



ALBUQUERQUE POLICE DEPARTMENT
PROCEDURAL ORDERS

SOP 2-33

Effective: 08/05/2020 Review Due: 08/05/2021 Replaces: 01/13/16

2-33 RIGHTS AND SAFETY OF ONLOOKERS

Related SOP(s), Form(s), Other Resource(s), and Rescinded Special Order(s):

A. Related SOP(s)

[2-68 Interviews and Interrogations](#)

[2-73 Submission of Evidence, Confiscated Property, and Found Items](#)

[2-80 Arrests, Arrest Warrants, and Booking Procedures](#)

[3-41 Complaints Involving Department Policy or Personnel](#)

B. Form(s)

None

C. Other Resource(s)

N.M. Stat. Ann. §§ 10-16F-1 – 10-16F-6 Electronic Communications Privacy Act

D. Rescinded Special Order(s)

None

2-33-1 Purpose

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

2-33-2 Policy

It is the policy of the Albuquerque Police Department (Department) to establish rules for Department personnel to protect the rights and safety of onlookers during witness stops, detentions, arrests, and officer-suspect contacts.

2-33-3 Definitions

A. Onlookers

A person who is not a witness and is a non-participating observer or spectator.

B. Witness

For this policy, the term “witness” shall be defined as any individual who sees, hears or otherwise has information relevant to the investigation, such as audio or visual recordings, of a criminal act or major event. Further, this term shall only apply to individuals for whom there is no reasonable suspicion or probable cause to believe these individuals are committing a crime.



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2-33-4 Rules

7 A. Citizens Witnessing Any Citizen-Officer Contacts, Detentions, or Arrests

1. Persons not involved in an incident 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:
 - a. When the safety of the officers, victims, suspects, or others could be jeopardized;
 - b. When persons interfere with officers lawfully exercising their duties, or violate the law; and
 - c. When persons threaten violence or illegal activity by words or actions, or attempt to incite others to violate the law.
2. It is entirely reasonable for officers to want to protect the privacy of victims or witnesses, but this should be accomplished only by such means as shielding victims or interviewing witnesses in private areas whenever possible. If interviews are conducted in a place that is legally accessible to the public, conversations are open to recording by the public and the media. Persons who are audio and/or video recording must be provided the same allowances and restrictions as others who are not recording.

B. Inquiries

7 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. Onlooker Filming of Officer-Suspect Contacts

1. Onlookers have the right to record police officer enforcement activities by camera, cell phone, video recorder, or other means. Officers must allow onlookers to record officer/public encounters (except under the exceptions set forth in Section 2-33-3(A) above).
2. An officer may view or seize an onlooker recording if consent is provided. If consent is not granted, an officer shall not compel or otherwise coerce production of these onlooker recordings by any means, without first obtaining a warrant pursuant to the Electronic Communications Privacy Act or unless exigent circumstances exist.
 - a. If an onlooker refuses to voluntarily provide the recording, an officer may request the person's identity in order to secure a warrant.



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- b. Exigent circumstances to seize a recording or warrants to seize a recording must be based on probable cause to believe that a recording has captured evidence of a crime.
- c. Any collected recording/equipment will be treated as evidence and tagged consistent with SOP Submission of Evidence, Confiscated Property, and Found Items.

E. Violations of Ordinance or Statute

1. If reasonably possible, officers should refrain from taking enforcement actions such as arrest, issuance of citations, or taking other actions to restrict recordings.
2. Any enforcement action taken against an onlooker shall be based on objective, articulable violations of the law that are unrelated to the act of recording alone.
3. Recording the police does not, of itself, establish legal grounds for enforcement actions.
4. If feasible, the officer shall:
 - a. Provide a warning that the person is violating an ordinance or statute and direct them to "move on" prior to taking enforcement action;
 - i. The person shall not be ordered to move any farther distance than is necessary to end a violation.
 - b. Prior to taking enforcement action, issue a lawful order to the person to stop obstructing or interfering with the officer's lawful discharge of the officer's duties;
 - i. Give the person the opportunity to comply with the officer's lawful order.
5. If enforcement action is necessary, the officer should take appropriate action in accordance with SOP Arrests, Arrest Warrants and Booking Procedures, and existing law.
 - a. If the onlooker was combative or uncooperative, a supervisor shall be notified as soon as possible.
6. Persons who believe that an officer has not complied with this section will be referred to an appropriate supervisor, consistent with SOP Complaints Involving Department Policy or Personnel.