



2-71 SEARCH AND SEIZURE WITHOUT A WARRANT

Related SOP(s), Form(s), Other Resource(s), and Rescinded Special Order(s):

A. Related SOP(s)

 2-43 Roadblocks and Checkpoints

B. Form(s)

 ~~(Placeholder)~~ Tow-In Report

C. Other Resource(s)

 None

D. Rescinded Special Order(s)

 SO 21-89 Amendment to SOP 2-71 Search and Seizure without a Warrant

2-71-1 Purpose

The purpose of this policy to provide sworn personnel with duties and responsibilities in regards to a search and seizure without a warrant. e...

2-71-~~24~~ Policy

It is the policy of the Albuquerque Police Department (Department) policy is to provide sworn personnel with guidelines to conduct warrantless searches and seizures that uphold individual civil rights, protect sworn personnel and others, and govern the collection of evidence.

N/A 2-71-3 Definitions

A. Actual Authority

An individual with access and control over property, such as a residence, a vehicle, or belongings.

~~A. who~~

B. Apparent Authority to Consent

When an individual appears to have access and control over property, but in fact does not.

C. Common Authority

Mutual use of the property by persons generally having joint access or control for most purposes.



~~(2)~~

D. 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 ~~which 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.

E. Consensual Encounter

~~B.~~ An encounter between an officer and a community member in which the community member reasonably believes they are free to leave. Without reasonable suspicion or probable cause, an officer must allow an individual to leave.

F. Consent

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 Consent may be withdrawn at any time.

—Curtilage

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

G.

H. 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 individual, or the destruction of evidence. An emergency situation(s) requiring swift action to prevent imminent danger to life, to forestall the imminent escape of an individual, or the destruction of evidence.~~

—Field Interview

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

I. Inventory Search

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



~~C.~~

~~D.A. Reasonable Suspicion~~

~~An objectively justifiable suspicion that is based on specific facts or circumstances and that justifies stopping a person thought to be involved in criminal activity at the time. A police officer stopping a person must be able to point to specific facts or circumstances even though the level of suspicion need not rise to that of the belief that is supported by probable cause. A reasonable suspicion is more than a hunch.~~

~~E.A. 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.~~

~~F.A. 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.~~

~~G.J. Pat-Down (Terry Frisk)~~

~~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. A "frisk" or pat-down may be conducted only if the officer has reasonable suspicion the individual is armed and dangerous.~~

~~K. Plain-Feel~~

~~The principle that allows an officer to further inspect an object discovered during a lawful pat-down when the officer has reasonable suspicion to believe the object is contraband or the object is a weapon and the individual is dangerous.~~

~~If, during a lawful pat down of outer clothing, the officer feels an object that is immediately apparent to be a weapon or contraband, or evidence of a crime, the officer may search for the object and seize it. The plain-feel of the object provides probable cause for the search and seizure.~~

~~H.L. Consent~~

~~A voluntary statement, verbal or written, giving officers permission to search a person,~~



~~premises, or items. Consent may be withdrawn at any time.~~
Probable Cause

1. Probable Cause to Arrest (Seize)

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

2. Probable Cause to Search

When facts and circumstances within an officer's knowledge, or, on which an officer has reasonably trustworthy information, are sufficient to warrant a reasonable person to believe that items related to the crime under investigation will be found in the place to be searched.

Protective Sweep

A quick and limited search for individuals who might pose a threat to sworn personnel, allowed only during the course of an arrest or immediately after an arrest, of the rooms immediately adjoining the area of an arrest. ~~A quick limited search of a premises, 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; this includes the immediate area within reach of the detained person(s) which may contain weapons.~~

M.

N. Reasonable Suspicion

An objectively justifiable suspicion that is based on specific facts or circumstances and that justifies stopping an person/individual thought to be involved in criminal activity at the time. A police officer stopping an person/individual must be able to point to describe specific facts or circumstances even though the level of suspicion need not rise to the level that of the belief that is supported by of probable cause. A reasonable suspicion is more than a hunch ~~en but less than.~~

O. Road Block

Intentional obstruction of traffic for the safety of the community.

Scope of Consent

J.P.

