

Bernalillo County Sheriff's Office  
\*Rules and Regulations\*

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Effective date: June 12, 2025

**321 SEARCH PROCEDURES**

**POLICY:**

This policy is to provide Office personnel with guidelines to conduct authorized searches and seizures. Both the Fourth Amendment to the United States Constitution and Article II, Section 10 of the New Mexico Constitution protect individuals against unreasonable searches and seizures by government officials. Office personnel must protect individual civil rights while recognizing the need to enforce the law and collect evidence.

There are two types of authorized searches that may be conducted:

1. A valid search warrant.
2. A warrantless search.

**DEFINITIONS:**

**AFFIANT**

The individual swearing to the affidavit.

**CURTILAGE**

Any grounds, buildings, space, or other facilities that are immediately enclosed along with the primary house of the given property.

**EXIGENT CIRCUMSTANCES**

An emergency circumstance that requires reasonable and prompt action necessary to prevent physical harm to the officers or public, the destruction of evidence, or the escape of a suspect.

**HOT PURSUIT**

The immediate and continuous chase of a suspect where probable cause exists for an arrest and the suspect has fled from a public place into a private property.

**INVESTIGATIVE DETENTION**

Temporary detention, for investigative purposes, of a person based upon reasonable suspicion that the person has committed, is committing, or is about to commit a crime, under circumstances that do not amount to probable cause for arrest.

**INVENTORY**

A complete list of items or contents. An inventory is conducted to protect and safeguard an individual's property, provide for the safety of the deputy and others, as well as protect the Office against claims or lawsuits for loss or destruction of private property.

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**NO KNOCK**

Authorization from a judge to serve a 'no knock' search warrant. Contrary to the normal procedure of law enforcement knocking and announcing themselves when serving a search warrant, 'no knock' authorization would allow law enforcement to enter the premises described in the search warrant without announcing their presence or waiting for the occupants to allow access.

**PARTS OF A SEARCH WARRANT**

- WARRANT - A document signed by a judge granting sworn personnel authority to conduct searches and seizures.
- AFFIDAVIT FOR A SEARCH WARRANT - A sworn statement of the specific articulable facts and circumstances showing probable cause that evidence of a crime exists on or in the person, place, or thing intended to be searched.
- RETURN OF SERVICE FOR A SEARCH WARRANT - A document (commonly referred to as an inventory) used for the inventory of all property seized during the service of a search warrant.

**PROBABLE CAUSE**

Specific and articulable facts, combined with rational inferences, that would lead a reasonable person to believe that more likely than not, a specific person has committed a specific crime.

**PROTECTIVE SWEEP**

A limited search of a location, during an arrest, for persons posing a danger to officers or others.

**REASONABLE SUSPICION**

Specific and articulable facts, combined with rational inferences, that would lead a reasonable person to believe that a crime is being, has been, or might be committed.

**SEARCH**

When a law enforcement officer goes through a part, or all, of an individual's property and is looking for specific items that are related to a crime that the officer has reason to believe has been committed. It is an intrusion on a person's reasonable expectation of privacy.

**SEIZURE**

When a law enforcement officer takes possession of items during a search or places a person under arrest. It also includes when a law enforcement officer detains a person for a lawful reason.

**TERRY PAT (PAT DOWN)**

The feeling of an individual's outer garments to determine if that person is armed with a weapon.

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**RULES AND PROCEDURES:**

**321-1 AUTHORIZED SEARCHES**

- A. A search must be supported by a valid search warrant or meet the criteria for a warrantless search.
- B. Community caretaking encounters **are not** a search or seizure subject to the requirements of the Fourth Amendment. To qualify as a community caretaking encounter, the encounter must be based on the following:
  - 1. Articulable facts establishing a public safety concern that must be based on the Office personnel's observations and must be objectively identifiable.
  - 2. The actions of the Office personnel initiating the encounter must be reasonable under the circumstances.
- C. Office personnel engaged in a community caretaking encounter may later conduct further investigation based on reasonable suspicion, or probable cause, of criminal activity established by their observations during the community caretaking encounter.

