

# United States v. City of Newark, et al., Civil Action No. 16-1731 (MCA) (MAH)

## CONSENT DECREE

### Independent Monitor - Twenty-Second Semiannual Report

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Independent Monitor  
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**TWENTY-SECOND REPORT AND SECOND SEMI-ANNUAL REPORT**  
(July 1, 2022 to December 31, 2022)

**I. EXECUTIVE SUMMARY (JULY 1, 2022 – DECEMBER 31, 2022)<sup>1</sup>**

This is the Twenty-Second Report and Second Semi-Annual Report from Independent Monitor Peter C. Harvey regarding the reforms that both the City of Newark (the “City”) and Newark Police Division (“NPD”) agreed to implement as set forth in the Consent Decree between the City and the United States Department of Justice (“DOJ”). This Semi-Annual Report covers the period from July 1, 2022 to December 31, 2022.

In this Semi-Annual Report, the Monitoring Team discusses outcome assessments and the status of the following audits: (1) *First* Property and Evidence Management audit; (2) *First* Searches audit; (3) *First* Arrests audit; (4) *Second* Use of Force audit; and (5) *Third* Body-Worn Camera and *Second* In-Car Camera audit.

Audits resumed at an increased pace in 2022 in light of the improved situation of the COVID-19 pandemic. In 2020 and 2021, the Monitoring Team was required to drastically scale back its in-person activities. On March 20, 2020, in response to growing public health concerns related to the COVID-19 pandemic, NPD’s then-Public Safety Director requested that the Monitoring Team discontinue in-person Monitorship activities. The Monitoring Team complied with this request. The nationwide pandemic continued throughout the balance of 2020 and during 2021. As a result of vaccines developed and made available to the public throughout 2021, much of the COVID-19 pandemic subsided in late 2021. The Monitoring Team was able to schedule and resume audits in 2022 in cooperation with the City and NPD.

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<sup>1</sup> Unless otherwise stated, the City’s and NPD’s progress with respect to Consent Decree tasks, as described in this Quarterly Report, reflects developments as of December 31st, 2022.

## II. DETAILED STATUS UPDATES

### A. *First Property and Evidence Management Audit*

The Monitoring Team has completed its *first* audit of NPD's compliance with certain provisions of the Consent Decree relating to Property and Evidence Management.

The audit covered the period from May 1, 2021 to June 30, 2021. The audit was conducted by Linda Tartaglia, Associate Director of the Rutgers University Center on Policing, Sgt. Roger Nunez of the Los Angeles Police Department, Lieut. Dan Gomez (Ret.) of the Los Angeles Police Department, Rosalyn Bocker Parks, Ph.D., Rutgers University Center on Policing, Kathryn Duffy, Ph.D., Rutgers University Center on Policing, and Jonathan Norrell, Rutgers University Center on Policing.

Specifically, the Monitoring Team assessed whether NPD is in compliance with Consent Decree Paragraphs 105, 110, and 111. Specifically, the Consent Decree requires NPD to ensure "that individuals are not deprived of property without due process... [and] take comprehensive efforts to prevent theft of property by officers." Accordingly, under Consent Decree Paragraph 105 "[i]n all instances where property or evidence is seized, the responsible officer [must] immediately complete an incident report... and [must] submit the property or evidence seized to the property room before the end of tour of duty." Paragraph 110 requires NPD to "maintain policies and procedures for the intake, storage, and release of property." Paragraph 111 requires NPD to "conduct and document periodic audits and inspections of the property room and immediately correct any deficiencies."

The Monitoring Team has met with the parties to discuss the findings of the audit, and will issue the audit report in the near future.

**B. *First Searches Audit***

On July 13, 2021, pursuant to Consent Decree Paragraphs 173 and 180, the Monitoring Team provided NPD with notice that the Monitoring Team would conduct its *First* audit of NPD's practices of searches with and without a warrant. The audit was conducted by Linda Tartaglia, Rosalyn Parks, and Jonathan Norrell of the Rutgers University Center on Policing, and Subject Matter Experts Daniel Gomez, Sekou Kinebrew, and Roger Nunez.

The Monitoring Team reviewed NPD's Searches With or Without a Warrant for a two-month time period, from June 1, 2021 to July 31, 2021 (the "Audit Period"). During October 2021, the Monitoring Team was onsite with NPD, and reviewed a randomly selected sample of 200 search events that NPD conducted during the Audit Period.

For the purposes of this audit, the Monitoring Team assessed whether: (1) NPD's policies that govern searches contained the Consent Decree required provisions (as listed above); and (2) NPD's personnel demonstrated routine adherence to NPD's own Search policies in their day-to-day operations, described here as "Overall Compliance."

Regarding the first component of the Audit, the Monitoring Team had previously approved various NPD policies and directives, including NPD's General Order 18-15, *Searches With or Without a Search Warrant*, dated May 27, 2021 and General Order 18-12, *First Amendment Right to Observe, Object to and Record Police Activity*, dated June 12, 2019. The Monitoring Team determined that these NPD General Orders as well as other, related written directives contained all Consent Decree-required policies, and were thus compliant with the Consent Decree.

Regarding the second component of the audit, the Monitoring Team considered whether NPD officers on the street conducting a Search (a) had legal justification for the Search and whether or not the mechanics of the Search were within legal and policy-related parameters,

described as *substantive compliance* and (b) completed required reports and accurately documented the Search in the narrative section of the report, described as *documentation compliance*. The Monitoring Team utilized a 95% Search event compliance standard for this audit. NPD achieved “Overall Compliance” when it satisfied both substantive and documentation compliance for 95% of the events in the sample reviewed by the Monitoring Team.

