

ALBUQUERQUE POLICE DEPARTMENT
* PROCEDURAL ORDERS *

Effective: 02/02/00; ADDITION TO THE MANUAL

2-17 SEARCH AND SEIZURE WITHOUT A WARRANT

POLICY:

Department policy is to provide officers with guidelines to conduct warrantless searches and seizures in order to uphold individual civil rights, protect officers and others, and govern the collection of evidence.

DEFINITIONS:

2-17-1 REASONABLE SUSPICION

An anonymous tip combined with some form of articulable investigation that leads an officer to reasonably believe a violation of law has occurred or is occurring.

2-17-2 PROBABLE CAUSE

When facts and circumstances within an officer's knowledge, or, on which an officer has reasonable trustworthy information, are sufficient to warrant a reasonable person to believe that an offense has been or is being committed and the person arrested conspired to commit the act.

2-17-3 FIELD INTERVIEW

The brief detainment of an individual who is on foot or in a vehicle, based on reasonable suspicion that a violation of law has occurred or is occurring, for the limited purpose of determining the individual's identity and confirming or dispelling an officer's suspicions.

2-17-4 PAT DOWN

A "frisk" or feeling of the outer garments of an individual with the sole purpose of detecting a weapon, allowing the officer to conduct a brief field interview without the threat of violence. An officer should use extreme caution when patting someone down to ensure that he/she is not stuck by a needle or other sharp object.

2-17-5 CONSENT

A voluntary statement, verbal or written, giving officers permission to search a person, premises, or items. Consent may be withdrawn at any time.

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2-17-6 EXIGENT CIRCUMSTANCES

An emergency situation(s) requiring swift action to prevent imminent danger to life, serious damage to property, to forestall the imminent escape of a suspect, or the destruction of evidence.

2-17-7 INVENTORY SEARCH

A search conducted on a person or vehicle to protect and safeguard an individual's property, provide for the safety of the officer and others, as well as protect the Department against claims or lawsuits for loss or destruction of private property.

2-17-8 PROTECTIVE SWEEP

A quick limited search of a premise, incident to an arrest, conducted to protect the safety of officers and others. The area searched must be large enough to be capable of harboring a person.

2-17-9 CURTILAGE

Any land or building immediately adjacent to a dwelling which is directly connected or in close proximity.

2-17-10 COMMUNITY CARETAKER

An officer may stop a vehicle or enter a premises without a warrant or reasonable suspicion when the officer has specific articulable safety concerns, that an individual might be in physical difficulty or need assistance. Such encounters must be done in good faith without the intent of coercion or detention.

RULES AND PROCEDURES:

2-17-11 APPROACH

An officer may approach an individual without a warrant or reasonable suspicion provided that:

- A. The officer is not violating the law at the time;
- B. The officer approaches in a non threatening manner;
- C. The person approached is free to leave or remain silent with no threat of coercion or detention from the officer.

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2-17-12 STOP AND FRISK (TERRY STOP)

A. A Terry Stop consists of a brief investigative detention, field interview, and, if warranted, a pat-down of a persons' outer garments if based on the officers training and experience, the person detained poses an immediate danger to the safety of officers or others. Factors to consider when determining whether to perform a Terry Stop should include but not be limited to:

1. The appearance or demeanor of an individual suggests that he/she is part of a criminal enterprise or is engaged in a criminal act;
The hour of day or night is inappropriate for the suspect's presence in the area;
The suspect's presence in a location is inappropriate;
The suspect is carrying a suspicious object;
The suspect's clothing bulges in a manner that suggests he/she is carrying a weapon;
The suspect is located in proximate place and time to the alleged crime;
The officer has knowledge of the suspect's prior criminal record or involvement in criminal activity.

B. A pat down is to be conducted in accordance with the officer's training and experience and is no more extensive than what is necessary to remove the immediate danger to the officer(s) and others.

Factors to consider when determining whether a pat down should be conducted:

- The type of crime suspected, particularly in crimes of violence where the use or threat of deadly weapons is involved;
When more than one suspect must be handled by a single officer;
The hour of the day and the location or neighborhood where the stop takes place;
Prior knowledge of the suspect's past use of force and/or a propensity to carry a firearm or other weapons;
The appearance and demeanor of the suspect such as nervousness, shaking, failure to make eye contact, or other behaviors which are not cultural;
Visual indications that suggest the suspect is carrying a firearm or other weapon;
The age and gender of the suspect. Whenever possible, pat down searches should be performed by officers of the same sex.

C. An officer may request a voluntary statement, verbal or written, giving the officer permission to search the person in accordance with this SOP.

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2-17-13 **ROAD BLOCK**

- A. A roadblock should be conducted in a reasonable time, duration and location to protect the safety of officers and others.
- B. Selection of the site and procedures for conducting a road block are made and established by police supervisory personnel.
- C. A briefing will be conducted prior to each roadblock to ensure that officers deal with motorists in the same manner as much as possible.
- D. Motorists shall only be detained for a reasonable time.
- E. All roadblocks shall be given appropriate advance publicity.
- F. An emergency roadblock may be put in place for the purpose of capturing a fleeing felon.

