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321 SEARCH WARRANT PROCEDURES

The Department shall utilize standardized procedures in the preparation, execution, and return of search warrants, to ensure the rights of the citizens of the County, the effectiveness of the operation, and the safety of personnel.

DEFINITIONS:

SEARCHES

There are three types of authorized searches that may be conducted.

1. A search authorized by a valid search warrant.
2. Consent to search.
3. Warrantless search.

Whenever a Deputy conducts a search other than an authorized warrantless, or consent search, he will obtain a warrant for the search of the person or premises prior to commencing the search.

PROBABLE CAUSE FOR A SEARCH WARRANT

Probable cause is deemed as facts and circumstances that are enough to satisfy a person of ordinary caution that a crime has been committed, or is being committed, that the particular thing to be seized in a search is reasonably connected to a crime, and that it can be found at a particular place.

1. Probable cause is more than bare suspicion.
2. Only a probability of criminal conduct need be shown.
3. Probable cause must be based on what the Deputy believes to be reasonably trustworthy information.

RULES AND PROCEDURES:

321-1 SEARCH WARRANT PREPARATION

- A. The search warrant consists of two parts:
 1. Part #1 - the affidavit.
 2. Part #2 - the search warrant/return and inventory.
- B. The affidavit is prepared by the Deputy/Affiant who is requesting the search warrant be issued, and must contain the following information:

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1. A complete and clear description of the person/property to be searched.
2. A description of all property to be seized.
3. Facts and circumstances that establish probable cause for the warrant to be issued.

321-2 APPROVAL OF THE SEARCH WARRANT

- A. After the Affiant has completed the affidavit and attached Part #2, the following steps have to be followed to have the warrant approved:
 1. Present the affidavit to the appropriate supervisor for approval.
 2. Take the affidavit to the District Attorney's office for review.
 3. Take the affidavit and Part #2 to a District Court judge for review and authorization.
- B. The search warrant/return and inventory is presented to the issuing judge and is filled in and signed by the judge after he has read and approved the affidavit.
- C. All search warrants obtained in the course of violent crime investigations must be accompanied by a motion to seal and an order to seal if a suspect has not been arrested at the time the search warrant is being requested.
- D. A District Court Judge may authorize a search anywhere within his or an adjoining judicial district.

321-3 PARTS OF A SEARCH WARRANT

- A. Part #1 is the affidavit of facts to be presented to the District Court Judge.
- B. The Affiant will be required to swear to the truthfulness of all the facts that are listed within the affidavit.
- C. Part #2 is the actual authorization to search and seize persons or property.
- D. The back of Part #2 is used to record items seized during the search and to file the return of inventory at the District Court after executing the warrant.

321-4 EXECUTION OF THE SEARCH WARRANT

- A. A search warrant is valid for ten (10) days after it is signed by a judge. If it is not served within ten (10) days, it becomes void and no further action is required.

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- B. Except under specific instances, Deputies will knock on the main entrance of the premises to be searched and identify themselves. They will state their intent and wait a reasonable time for the occupant(s) to open the door and allow them access into the premises.
- C. A SWAT Matrix shall be completed for any search warrant service involving an unsecured and occupied dwelling. (Affiant shall presume that a dwelling is occupied in the absence of specific intelligence to the contrary.) In such circumstances, the Affiant shall contact the Special Weapons and Tactics Commander who will ensure that the SWAT Matrix is completed correctly. Following the requirements set forth in the SWAT Matrix is the responsibility of both the Affiant and their direct supervisor.
- D. The Affiant will attempt to contact the property owner prior to making forced entry on property crime search warrants.
- E. A search warrant can be executed between 6:00 a.m. and 10:00 p.m. ONLY. A special night time search authorization is necessary to execute a search warrant after 10:00 p.m. and before 6:00 a.m.
- F. The nighttime search authorization must be requested and justified by fact outlined in the affidavit.