The audit revealed that 48.00% of events reviewed were compliant both substantively and with respect to documentation requirements. In other words, 96 out of 200 events reviewed by the Monitoring Team achieved Overall Compliance. When further separated by substantive and documentation compliance, the audit revealed that NPD attained a score of 65.00 % for substantive compliance (130 out of 200 events assessed for substantive compliance were determined to be compliant). NPD’s documentation compliance score was 52.50% (105 out of 200 events assessed for documentation compliance were determined to be compliant). The chart below summarizes the results of this audit.

<b>Overview of First Searches Audit Results</b>		
<b>Audit Area/Subject</b>	<b>Consent Decree Paragraph</b>	<b>Compliance?</b>
<b>Without a Search Warrant Policy and Related Policies</b>	See Appendix B	Yes.
<b>Stop, Search and Arrest Analysis Protocol</b>	Paragraph 53	Yes.
<b>Overall Compliance</b> <i>Whether NPD demonstrated overall compliance in its Searches with or without a Search Warrant practices (Substantive and Documentation).</i>	Paragraphs 25-34 (Section VI(A))	No. Overall, 48.00 % of Search events reviewed were compliant both substantively and with respect to documentation.

<p><b>Substantive Compliance</b></p> <p><i>Whether the responsible NPD officer adhered to NPD policy by demonstrating that legal justification for the search existed and that the search was within legal and policy-related parameters.</i></p>	<p>Paragraphs 25-34; 55-62 (First Amendment)</p>	<p>No. NPD was deemed substantively compliant in 65.00 % of Search events reviewed.</p>
<p><b>Documentation Compliance</b></p> <p><i>Whether the responsible NPD officer adhered to NPD policy by demonstrating that all reporting and related narrative requirements were met as determined by NPD policy and the Consent Decree.</i></p>	<p>Section VI (Omnibus Statement); Paragraphs 26, 27, 29-34</p>	<p>No. NPD was deemed compliant with respect to documentation in 52.50 % of Search events reviewed.</p>

The Monitoring Team found that the great majority of the searches it reviewed were conducted in an exhaustively lawful and constitutional manner. The searches also were conducted pursuant to circumstances under which a reasonable police officer would undertake the same course of action. In addition, video footage captured on body-worn and in-car cameras confirmed that, in the overwhelming majority of interactions with members of the community, Newark Police Division officers comported themselves in a professional manner, maintained a courteous and respectful demeanor, and exercised laudable restraint during often tense situations. The Monitoring Team commends NPD for its professionalism in conducting searches during this audit period.

But the Monitoring Team also made several observations regarding NPD's deficiencies: (i) many of the reports filed by NPD officers used pro forma language<sup>2</sup>, (ii) many reports did not identify the searching officer, (iii) many written reports exhibited inconsistencies with the available video footage, and (iv) many NPD officers appeared to misunderstand critical legal principles (such as the distinction between a protective pat down in contrast to a search incident to arrest). In its Audit Report, the Monitoring Team has made several recommendations to NPD regarding how to correct these issues (attached as **Appendix B**), and has every confidence NPD will be able to implement the suggestions and improve its search practices.

**C. Second Use of Force Audit**

On March 2, 2022, pursuant to Consent Decree Paragraphs 173 and 180, the Monitoring Team provided NPD with notice that the Monitoring Team would conduct its Second Use of Force audit. Section VIII of the Consent Decree requires that "NPD will develop and implement policies and training directing that the use of force by NPD officers accords with the rights secured and protected by the Constitution and state and federal law."

This audit was conducted by Linda Tartaglia, Rosalyn Parks, Wayne Fisher, and Jonathan Norrell of the Rutgers University Center on Policing, and Subject Matter Expert Lt. Daniel Gomez (ret.), LAPD. For this audit, the Monitoring Team reviewed NPD's police activities and records for a three-month period from July 1, 2021, through September 30, 2021 (the "Audit Period"). The Monitoring Team reviewed a randomly selected sample of 104 separate use of force incidents that occurred during the Audit Period.

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<sup>2</sup> Pro forma language is specifically prohibited by the Consent Decree, so this was treated as a substantive deficiency.

In this audit, the Monitoring team assessed whether: (1) NPD's use of force policies contained the Consent Decree-required provisions; (2) NPD demonstrated routine adherence to its own use of force policies in its day-to-day operations, described here as "Operational Compliance"; and, (3) NPD was able to produce police data concerning its use of force that was sufficient for the Monitoring Team to conduct aggregate data analysis as required by Consent Decree Paragraph 174(b), known as an "outcome assessment."

With respect to the first component of this audit, namely NPD's use of force policies, the Monitoring Team previously determined in the *first* audit of NPD's Use of Force, that the policies embody each of the Consent Decree requirements. These policies, therefore, remain compliant for this second audit.

With respect to the second component of this audit – whether NPD had demonstrated routine adherence to its use of force policies in its day-to-day operations, the Monitoring Team considered (a) whether NPD officers' actions were lawful and consistent with the four (4) fundamental principles of NPD's Use of Force policy<sup>3</sup>, described in this audit as *substantive compliance*; and (b) whether all officers involved in a use of force incident, meaning those actually employing force, witnessing force, or present in a supervisory capacity, complied with the documentation requirements contained in NPD's policy, described in this audit as *documentation compliance*. As in the *first* Audit of Use of Force, NPD achieves Overall Operational Compliance only when it satisfies both metrics (*i.e.*, substantive compliance and documentation compliance) 95% of the time in the sample that the Monitoring Team reviewed.

