



## 2-33 RIGHTS AND SAFETY OF ONLOOKERS

### Related SOP(s), Form(s), Other Resource(s), and Rescinded Special Order(s):

A. Related SOP(s)

[2-8 Use of On-Body Recording Devices \(Formerly 1-39\)](#)

[2-68 Interviews and Interrogations \(Formerly 2-23\)](#)

[2-73 Submission of Evidence, Confiscated Property, and Found Items \(Formerly 2-08\)](#)

[2-80 Arrests, Arrest Warrants, and Booking Procedures \(Formerly 2-14\)](#)

[3-41 Complaints Involving Department Personnel \(Formerly 3-22 and 3-43\)](#)

B. Form(s)

None

C. Other Resource(s)

NMSA 1978, §§ 10-16F-1 – 10-16F-6 Electronic Communications Privacy Act

D. Rescinded Special Order(s)

None

### 2-33-1 Purpose

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.

N/A

### 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 person 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



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individuals for whom there is no reasonable suspicion or probable cause to believe these individuals are committing a crime.

**6** 2-33-4 **Rules**

A. Community members Witnessing Any Community member-Officer Contacts, Detentions, or Arrests

1. Sworn personnel shall allow people who are not involved in an incident to remain in the immediate vicinity to witness stops, detentions, and arrests of suspects occurring in public areas, and shall allow them to overhear and record the encounter between the individual and the officer, except under the following circumstances:

- a. When the safety of sworn personnel, victims, individuals, or others could be jeopardized;
- b. When persons interfere with sworn personnel lawfully exercising their duties, or violate the law;
- c. When persons threaten violence or illegal activity by words or actions, or attempt to incite others to violate the law; and
- d. Sworn personnel shall comply with the Department Standard Operating Procedures (SOP) regarding use on-body recording devices (OBRD) and mandatory recording incidents (refer to SOP Use of On-Body Recording Devices for sanction classifications and additional duties).

N/A

2. It is entirely reasonable for sworn personnel to want to protect the privacy of victims or witnesses, but this may be accomplished only by such means as shielding victims or interviewing witnesses in private areas whenever possible.

- a. 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

If a community member is a witness to the activity for which the individual was detained or arrested, the officer may request their name; however, the community member is not required to disclose such information.

C. Onlooker Filming of Officer-Suspect Contacts

1. Onlookers have the right to record sworn personnel enforcement activities by camera, cell phone, video recorder, or other means. Sworn personnel must allow onlookers to record officer/public encounters, except under the exceptions set forth in this SOP.



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2. An officer may view or obtain an onlooker recording if consent is provided.
  - a. If consent is not granted, an officer shall not compel or otherwise coerce production of the onlooker's recordings by any means, without first obtaining a warrant, pursuant to the Electronic Communications Privacy Act, or unless exigent circumstances exist.
  - b. If an onlooker refuses to voluntarily provide the recording, an officer may request the person's identity in order to secure a warrant.
    - i. 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. The officer shall treat any collected recording/equipment as evidence and shall tag the evidence as outlined in SOP Submission of Evidence, Confiscated Property, and Found Items (refer to SOP Submission of Evidence, Confiscated Property, and Found Items for sanction classifications and additional duties).

N/A

D. Violation of Laws

1. If reasonably possible, sworn personnel should refrain from taking enforcement actions, such as arrest, issuance of citations, or taking other actions to restrict incidents from being recorded.
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; and
    - i. The officer shall not order the person to move any farther distance than is necessary to prevent them from further violating the law.
  - b. Prior to taking enforcement action, sworn personnel shall direct the person to stop obstructing or interfering with the officer's lawful discharge of their duties.
    - i. The officer shall give the person the opportunity to comply with their direction.

N/A

5. If enforcement action is necessary, the officer should take appropriate action, consistent with SOP Arrests, Arrest Warrants, and Booking Procedures, and existing law (refer to SOP Arrests, Arrest Warrants, and Booking Procedures for sanction classifications and additional duties).
  - a. If the onlooker was combative or uncooperative, the officer shall notify a supervisor as soon as possible.



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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 Personnel.