2-17-14 **VEHICLE INVENTORY SEARCH**

When a vehicle is towed pursuant to state law or city ordinance, an inventory search of the vehicle shall be conducted to protect an individual's property, the officer and others, as well as the Department from claims of lost or damaged property resulting from the seizure of the vehicle or items. Officers will use the following criteria when an inventory search is conducted:

- A. Vehicles must be in lawful police custody;
- B. Must be reasonable and conducted in good faith;
- C. Will be conducted by the public, officers, or public safety aides in accordance with their training and Department standard operating procedures;
- D. Inventory searches will include the entire passenger compartment, glove box, trunk and containers without damaging the property, at or near the time the vehicle was lawfully placed within police custody. Containers found during an inventory search of a vehicle can be opened if accomplished without damage to the container and the search is conducted in accordance with the Department SOP.
- E. The Inventory search will be documented and become part of the original Offense/Incident Report. If towed, an inventory search will be conducted of the vehicle and will be documented on the Tow-in Report form.

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2-17-15 VEHICLE SEARCHES UNDER THE “AUTOMOBILE EXCEPTION”

Warrantless search of a vehicle under the “Automobile Exception” requires:

- A. An articulable legal justification for stopping the vehicle;
- B. That there is reasonable basis for believing an automobile will be moved or it's search will be compromised by delay. Otherwise, a warrant is required prior to searching the vehicle;
- C. Inventory searches must be reasonable and conducted only if there is probable cause to believe the vehicle contains the fruit or instrumentalities of a crime or contraband, and the officer can articulate exigent circumstances which create an emergency situation requiring swift action to prevent danger to life, escape, or destruction of evidence;
- D. The scope of the inventory search shall be limited to the exigent circumstance that created an emergency situation requiring swift action to prevent danger to life, escape, or destruction of evidence;

Example:

1 If the exigent circumstance exists that the vehicle is being used to harbor a felon, you can not search anywhere within the vehicle that a person could not hide, i.e. under the seat, within the glove box, etc.

2 If the exigent circumstance exists that a weapon is within the vehicle which poses an immediate danger to officers or others, the officer may remove all persons from the vehicle in accordance with their training and wait for a search warrant prior to searching the vehicle for the weapon.

- E. A police officer may conduct a plain view inspection of the vehicle to rule out any exigent circumstances or request a voluntary statement (verbal or written) giving the officer permission to search the vehicle in accordance with the Department SOP.

2-17-16 SEARCH INCIDENT TO LAWFUL ARREST

A warrantless search can be conducted pursuant to a lawful arrest. Such a search must be conducted during or very near the time and place of the arrest and must be limited in scope to:

- A. Searching the arrested person and any containers discovered on his/her person, or within the arrested persons control if the officer has reason to believe the containers belong to or were used by the arrested person;

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- B. Searching the immediate area within the arrestee's control;
 - C. Searching the interior of the vehicle excluding the trunk, glove box, or any containers found in the vehicle if a person is removed from a vehicle and placed under arrest. Any containers found on the arrestee can be searched;
 - D. Conducting a "protective sweep" of the area adjoining the arrest;
 - E. Conducting a sweep of any other area within the premises which officers reasonably suspect might harbor a person who could endanger them.
 - F. An officer may request a voluntary statement (verbal or written) giving the officer permission to search the person and the vehicle in accordance with the Department SOP.

2-17-17 OTHER SITUATIONS INVOLVING SEARCH AND SEIZURES

A. Plain view

When an officer observes evidence of a crime or contraband in plain view from a public place such as a sidewalk or a street.

Example:

An officer walking along a street observes a vehicle and sees a bag of marijuana on the front seat. The officer may search the vehicle and seize the contraband.

B. Abandonment

A subject who abandons property does not retain an expectation of privacy of that property as long as the abandonment was voluntary and not coerced by an illegal search or seizure.

Example:

When a person sees an officer and discards a bag of drugs onto the ground.

C. Open fields and curtilage

1. Open fields surrounding a home are not constitutionally protected from a warrantless search or seizure.
2. The curtilage surrounding a home is constitutionally protected from a warrantless search and seizure.

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3. Factors to consider when determining whether a specific location is within the curtilage of a residence:
 - a. the proximity of the location to the house;
 - b. whether the same enclosure surrounding the house also encloses the location;
 - c. the uses of the location;
 - d. the steps taken to protect the location from observation by passersby.

D. Hot Pursuit

The hot pursuit doctrine permits warrantless entries of premises when suspects have fled the officer. Officers must have probable cause to believe the person they are pursuing has committed an act of domestic violence or a felony and:

The person sought is on the premises they wish to enter; and

The person sought will escape or harm someone, or destroy evidence unless a warrantless entry is made.

The pursuit must be immediate and continuous from the time of the crime or the time the known felon is spotted in plain view outside the premises.

E. PROTECTIVE SWEEP

A protective sweep can only be conducted after a lawful arrest. An officer must have a reasonable belief based on specific and articulable facts that lead the officer to believe the area swept harbors an individual posing a danger to the officer or others and limits the scope of the search to places large enough to harbor a person.

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