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<sup>3</sup> The four principles are as follows: (1) authorization to initiate force; (2) appropriate cessation of force; (3) use of force as a last resort; (4) minimization of the level of force.

In terms of substantive compliance, the Monitoring Team found that NPD achieved substantive compliance with its use of force incidents; meaning that NPD officers used force in a manner consistent with its policies, the Consent Decree, New Jersey law, and federal law 94.23% of the time. NPD officers failed to employ force in a manner consistent with applicable law and policy in only 6 of the 104 incidents reviewed. In terms of documentation compliance, the Monitoring Team found that NPD was compliant in 92.31% of the 104 incidents of use of force reviewed.

The Monitoring Team determined that NPD achieved full and effective compliance with the Consent Decree based on the above figures. In terms of both substantive use of force and documentation, NPD was compliant in well over 90% of incidents reviewed. Importantly, NPD was 100% compliant in every intermediate and serious use of force incident. While 95% remains the relevant threshold under the Consent Decree, the Monitoring Team believes that based on the sample of use of force incidents reviewed, NPD demonstrated commendable adherence to both its substantive use of force and documentation policies. NPD’s high rate of compliance demonstrates that the revised Use of Force policy and training are embodied in officers’ daily on-the-street behavior.

With respect to the third component of this audit, the provision by NPD of data relating to outcome assessments, NPD provided the Monitoring Team with the necessary data. Outcome assessments are discussed in a separate section of this report.

The table below summarizes the results of this audit.

<b>Overview of Second Use of Force Audit Results</b>		
<b>Audit Subject</b>	<b>Consent Decree Paragraph(s)</b>	<b>Compliance?</b>
<b>Use of Force Policies</b>	Paragraphs 67-102	Yes.
<b>Substantive Operational Compliance</b>	Paragraphs 66, 67, 71, 72, 76, 77	Yes. 94.23% of use of force incidents reviewed by the

<b>Overview of Second Use of Force Audit Results</b>		
<b>Audit Subject</b>	<b>Consent Decree Paragraph(s)</b>	<b>Compliance?</b>
<i>Whether all officers who employed force acted consistently with the fundamental principles of NPD's Use of Force policy.</i>		Monitoring Team complied with the substantive requirements. This constitutes full and effective compliance pursuant to Consent Decree Paragraphs 223-225.
<p><b>Documentation Operational Compliance</b></p> <p><i>Whether NPD officers complied with NPD's use of force reporting requirements.</i></p>	Paragraphs 66, 75, 77, 79 (a and c)	Yes. 92.31% of use of force incidents reviewed by the Monitoring Team complied with the documentation requirements. This constitutes full and effective compliance pursuant to Consent Decree Paragraphs 223-225.
<p><b>Outcome Assessments</b></p> <p><i>NPD's production of aggregate use of force data required by the Consent Decree</i></p>	Paragraph 174(b)(i)-(ix)	Outcome assessment data is discussed in a separate section of this report.

The Monitoring Team commends NPD on the results of this audit. The full audit report is attached to this report as **Appendix C**.

**D. First Audit of Arrests With or Without A Warrant**

On May 27, 2022, pursuant to Consent Decree Paragraphs 173 and 180, the Monitoring Team provided NPD with notice that the Monitoring Team would conduct its first audit of Arrests With our Without a Warrant ("Arrests"). Sections VI and XVI of the Consent Decree require NPD to, among other things, prohibit officers from arresting an individual unless the officer has probable cause to do so, and from relying on information they know to be materially false or incorrect when effecting an arrest; Prohibit officers from considering a subject's demographic category to justify an arrest (except that officers may rely on a

demographic category in a specific suspect description, where the description is from a trustworthy source that is relevant to the locality and time); and require that officers complete all arrest reports, properly documenting the probable cause for arrests, by the end of their shifts.

This audit was conducted by Subject Matter Experts Sekou Kinebrew, Daniel Gomez, and Roger Nunez, as well as Linda Tartaglia, Rosalyn Parks, Kathryn Duffy, and Jonathan Norrell of the Rutgers University Center on Policing. The Monitoring Team reviewed NPD's arrests for a two-month time period, from October 1, 2021-November 30, 2021 (the "Audit Period"). The Monitoring Team reviewed a randomly selected sample of 201 arrests drawn from the Audit Period. The Monitoring Team conducted its review in person on various dates in June, July and August of 2022.

During this audit, the Monitoring Team analyzed whether (1) NPD's policies that govern these practices contained the Consent Decree required provisions, and (2) NPD's personnel demonstrated routine adherence to NPD's own Arrest policies in their day-to-day operations, described here as "Overall Compliance."

On the first component of this audit—NPD's policies and procedures regarding arrests with or without an arrest warrant—the Monitoring Team determined that NPD's applicable General Orders, directives, and In-Service Training Bulletins contained each Arrest-related policy requirement specified in the Consent Decree.

For the second component of this audit—whether NPD had demonstrated routine adherence to its Arrests With or Without a Warrant policy, thereby achieving "Overall Compliance" with the mandates of the Consent Decree—the Monitoring Team considered whether NPD officers conducting an arrest (a) had legal justification for the arrest and whether or not the mechanics of the arrest were within legal and policy related parameters, described in

this audit as substantive compliance, and (b) completed required reports and accurately documented the arrest in the narrative section of the report, described in this audit as documentation compliance. If any Arrest event was deficient, either substantively or with respect to documentation, that Arrest event was deemed “Non-Compliant.” The Monitoring Team utilized a 95% Arrest event compliance standard for this audit. NPD achieved “Overall Compliance” when it satisfied both substantive and documentation compliance for 95% of the events in the sample reviewed.