**321-2 SEARCH WARRANT PREPARATION**

- A. The search warrant consists of three parts:
  - 1. The warrant.
  - 2. The affidavit.
  - 3. The return of service.
- B. The search warrant and affidavit are prepared by the affiant and must contain the following information:
  - 1. A complete and clear description of the person, place, or property to be searched.
  - 2. A description of the specific items to be seized.
  - 3. Facts and circumstances that establish probable cause for the warrant to be issued.

**321-3 AUTHORIZATION OF THE SEARCH WARRANT**

- A. After the affiant has completed the warrant and affidavit, these steps must be followed for the warrant to be authorized:
  - 1. Present the search warrant and affidavit to the appropriate supervisor for approval.
  - 2. Present the search warrant and affidavit to the prosecuting attorney's office for review.
  - 3. Present the search warrant to a District Court or Metropolitan Court judge for review and authorization.
  - 4. The judge will swear in the affiant and sign the warrant and affidavit if authorized.

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- B. A search warrant may be accompanied by a motion to seal and an order to seal to prevent violations of law or obstructions of justice.
- C. Any search warrant being sought for any entity not within Bernalillo County, such as an internet service provider, must be signed by a District Court judge.

**321-4 SERVICE OF THE SEARCH WARRANT**

- A. A search warrant is valid for ten days after it is signed by a judge. If it is not served within ten days, it becomes void and no further action is required.
- B. Except under exigent circumstances, deputies will:
  - 1. Knock on the main entrance of the premises to be searched and identify themselves as law enforcement.
  - 2. Inform the occupant(s) the purpose of their presence is to execute a search warrant.
  - 3. Wait a reasonable time for the occupant(s) to allow access to 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. Following the requirements set forth in the SWAT Matrix is the responsibility of both the Affiant and their direct supervisor. The SWAT Matrix will be made available by the SWAT Commander.
- D. A search warrant can be executed between 6:00 a.m. and 10:00 p.m. unless a special nighttime search authorization is granted to execute a search warrant after 10:00 p.m. and before 6:00 a.m. Note: According to State v. Santiago, if the property is secured before 10:00pm we do not need nighttime authorization.
  - 1. The nighttime search authorization must be requested and justified by the facts outlined in the affidavit.
- E. An Affiant can request approval for 'no-knock' authorization from the judge. This authorization would allow law enforcement to enter the premises described in the search warrant without announcing their presence or waiting for the occupants to allow access. This request must be justified by the facts outlined in the affidavit.
  - 1. Prior to requesting approval from a judge for 'no-knock' authorization, the Affiant must have approval through their chain of command up to the Sheriff or his designee.

**321-5 AFFIANT RESPONSIBILITIES**

- A. Ensure that a supervisor is thoroughly briefed before the search warrant is executed.
- B. When needed, ensure a SWAT Matrix is completed and reviewed by a SWAT supervisor.
- C. Brief all participants as to the area to be searched, items to be seized, and any special circumstances.

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- D. Have all necessary copies of the search warrant on scene.
- E. Ensure there is a means of collecting evidence.
- F. Ensure the following tasks are accomplished upon service of the warrant:
  - 1. When items are seized, record the location of the item, the name of the person who located the item, and the time the item was seized.
  - 2. Photograph evidence prior to being seized.
  - 3. Complete a return of service (inventory) for all items being seized.
  - 4. Ensure all evidence collected or seized is submitted in accordance with SOP.
  - 5. Provide a copy of the search warrant, affidavit, and return of service at the place from which the items were seized or with the person named on the warrant.
  - 6. File the warrant, affidavit, and return of service with the District Court clerk within three workdays of the service of the warrant.

