



ALBUQUERQUE POLICE DEPARTMENT
PROCEDURAL ORDERS

SOP 2-71 (Formerly 2-17) Effective: 04/11/2022 Review: 04/11/2023 Replaces: 04/26/2018

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Related SOP(s), Form(s), Other Resource(s), and Rescinded Special Order(s):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

[2-16 Reports](#)
[2-43 Roadblocks and Checkpoints](#)

B. Form(s)

Tow-In Report

C. Other Resource(s)

NMSA 1978, §§ 26-2C-1 through 26-2C-42 Cannabis Regulation Act
NMSA 1978, § 66-8-102 Driving Under the Influence of Intoxicating Liquor or Drugs;
Aggravated Driving Under the Influence of Intoxicating Liquor or Drugs; Penalties

D. Rescinded Special Order(s)

SO 21-89 Amendment to SOP 2-71 Search and Seizure without a Warrant
SO 21-166 Amendment to SOP 2-71 Search and Seizure without a Warrant;
Reasonable Suspicion

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.

2-71-2 Policy

It is the policy of the Albuquerque Police Department (Department) 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.

B. Apparent Authority to Consent



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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.

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 an individual might be in physical distress or danger, or that the individual needs assistance. Such encounters must be done in good faith without the intent of coercion or detention.

E. Consensual Encounter

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 Consent may be withdrawn at any time.

G. Curtilage

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

H. Emergency Assistance

An officer may conduct a warrantless search of a home where the officer has objectively reasonable grounds to believe that there is an emergency and an immediate need for officer assistance for the protection of life or property. The officer's search must not be primarily motivated by an intent to arrest an individual nor to seize evidence. The officer's motivation for the intrusion must be based on a strong sense of an emergency. There must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched.

I. Exigent Circumstances

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.



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J. Inventory Search

A search of an 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.

K. 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.

L. 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.

M. 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 the individual arrested.

2. Probable Cause to Search

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

N. 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



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immediately adjoining the area of an arrest. The area searched must be large enough to be capable of harboring a person.

O. Real Property

A term applied to land and immovable property on land such as buildings.

P. Reasonable Suspicion

1. 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. None of the following shall, individually or in combination with each other, constitute reasonable articulable suspicion of a crime and is not a basis to stop, detain, or search a person:

- a. The odor of cannabis or cannabis extract or of burnt cannabis or cannabis extract;
- b. The possession of or the suspicion of possession of cannabis without evidence of quantity in excess of two (2) ounces of cannabis, sixteen (16) grams of cannabis extract or eight-hundred (800) milligrams of edible cannabis; or
- c. The possession of multiple containers of cannabis without evidence of quantity in excess of two (2) ounces of cannabis, sixteen (16) grams of cannabis extract or eight-hundred (800) milligrams of edible cannabis.

2. These limitations shall not apply when sworn personnel are investigating whether a person is operating a vehicle while under the influence of or impaired by alcohol or a drug or any combination thereof in violation of NMSA 1978, Section § 66-8-102.

Q. Road Block

Intentional obstruction of traffic for the safety of the community.

R. 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.

6 2-71-4 **Procedures**

5 A. Authority to Make an Arrest, Search, or Seizure

- 1. Sworn personnel shall only make arrests, searches, and seizures which they know or should know are lawful and do so in accordance with related Department Standard Operating Procedures (SOP).



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B. 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;
 - b. The individual is not violating the law at the time;
 - c. The officer approaches in a non-threatening manner; and
 - d. The 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, including those instances where an individual appears to be homeless, or to be experiencing symptoms of a mental disorder.
 - a. 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.

C. Stop and Frisk (Terry Stop)

1. A Terry Stop consists of a brief investigative detention or field interview if there is reasonable suspicion to believe that a crime has occurred or is occurring.
2. No single factor may be sufficient to establish reasonable suspicion for a Terry Stop. The test to be applied is whether all facts under the totality of the circumstances amount to reasonable suspicion.
3. Factors to consider when determining whether there is reasonable suspicion for a Terry Stop include, but are not limited to:
 - a. The appearance or demeanor of an individual suggests that they are part of a criminal enterprise or are engaged in a criminal act;
 - b. The hour of day or night is inappropriate for the individual's presence in the area;
 - c. The individual's presence in a location is inappropriate;
 - d. The individual is carrying a suspicious object;
 - e. The individual's clothing bulges in a manner that suggest they are carrying a weapon;
 - f. The individual is located near the place and time of an alleged crime; and
 - g. The officer has knowledge of the individual's prior criminal record or involvement in criminal activity.