When separated by substantive and documentation compliance, the audit revealed that NPD attained a score of 99.00% for substantive compliance (199 out of 201 events assessed for substantive compliance were determined to be compliant). NPD’s documentation compliance score was 95.52% (192 out of 201 events assessed for documentation compliance were determined to be compliant). Thus, when assessing for Overall Compliance (*i.e.*, satisfaction of **both** substantive and documentation requirements), the Monitoring Team found that 95.02% of events reviewed were compliant both substantively and with respect to documentation requirements. In other words, 191 out of 201 events reviewed by the Monitoring Team achieved Overall Compliance.

The Monitoring Team found that NPD’s performance, particularly on the substantive portion of the audit, demonstrated that NPD has achieved substantive, documentation, and overall compliance. The Monitoring Team commends NPD on its strong performance in this audit. The full audit report is attached to this report as **Appendix D**.

**E. Third Body-Worn Camera and Second In-Car Camera Audit**

On June 24, 2022, pursuant to Consent Decree Paragraphs 173 and 180, the Monitoring Team provided NPD with notice that the Monitoring Team would conduct its *third* audit of Body-Worn Cameras (“BWC”) and *second* Audit of In-Car Cameras (“ICC”). Section

IX of the Consent Decree requires NPD to develop, implement, and maintain a system of video recording officers' encounters with the public by using both body-worn and in-car cameras. NPD must equip all cars with cameras, and require all officers (with certain exceptions) to wear cameras as well.

This audit was conducted by Subject Matter Experts Maggie Goodrich, Daniel Gomez, and Roger Nunez, as well as Linda Tartaglia, Rosalyn Parks, Kathryn Duffy, and Jonathan Norrell of the Rutgers University Center on Policing. The Monitoring Team reviewed BWC and ICC videos from June 1, 2022 up to and including June 30, 2022 (the "Audit Period"). The Monitoring Team reviewed video footage relating to 181 events from the Audit Period while onsite at NPD from July 25 through July 29, 2022. This video review process is quite tedious and requires a significant amount of time.

During this audit, the Monitoring Team analyzed whether: (1) NPD's BWC and ICC policies contained the provisions required by the Consent Decree; (2) NPD demonstrated routine adherence to its own BWC and ICC policies in its day-to-day operations; and (3) NPD equipped all patrol cars with ICC systems as required by the Consent Decree.

Regarding the first component of the audit, the Monitoring Team previously found that NPD's policies complied with the Consent Decree, and those policies remained in compliance during this audit.

Regarding the second component of the audit, The Monitoring Team considered whether all video footage reviewed met the BWC Objective for this audit, described in this audit as BWC Compliance (*i.e.*, Notification requirement)<sup>4</sup>, and the ICC objectives, described in this

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<sup>4</sup> NPD has achieved compliance (at least 95%) in the categories of Activation, Categorization and Deactivation for two consecutive prior audits. Consequently, these particular objectives did not require assessment in this *third* BWC audit. As a result, the scope for this Body-Worn Camera audit was limited

audit as ICC Compliance (*i.e.*, Activation, Deactivation, and Availability of video for rear-seat transports). Regarding Body-Worn Camera compliance, in this third audit, NPD did not meet the 95% compliance threshold, achieving a score of 84.55% for the Notification objective assessed. Regarding ICC compliance, NPD achieved compliance for Deactivation, scoring 100% for this objective.

However, NPD did not achieve compliance for the remaining two objectives (Activation and Availability of video for rear seat transports). NPD received a score of 93.68% for Activation, and 92.85% for Availability of video for rear-seat transports.

The third component of this audit involved the inspection of marked vehicles for ICC installation and functional ICC equipment. The results of the Monitoring Team's physical inspection at three NPD precincts is described in this audit as Vehicle Inspection Compliance. Regarding the ICC equipment component of the audit, NPD scored 83.72%, and, therefore, did not achieve compliance.

Although NPD did not achieve the needed 95% score for BWC notification, the Monitoring Team noticed significant improvement in NPD's use of BWC technology, and commends NPD for its progress.

The Monitoring Team suggests that NPD continue to stress the importance of notification during roll calls. The Monitoring Team further suggests that NPD conduct monthly inspections of its vehicles to ensure ICC functionality. With these improvements, the Monitoring Team has confidence that NPD will be able to pass future audits in these areas. The full audit report is attached to this report as **Appendix E**.

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to notification requirements to inform members of the public that they were being recorded, unless doing so would have been unsafe, impractical, or impossible.

**F. Outcome Assessments**

1. *Use of Force*

The Independent Monitoring Team's first review of outcome assessments covers NPD's Use of Force. This assessment includes a summary of findings regarding NPD's use of force obtained from previously conducted community perception surveys.

While the Consent Decree seeks primarily a comparison of the rate of use of force over time, a holistic approach is recommended by all parties to the Consent Decree to establish a comprehensive view of the Newark Police Division's (NPD) progress towards legally proper uses of force and best practices as required by the Consent Decree.

2. *Method for Review & Assessment*

The Consent Decree requires the Monitoring Team to review NPD's change in performance over time per "Part C: Outcome Assessments." Pursuant to Consent Decree Paragraph 174:

"In addition to compliance reviews and audits to determine whether the specific requirements of this Agreement have been met, the Monitor will assess whether implementation of this Agreement is resulting in the desired outcomes (*i.e.*, policing that is consistent with the Constitution and that engenders effective cooperation and trust between NPD and the community it serves.)..."