321-5 AFFIANT RESPONSIBILITIES

- A. It is the responsibility of the Affiant or the Affiant's representative to:
 - 1. Ensure that a supervisor is present and thoroughly briefed before the search warrant is executed.
 - 2. Brief all participants as to the area to be searched, items to be seized and any exigent circumstances involving the premises to be searched or its occupants.
 - 3. Have all necessary copies of the warrant, and in the event that the Department's Criminalistics Unit is not used the Affiant will have containers for evidence collection at the scene.
 - 4. Advise the supervisor in charge of any situations that might require the use of the SWAT Team.
 - 5. Ensure that the following tasks are accomplished once entry has been made:
 - a. Record the location of all items to be seized and the name of the person who located the item.
 - b. Photograph evidence prior to its being seized.

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- c. Complete the inventory on all items being seized.
- d. Take custody of all evidence not collected or seized by the Criminalistics Unit and deliver it into the custody of the Evidence Room.
- e. Provide a copy of the search warrant affidavit and warrant to the defendant or his representative if present, or leave a copy within the premises along with a copy of the inventory of all items that were seized. Should the Property Seized section of Part #2 of the warrant not allow for sufficient space to document all of the property seized, the Affiant may use additional sheets of paper. Copies of these additional sheets will also be attached to the warrant inventory itself when it is returned to the District Court.
- f. Be responsible for the return of the warrant, affidavit, and inventory to the District Court clerk within three (3) days of the execution of the warrant.

321-6 SUPERVISORS RESPONSIBILITIES

- A. Be thoroughly briefed by the Affiant or his representative and review the search warrant prior to its being presented to the District Attorney's Office.
- B. Accompany Deputies, except as noted below in paragraph 1., on search warrant executions and determine the number of personnel to be deployed, as well as coordinating with other law enforcement agencies involved in the search warrant.
 - 1. Supervisors may in some cases authorize Deputies to execute search warrants without supervisor being present. The Deputy must brief his/her supervisor of the existence and circumstances of the warrant, and the supervisor will determine if it is acceptable for the Detective/Deputy to execute the warrant without him/her being present. This will be conducted on a case by case basis.

This shall be limited to the following instances:

- 1. When a search warrant is being executed on a vehicle which has been taken to a storage facility, such as a towing yard.
 - 2. When a "body warrant" is being executed on a person for forensic evidence such as hair, bodily fluids, etc.
 - 3. At the discretion of a supervisor.
- C. Ensure that specific tasks are assigned to each Deputy who is involved in the search. Ensure that at least one

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uniformed Deputy is present at the time the warrant is executed along with a Deputy capable of photographing the scene.

- D. Make certain that all non-uniformed Deputies who take part in the initial entry are wearing body armor and a Department issued "raid jacket". The supervisor may approve of an undercover approach to secure entry of a fortified or hazardous location. In such a case the supervisor may authorize Deputies to deviate from the above procedures (utilization of S.W.A.T. should be considered).
- E. Assign personnel to specific areas of the scene for the purpose of protecting the scene, searching for evidence, and preventing the destruction of evidence.
- F. (Only for Homicides, Deadly Force Encounters and the request of the Case Agent or Supervisor)-Ensure that the scene is videotaped prior to the beginning of the search, and at the termination of the search, any property that is damaged during the search will also be photographed.
- G. Notify the Field Services supervisor for the area in which the search is taking place, prior to the beginning of the search.
- H. Ensure that if the warrant is being served outside the jurisdictional areas of Bernalillo County, that the appropriate law enforcement agency is notified and representatives of that agency are present, if they so desire.
- I. Make a reasonable attempt to secure the premises upon completion of warrant service.

321-7 CONSENT SEARCHES

- A. A consent is a voluntary statement, verbal or written, giving deputies permission to search a person, premises, or items. Consent is valid only under the following circumstances.
 - 1. The person consenting to the search has legal control over the area to be searched.
 - 2. The person giving consent is made aware that any evidence found may be used in criminal prosecution.
 - 3. The consent is voluntary.
 - 4. A Sheriff's Department permission form is completed and signed by the consenter.
 - 5. Consent has been given freely and without coercion.

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321-8 SEARCH AND SEIZURE WITHOUT A WARRANT

This policy is to provide deputies with guidelines to conduct warrantless searches and seizures in order to uphold individual civil rights, protect deputies and others. As well as govern the collection of evidence.

DEFINITIONS

REASONABLE SUSPICION

Information supported by specific and articulable investigation that combined together would lead a Deputy to believe that a violation of law has occurred or is occurring.

