



## 2-33 RIGHTS OF ONLOOKERS

### 2-33-1 Policy

It is the policy of the Department to protect the rights of onlookers while maintaining the integrity of a scene and/or investigation.

### 2-33-2 Rules

#### [7] A. Witnessing Stops, Detentions, Arrests

Persons that are not involved in an incident **may shall** be allowed to remain in the immediate vicinity to witness stops, detentions, and arrests of suspects occurring in public areas, **and shall be allowed to overhear and record the encounter between the suspect and the officer**, except under the following circumstances:

1. When the safety of the officers, **or the** suspects, **or others** **is are** jeopardized.
2. When persons interfere **with officers lawfully exercising their duties** or violate the law.
3. When persons threaten by words or actions, or attempt to incite others to violate the law.

#### [7] B. Overhearing Conversation

1. **If the conditions at the scene are peaceful and sufficiently quiet, and the officer has stabilized the situation, persons shall be allowed to approach close enough to overhear the conversation between the suspect and the officer, except when:**

- a. **The suspect objects to persons overhearing the conversation.**
- b. **There is a specific and articulable need for confidential conversation for the purpose of police interrogation.**

#### [7] B. Inquiries

If a citizen is a witness to the activity for which the suspect was detained or arrested, the officer may request his/her name; however, the citizen is not compelled to disclose such information.

#### [7] C. Bystander Filming of Officer-Suspect Contacts

1. **Bystanders have the right to record police officer enforcement activities by camera, cell phone, video recorder, or other means. Officers must allow**



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bystanders to record officer/public encounters (except under the exceptions set forth in Section 2-33-2(A), certain circumstances as set forth in Sections A and B above).

2. An officer shall not seize, compel or otherwise coerce production of these bystander recordings by any means without first obtaining a warrant. Without a warrant, an officer may only request, in a non-coercive manner, that a bystander voluntarily provides the film or another recording.
3. These requests should be made only if the officer has probable cause to believe that a recording has captured evidence of a crime.
4. If a bystander refuses to voluntarily provide the recording, an officer may request the person's identity in order to secure a warrant as provided in Section C-2, above.
5. If a bystander voluntarily provides his or her recording and/or equipment, the officer shall provide the bystander with a receipt PD-1354. The receipt shall contain a written statement verifying that the recording and/or equipment has been voluntarily provided to the Department and shall be signed by the bystander.
6. The collected recording/equipment will be treated as evidence and tagged accordingly.

D. ~~Violations/Compliance~~ Violations of Ordinance or Statute

If a person is resisting, obstruction, or refusing to obey a lawful order as defined by City Ordinance § 12-2-19, or if a person is resisting, evading, or obstructing an officer, as defined by N.M.S.A. 1978, § 30-22-1, officers shall:

1. If feasible:
  - a. Give the person a warning that the person is violating the ordinance or statute;
  - b. Issue a lawful order to the person to stop obstructing or interfering with the officer's lawful discharge of the officer's duties;
  - c. Warn the person of the consequences for failing to comply with the lawful order; and
  - d. Give the person the opportunity to comply with the officer's lawful order.
2. If the person does not comply with a lawful order to stop interfering with or obstructing the officer in lawfully executing the officer's duties, the officer shall notify the officer's supervisor.



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3. Violation of City Ordinance § 12-2-19 and N.M.S.A. § 30-22-1 are non-violent misdemeanors for which a citation or summons, rather than an arrest, is appropriate.

4.

As an alternative to arresting an onlooker who is in violation of City Ordinance Section 12-2-19 or other related offenses (State Statute 30-22-1) officers may order onlookers to "move on"; however, the person shall not be ordered to move any farther distance than is necessary to end a violation. Persons who believe that an officer did not comply with the provisions of this order shall be referred to an appropriate supervisor. Complaints by onlookers shall be referred to the officer's supervisor.



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Effective: 01/13/16 Review Due: 01/13/17 Replaces: 04/27/15

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- a. The suspect objects to persons overhearing the conversation.
  - b. There is a specific and articulable need for confidential conversation for the purpose of police interrogation.

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#### [7] D. Bystander Filming of Officer-Suspect Contacts

1. Bystanders have the right to record police officer enforcement activities by camera, video recorder, or other means (except under certain circumstances as set forth in Sections A and B above).
2. An officer shall not seize, compel or otherwise coerce production of these bystander recordings by any means without first obtaining a warrant. Without a warrant, an officer may only request, in a non-coercive manner, that a bystander voluntarily provides the film or another recording.



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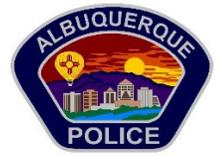
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E. Violations/Compliance

As an alternative to arresting an onlooker who is in violation of City Ordinance Section 12-2-19 or other related offenses (State Statute 30-22-1) officers may order onlookers to "move on"; however, the person shall not be ordered to move any farther distance than is necessary to end a violation. Persons who believe that an officer did not comply with the provisions of this order shall be referred to an appropriate supervisor.

Policy Development Form  
Office of Policy Analysis



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SOP: 2-33 Rights of Onlookers

Date Completed: 7/11/18

In order to gain a clear understanding of the reason for the policy change, please answer the questions below with as much detail as possible as this information will be shared with internal and external stakeholders interested in participating in APD's policy development process.

Explain the rationale or purpose for the new policy or amended policy? Example: Best practices, case law, liability, conflicts with other policies or regulations, CASA related.

Policy due for review

Check for wordiness.

Remove Section B. (redundant)

Include Cell phones in recording devices list (D1)

Include evidentiary value to collected devices/recordings.

Reword Section E

What is the policy intended to accomplish? Explain the general intent with respect to the specific topic of the policy.

Rights of Onlookers

How will the policy be measured to determine its effectiveness? (Example: Will data be collected, if so, in what format and who will maintain the information?)

N/A

Please list any references used to draft the policy such as policies from other agencies, case law, directives from the CASA, research papers, etc.

N/A

Please submit this form to [OPA@cabq.gov](mailto:OPA@cabq.gov)

If you need assistance completing this form, and for any questions or concerns please contact your SOP liaison @ [adgarcia@cabq.gov](mailto:adgarcia@cabq.gov).

Updated 06/20/2018

Policy Development Form  
Office of Policy Analysis



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