



**Las Cruces Police Department
GENERAL ORDERS
FIELD OPERATIONS VOLUME 2
GO-292 SEARCH AND SEIZURE
Revised 5/13/2005**

292 SEARCH AND SEIZURE

PURPOSE

The purpose of this policy is to provide officers of the Las Cruces Police Department with guidelines for search & seizure and to ensure compliance with Constitutional rights.

POLICY

All commissioned employees with law enforcement powers shall conduct searches and seizures in accordance with Constitutional rights and all other statutory requirements.

APPLICABILITY

This General Order applies to all commissioned employees. This General Order supersedes all previous versions.

REFERENCES

- ADM.02.02
- ADM.02.03

292.01 PROCEDURES

A. SEARCHES – GENERAL

Property may be seized pursuant to a valid search warrant that particularly describes the item to be seized, the location to be searched, the reason for the search, and provides written authorization by a judge.

The Fourth Amendment has been interpreted by the U. S. Supreme Court to require a search warrant prior to any search performed by a law enforcement officer, or a person acting at the direction of a law enforcement officer, when the search is of a person or of an area or item in which a person has a reasonable expectation of privacy. The New Mexico Supreme Court has declared a strong preference for a search warrant. No search may be performed without a warrant, unless the search can be justified by one of the exceptions to the warrant requirement.



**Las Cruces Police Department
GENERAL ORDERS
FIELD OPERATIONS VOLUME 2
GO-292 SEARCH AND SEIZURE
Revised 5/13/2005**

B. REASONABLE EXPECTATION OF PRIVACY

The U. S. Supreme Court has determined that the Fourth Amendment is meant only to regulate searches of those things in which a person has a reasonable expectation of privacy. The examination of an item or area in which a person has no reasonable expectation of privacy is not regulated by the Fourth Amendment. Examples include:

1. **Abandoned Property** - A person who abandons property has, by abandoning it, surrendered any privacy interest he or she may have had in the property. Such property is subject to search by a law enforcement officer without a warrant.
2. **Open Fields** - An open field is defined by the U. S. Supreme Court as any unoccupied or undeveloped area outside the curtilage of a home. The area that is considered open fields is not subject to a reasonable expectation of privacy and a search of the fields is therefore not governed by the Fourth Amendment.
3. **Personal Characteristics** - Generally, a person has no reasonable expectation of privacy in those items that the person subjects to the plain view of others. Examples include a person's voice, handwriting or photograph. Personal characteristics that are not subject to public examination (blood content, scrapings under a person's fingernails, *etc.*) are items in which a person has a reasonable expectation of privacy.
4. **Dog or Human Sniff** - Sniffing the air around a person or property that is in a public place or a place open to the public is not considered a search, as there is no reasonable expectation of privacy in the air.

C. SEARCHES NOT SUBJECT TO FOURTH AMENDMENT PROTECTION

Not every examination of a person or their property is a considered a search. Examples include:

1. **Visual Aids or Heat Sensing Equipment** - The use of flashlights, photo surveillance, or heat sensing equipment to view or measure property that is otherwise open to public view is not considered a search, as it simply enhances the officer's senses.
2. **Plain View** - This is not a search issue, but rather a seizure issue, since no search is performed. When a police officer sees an object in "plain view" and its value as evidence or contraband is apparent, the officer may generally seize it, as long as the



**Las Cruces Police Department
GENERAL ORDERS
FIELD OPERATIONS VOLUME 2
GO-292 SEARCH AND SEIZURE
Revised 5/13/2005**

officer can do so without reaching into an area in which the officer has no right to be and does not move or manipulate the item first. Because the officer must be careful that he or she does not reach into an area where they should not be and the Third Judicial District Attorney's Office's policy requires that a search warrant should be executed in most plain view situations, the officer is warned that a search warrant should be obtained in most instances of this nature before a seizure is made.

3. **Search by Non-Government Agent** - The Fourth Amendment does not provide protection against actions of a private citizen. Property seized by citizen, in a manner that would otherwise be illegal if seized by a government agent, may still be provided to an officer for use in a criminal investigation. However, an officer may not utilize a non-police officer as their "agent" to search a place or person if the officer would not have been authorized to conduct that same search themselves, whether with or without a search warrant.