PROBABLE CAUSE

When facts and circumstances within a deputy's knowledge, or, on which a deputy has reasonable, trustworthy information, are sufficient to warrant a reasonable person to believe that an offense has been or is being committed.

FIELD INTERVIEW

The brief detainment of an individual, based on reasonable suspicion that a violation of law has occurred or is occurring, for the limited purpose of determining the identity of a particular person and confirming or dispelling a deputy's suspicions.

PAT DOWN

Commonly referred to as a "frisk", it is the feeling of an individual's outer garments to determine if that person is armed with a weapon. This allows the deputy to conduct a brief field interview without threat of violence.

EXIGENT CIRCUMSTANCES

An emergency situation(s) requiring swift action to prevent danger to life, serious damage to property, to forestall the imminent escape of a suspect, or the destruction of evidence.

INVENTORY SEARCH

A search conducted to protect and safeguard an individual's property, provide for the safety of the deputy and others, as well as protect the Department against claims or lawsuits for loss or destruction of private property.

PROTECTIVE SWEEP

A quick limited search of a premise, incident to an arrest, conducted to protect the safety of deputies and others. The area searched must be large enough to be capable of harboring a person.

CURTILAGE

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

COMMUNITY CARETAKER

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An deputy may stop a vehicle or enter a premises without a warrant or reasonable suspicion when the deputy has specific articulable safety concerns, that an individual might be in physical difficulty or need assistance. Such encounters must be done in good faith without the intent of coercion or detention.

A. EXCEPTIONS TO WARRANTS

As a general rule, a search must be supported by a valid warrant or consent to search authorization. In some cases there are special exceptions to the rule. The following are the only exceptions authorized by this agency:

1. **Search Incident to an Arrest:**

Incidental to a valid arrest, a warrantless search of the arrested person at the time and place of his arrest will be made. The area into which the arrestee might reach for a weapon or to destroy evidence will also be searched.

2. **Plain View:**

Deputies may, without a warrant, seize items unexpectedly found in plain view at the time of an arrest, and/or if the items are evidence of a crime and it is impractical to first obtain a warrant.

3. **Hot Pursuit:**

If a Deputy is pursuing a person and the Deputy has probable cause to believe the person is armed, and has just committed a felony crime, the Deputy may for the purpose of his/her safety, the safety of the public, and the prevention of escape, search the building into which the person has been pursued.

4. **Open Fields:**

Under the "open field" doctrine, a Deputy may enter and search any unoccupied or undeveloped area that lies outside the "curtilage of a dwelling".

5. **Aerial Surveillance:**

Surveillance of outdoor areas from public airspace is not a "search", even if the area in question is within the "curtilage of a dwelling".

6. **Public Places:**

There is no requirement that a Deputy obtain a warrant before seizing things brought into public places, open to public view.

7. **Emergency searches exigent circumstances:**

Deputies may make a warrantless entry of anything, whether personal belongings, a vehicle, or building, anytime that the Deputies have good reason to believe it is necessary to save a life or prevent injury (i.e.,

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cries for help from the inside of a building, assisting the fire Department on a fire, to check on the welfare of the suspected abused child). However, once the emergency has passed, Deputies may not continue to search without first obtaining a warrant.

8. Abandoned Property:

Deputies may, without warrant, seize and search property that they have good reason to think has been abandoned.

Deputies having questions on whether a warrantless search would be legal, should contact their supervisor, or consult with the on-call Assistant District Attorney for advice.

B. RULES AND PROCEDURES

1. APPROACH

A Deputy may approach an individual without a warrant or reasonable suspicion provided that:

- a. The Deputy is not violating the law at the time;
- b. The Deputy approaches in a non-threatening manner;
- c. The person approached is free to leave or remain silent with no threat of coercion or detention from the officer.

2. STOP AND FRISK (TERRY STOP)

A Terry Stop consists of a brief investigative detention, field interview, and if warranted, pat-down of a person's outer garments if based on the Deputy's training and experience, the person detained poses in immediate danger to the safety of Deputies or others. Factors to consider when determining whether to perform a Terry Stop should include but not be limited to:

- a. The appearance to demeanor of an individual suggests that he/she is part of a criminal enterprise or is engaged in a criminal act;
- b. The hour of day or night is inappropriate for the suspects presence in the area;
- c. The suspects presence in a locations in inappropriate;
- d. The suspect is carrying a suspicious object;

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- e. The suspects clothing bulges in a manner that suggests he/she is carrying a weapon;
- f. The suspect is located in proximate place and time to the alleged crime;
- g. The Deputy has knowledge of the suspects prior criminal record or involvement in criminal activity.