The Monitoring Team conducted the outcome assessment from the first year that NPD data was readily available in its most complete form. This approach was taken to ensure that the data collected and analyzed allowed for the establishment of an accurate baseline. This baseline was then compared to the observed outcome assessments for subsequent years.

NPD's Use of Force records allowed for a review beginning in the baseline year of 2019. The review periods for this outcome assessment were July-September 2019 (baseline) and July-September 2021 (comparison group).<sup>5</sup>

3. *Required Documents & Materials:*

To conduct a comprehensive outcome assessment for Use of Force, the Monitoring Team required that NPD provide all relevant documents and materials for the time period and years under consideration. To systematically review recommendations and observations from prior Use of Force audits and the findings of past community surveys, the reviewed documentation included, but was not limited to:

- Final Report of the First Use of Force Audit
- Final Report of the Second Use of Force Audit
- Final reports of the Newark Community Surveys from:
  - 2017 (conducted by the Eagleton Institute of Politics)
  - 2018 (conducted by Suffolk University)
  - 2020 (conducted by Suffolk University)

4. *Results*

a. **Descriptive Statistics and Computation of Rates Required by the Consent Decree**

The requirements of Consent Decree paragraphs 174(a) and 174(b) speak specifically to the quantitative outcome assessments required for the Stop; Search; Arrest; and Use of Force areas.

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<sup>5</sup> For context, per current census data, Newark's current population breakdown is as follows: 9.9% White, 48.2% Black, and 36.8% Hispanic or Latino with the remaining percentages made up of other groups including Native Americans and Asians. It is important to note, however, that census data was not used as a basis for any analysis or comparison in the outcome assessment. These numbers are provided only for context.

5. *Use of Force Analysis*

The Consent Decree requires the evaluation of certain categories of data relevant to NPD's uses of force against members of the public. In particular, Consent Decree Paragraph 174(b) provides that the Monitor shall evaluate:

- i. the rate of force used per arrest by NPD;
- ii. the rate of force by types of force used;
- iii. the rate of force by geographic data and type of arrest;
- iv. the rate of force used, measured against the subject's race or ethnicity, gender, and age;
- v. the rate of force complaints that are sustained, overall and by force type; sources of complaint (internal or external); types of arrest; types of force complained of;
- vi. uses of force that were found to violate policy overall and by the following subsets: force type; type of arrest; force implement used; and number of officers involved;
- viii. the number of officers who have more than one instance of force found to violate policy.”<sup>6</sup>
- ix. claims and lawsuits filed regarding uses of force, judgements entered, or cases settled.

Using data provided by NPD, the Monitoring Team computed the above rates and counts.<sup>7</sup> NPD provided the Monitoring Team with 2019 Data for analysis for three months July

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<sup>6</sup> For Paragraph 174(b)(vii) is not included in this Outcome Assessment. This assessment will be included in the Internal Affairs Audit.

<sup>7</sup> When reviewing Uses of Force, the Monitoring Team used the following definition of “incident”: an “incident” involves an individual subject upon whom force is applied by one or more officers.

1<sup>st</sup> 2019 through September 30<sup>th</sup> and for the same period in 2021.<sup>8</sup> In 2019, 84 of 128 use of force incidents underwent individual case review. In 2021, all 104 use of force incidents underwent individual case review. The data revealed the following information: In 2019, 89 of 128 use of force incidents ended in arrest compared to 83 of 104 use of force incidents in 2021. Table 1 provides a breakdown of use of force incidents where arrests were made in 2019 and 2021.

<b>Table 1</b>		
<b>Arrests Made in Use of Force Incidents</b>		
<b>Arrest Made</b>	<b>2019 (128 Total)</b>	<b>2021 (104 Total)</b>
Yes	69.5%	79.8%
No	30.5%	20.2%
Total	100%	100%

In the 2019 sample, there were 116 low level uses of force incidents, 11 intermediate use of force incidents, and one (1) serious use of force incidents.

In 2021 there were 94 low level uses of force incidents, 8 intermediate use of force incidents, and 2 serious use of force incidents.

Table 2 provides a review of the percentages of levels of force used in use of force incidents in 2019 and 2021.

<b>Table 2</b>		
<b>Level of Force Used in Use of Force Incidents<sup>9</sup></b>		
<b>Level of Force</b>	<b>2019 (128 Total)</b>	<b>2021 (104 Total)</b>
Low	90.6%	90.4%
Intermediate	8.6%	7.7%
Serious	0.8%	1.9%
Total	100%	100%

<sup>8</sup> All computations in this report were rounded to the nearest tenth decimal place.

<sup>9</sup> For the purposes of these tables if multiple levels or types of force were applied to a subject by one or more officers, the greatest level applied was recorded here.

In the 2019 sample there were 118 uses of physical force/compliance holds, 7 uses of other types of force, and 3 uses of chemical agents. In 2021, there were 98 uses of physical force/compliance holds, one (1) use of other types of force, 4 uses of chemical agents, and one (1) use of a firearm.

Table 3 provides a breakdown by percentage of type of force used in use of force incidents in 2019 and 2021.

<b>Table 3</b>		
<b>Types of Force Used in Use of Force Incidents</b>		
<b>Type of Force</b>	<b>2019 (128 Total)</b>	<b>2021 (104 Total)</b>
Physical Force/Compliance Hold	92.2%	94.2%
Chemical Agent	2.3%	3.9%
Firearm	0%	1.0%
Other <sup>10</sup>	5.5%	1.0%
Total	100%	100%

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<sup>10</sup> The term “Other” includes less than lethal uses of force, including but not limited to non-lethal rounds and tasers.

