3) Deputies have a lawful right of access to the object.
4. Searches of Persons Found on Premises
- a. 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 deputy has reasonable belief that the person is armed and dangerous, then the deputy may pat down or frisk the person for weapons. Absent that belief, the deputy must have probable cause to support the search of a person on the premises without a warrant. However, the search warrant may provide for all persons at the scene to be searched for contraband.
 - b. Detention of Persons on the Premises: A warrant to search the premises for contraband does carry with it the authority to detain the occupants of the premises while a search is being conducted. If the search of the premises gives rise to probable cause to arrest the detainee, he/she may be arrested and his/her person searched incident to arrest.
 - c. Furtive Movements: A deputy is permitted to search a person found on the premises if:
 - (1) The person makes a "furtive movement" which the deputy would reasonably interpret to be an indication of being armed and dangerous.
 - (2) The deputy has probable cause to believe that items are concealed on the person. But mere presence on premises does not constitute probable cause.
 - (3) 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.
 - d. Personal Possessions: A search of a person's personal possessions is not considered a search of the person if they are outside his/her physical possession. Such possessions, then, would fall within the definition of things or places specifically to be searched, as set forth in the warrant.
 - e. Frisks: A deputy may frisk the exterior clothing of a person found on the premises for weapons, if he/she believes that his/her safety is in danger; however, it is unlawful to routinely frisk for weapons all persons present.

D. Procedures - Return of the Search Warrant

1. After a deputy has finished a search, he/she is required by Code of Virginia § 19.2-57 to observe the following procedures:
 - a. He/She must note the date of execution on the search warrant; and
 - b. Under oath, he/she must make an inventory of all the property he/she has seized; and
 - c. Within three days of the date of the search (excluding Saturdays, Sundays, or legal holidays) he/she must file in the Circuit Court Clerk's office (in the jurisdiction wherein the search was made):

- (1) The search warrant; and
- (2) Either the inventory of articles seized (which must be notarized) or a notation that nothing was seized during the search; and
- (3) The affidavit (unless affidavit was made by voice or videotape recording).
- (4) Refer to Virginia § 19.2-56.1 for search warrants executed on attorney's offices.

2. Responsibility for Property Seized

- a. All property seized must follow the chain-of-custody procedure. Documentation should appear in all property reports pertaining to the chain-of-custody of any items seized. The Sheriff's Office evidence marking procedure shall be used to mark all seizures.
- b. In court, the judge may wish to ascertain 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.
- c. Deputies shall follow Sheriff's Office procedures for the storage of evidence by placing evidence in the locker reserved for that purpose at the Sheriff's Office.

E. Procedures - Searches of Persons

1. Except for an arrest or consent, a deputy shall obtain a search warrant whenever there is enough time to obtain one before searching a person.
2. A warrantless search of a person may take place under the conditions specified in this General Order.
3. Scope of search:
 - a. If a search warrant authorizes the search of a person only, a deputy may only search the following places:

- (1) The entirety of the person named in the warrant;

(2) The area in immediate control of the person being searched from which he/she could reach for a weapon or for evidence so as to:

- (a) Protect the deputy;
- (b) Prevent escape; and
- (c) Prevent the destruction of evidence.

F. Search and Seizure: The Fourth Amendment guarantees the right of people to be free from unreasonable searches and seizures of their homes, persons, and belongings. The Supreme Court is constantly interpreting the Fourth Amendment as it applies to law enforcement conduct. Illegally seized items of evidence may not be admitted in court and may be cause for the loss of a criminal case. Additionally, an illegally conducted search invites civil litigation under the Civil Rights Act. In order to ensure that Fourth Amendment Rights are protected, deputies will obtain search warrants upon probable cause in all appropriate criminal cases except the following:

- 1. Consent searches
- 2. Emergency searches
- 3. Plain view
- 4. Abandoned property
- 5. Inventory searches of vehicles
- 6. Incident to arrest
- 7. Pat-downs of suspicious persons

IV. **Asset Forfeiture**- A constitutional amendment to state law permits law enforcement agencies to benefit directly from the seizures made in narcotics or drug investigations. Formerly, in order to receive financial assistance through seized assets, law enforcement agencies had to use the federal forfeiture process.

- A. When a deputy makes a seizure of property or money according to state law, the Sheriff's Office shall begin forfeiture proceedings. Any assets recovered through the forfeiture process, whether money or property, will be applied to legitimate enforcement needs.
- B. The Major will oversee the entire program and is responsible for its monitoring, managing of property, monitoring of assets, processing/filing of paperwork and the filing of asset forfeiture certification reports.