A pat down is to be conducted in accordance with the deputy's training and experience and is no more extensive than what is necessary to remove the immediate danger to the deputies and others.

Factors to consider when determining whether a pat down should be conducted:

- 1. The type of crime suspected, particularly in crimes of violence where the use or threat of deadly weapons is involved;
- b. When more than one suspect must be handled by a single deputy;
- c. The hour of the day and the location or neighborhood where the stop takes place;
- d. Prior knowledge of the suspect's past use of force and/or a propensity to carry a firearm or other weapons;
- e. The appearance and demeanor of the suspect such as nervousness, shaking, failure to make eye contact, or other behaviors which are not cultural;
- f. Visual indications that suggest the suspect is carrying a firearm or other weapon;
- g. The age and gender of the suspect. Whenever possible, pat down searches should be performed by deputies of the same sex.

A deputy may request a voluntary statement, verbal or written, giving the deputy permission to search the person in accordance with this SOP.

3. ROAD BLOCK

- a. A roadblock should be conducted in a reasonable time, duration and location to protect the safety of deputies and others.

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- b. Selection of the site and procedures for conducting a road block are made and established by sheriff's supervisory personnel.
- c. A briefing will be conducted prior to each roadblock to ensure that deputies deal with motorists in the same manner as much as possible.
- d. Motorists shall only be detained for a reasonable time.
- e. All roadblocks shall be given appropriate advance publicity.
- f. An emergency roadblock may be put in place for the purpose of capturing a fleeing felon.

4.VEHICLE INVENTORY SEARCH

When a vehicle is towed pursuant to state law or county ordinance, an inventory search of the vehicle shall be conducted to protect an individual's property, the deputy and others, as well as the Department from claims of lost or damaged property resulting from the seizure of the vehicle or items. Deputies will use the following criteria when an inventory search is conducted:

- a.Vehicles must be in lawful custody;
- b.Must be reasonable and conducted in good faith;
- c.Will be conducted by the deputies, or public safety aides in accordance with their training and Department standard operating procedures;
- d.Inventory searches will include the entire passenger compartment, glove box, trunk and containers without damaging the property, at or near the time the vehicle was lawfully placed within police custody. Containers found during an inventory search of a vehicle can be opened if accomplished without damage to the container and the search is conducted in accordance with the Department SOP.
- e.The Inventory search will be documented and become part of the original Offense/Incident Report. If towed, an inventory search will be conducted of the vehicle and will be documented on the Tow-in Report form.

5. VEHICLE SEARCHES UNDER THE AUTOMOBILE EXCEPTION

Warrantless search of a vehicle under the "Automobile Exception" requires:

- a.An articulable legal justification for stopping the vehicle;

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b. That there is reasonable basis for believing an automobile will be moved or its search will be compromised by delay. Otherwise, a warrant is required prior to searching the vehicle;

c. Inventory searches must be reasonable and conducted only if there is probable cause to believe the vehicle contains the fruit or instrumentalities of a crime or contraband, and the officer can articulate exigent circumstances which create an emergency situation requiring swift action to prevent danger to life, escape, or destruction of evidence;

d. The scope of the inventory search shall be limited to the exigent circumstance that created an emergency situation requiring swift action to prevent danger to life, escape, or destruction of evidence;

Example:

1). If the exigent circumstance exists that the vehicle is being used to harbor a felon, you can not search anywhere within the vehicle that a person could not hide, i.e. under the seat, within the glove box, etc.

2). If the exigent circumstance exists that a weapon is within the vehicle which poses an immediate danger to officers or others, the officer may remove all persons from the vehicle in accordance with their training and wait for a search warrant prior to searching the vehicle for the weapon.

e. A deputy may conduct a plain view inspection of the vehicle to rule out any exigent circumstances or request a voluntary statement (verbal or written) giving the deputy permission to search the vehicle in accordance with the Department SOP.