Terry Stop (Field Interview)

The brief detention of an individual who is on foot or in a vehicle that is based on reasonable suspicion that a violation of law has occurred or is occurring. A Terry Stop



is for the limited purpose of determining the individual's identity and confirming or dispelling an officer's suspicions.

~~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.~~

~~K. 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.~~

~~L. Protective Sweep~~

~~A quick limited search of a premises, 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; this includes the immediate area within reach of the detained person(s) which may contain weapons.~~

~~M.A. Curtilage~~

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

~~N.A. 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, which 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.~~

6 2-71-43 ~~Rules and Procedures~~

A. Approach and Consensual Encounter

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

a. The approach occurs in public or a place where the officer has a right to be;

~~a.b.~~ _____ The officer is not violating the law at the time;

~~b.c.~~ _____ The officer approaches in a non-threatening manner; and

d. The ~~person~~ individual approached is free to leave or remain silent with no threat of coercion or detention from the officer.

2. An approach as described in this Standard Operating Procedure (SOP) is not to be made for the purposes of running a warrant check, attempting to develop a basis for a Terry Stop, or instigating an event that would create the basis for an arrest,



Frisk. The test to be applied is whether all facts under the totality of the circumstances amount to reasonable suspicion.

~~h.~~ Factors to consider when determining whether there is reasonable suspicion to believe that an individual is armed and dangerous for a pat-down may include the following should be conducted:

~~i.~~
b.

~~i.~~ i. The type of crime suspected, particularly in crimes of violence where the use or threat of deadly weapons is involved;

ii. The appearance and demeanor of the individual such as nervousness, shaking, failure to make eye contact, or other behaviors that are not cultural;

iii. Visual indications that suggest the individual is carrying a firearm or other weapon;

~~k.~~ iv. When more than one suspect individual must be handled by a single officer;

~~l.~~ v. The hour of the day and the location or neighborhood where the stop takes place;

~~m.~~ vi. Prior knowledge of the individual's past use of force and/or a propensity to carry a firearm or other weapons; and

~~n.~~ i. ~~The appearance and demeanor of the suspect such as nervousness, shaking, failure to make eye contact, or other behaviors that are not cultural;~~

~~o.~~ Visual indications that suggest the suspect is carrying a firearm or other weapon;

vii. The age and gender of the individual. Whenever possible, pat-down searches should be performed by sworn personnel of the same sex.

~~p.~~ c. Sworn personnel shall document their reasonable suspicion in the Computer-Automated Aided Dispatch (CAD) or a Uniform Incident Report.

~~2.~~ 6. An officer may request a voluntary statement, verbal or written, giving the officer permission to search the person, ~~in accordance~~ consistent with this Standard Operating Procedure (SOP).

N/A

C. Road Block

1. Sworn personnel shall refer to SOP Roadblocks and Checkpoints for the procedures regarding road blocks, sanction classifications and additional duties.

~~1. Any enforcements, road blocks, or checkpoints must be approved by the traffic division commander.~~

~~2. An emergency roadblock may be put in place for the purpose of capturing a fleeing felon.~~

D. Vehicle Inventory Search

1. When Department personnel request that a vehicle is towed under 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. Sworn personnel shwill use the following criteria when an inventory search is conducted:

- a. The vvehicle(s) must be in lawful police custody;
- b. The tow Mmust be reasonable and conducted in good faith;
- c. ~~It will s~~Shall be conducted by sworn personnel or ~~public~~ Police safety Service Aides (PSA) ~~in accordance~~ consistent with their training and Department ~~SOP(s) standard operating procedures~~;
- d. Inventory searches shwill be conducted at or near the time the vehicle was lawfully placed within police custody, and 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~~ consistent with the Department SOP; and
- e. ~~An~~ The inventory search shwill be documented and become part of the ~~original Offense/Incident~~ Uniform Incident Report.
 - i. If the vehicle is towed, an inventory search shwill be conducted ~~of the vehicle and~~ shwill be documented on the ~~Tow-In Report form.~~

