

COVID-19 STATE OF EMERGENCY

GUIDE FOR LAW ENFORCEMENT

EXECUTIVE ORDERS & ORDERS OF THE HEALTH COMMISSIONER

The nature of the emergency caused by COVID-19 is continuing to evolve. Law enforcement may be called upon to enforce or assist with enforcement of Executive Orders, Quarantine Orders and Isolation Orders, and to assist with other matters that are not typical in day-to-day law enforcement. This guide is intended to provide a quick reference to some of the applicable laws. Always obtain a copy of and carefully review any order you are being asked to enforce before taking action. Should you have any questions regarding the enforcement of any statute, order, or regulation, consult with your supervisor and request the guidance of legal counsel, if necessary.

- I. EXECUTIVE ORDERS OF THE GOVERNOR
 - a. Section [44-146.17](#) of the Code of Virginia, 1950, as amended, provides, in part: “Executive orders, to include those declaring a state of emergency and directing evacuation, shall have the force and effect of law and the violation thereof **shall be punishable as a Class 1 misdemeanor in every case where the executive order declares that its violation shall have such force and effect.**”
 - b. **Enforcement of Executive Orders:** If an Executive Order contains a clause indicating that violation of the order shall be punishable as a Class 1 misdemeanor, it may be enforced as such.
- II. ORDERS OF THE STATE HEALTH COMMISSIONER
 - a. Generally, the health laws of the Commonwealth and regulations of the State Board of Health are enforced by the local health departments. See [32.1-32\(B\)](#). Certain items, including orders of quarantine and orders of isolation, may be enforced by law enforcement. **Orders of quarantine and isolation must be issued by the State Health Commissioner; such authority cannot be delegated to or invoked by local or district health department directors. Should the Health Commissioner be unable to perform his duties, a Deputy Commissioner is so authorized. See [32.1-48.05\(C\)](#)**
 - b. Order of Quarantine:
 - i. "Quarantine" means the physical separation, including confinement or restriction of movement, of an individual or individuals who are present within an affected area, as defined herein, or **who are known to have been exposed or may reasonably be suspected to have been exposed** to a communicable disease of public health threat and who do not yet show signs or symptoms of infection with the communicable disease of public health threat in order to prevent or limit the transmission of the communicable disease of public health threat to other unexposed and uninfected individuals.
 - ii. Prior to placing any person or persons under quarantine, the State Health Commissioner is required to issue an order of quarantine pursuant to [32.1-48.09](#). The order is required to specify a number of different things, including:
 1. The public health threat involved;
 2. Sufficient information to provide reasonable notice to those affected by the order that they are subject to the order;

3. The means by which the quarantine is to be implemented;
 4. The geographic parameters of the quarantine, if an affected area is involved;
 5. The duration of the quarantine;
 6. Directions for compliance;
 7. Provide timely opportunities for persons to subject to the order to notify others of their situation;
 8. The penalty or penalties that may be imposed for noncompliance pursuant to [32.1-27](#); and
 9. A copy of [32.1-48.010](#) to inform persons subject to the order of the right to seek judicial review.
- iii. Such an order may apply to all persons within an affected area, if the governor has declared a state of emergency for that affected area.
 - iv. **Any law-enforcement officer, state or local health department employee, or other person designated by a law-enforcement officer or state or local health department employee may deliver an order of quarantine.**
- c. Orders of Isolation:
- i. "Isolation" means the physical separation, including confinement or restriction of movement, of an individual **or individuals who are infected with or are reasonably suspected to be infected** with a communicable disease of public health threat in order to prevent or limit the transmission of the communicable disease of public health threat to other uninfected and unexposed individuals.
 - ii. Prior to placing any person or persons in isolation, the State Health Commissioner is required to issue an order of isolation pursuant to [32.1-48.012](#).
 - iii. The order of isolation is required to specify the following:
 1. The person or persons subject to the order;
 2. **The site of the isolation (which may be their residence);**
 3. The time and date the isolation is to commence;
 4. The public health threat involved;
 5. The bases for isolation;
 6. Timely opportunity for persons subject to the order to notify others of their situation;
 7. **The penalty or penalties that may be imposed for noncompliance pursuant to [32.1-27](#); and**
 8. A copy of [32.1-48.013](#) to inform persons subject to the order of the right to seek judicial review.
 - iv. Such an order may apply to all persons within an affected area, if the governor has declared a state of emergency for that affected area.
 - v. **Any law-enforcement officer, state or local health department employee, or other person designated by a law-enforcement officer or state or local health department employee may deliver an order of isolation.**
- d. **ENFORCEMENT OF ORDERS OF QUARANTINE OR ISOLATION**

- i. [15.2-1704](#) provides authority for a police officer to “deliver, serve, execute and enforce orders of isolation and quarantine issued pursuant to §§ 32.1-48.09, 32.1-48.012, and 32.1-48.014.”
- ii. **[32.1-48.014](#) provides that orders of quarantine or isolation “shall be enforced by law-enforcement agencies, as directed by the State Health Commissioner.** Any enforcement authority directed to law-enforcement by the Commissioner shall expressly include, but need not be limited to, the power to detain or arrest any person or persons identified as in violation of any order of quarantine or isolation, or for whom probable cause exists that he may fail or refuse to comply with any such order.” **Failure to comply with a validly issued order of quarantine or isolation may subject the person to penalties under [32.1-27](#), including a class 1 misdemeanor, upon conviction.**
- iii. **32.1-48.014** requires that persons so detained shall be held in the least restrictive environment that can provide any required health care or other services for such person. **As this requires judgment as to medical needs, law enforcement should consult with health department representatives as to an appropriate setting.** [32.1-48.07](#) requires that the Commissioner ensure that any quarantine or isolation is implemented in the least restrictive environment necessary, and that quarantined persons are confined separately from isolated persons, to the extent practicable.
- iv. 32.1-27 provides, in part, that any person “**willfully** violating or refusing, failing or neglecting to comply with any ... order of the ... Commissioner...shall be guilty of a Class 1 misdemeanor unless a different penalty is specified.”
- v. The Commonwealth’s Attorney has the duty to prosecute any such violations in accordance with the penalties set forth in 32.1-27.

III. GENERAL CONSIDERATIONS

- a. Guidance of public health officials is paramount in addressing this pandemic. Confer with local and state officials as necessary regarding all orders before taking enforcement action.
- b. Provide an opportunity for voluntary compliance, when possible. Provide individuals with a copy of the applicable order, and instructions regarding compliance, if possible, to ensure that the individual is aware of the order. As indicated above, violations must be willful under 32.1-27.
- c. **Absent a lawful order, there is no authority to compel an individual to self-quarantine, isolate, or accept treatment. Persons should be encouraged to voluntarily comply with all guidance and directions being provided by public health officials.**