6. SEARCH INCIDENT TO LAWFUL ARREST

A warrantless search can be conducted pursuant to a lawful arrest. Such a search must be conducted during or very near the time and place of the arrest and must be limited in scope to:

a. Searching the arrested person and any containers discovered on his/her person, or within the arrested persons control if the deputy has reason to believe the containers belong to or were used by the arrested person;

b. Searching the immediate area within the arrestee's control;

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c. Searching the interior of the vehicle excluding the trunk, glove box, or any containers found in the vehicle if a person is removed from a vehicle and placed under arrest. Any containers found on the arrestee can be searched;

d. Conducting a "protective sweep" of the area adjoining the arrest;

e. Conducting a sweep of any other area within the premises which deputies reasonably suspect might harbor a person who could endanger them.

f. A deputy may request a voluntary statement (verbal or written) giving the deputy permission to search the person and the vehicle in accordance with the Department SOP.

7. PROTECTIVE SWEEP

A protective sweep can only be conducted after a lawful arrest. A deputy must have a reasonable belief based on specific and articulable facts that lead the deputy to believe the area swept harbors an individual posing a danger to the deputy or others and limits the scope of the search to places large enough to harbor a person.

321-9 BODY CAVITY AND STRIP SEARCHES

This policy is to ensure that body cavity/strip searches of individuals are conducted within the limits of legal authority, with consideration for the safety of deputies and suspects, out of public view, and with due regard for human dignity.

DEFINITIONS

STRIP SEARCH:

The suspect/arrested person removes all articles of clothing and is visually examined for any signs of concealed evidence.

BODY CAVITY SEARCH:

A search conducted by qualified medical personnel of a suspect/arrested person on specific body cavities for the purpose of retrieving necessary evidence.

RULES AND PROCEDURES

STRIP SEARCH

A. Strip searches will be conducted only after the deputy has obtained the following:

1. Established probable cause and has an articulable reason to believe exigent circumstances exist. The probable cause and the exigent circumstances will be documented in an offense report and/or supplemental report.

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2. Written consent to search from the suspect/arrested person or a valid search warrant.

B. Strip searches will be conducted in the following manner:

A. A deputy of the same sex will search the suspect/arrested person(s).

B. Another deputy of the same sex will witness the search.

C. The search will be conducted in an interior, secure location out of public view. Strip searches will not be conducted within vehicles or outside.

D. If an item(s) is located within the suspect's person, the deputy will:

a. Request that the subject remove the item(s) from his/her person.

b. Refer to the Body Cavity portion of this section, if the subject cannot or will not remove the item.

c. Properly package and tag any evidence that is retrieved.

E. In the event the above circumstances exist when a deputy takes possession of a prisoner in the custody of a detention center or institution and believes that a strip search is indicated but are not allowed to conduct one, they are authorized to refuse to accept the prisoner. The District Attorney's Office and Transportation Division Supervisor(s) are to be immediately notified if a prisoner is not to be transported.

F. All articles of clothing will be thoroughly searched before returning them to the suspect.

G. The search will be documented on an offense report or supplemental report detailing the probable cause, persons present, location and items retrieved.

H. The search will be video recorded documenting the start and stop time of the search, persons present, location of search and items retrieved. This video will be tagged into evidence.

321- BODY CAVITY SEARCH

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A. Body cavity searches will be conducted only with a

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valid search warrant.

B. Deputies will not personally conduct body cavity searches.

C. Body cavity searches will be conducted in the following manner:

1. Suspect/arrested person(s) will be taken to a medical facility where qualified medical personnel will conduct the search.
2. The deputy will provide the medical personnel a copy of the search warrant.
3. If an item(s) is located within the subject's person, the deputy will retrieve the item(s) from the medical personnel and properly package and tag the item into evidence.
4. The search will be documented on an offense report and/or supplemental report and will include the name(s) of the medical personnel who conducted the search, and the name and location of the medical facility where the search was conducted.

D. The use of the X-Ray machine is used for prisoners wearing casts or prosthetic devices. In all cases, Deputies should verify an injury requiring a cast either with the jail or medical facility that treated the prisoner. This X-Ray search may also be used if the Deputy has reasonable grounds to believe the prisoner has swallowed contraband. This medical procedure must first, however, be authorized by a physician.