



**Las Cruces Police Department
GENERAL ORDERS
FIELD OPERATIONS VOLUME 2
GO-294 WARRANTLESS SEARCHES
Revised 5/13/2005**

294 WARRANTLESS SEARCHES

PURPOSE

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

POLICY

All commissioned employees with law enforcement powers may conduct warrantless searches 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

DEFINITIONS

Small Unmanned Aircraft System (sUAS): A small unmanned aircraft and all of its associated elements, accessories, etc. (i.e., telemetry links, payload elements and control interfaces (Ground Control Station, antennas, avionics equipment, etc.) that are required for the safe and efficient operation of the small unmanned aircraft in the national airspace system.

294.01 CONSENT SEARCHES

A. Consent is more than just an exception to the warrant requirement. Consent is a waiver, not only of the warrant requirement, but also of the probable cause requirement. The sole element the courts look for when determining if consent was valid is the voluntariness of the consent based upon the totality of the circumstances. The list below notes some of the factors the courts have considered in determining voluntariness:

1. Whether or not officers informed the person of their right to refuse the search. Officer should inform the subject of their right to refuse.



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2. Assistance of the subject in conducting the search.
 3. Whether the subject was cooperative or uncooperative.
 4. The subject's prior arrest record, which may demonstrate knowledge and experience with police procedures.
 5. The number of officers present.
 6. The length of time during which consent was sought; such length of time should be brief.
 7. Any threat of consequences if consent is not given (including the threat to obtain a search warrant).
 8. The surrounding circumstances, *e.g.*, drawn weapons, and detention in handcuffs.
 9. Whether the subject is in custody or investigative detention. Consent is most likely to be found voluntary if the subject is free to leave, and least likely to be found voluntary if the subject is under arrest.
 10. Ability to understand the request for consent. If the subject does not speak English, the consent should be sought in the subject's native language.
 11. Age, education and intelligence of the subject.
- B. The extent of the search is limited by the consent given. The subject can stop the search at any time or restrict the breadth of the search at any time. The Consent to Search Form should used, signed by the subject, and witnessed by the officer.

294.02 FRISKS OR PAT DOWNS

- A. The essential elements of a legal frisk or pat down are that the subject to be frisked or patted down must have been stopped based on reasonable suspicion of criminal activity, and the officer must be able to articulate a reasonable belief that the person to be frisked is presently armed and dangerous. This reasonable belief may be based on facts such as:
1. The person's appearance, including clothing that bulges in a manner suggesting the presence of objects capable of inflicting injury, or demeanor suggesting the possibility that the subject is armed.



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2. The person's actions, including furtive movements as if to hide a weapon when the officer approached; threatening words or actions.
 3. Prior knowledge of the person, including whether the person has an arrest record for weapons or other violent offenses, or whether the person has a reputation in the community for carrying weapons, or for assaultive behavior.
 4. Location of the incident, including whether the area is known for criminal activity, is a high crime area, or is a remote area.
 5. Time of day and whether the encounter is taking place in a well-lit area, or whether the area is dark.
 6. The police purpose for the stop, including whether the officer can articulate facts and circumstances that lead the officer to believe that the person stopped may have been involved, or be about to become involved, in a serious and violent, or armed, offense.
 7. Companions, including whether the officer has frisked or patted down a companion of the suspect that revealed a weapon and whether the officer has immediately available assistance with regard to the number of subjects that have been stopped.
- B. The frisk or pat down shall be confined in scope to an intrusion reasonably designed to discover guns, knives, clubs or other hidden instruments that might be used to assault the officer. The purpose is not to discover evidence of a crime, but to allow the officer to pursue the investigation without fear of violence.
- C. A frisk or pat down is generally limited to the outer garments of a suspect, particularly those areas most likely to contain a weapon. The frisk or pat down may be extended to areas designed to discover potentially lethal weapons.
- D. The frisk or pat down may be conducted immediately upon making the detention or at any time during the detention but will be made as soon as the officer develops a reasonable belief that the person being detained is presently armed and dangerous.
- E. In order to justify a frisk or pat down, officers must be able to articulate the specific facts that led them to conclude the person being detained was presently armed and dangerous.
- F. Securing separable possessions:



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1. If the person is carrying an object immediately separable from the person (e.g., a purse, shopping bag, briefcase etc.), the object shall be removed from the person's control.
2. Officers shall not look inside the object but shall place it in a secure location out of the person's reach for the duration of the detention.
3. However, if something occurs during the detention that causes the officer to reasonably suspect the possibility of harm if the object is returned unexamined, the officer may briefly inspect the interior of the item before returning it.
4. If while conducting a frisk or pat down, an officer feels an object whose contour or mass makes its identity as a weapon or contraband immediately apparent, this item may be seized.
5. If the frisk or pat down discovers a seizeable item, the officer shall seize it and consider it in determining if probable cause exists to arrest the person.
6. Persons frisked or patted down but not arrested shall have any objects taken from them returned to them upon completion of the frisk or pat down, unless the objects constitute contraband or evidence of a crime.

G. Record keeping:

1. Adequate records of stop and frisk activity serve to ensure the proper exercise of law enforcement authority and enhance an officer's ability to reconstruct those factors that prompted the stop or frisk, and what took place during the confrontation. They also serve to protect the officer from baseless allegations of wrongdoing.
2. Officers who have stopped or frisked any person shall document each event via a separate Field Interview card or on an Incident Report if a report is made.
3. If the stop and frisk was based in whole or in part upon an informant's tip, the officer making the stop and frisk will attempt to obtain and record the identity of the informant, and record the facts concerning such tip (e.g., how it was received, the basis of the informant's reliability, and the origin of the informant's information) on a Field Interview card or report.



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294.03 SEARCHES INCIDENT TO ARREST

- A. A search incident to arrest is permissible in two situations:
 - 1. After a full custodial arrest and prior to transport
 - 2. After an arrest, even when a person is to be field released, to search for evidence related to the offense with which the person has been charged.
- B. An officer has the authority to conduct a full search of the person of an arrestee following a full custodial arrest and prior to transport.
- C. The search incident to arrest of an arrestee who will be field released is limited to a search for evidence related to the offense with which the person is charged. For example, a person arrested for shoplifting may be searched for additional stolen merchandise prior to being field released.

294.04 STRIP SEARCHES

No officer shall perform any strip search of any suspect without the express permission of their Lieutenant or Deputy Chief. Strip/body cavity searches (incident to felony arrest or to a search warrant) shall be conducted by medical personnel utilizing medical facilities to ensure safety and privacy for the individual. Officers of the same gender as the arrestee may observe only if it is considered necessary for the preservation of evidence. In every case, the search shall be documented in an Offense Incident Report or Supplemental Report providing the name of the medical personnel who performed the search.

294.05 EMERGENCY SEARCH OF A PERSON

- A. Various courts have allowed warrantless searches of persons when those searches are in response to emergency situations concerning an injured or unconscious person requiring aid, rather than a search in a criminal investigation.
- B. The scope of an emergency search of a person is limited to the extent necessary to effectuate the purpose.
- C. Officers must be able to demonstrate that the emergency presented by the injured or unconscious person is readily apparent, and there is a need to intrude upon the privacy interests of that person for one or more of the following reasons:
 - 1. Identification of the person in order to contact relatives or friends;



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2. Determination of the need for specific medication, e.g. medical bracelet, necklace or card, or evidence of medication etc.
3. Discovery of the nature of the injury or problem by examination.

294.06 SEARCHES OF RESIDENCES

- A. Searches of a person's residence without a warrant are presumed to be unreasonable. Officers must use caution when entering a home without a warrant, and must be prepared to justify, in detail, any entrance to a residence not authorized by a warrant.
- B. Officers may request consent to search from any person who has apparent authority over the immediate area to be searched or the object sought. If more than one person has authority or an expectation of privacy over an area to be searched, consent from each person having authority or an expectation of privacy shall be obtained before searching.
- C. Officers shall not conduct a consent search on a residence unless all persons consenting (all persons having an expectation of privacy and having apparent authority) sign the Department Consent to Search form and the officer is satisfied that the person read and understood the form.
- D. Consent Search of a Residence
 1. The courts will look to the totality of the circumstances in determining whether or not the consent was voluntary and was received from all persons affected by the search.
 2. The extent of the search is limited by the consent given. The subject or subjects can stop the search at any time or restrict the breadth of the search at any time.
 3. The extent of the search is limited to the area over which the consenting parties have common authority or an expectation of privacy.
- E. Common Authority or Expectation of Privacy
 1. Whether or not a person has authority to consent to a search of particular property or a particular area depends on all of the facts known to the officers at the time. It is not necessary to prove that a person has actual authority; apparent authority is



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sufficient. Additionally, a person who has an expectation of privacy in a particular area to be searched must be considered as well.