Table 4 provides a breakdown by percentage of use of force incidents by precinct in 2019 and 2021.

<b>Table 4</b>		
<b>Use of Force Incidents by Officer's Assignment<sup>11</sup></b>		
<b>Precinct</b>	<b>2019 (128 Total)</b>	<b>2021 (104 Total)</b>
1 <sup>st</sup> Precinct <sup>12</sup>	10.9%	0% <sup>13</sup>
2 <sup>nd</sup> Precinct	19.5%	17.3%
3 <sup>rd</sup> Precinct	18.8%	11.5%
4 <sup>th</sup> Precinct	3.9%	8.7%
5 <sup>th</sup> Precinct	21.1%	41.4%
6 <sup>th</sup> Precinct	10.2%	9.6%
7 <sup>th</sup> Precinct	9.4%	9.6%
Other	6.3%	1.9%
Total	100%	100%

Table 5 provides a breakdown by percentage of use of force incidents by disposition in 2019 and 2021.

<b>Table 5</b>		
<b>Percentages of Use of Force Incidents by Disposition</b>		
<b>Disposition</b>	<b>2019 (128 Total)</b>	<b>2021 (104 Total)</b>
Arrest - Indictable Offense	60.9%	63.5%
Arrest - Disorderly Persons	12.5%	16.4%
No Arrest - Summons	11.7%	1.0%
No Arrest - No Action	14.8%	19.2%
Total	100%	100%

<sup>11</sup> The category "Other" includes specialized units such as Major Crimes.

<sup>12</sup> The 1<sup>st</sup> Precinct was dissolved by NPD in 2020. As such, no data is provided for 2021.

<sup>13</sup> Precinct 1 was no longer operational in 2021.

Table 6 provides a breakdown of use of force incidents by subject race/ethnicity as per the reporting officer.

<b>Table 6<sup>14</sup></b>		
<b>Use of Force Incidents by Subject Race/Ethnicity 2021</b>		
<b>Race/Ethnicity</b>	<b>Use of Force Incidents (n= 104)</b>	<b>Percent</b>
Black	90	86.5%
Hispanic	13	12.5%
Unspecified <sup>15</sup>	1	1.0%
Total	104	100%

In the 2019 sample there were a total of 128 use of force incidents. Of the 128 use of force incidents, 104 subjects were male and 24 were female.

In 2021, there were a total of 104 use of force incidents. Of the 104 use of force incidents, 82 subjects were male, 21 were female, and one (1) was unspecified.

Table 7 provides a breakdown of use of force incidents by subject's gender as per the reporting officer.

<b>Table 7</b>		
<b>Use of Force Incidents by Subject Gender</b>		
<b>Gender</b>	<b>2019 (128 Total)</b>	<b>2021 (104 Total)</b>
Male	81.3%	78.9%
Female	18.8%	20.2%
Unspecified <sup>16</sup>	0%	1.0%
Total	100%	100%

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<sup>14</sup> The data for 2019 is not included here as definitional changes were made to the categories of race between 2019 and 2021 in NPD's new Stop report. The Stop reports are the source of the data used. Because of this change in definitions a meaningful comparison between these two years is not possible.

<sup>15</sup> The category "Unspecified" includes incidents in which subjects did not openly disclose race and/or ethnicity or in which the officer was unable to determine the same.

<sup>16</sup> The category "Unspecified" includes incidents in which subjects did not openly disclose gender or in which the officer was unable to determine the same.

In the 2019 sample there were a total of 84 use of force incidents reviewed; 17 In 2021 there were 104 use of force incidents.

Table 8 provides a breakdown of use of force incidents by subject age.

<b>Table 8</b>		
<b>Use of Force Incidents by Subject Age</b>		
<b>Age</b>	<b>2019 (84 Total)</b>	<b>2021 (104 Total)</b>
<18	7.1%	14.4%
18-21	15.5%	13.5%
22-25	11.9%	15.4%
26-30	25.0%	15.4%
>30	40.5%	40.4%
Unknown	0.0%	1.0%
Total	100%	100%

To determine whether NPD is complying with its use of force policies, the Monitoring Team analyzed the actions of each officer who employed force as well as their documentation of the use of force, *and* determined if those officers who witnessed the force incident complied with applicable reporting requirements. The Monitoring Team evaluated whether, or not, the actions of NPD officers employing force were compliant with applicable policy regarding (i) the initiation of force; (ii) the use of the minimum amount of force necessary; (iii) the employment of all other reasonable means before using force; and (iv) the cessation of force when it was no longer necessary. The Monitoring Team also determined whether NPD officers, including both those using force and those witnessing force incidents, completed and submitted all necessary reports consistent with applicable policy.

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<sup>17</sup> Of the 128 use of force incidents in the 2019 sample period, the Monitoring Team individually reviewed a subset of 84 incidents, comprising all serious uses of force, all intermediate uses of force, and a randomly selected sample of 50% of low-level uses of force. For certain categories of comparison, only data from this subset of 84 incidents was available.

Table 9 provides a breakdown of non-compliant use of force incidents attributed to either substantive or documentation failures. The terms “substantive” and “documentation” are defined as follows:

Substantive Compliance is achieved when the actions of an officer using force are compliant with all four (4) criteria listed above.

Documentation Compliance is achieved when all required reports are completed by NPD officers.