**321-6 SUPERVISORS RESPONSIBILITIES**

- A. Review the warrant and affidavit prior to it being presented to a prosecuting attorney.
- B. Notify other appropriate law enforcement units about the search warrant service, i.e. Albuquerque Police Department or BCSO Field Services Division. This communication should be done prior to the search warrant being served. The purpose of this communication is to make the other law enforcement units aware of the search warrant service.
- C. Coordinate with the appropriate law enforcement agency when serving a search warrant outside of the jurisdictional areas of Bernalillo County. Representatives of that agency may be present if they so desire.
- D. Accompany deputies on search warrant service when needed. This will be determined by the supervisor on a case-by-case basis.
- E. Ensure affiant has all resources needed for the service of the warrant.
- F. Ensure a marked unit is present at the time the search warrant is served for any dwelling or structure.
- G. Make certain that all non-uniformed deputies comply with *SOP 236 Uniform Equipment* during the service of the search warrant.
- H. If on scene, assign personnel to specific areas for the purpose of scene security, searching for evidence, and preventing the destruction of evidence.
  - 1. Ensure the scene was properly documented to include all items of evidence.
  - 2. Make a reasonable attempt to secure the premises upon completion of warrant service.

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**321-7 WARRANTLESS SEARCHES**

- A. In the past, New Mexico courts have generally shown a strong preference for search warrants in place of warrantless searches. However, several exceptions to that general rule have been recognized. The 8 types of warrantless searches are:
1. A consent-based search.
  2. A Terry Pat (According to Terry v. Ohio)
  3. A protective sweep.
  4. A search incident to an arrest.
  5. A search based on plain/open view.
  6. A search based on probable cause and exigent circumstances.
  7. A search for a suspect based on hot pursuit.
  8. An inventory.
- B. Deputies having questions on whether a warrantless search would be legal, should contact their supervisor and/or an on-call prosecuting attorney to seek guidance prior to proceeding.

**321-8 CONSENT-BASED SEARCH**

- A. Consent-based searches are a search under the Fourth Amendment but are one of the warrantless exceptions.
- B. A consent-based search is a voluntary search where deputies are given permission, verbally or written, to search a person or property. 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. Consent has been given freely and without coercion.
  3. The person giving consent is made aware that any evidence found may be used in a criminal prosecution.
  4. Office personnel shall make the consenting party aware that consent can be withdrawn at any point during a consent-based search.
- C. The request for consent to search should be documented in writing by completing the appropriate *Consent to Search* form.
- D. Consent searches are limited in scope by the request of the deputy and the permission given by the person granting the consent to search.
- E. The deputy may not legally search beyond the scope of the consent which has been given. The consent to search lasts only as long as the person granting the consent does not change his/her mind or a person with a right to equal access revokes the consent.
- F. If there is a question as to the validity or scope of a consent-based search, personnel shall contact their supervisor and/or an on-call prosecuting attorney to seek guidance prior to proceeding.

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**321-9 TERRY PATS**

- A. Terry Pats are a search under the Fourth Amendment but are one of the warrantless exceptions.
- B. A Terry Pat will be conducted in accordance with training and will be no more extensive than patting the outer garments.
- C. If articulable, subjects may be restrained during a Terry Pat.
- D. Office personnel must have articulable facts as to why they performed a Terry Pat. These facts could include the following:
  - 1. The type of crime being investigated.
  - 2. Number of subjects contacted.
  - 3. The hour of the day and the location.
  - 4. Knowledge of the subject's past propensity for violence or to carry weapons.
  - 5. The appearance and demeanor of the subject.
  - 6. Visual indications that suggest the subject is carrying a weapon.
  - 7. The age and gender of the suspect. Whenever possible, Terry Pats should be performed by deputies of the same sex.