E. Vehicle Searches Under the A“Automobile EException”

1. Warrantless search of a vehicle under the ~~a~~“Automobile eException” requires:

- a. An articulable legal justification for stopping the vehicle;
- b. ~~That there is a~~ There be a reasonable basis for believing an automobile will be moved or its search will be compromised by the delay in getting a warrant. Otherwise, a warrant is required before searching the vehicle;
- c. Probable cause to believe that the vehicle contains contraband or evidence ~~Exigent circumstance search 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 requiring swift action to prevent immediate loss or destruction of evidence.~~
- d. The officer can articulate exigent circumstances requiring swift action to prevent immediate loss or destruction of evidence.
- ~~e.~~ The scope of an exigent circumstance a warrantless search shall be limited to the exigent circumstance requiring swift action to prevent immediate loss or destruction of evidence areas where there is probable cause to believe the evidence could be located.
 - ~~i.~~ If the exigent circumstance probable cause exists that the vehicle is being used to harbor an felon individual, you the officer cannot search anywhere within the vehicle that an person individual could not hide, i.e., under the seat, within the glove box, etc.



~~iii.ii. If the exigent circumstance probable cause exists that a weapon that poses an immediate danger to sworn personnel or others, is within the vehicle that poses an immediate danger to sworn personnel or others, and the weapon may be accessible to the occupants, including removed occupants, of the vehicle, the officer may search any area where the weapon may be obtained by the individuals and seize the weapon for the duration of the encounter. ~~remove all persons from the vehicle in accordance with their training and wait for a search warrant before searching the vehicle for the weapon.~~~~

After a lawful stop of a vehicle,

- ~~f. A police officer may conduct a plain view inspection of the vehicle without entering it 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 consistent with this Department SOP; and~~
- ~~f.g. If an officer can remove individuals and seal the vehicle for a subsequent search warrant, there is no exigency permitting a warrantless search.~~

F. Search Incident to Lawful Arrest

1. A warrantless search can be conducted pursuant to a lawful arrest. Such a search ~~must~~ shall be conducted during or very near the time and place of the arrest and ~~must~~ shall be limited in scope to:
 - a. Searching the arrested ~~person~~ individual and any containers discovered on ~~his/her~~ their person, or within the arrested ~~person's~~ individual's control if the officer has reason to believe the containers belong to or were used by the arrested ~~person~~ individual;
 - b. Searching the immediate area within the ~~arrestee's~~ individual's control and from which the individual could gain possession of a weapon or evidence; and
 - c. Searching the interior of the vehicle excluding the trunk, glove box, or any containers found in the vehicle if an individual ~~person~~ is removed from a vehicle and placed under arrest. Any containers found on the arrestee can be searched, ~~and~~
 - ~~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 individual and the vehicle in accordance consistent with the Department SOP.~~

G. Other Situations Involving Search and Seizure Without a Warrant

1. Plain View
 - ~~a. When an officer observes evidence of a crime or contraband in plain view from a public place such as a sidewalk or a street. Under the plain view exception to the warrant requirement, items may be seized without a warrant if sworn~~



personnel were lawfully positioned when the evidence was observed, and the incriminating nature of the evidence was immediately apparent, such that sworn personnel have probable cause to believe that the article seized was evidence of a crime.

- i. If sworn personnel observe evidence of a crime or contraband from outside of an area protected by an expectation of privacy, such as a residence or vehicle, sworn personnel should obtain a warrant to search the area and seize the contraband or evidence.
- ii. If sworn personnel are lawfully inside a residence when they observe contraband or evidence of a crime, sworn personnel may seize the contraband or evidence.
- iii. Sworn personnel must be able to see the evidence or contraband without moving items.

—The incriminating nature of the evidence must be apparent from its outward appearance.

~~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.~~

iv.

2. Abandonment

a. An ~~subject~~ individual 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.

i.

~~Example: When an ~~person~~ individual sees an officer and discards a bag of drugs contraband or evidence onto the ground, sworn personnel may seize it.~~

ii. When an individual claims an item is not theirs and no owner is apparent, it is abandoned and may be seized and searched.

3. Verbal Consent

—Sworn personnel may request a voluntary statement, (verbal or written,) giving the officer permission to search the individual and the vehicle consistent with the Department SOP.

a.

