

ROLL CALL

For Law Enforcement/Corrections

March 2026

High Risk Critical Task/ Arrest, Search & Seizure

Name _____ Date _____

The provisions of the United States Constitution restrict the power of government officials, and specifically law enforcement officers, with respect to a deputy's authority over citizens. The amount of power a deputy can exercise over an individual is controlled by the level of proof or the level of suspicion that the deputy has regarding the actions of the individual. The policy of most law enforcement agencies is to protect and serve the public while preserving the constitutional rights of all citizens. This is especially important when stopping, arresting, or searching individuals. Deputies must carefully balance any intrusion on citizens' rights against the needs of law enforcement in solving crimes for the protection of the community. Probable cause to arrest is defined as facts and circumstances based upon observations or information that would lead a reasonable deputy to believe that a crime has been or is being committed and the suspect is responsible.

Scenario: Deputies are called to a public park where an individual is distributing leaflets that criticize the local government and its policies. The complaining caller identified himself as a local County Commissioner, the target of some of the criticism, who wants the individual removed from the park and his leaflets confiscated. The individual is peacefully protesting and is not blocking walkways, violating any laws, or otherwise causing any disturbance. The deputy approaches and questions the individual regarding his distribution of leaflets and the message on the leaflets. The man politely informs the deputy that he is unwilling to answer any of his questions, that he is exercising his constitutionally guaranteed First Amendment right, and he continues to go about his activities. The deputy becomes agitated that the man refuses to answer his questions, and eventually arrests the man and confiscates his leaflets.

Question: Can the deputy confiscate the leaflets because the County Commissioner doesn't want the individual distributing the message he doesn't like? And/or can the deputy

arrest the individual solely for exercising his First Amendment rights to free speech absent the individual violating any laws or ordinances?

Answer: No, the deputy cannot lawfully confiscate the leaflets or arrest the individual solely for exercising his First Amendment rights, as long as the “protest” is peaceful and does not disrupt public order, infringe on the rights of others, or violate some ordinance, resolution, or statute.

The First Amendment protects individuals’ rights to free speech and peaceful assembly, and any restriction or detention must be justified by a compelling government interest and be narrowly tailored. If the individual is peacefully distributing leaflets without interfering with others or violating any law, their First Amendment rights are protected, and suppressing or restricting that activity would likely violate their constitutional rights.

Note: The content of this Roll Call is derived from the Law Enforcement High-Risk Critical Task Lesson Plans of Legal and Liability Risk Management Institute (LLRMI). It has been edited by NIRMA for Nebraska agencies.