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4. A Terry Frisk or a pat-down may be conducted if there is reasonable suspicion to believe that individual is armed and dangerous.
5. A Terry Frisk consists of a pat-down of an individual's outer garments if, based on the officer's training and experience, the individual detained poses an immediate danger to the safety of sworn personnel or others. It is no more extensive than what is necessary to remove the immediate danger.
 - a. No single factor may be sufficient to establish reasonable suspicion for a Terry Frisk. The test to be applied is whether all facts under the totality of the circumstances amount to reasonable suspicion.
 - b. 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 but are not limited to:
 - 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;
 - iv. When more than one individual must be handled by a single officer;
 - v. The hour of the day and the location or neighborhood where the stop takes place;
 - vi. Prior knowledge of the individual's past use of force and/or a propensity to carry a firearm or other weapons; and
 - vii. The age and gender of the individual. Whenever possible, pat-down searches should be performed by sworn personnel of the same sex.
 - viii. For crimes that have been recognized by the courts to be inherently dangerous and have been supported by case law (refer to *State v. Almanzar* and *State v. Cobbs*).
 - c. Sworn personnel shall document their reasonable suspicion in the Computer-Aided Dispatch (CAD) system or a Uniform Incident Report.
6. Sworn personnel may request a voluntary statement, verbal or written, giving the officer permission to search the individual and the vehicle consistent with this SOP.

N/A D. Road Block

Sworn personnel shall refer to SOP Roadblocks and Checkpoints for sanction classifications and additional duties.

E. 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.



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Sworn personnel shall use the following criteria when an inventory search is conducted:

- a. The vehicle(s) must be in lawful police custody;
- b. The tow must be reasonable and conducted in good faith;
- c. It shall be conducted by sworn personnel or Police Service Aides (PSA) consistent with their training and Department SOP(s);
- d. Inventory searches shall 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. Containers found during an inventory search of a vehicle can be opened if accomplished without damage to the container and the search is consistent with Department SOP; and
- e. An inventory search shall be documented and become part of the Uniform Incident Report.
 - i. If the vehicle is towed, an inventory search shall be conducted and shall be documented on the Tow-In Report.

F. 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. There be a reasonable basis for believing an automobile will be moved or its search will be compromised by 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 of a crime;
 - d. The officer can articulate exigent circumstances requiring swift action to prevent immediate loss or destruction of evidence;
 - e. The scope of a warrantless search shall be limited to the areas where there is probable cause to believe the evidence could be located;
 - i. If probable cause exists that the vehicle is being used to harbor an individual, the officer cannot search anywhere within the vehicle that an individual could not hide, i.e., under the seat, within the glove box, etc.
 - ii. If probable cause exists that a weapon that poses an immediate danger to sworn personnel or others, is within the vehicle, 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.
 - f. After a lawful stop of a vehicle, an 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 consistent with this SOP; and
 - g. If an officer can remove individuals and seal the vehicle for a subsequent search warrant, there is no exigency permitting a warrantless search.



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G. Search Incident to Lawful Arrest

1. A warrantless search can be conducted pursuant to a lawful arrest. Such a search shall be conducted during or very near the time and place of the arrest and shall be limited in scope to:
 - a. Searching the arrested individual and any containers discovered on their person, or within the arrested individual's control if the officer has reason to believe the containers belong to or were used by the arrested individual;
 - b. Searching the immediate area within the 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 is removed from a vehicle and placed under arrest. Any containers found on the arrestee can be searched.

H. Other Situations Involving Search and Seizure without a Warrant

1. Plain View

- a. 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.
 - iv. The incriminating nature of the evidence must be apparent from its outward appearance.

2. Abandonment

- a. An 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. When an individual sees an officer and discards contraband or evidence, 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. Open Fields and Curtilage



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- a. Open fields surrounding a residence are not constitutionally protected from a warrantless search or seizure.
- b. The curtilage surrounding a 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:
 - i. The proximity of the location to the residence;
 - ii. Whether the same enclosure surrounding the residence also encloses the location;
 - iii. The uses of the location; and
 - iv. The steps taken to protect the location from observation by passersby.

4. Hot Pursuit

- a. The hot pursuit doctrine permits warrantless entries of premises when individuals have fled the officer. Sworn personnel must have probable cause to believe the individual they are pursuing has committed an act of domestic violence or a felony and they have reasonable grounds to believe that:
 - i. The individual sought is on the premises they wish to enter;
 - ii. The 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.

5. Consent

- a. Sworn personnel may request an individual's consent to search that individual.
- b. Sworn personnel may request an individual's consent to search property provided that the individual has authority to give consent.
 - 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.
 - iv. Consent to search can apply to real property, as well as containers, personal property, such as a backpack, a brief case, or a purse.



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- 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 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. Confirm the individual consents;
 - iii. Only search what the individual agreed to; and
 - iv. Discontinue the search if the individual withdraws consent.
- g. Sworn personnel shall document the factual circumstances of the consent given in their Uniform Incident Report (refer to SOP Reports for sanction classifications and additional duties).

N/A

I. Protective Sweep for Individuals

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. Sworn personnel shall request verbal consent to perform a sweep for their safety and others.
4. 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



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- b. That individual poses a danger to sworn personnel.
5. The requirement to obtain verbal consent does not prevent sworn personnel from conducting a protective sweep during the course of an investigation if they feel they or others might be in danger.