



**Las Cruces Police Department
GENERAL ORDERS
FIELD OPERATIONS VOLUME 2
GO-290 LEGAL ISSUES
Revised 5/13/2005**

290 LEGAL ISSUES

DISCUSSION

Departmental employees shall keep all public contacts within the legal parameters set forth within the United States Constitution. Persons who have had their property seized, or who have themselves been seized, shall be afforded all due process guarantees provided to them by the Constitution of this state and the Constitution of the United States.

POLICY

It is the policy of the Las Cruces Police Department to treat all persons equally and without regard to their race or ethnicity. Except where race or ethnicity is part of an identifying description or characteristic of a possible criminal suspect, any decision made by personnel of this Department regarding whether to stop, question, search or arrest a person solely on the basis on his or her race or ethnicity, constitutes racial profiling and is expressly prohibited.

290.01 SEARCH AND SEIZURE

The Fourth Amendment to the U.S. Constitution guarantees all citizens the right to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. U. S. Supreme Court decisions regarding searches and seizures place the responsibility on the police to ensure that a citizen's Fourth Amendment rights are not violated. Further, the New Mexico Supreme Court has deviated from the U. S. Supreme Court by affording greater protection to citizens with regard to search and seizure issues. Officers shall observe constitutional guidelines as interpreted by the U.S. Supreme Court, the Tenth Circuit Court of Appeals and the New Mexico courts when making seizures of persons or property and when conducting searches of persons or property.

290.02 DEFINITIONS

Arrest: An arrest occurs when a person is taken into custody and is not free to leave, for the purpose of criminal prosecution or interrogation.

Probable Cause: Facts and circumstances that would lead a reasonable person to believe a crime is being, has been or will be committed and that the person to be arrested is committing, has committed or will commit that crime.



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Reasonable Suspicion: More than a hunch and less than probable cause; articulable reasons to suspect that criminal activity is ongoing, and that the person stopped is involved in that criminal activity.

Search: Law enforcement examination of an area or item in which a person has a reasonable expectation of privacy.

Search Warrant: An order in writing issued in the name of the State of New Mexico, signed by a Municipal, Magistrate, or a District Court judge directed to a peace officer, commanding the peace officer to search for personal property, persons or items described within the warrant.

Seizure: When an officer, by words or conduct, interferes with a person's right to continue on with their private business.

Stop: A temporary detention of a person for investigation. A stop occurs when an officer uses police authority either to compel a person to halt, to remain in a certain place, or to perform some act (such as walking to a nearby location where the officer can use a radio or telephone). When a reasonable person would believe he or she is not free to leave, a stop has occurred.

Voluntary Contact: Face-to-face communication between an officer and a citizen when the citizen is free to leave. A voluntary contact may be made for any reason.

290.03 SEIZURES

The Fourth Amendment prohibits unreasonable seizures of persons or property. With regard to seizures of persons, the United States Supreme Court has determined that a person may be seized by an officer only when the officer has reasonable suspicion or probable cause to believe that the person is engaged in criminal activity.

290.04 VOLUNTARY CONTACTS

An officer may initiate a voluntary contact at any time, for any reason, and in any place the officer has a right to be. A voluntary contact is not a seizure, stop or arrest, but rather is a voluntary interaction between an officer and another person.

Persons contacted shall not be detained against their will or searched. An officer may not use force or coercion in initiating a voluntary contact or in attempting to obtain cooperation once the voluntary contact is made. Officers shall act in a restrained and courteous manner. Persons who do not respond to the officer's greeting or approach must be allowed to



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continue on their way. Restraining the person in any manner converts the voluntary contact to a stop, which can be made only upon reasonable suspicion.

290.05 STOPS

A stop is considered a seizure under the Fourth Amendment and occurs whenever a person is detained by a police officer. An officer may stop a person only if the officer has reasonable suspicion that the person has committed, is committing, or is about to commit any crime. Vehicles may also be stopped on the basis of reasonable suspicion.

290.06 REASONABLE SUSPICION

Every officer who conducts a stop shall be prepared to articulate the specific factors that provide the justification (reasonable suspicion) for the stop. The elements of reasonable suspicion include:

- A. Facts and circumstances that would lead a reasonable police officer to believe that some criminal activity is taking, will take, or has taken place, and
- B. Facts and circumstances connecting the person under suspicion with the suspected criminal activity. Reasonable suspicion may arise out of a contact, or it may exist independently of a contact.

290.07 EFFECTING A STOP

Officers shall use the least coercive means necessary to stop a person. The least coercive means can be verbal requests, an order, or the use of physical force. Officers shall use only such force as is reasonably necessary to affect a stop and no more.