2. Whether or not a person has an expectation of privacy depends on all of the facts known to the officers at the time. Apparent expectation of privacy will be recognized by an officer wishing to conduct a search.
3. The officer must be prepared to detail why the person giving consent was reasonably believed to have authority to do so.

F. Abandoned Premises

1. A person has no reasonable expectation of privacy in a residence or other premises that the person has intentionally or constructively abandoned. A police officer may enter such premises, and this would not be a search under the Fourth Amendment. The most likely application of this concept would be in an abandoned rental property. While the tenant who abandoned the property would no longer have a reasonable expectation of privacy, the landlord probably would. In such an instance, the officer must seek consent from the landlord to search the premises. Intent to abandon will not be presumed. Whether abandonment has occurred will be determined by a review of all circumstances.

294.07 OPEN FIELDS AND CURTILAGE

A. The open field around a residence is defined as the unoccupied or undeveloped area outside of the curtilage. The Supreme Court has determined that there is no reasonable expectation of privacy in the open fields around a home and, therefore, a search of open fields does not raise a constitutional issue. Areas within the curtilage of a home are treated as a part of the residence and are subject to the Fourth Amendment. Curtilage is normally defined as the area around the home to which the activity of home life extends. To determine curtilage, the U.S. Supreme Court considers:

1. The proximity of the area to the home.
2. Whether the area is included within an enclosure surrounding the home.
3. The nature of the uses to which the area is put.
4. The steps taken to protect the area from observation by people passing by.



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294.08 AERIAL VIEWS

- A. Naked-eye aerial observation of areas around a home, even within the curtilage, does not constitute a search. As long as the observations are made with the naked eye and from a public vantage point where the officers have a right to be, the surveillance will be constitutional.
- B. Any over-flight for surveillance may not interfere with the person's use of his property or reveal intimate details connected with the home or curtilage. A flight so low that the downdraft or noise would interfere with the reasonable use of the property might be considered unconstitutional.
 - 1. Deployment of the sUAS will require the authorization of the shift supervisor or designee.
 - 2. All aerial operations performed by a sUAS will follow guidelines in GO-250 sUAS Operations.

294.09 PUBLIC SAFETY OR EMERGENCY SEARCH OF A RESIDENCE

- A. This exception to the warrant requirement generally relates to factual situations in which it appears that a person may be hurt or in need of immediate medical assistance. Examples include welfare checks and domestic violence situations where the crime is ongoing. This exception is based upon the need for immediate aid, not on the need for investigation or the seriousness of an offense. The reasonableness of an officer's entry under the emergency aid exception is a question of fact for the court. Officers shall document in a report specific facts warranting the necessity for the immediate entry.
 - 1. There must be reasonable grounds to believe an emergency is at hand and that there is an immediate need for assistance for the protection of life or property.
 - 2. There must be some reasonable basis to associate the emergency with the area or place to be searched.
 - 3. The search may extend only to those areas where it would be reasonable, in light of the nature of the emergency, to search.
- B. Protective sweep / exigency



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1. Officers may, when they reasonably perceive an immediate danger to their safety, make a warrantless, protective sweep of a residence. Judicial decisions on protective sweeps have authorized them in two circumstances:
2. When an officer is lawfully within a residence and there are circumstances which give the officer a reasonable belief that there might be others within the residence that pose an immediate danger to the officer.
3. When officers arrest someone near the door, but outside a residence and there is reason to believe that a person might be within the residence who poses a danger to the officers. This exception will apply only when there is reason for the officers to fear violence, either based on the nature of the crime or other information related to the arrestee or the arrestee's associates.
4. The protective sweep exception to the warrant requirement does not authorize officers to search a residence simply because they are interviewing an occupant, either at the threshold or within the residence, when there are not articulable reasons for believing someone might be within that poses a threat.
5. The search is limited to those areas in which the person may be found.