In the 2019 sample there were 27 non-compliant use of force incidents out of the 84 incidents reviewed by the Monitoring Team. Of the 27 non-compliant incidents, 6 use of force incidents were found to be non-compliant for substantive reasons, and 21 were found to be non-compliant due to documentation reasons.

In 2021 the Monitoring Team reviewed all 104 use of force incidents and determined that 14 were non-compliant. Of these 14 non-compliant incidents, 6 were found non-compliant for substantive reasons, and 8 were found non-compliant due to documentation reasons.

<b>Table 9</b>		
<b>Use of Force Incidents by Compliance Determination</b>		
<b>Policy Determination</b>	<b>2019 (84 Total)</b>	<b>2021 (104 Total)</b>
Compliant	57 (67.9%)	90 (86.5%)
Non-Compliant	27 (32.1%)	14 (13.5%)
(Substantive)	(6)	(6)
(Documentation)	(21)	(8)
Total	100%	100%

In the 2019 sample the Monitoring Team reviewed, there were 27 non-compliant uses of force. Of these 27, one (1) was a serious level use of force incident; 5 were intermediate level use of force incidents; and 21 were low level use of force incidents.

In 2021 there were 14 non-compliant uses of force. Of these 14, one (1) was an intermediate level of use of force incident; and 13 were low level use of force incidents. Table 10 provides a breakdown of non-compliant use of force incidents by level of force.

<b>Table 10</b>		
<b>Non-Compliant Use of Force Incidents by Level of Force</b>		
<b>Level of Force</b>	<b>2019</b>	<b>2021</b>
Low	21 (77.8%)	13 (92.9%)
Intermediate	5 (18.5%)	1 (7.1%)
Serious	1 (3.7%)	0 (0%)
Total	27 (100%)	14 (100%)

In the 2019 sample, there were 27 non-compliant use of force incidents. Of these 27 non-compliant use of force incidents, 22 of these incidents ended in arrest. Of these 22 arrests, 19 were for indictable offenses, and 3 were disorderly persons arrests.

In 2021 there were 14 non-compliant use of force incidents. Of these 14 non-compliant use of force incidents, 13 of these incidents ended in arrest. Of these 13 arrests, 8 were for indictable offenses, and 5 were disorderly persons arrests.

Table 11 provides a breakdown of non-compliant use of force incidents by type of arrest.

<b>Table 11</b>		
<b>Percentage of Non-Compliant Use of Force Incidents by Type of Arrest</b>		
<b>Type of Arrest</b>	<b>2019</b>	<b>2021</b>
Indictable Offense	19 (70.4%)	8 (57.1%)
Disorderly Persons	3 (11.1%)	5 (35.7%)
No Arrest	5 (18.5%)	1 (7.1%)
Total	27 (100%)	14 (100%)

In the 2019 sample, there were 27 non-compliant use of force incidents. Of these 27 non-compliant use of force incidents, 24 were physical force/compliance holds, 2 were “Other,”<sup>18</sup> and one (1) was chemical agent.

In 2021 there were 14 non-compliant use of force incidents. Of these 14 non-compliant use of force incidents, 13 were physical force/compliance holds, and one (1) was a chemical agent.

Table 12 provides a breakdown of non-compliant use of force incidents categorized by the highest type of force used.

<b>Table 12</b>		
<b>Non-Compliant Use of Force Incidents (substantive and documentation) by Type of Force</b>		
<b>Type of Force</b>	<b>2019</b>	<b>2021</b>
Physical Force /Compliance Hold	24 (88.9%)	13 (92.9%)
Chemical Agent	1 (3.7%)	1 (7.1%)
Firearm	0 (0.0%)	0 (0.0)
Other	2 (7.4%)	0 (0.0%)
Total	27 (100%)	14 (100%)

In the 2019 sample, there were 27 non-compliant use of force incidents. Of these 27 non-compliant incidents, a single officer was non-compliant in 25 use of force incidents, and 2 officers were non-compliant in 2 use of force incidents. In 2021 there were 14 non-compliant use of force incidents. Of these 14 non-compliant incidents, a single officer was non-compliant in 13 use of force incidents, and 2 officers were non-compliant in one (1) use of force incident.

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<sup>18</sup> The category “Other” involves all types of force not explicitly listed in Table 13.

Table 13 provides a breakdown of non-compliant use of force incidents by the number of non-compliant officers.

<b>Table 13</b>		
<b>Non-Compliant Use of Force Incidents (substantive and documentation) by the Number of Non-Compliant Officers</b>		
<b>Number of Non-Compliant Officers</b>	<b>2019</b>	<b>2021</b>
1 Officer	25 (92.6%)	13 (92.9%)
2 Officers	2 (7.4%)	1 (7.1%)
Total	27 (100%)	14 (100%)

6. *Review of Observations and Recommendations from Subject Matter Experts*

a. **Use of Force**

In both use of force audits, the Monitoring Team found NPD's rate of substantive compliance with applicable agency policy - the most consequential indicator of individual officer performance - to be commendable by any of the compliance measures used in the audit. NPD's substantive compliance increased from 92.9% in 2019 to 94.2% in 2021. The most significant area of improvement from the first to second audit however, was in NPD's documentation of force incidents.

The first audit noted many missing reports from officers who either used force or witnessed a use of force incident. This serious issue required immediate attention from the NPD command staff. In the second audit the Monitoring Team found significant improvement in the documentation of force incidents by both officers employing force and those witnessing the incidents. It was evident that measures taken by NPD Commanders to address the shortcomings noted in the first audit accomplished their objective.