Officers driving unmarked police vehicles while not wearing a police uniform will not attempt to make vehicle stops solely for the purposes of traffic enforcement. Vehicle stops for arrest or investigation may be made if a marked vehicle is not available or the time required for the marked unit to respond would be excessive. Obtaining assistance from a marked police vehicle is the preferred method and should be considered whenever possible.

290.08 CONDUCT DURING STOP

Proper justification for a stop does not permit unreasonable conduct during the stop. The courts, in determining whether the stop was reasonable and lawful, will consider every phase of a stop.



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A person may be detained at or near the scene of a stop for a reasonable period of time. The courts have indicated that the length of time of a stop may be no more than the time necessary to determine whether or not a crime has been committed and whether the person will be arrested or released.

Officers shall act with restraint and courtesy toward those persons they have stopped. Officers not in uniform who affect a stop shall identify themselves as law enforcement officers as soon as practical. Officers shall give, to the person stopped, a reason for the stop. Officers may question a detained person for the purpose of obtaining name, address, and an explanation of presence and conduct. Persons having been stopped may not be compelled to answer officer's questions. Officers may request the person to produce identification, but citizens are not generally required to carry identification. When the person stopped has been operating a vehicle, the officer may demand to view certain documents (such as operator's license, proof of insurance and vehicle registration). Officers shall not search a subject who has been stopped on the basis of reasonable suspicion except when there is justification to perform a frisk or when the person consents to a search.

290.09 REQUESTING SOCIAL SECURITY NUMBER

The Federal Privacy Act of 1974 requires that prior to requesting a person's social security number (SSN), that person must be told that:

- A. Providing their SSN to the employee is voluntary not mandatory.
- B. The purpose for which the SSN will be used.
- C. Completion of the New Mexico Uniform Traffic Citation form provides a place for a SSN but does not require a number to be recorded.

Therefore, persons who are charged criminally or cited for a traffic violation for which the officer can use the person's SSN, the person should be told that:

- A. The SSN is used to ensure accurate record keeping for administrative purposes
- B. That providing their SSN is voluntary

No action shall be taken against any person who refuses to provide a social security number.

No SSN shall be included in any narrative of any report which may be released to the public.



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290.10 FIELD INTERVIEWS

The purpose of a field interview is to assist with investigations and prevent crime. Officers shall conduct a field interview whenever he or she stops a person and may conduct a field interview when a voluntary contact is made. The decision to conduct a field interview shall not be made merely on the basis of random selection, ethnicity, unusual personal appearance, or personal beliefs. Field interviews shall be conducted with the utmost courtesy toward the person having been stopped or contacted. Any reasonable question posed by a citizen shall be answered by the officer.

Whenever a stop or contact is made, the officer shall explain the reason for the stop or contact if asked to do so. Officers not in uniform shall fully identify themselves as police officers with the Las Cruces Police Department and shall exhibit their badge and / or Departmental identification card prior to initiating any field interview. All officers, whether in uniform or civilian dress, shall furnish a citizen with their Officer Number upon request. A Field Interview card shall be completed when the officer determines that it may assist in the prevention or investigation of a crime or if a frisk or pat down is conducted.

290.11 ARRESTS

An arrest is a seizure and occurs when a person is taken into custody against the person's will for the purpose of criminal prosecution or interrogation. An arrest must be based upon probable cause. The United States Supreme Court has established that the seizure of a person for investigatory reasons is not an arrest as long as it is for a reasonable length of time for which the officer can determine if a person is involved in, has committed, or is about to commit a crime. Officers should be conscious that long detention periods may be interpreted as an arrest by the courts.

290.12 OFF-DUTY ARRESTS

An off-duty officer may arrest any person for a violation of the law committed in his or her presence if the situation warrants immediate action (See GO 103.23 D). The arresting officer will complete all necessary reports and contact the on-duty supervisor to ensure the proper disposition of the case.

290.13 SEIZURE OF PROPERTY

Plain View

An officer who is in a place the officer has a right to be may generally seize contraband or evidence of a crime, without a warrant, if the property is in plain view. This seizure is



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lawful, because a person has no right of privacy in an item that is in plain view. It must be immediately apparent to the officer that the item is evidence or contraband simply by looking at the item. An officer may not manipulate the item or move it in any way; doing so is a search and involves the protections of the Fourth Amendment.

WARNING: Officer should be aware that the Third Judicial District Attorney's Office strongly insists that in most plain view situations, the officer obtain a search warrant before seizing contraband or evidence of a crime.