C. Fresh pursuit of a residence

1. Pursuit must be "fresh." Although an officer need not be in sight of the fleeing suspect, the officer must be in active pursuit of the fleeing suspect if this exception is to be applied.
2. "Serious crime" only: There is no clear consensus in the courts as to what type of a crime is to be considered serious. It is recommended that this exception be used only for fleeing felons and serious misdemeanors.
3. Search is limited to those areas in which the person may be hiding.

D. Destruction of evidence

1. Facts indicating the ongoing destruction, or the immediate danger of destruction of contraband or crime-related evidence.
2. Search is limited to those actions necessary to preserve the evidence until a search warrant can be obtained.



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E. Search of a residence to prevent escape / flight

1. The officer knows that a suspect is fleeing or attempting to flee; and
2. Entry is necessary to prevent escape; and
3. The officer did not create the exigency.
4. The search may not exceed what is necessary to make the arrest.

F. Search of a residence incident to an arrest

1. The officer is in the home lawfully
2. The arrest of the person is lawful
3. The officer may search areas under the immediate control (or “wingspan”) of the arrestee
4. Officers may also search closets or other spaces immediately adjoining the place of arrest from which an attack could be immediately made.

G. Consent searches

1. As in all consent searches, the issue of voluntariness must be addressed. The owner or the person with apparent authority over the vehicle (the driver) or premises may give consent to its search. A third party within a vehicle or on the premises must also give consent for the search if that person has joint access and control over contents within the vehicle or premises.
2. Neither reasonable suspicion nor probable cause is required. The extent of the search is limited by the consent given. The subject can stop the search at any time or restrict the breadth of the search at any time. If the third-party refuses to give consent, then the consent search cannot be performed.
3. It is recommended that a Consent to Search form be completed, signed by the subject or subjects, and witnessed by the officer. A tape recording of the consent is recommended.



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294.10 SEARCH OF VEHICLES INCIDENT TO ARREST

- A. Vehicles may be searched incident to a full custodial arrest when the arrestee is to be transported and booked.
- B. The vehicle may be searched incident to an arrest where the suspect is to be field released, but only to search for evidence of the crime for which the suspect is charged. For example, if a person is arrested for reckless driving and is to be field released, no vehicle search may be performed since there is no evidence of reckless driving that may be found in the vehicle.
- C. The scope of the search of the vehicle does not include a search of the trunk and may only include:
 - 1. Passenger compartment and all containers therein
 - 2. Locked containers that may be opened with a key present at scene and located within the passenger compartment.
- D. Vehicle inventory refer to GO-270 Towing and Impounding Vehicles.
- E. Vehicle searches: miscellaneous
 - 1. Opening Locked Containers
 - a. When possible, officers shall open a locked container, trunk or glove compartment with a key rather than by force. If keys are unavailable, and time permits, officers shall contact the City contract locksmith to respond and open the vehicle or container.
 - 2. Location of Search
 - a. Searches will be conducted at the scene of the arrest as soon as the prisoner is placed in secure custody. In those cases where it is not feasible to conduct the search at the scene of the arrest, the vehicle shall be secured in police custody at all times until it is searched. The search shall be conducted as soon as practical.
 - 3. Search for Vehicle Identification Number (VIN)



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- a. An officer may remove items on the dashboard of a vehicle that are blocking the view of the public VIN from the outside of the vehicle. This VIN is normally visible through the windshield. When checking the registration of a vehicle, the officer may compare the VIN on the registration with the VIN on the vehicle.
4. Motor Home/Mobile Home
- a. A motor home or mobile home, if apparently mobile, is treated the same as a motor vehicle for the purposes of warrantless searches. Motor homes and mobile homes that are apparently affixed to a location, *e.g.*, water hookups, skirts, lack of wheels, shall be treated as residences, not as vehicles.

294.11 ABANDONED VEHICLES

If a vehicle is truly abandoned, there is no need for a search warrant or other exception to the warrant requirement, as there would be no reasonable expectation of privacy in the vehicle. This does not mean a vehicle that is dismantled or possibly junked on a person's private property is abandoned. Any time any person would have a reasonable expectation of privacy inside that vehicle, the vehicle would not be considered abandoned.

294.12 AIRCRAFT

Aircraft are subject to the same exceptions to the warrant requirement as are automobiles.