



ALBUQUERQUE POLICE DEPARTMENT  
PROCEDURAL ORDERS

SOP 2-71

Effective: 4/26/18 Review Due: 4/26/19 Replaces: 11/29/17

## 2-71 SEARCH AND SEIZURE WITHOUT A WARRANT

### 2-71-1 Policy

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

### 2-71-2 Definitions

#### 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 the level of probable cause. A reasonable suspicion is more than a hunch.

#### B. 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. The refusal of an individual to provide consent to search a person, premises or items does not provide probable cause or reasonable suspicion of criminal activity.

#### C. Field Interview

The brief detention 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.

#### D. 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. A pat down does not allow a search of items an individual may be carrying such as a backpack, purse, etc., or an item that an individual may be pushing or pulling such as a shopping cart.

#### E. Consent

A voluntary statement, verbal or written, giving officers permission to search a person, premises, or items. Consent may be withdrawn at any time. Consent will not be found to be voluntary if determined to be the result of the use of threats,



ALBUQUERQUE POLICE DEPARTMENT  
PROCEDURAL ORDERS

SOP 2-71

Effective: 4/26/18 Review Due: 4/26/19 Replaces: 11/29/17

force or coercion to obtain consent. Also, certain individuals, such as those who have a mental disability, may be found not to be capable of giving consent.

F. Exigent Circumstances

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

G. Inventory Search

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

H. 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.

I. Curtilage

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

J. Community Caretaker / Welfare Check

An officer may stop a vehicle or enter a premises or curtilage without a warrant or probable cause when the officer has specific articulable safety concerns that an individual might be in physical danger or in need of immediate assistance. Such encounters must be done in good faith without the intent to investigate criminal activity or effect an arrest or detention. In those instances where an officer is conducting a welfare check on an individual based on a request by that individual's treating mental health professional or the individual's family, officers should contact a Mobile Crisis Team if available. These encounters are not for the purposes of investigating criminal activity or to effect an arrest.

K. Emergency Mental Health Detention and Transportation

An officer may detain and transport a person to a mental health evaluation facility without a warrant or reasonable suspicion if the officer has reasonable grounds to believe, based on his/her own observation and investigation, that the person, as a result of a mental disorder, presents a likelihood of serious harm to himself or herself or to others and that immediate detention is necessary to prevent such harm. "Likelihood of serious harm to himself or herself" includes serious harm by grave



ALBUQUERQUE POLICE DEPARTMENT  
PROCEDURAL ORDERS

SOP 2-71

Effective: 4/26/18 Review Due: 4/26/19 Replaces: 11/29/17

passive neglect. Such encounters are not arrests and the officer may not transport the person to a jail or other detention facility.

## 2-71-3 Rules and Procedures

### A. Approach

1. An officer may approach an individual without either 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.
2. An approach as described above 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, in those instances where an individual appears to an officer to be homeless, or to be experiencing symptoms of a mental disorder. This does not prevent an officer from assisting such an individual in obtaining medical treatment of that individual's choosing or from otherwise rendering aid to that individual.

### B. Stop and Frisk (Terry Stop)

1. 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 officer's 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:
  - a. The appearance or demeanor of an individual suggests that he/she is part of a criminal enterprise or is engaged in a criminal act;
  - b. The hour of day or night is inappropriate for the suspect's presence in the area;
  - c. The suspect's presence in a location is inappropriate;
  - d. The suspect is carrying a suspicious object;
  - e. The suspect's clothing bulges in a manner that suggest he/she is carrying a weapon;
  - f. The suspect is located in proximate place and time to the alleged crime;
  - g. The officer has knowledge of the suspect's prior criminal record or involvement in criminal activity; and
  - h. A Terry Stop may not be conducted solely because an individual appears to be homeless or to have a mental disorder.
2. A pat down may only be conducted when the officer has a reasonable, articulable belief that a person may be presently armed and dangerous.



ALBUQUERQUE POLICE DEPARTMENT  
PROCEDURAL ORDERS

SOP 2-71

Effective: 4/26/18 Review Due: 4/26/19 Replaces: 11/29/17

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

- a. The type of crime suspected, particularly in crimes of violence where the use or threat of deadly weapons is involved;
  - b. When more than one suspect must be handled by a single officer;
  - c. The hour of the day and the location or neighborhood where the stop takes place;
  - d. Prior knowledge of the suspect's past use of force and/or a propensity to carry a firearm or other weapons;
  - e. The appearance and demeanor of the suspect such as nervousness, shaking, failure to make eye contact, or other behaviors that are not cultural;
  - f. Visual indications that suggest the suspect is carrying a firearm or other weapon;
  - g. The age and gender of the suspect. Whenever possible, pat down searches should be performed by officers of the same sex.
3. An officer may request a voluntary statement, verbal or written, giving the officer permission to search the person in accordance with this SOP.

C. Road Block

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 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. 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 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; and



ALBUQUERQUE POLICE DEPARTMENT  
PROCEDURAL ORDERS

SOP 2-71

Effective: 4/26/18 Review Due: 4/26/19 Replaces: 11/29/17

- 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.

E. Vehicle Searches Under the “Automobile Exception”

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

- a. An articulable legal justification for stopping the vehicle.
- b. Probable cause to believe the vehicle contains evidence of a crime or contraband.
- c. Exigent circumstances require an immediate search or there is a reasonable basis for believing an automobile will be moved or its search will be compromised by the delay. Otherwise, a warrant is required before searching the vehicle.
- d. 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 immediate action to prevent imminent loss or destruction of evidence.
- e. The scope of an exigent circumstance search shall be limited to the exigent circumstance requiring immediate action to prevent immediate loss or destruction of evidence.
  - i. If the exigent circumstance exists that the vehicle is being used to harbor a felon, you cannot search anywhere within the vehicle that a person could not hide, i.e. under the seat, within the glove box, etc.
  - ii. If the exigent circumstance exists that a weapon is within the vehicle that 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 before searching the vehicle for the weapon.
- f. 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.

F. Search Incident to Lawful Arrest

1. 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 person's control if the officer has reason to believe the containers belong to or were used by the arrested person;
  - b. Searching the immediate area within the arrestee's control;



ALBUQUERQUE POLICE DEPARTMENT  
PROCEDURAL ORDERS

SOP 2-71

Effective: 4/26/18 Review Due: 4/26/19 Replaces: 11/29/17

- 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; and
- f. An officer must request a voluntary statement (verbal or written) giving the officer permission to search the person and the vehicle in accordance with the Department SOP.

### G. Other Situations Involving Search and Seizure

#### 1. 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 seize the contraband.

#### 2. 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.

#### 3. Open Fields and Curtilage

- a. Open fields surrounding a home are not constitutionally protected from a warrantless search or seizure.
- b. The curtilage surrounding a home 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:
  - i. The proximity of the location to the house;
  - ii. Whether the same enclosure surrounding the house also encloses the location;
  - iii. The uses of the location;
  - iv. The steps taken to protect the location from observation by passersby;
  - v. Any other indication that the premises owner has taken steps to protect the privacy of the area such as erecting fences or posting no trespass signs.



ALBUQUERQUE POLICE DEPARTMENT  
PROCEDURAL ORDERS

SOP 2-71

Effective: 4/26/18 Review Due: 4/26/19 Replaces: 11/29/17

4. Hot Pursuit

- a. The hot pursuit doctrine permits warrantless entries of a 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:
  - i. The person sought is on the premises they wish to enter;
  - ii. The person 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.

H. Protective Sweep for Persons

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, within a reasonable proximity of the arrestee. Protective sweeps shall not be used to search for evidence.