~~3.~~4. Open Fields and Curtilage

- a. Open fields surrounding a ~~home~~ residence are not constitutionally protected from a warrantless search or seizure.
- b. The curtilage surrounding a ~~home~~ residence is constitutionally protected from a warrantless search and seizure.



c. Factors to consider when determining whether a specific location is within the curtilage of a residence:

- ~~ii.~~ i. The proximity of the location to the ~~house~~ residence;
- ~~iii.~~ ii. Whether the same enclosure surrounding the ~~house~~ residence also encloses the location;
- ~~iv.~~ iii. The uses of the location; and
- ~~v.~~ iv. The steps ~~are~~ taken to protect the location from observation by passersby.

4.5. Hot Pursuit

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

- ~~ii.~~ i. The ~~person~~ individual sought is on the premises they wish to enter; ~~and~~
- ~~iii.~~ ii. The ~~person~~ individual sought will escape or harm someone, or destroy evidence unless a warrantless entry is made; and
- iii. 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.

6. Consent

a. Sworn personnel may request an individual's consent to search ~~an~~ that individual.

~~Sworn personnel may request an individual's consent to search property provided that the individual has authority to give consent from an individual with actual authority over the property.~~

b. ~~Sworn personnel shall verify that individual who consents has actual authority over the property to be searched~~

- i. An individual has actual authority to consent to search property when the individual has access to the property, and when the individual exercises control over the property.
- ii. An individual cannot consent to a search of an area if they do not have access and control over that area. Common examples of people who may not consent to a search include:
 - 1. A motel operator who has rented a room for the night;
 - 2. A landlord who does not have permission to use the tenant's property;
 - 3. A parent of an adult child who does not have access and control of the adult child's room; and
 - 4. An overnight guest in a house that belongs to someone else.
- iii. If multiple people have common authority over property, and one objects, then sworn personnel shall not conduct a search based on consent.



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PROCEDURAL ORDERS

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- ~~Sworn personnel shall not conduct a search when an individual with actual authority objects, even if another individual with actual authority consents.~~
- c. Sworn personnel shall verify that individual who consents has actual authority over the property to be searched by determining the consenting individual's relationship to the property to be searched.
 - i. Sworn personnel shall ask questions to determine if whether the consenting individual has access and control over the property to be searched.
 - d. Sworn personnel shall not assume the consenting individual has authority to consent to a search.
 - e. When requesting consent, sworn personnel shall only state that they will obtain a search warrant if they have probable cause to support an affidavit for a search warrant.
 - f. If an individual grants consent to search, sworn personnel shall:
 - i. State exactly what they intend to search;
 - ii. ~~and~~ Confirm the individual consents;
 - iii. Only search what the individual agreed to; and
 - iv. Discontinue the search if the individual withdraws consent.
- ~~their~~

~~J.H.~~ Protective Sweep for Individuals ~~Persons~~

1. The courts allow a protective sweep based on concerns for officer safety following an arrest. A protective sweep is a very limited search. Its purpose is to protect the safety of sworn personnel and others, and it is narrowly confined to a cursory visual inspection of those places in which an individual might be hiding.
2. The following requirements shall be met to conduct a protective sweep:
 - a. A protective sweep is only allowed after an arrest;
 - b. The protective sweep is only of areas and rooms immediately adjoining the space in which the arrest occurred;
 - i. In a building, this means the rooms and closets that share walls with the room in which the arrest occurred.
 - c. The sweep is cursory, meaning quick and limited; and
 - i. The sweep must be no longer than is necessary to dispel the reasonable suspicion of danger, and no longer than it takes to complete the arrest and depart the premises.
 - d. The sweep is limited to areas in which an individual could be hiding.
3. A protective sweep may be expanded beyond immediately adjoining spaces where there is reasonable suspicion to believe the area to be swept harbors an individual posing a danger to those on-scene. There must be reasonable suspicion that:
 - a. The area harbors an individual; and
 - b. That individual poses a danger to sworn personnel.



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~~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. Protective sweeps shall not be used to search for evidence.~~

REDLINED