**321-10 PROTECTIVE SWEEP**

- A. Protective sweeps are a search under the Fourth Amendment but are one of the warrantless exceptions.
- B. A protective sweep can only be conducted:
  - 1. During an arrest and;
  - 2. If a deputy has a reasonable belief based on specific and articulable facts that other people are present and could pose a danger. This belief can be based on circumstances that would lead a reasonable person to believe others could be present and pose a danger, such as observations of people entering the premises, sounds of people moving about other areas of the premises, and the violent nature of the crime.
- C. The search must be limited to the areas of the premises where a person might be found.

**321-11 SEARCH INCIDENT TO ARREST**

- A. Searches incident to arrest are a search under the Fourth Amendment but are one of the warrantless exceptions.
- B. The search must occur at the time of arrest and be limited to the area within the immediate control of the person arrested. This search is not to be confused with the inventory of the arrestee, which comes later.
- C. Property belonging to the arrestee that will be tagged for safekeeping or taken with them to MDC will be inventoried.

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**321-12 PLAIN/OPEN VIEW**

- A. Searches in plain/open view are a search under the Fourth Amendment but are one of the warrantless exceptions.
- B. There are two factors that must be present for this warrantless search.
  - 1. The officer is legally present at the location.
  - 2. The items seized must be immediately recognizable as evidence or contraband.
- C. When dealing with structures or vehicles, once the plain/open view contraband or evidence is seized, no further searching can be continued without consent or a search warrant.

**321-13 PROBABLE CAUSE AND EXIGENT CIRCUMSTANCES**

- A. Searches done with probable cause and exigent circumstances are a search under the Fourth Amendment but are one of the warrantless exceptions.
- B. These searches are not the same as Community Caretaker encounters.
- C. Both elements of probable cause, as defined above, and exigent circumstances, as defined above, must be present.

**321-14 HOT PURSUIT**

- A. Searches done while in hot pursuit of a suspect are searches under the Fourth Amendment but are one of the warrantless exceptions.
- B. Hot pursuit of a suspect of a felony level crime is an exigent circumstance.
- C. Hot pursuit of a suspect of a misdemeanor crime should be decided on a case-by-case basis to determine if there are exigent circumstances.

**321-15 INVENTORY**

- A. Inventories are searches under the Fourth Amendment but are one of the warrantless exceptions.
- B. At the property owner's request, Office personnel may leave property with a responsible party identified by the property owner. This request should be documented on BWC and in the report.
- C. **Inventory of a person:** When a person is arrested pursuant to state law, an inventory search of that person's property in their possession at the time of arrest shall be conducted.
  - 1. An inventory search of a person will be documented in the incident report.
- D. **Inventory of a vehicle:** When a vehicle is towed pursuant to state law or county ordinance, an inventory of the vehicle shall be conducted.
  - 1. An inventory search will be documented on the Tow Report form.
- E. Office personnel will conduct an inventory without damaging the property to the best of their ability. Secured containers may not be forcibly opened.



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- F. If, during an inventory, evidence of a crime is located, Office personnel will follow the procedures under the plain view warrantless search exception. If no further search for evidence will be conducted, the inventory must be completed.

**321-16 CONSENSUAL CONTACTS**

- A. Consensual contacts are not a seizure under the Fourth Amendment if a reasonable person would feel free to leave. Office personnel may approach an individual without a warrant or reasonable suspicion if Office personnel:
  - 1. Approach in a non-threatening and non-coercive manner.
  - 2. Do not use language or tone of voice indicating compliance might be compelled.
  - 3. Restrain the person's freedom of movement.
- B. During a consensual contact, identification of the subject may be requested but cannot be compelled.

**321-17 INVESTIGATIVE DETENTIONS**

- A. Investigative detentions are a seizure under the Fourth Amendment.
- B. The detention must comply with the following:
  - 1. Be temporary and no longer than reasonable.
  - 2. Be for investigative purposes.
  - 3. Be based upon reasonable suspicion that the person has committed, is committing, or is about to commit a crime.
- C. If articulable, subjects may be restrained during an investigative detention.
- D. Transporting a detained subject during an investigative detention is a de facto arrest, which must be supported by probable cause.