Also of important note in both audits was the significant proportion of force incidents (25% and 22% respectively) containing documentation indicating that the force subject

was an emotionally disturbed person (EDP). The Monitoring Team noted in both audits that in every incident involving an EDP the actions of all officers who used force was substantively compliant with applicable policy.

7. *Excessive Force Complaints*

As reported in Table 14 below, the NPD has provided excessive force complaint data for the years 2018-2021 for comparison with baseline data from the year 2010. In the baseline year of 2010, NPD recorded 88 excessive force complaints as compared to a range of 22-34 complaints for the four-year period of 2018-2021. A reduction in complaints of that magnitude is a positive change by any standard. Also of note is information reported regarding the origin of the excessive force complaints. In 2010, there were no excessive force complaints initiated from within the NPD. Stated otherwise, no incidents of suspected excessive force were identified as a result of the NPD's internal supervisory review of force incidents. While there also were no such incidents internally identified in 2018, there were a total of 23 incidents of suspected excessive force identified by NPD supervisory officers during the years 2019-2021.

Positive change also is evident in data regarding the disposition or outcome of investigations into the excessive force complaints. In 2010, only one of the 88 excessive force complaints was sustained by NPD's disciplinary process. By contrast, a total of 24 complaints were sustained during the years 2018-2021.

The IMT believes the trend documented in the data here reviewed is evidence of positive change in two important areas. First, the initiation of accountability measures absent citizen complaints demonstrates a developing capacity and inclination of the NPD to self-police this critical area of police performance. Second, changes in the disposition or outcomes of excessive force complaints is evidence of a more objective review process by the NPD. That review process has resulted in an emerging culture of officer accountability when evidence

indicates that force has been employed in a manner not consistent with agency policy and training.

<b>Table 14</b>					
<b>Excessive Force Complaints</b>					
<b>Year</b>	<b>2010</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>
<b>Internal</b>	0	0	5	10	8
<b>External</b>	88	23	17	24	16
<b>Total</b>	88	23	22	34	24
<b>Outcome</b>	1 Sustained	7 Sustained	8 Sustained	6 Sustained	3 Sustained (11 Pending)

a. **Part III: Systematic Review of Community Surveys and Their Findings**

Pursuant to Consent Decree Paragraph 175:

“In conducting these assessments, the Monitor may use any relevant data collected and maintained by NPD, and information available from claims and settlements filed against NPD, provided that it has determined, and the Parties agree, that this information is reasonably reliable and complete. The Monitor should also consider the annual community survey as an outcome measure in determining whether the implementation of this Agreement has had any unintended negative consequences on either accomplishing the purposes of the Agreement or the ability of NPD to conduct effective and constitutional policing.”<sup>19</sup>

In accordance with Paragraph 175, the Monitoring Team conducted a systematic review of prior surveys that included but was not limited to reviewing different survey instruments; contextualizing them within the group of surveys selected for review; and providing

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<sup>19</sup> The Parties agreed as of May 12, 2022 (Extension Order) that the IMT would not conduct any further surveys.

observations on these in a general fashion in line with observations noted in the reports themselves.

Paragraphs 22 and 23 of the Consent Decree require that the Independent Monitor conduct a reliable, comprehensive, and representative survey of the Newark Community's experience with and perceptions of the Newark Police Division and public safety. This report provides an overview of three Newark community survey assessments.

The first of three surveys highlighted in this report was conducted by the Eagleton Institute for Public Policy and Polling. The Eagleton baseline assessment survey took place from December 1, 2016 through February 10, 2017.

Suffolk University Political Research Center (SUPRC) was commissioned to exactly replicate the Rutgers 2017 survey questions, but recommended the addition of questions about individual politicians to examine and further explain the disparity between NPD relations and perceptions, and to more broadly define the relationship between residents and the City as a whole. The subsequent SUPRC survey occurred during the timeframe from September 9, 2018 to September 30, 2018. SUPRC was again commissioned for the 2020 survey. The most recent SUPRC survey was conducted from May 27, 2020 through June 9, 2020.

Survey participants were identified by using a random, address-based sample of Newark residents, and the number of respondents was almost the same across each of the three surveys (Eagleton: 687 residents; SUPRC 2018: 700 residents; SUPRC 2020: 700 residents). In each of the three surveys, the survey took place either via landline or cell phone.

8. *Limitations to this Systematic Review*

The main limitation to this report is that the surveys referenced were conducted in 2016, 2018, and 2020.<sup>20</sup> The Consent Decree was entered as an order in the U.S. District Court for the District of New Jersey on May 5, 2016. At the time the surveys were conducted, Consent Decree-related policy and training were still being developed and implementation of these had not yet taken place. As such, the surveys do not reflect the implementation or impact of the Consent Decree. Although each of these surveys was conducted in Newark with almost the same number of survey participants, and the same type of survey methodology implemented, the inferences and associations drawn within each survey may be specific only to that particular survey.

The observations made within each survey differ from one survey to the next. The written narrative of each survey differs as to inferences, observations, associations and correlations drawn from that year's survey results, and all observations are not uniformly standardized from year to year. Given this format, it is therefore not possible to provide a uniform systematic review across all three surveys.

In spite of these limitations, the surveys do provide useful insights into the perceptions of the Newark community regarding police reform under the Consent Decree. This review includes the broad scope of observations drawn across the three surveys that are relevant to Consent Decree subject matter areas assessed.

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<sup>20</sup> Note that surveys were not conducted after March 2020 and in 2021 due to the State of Emergency in NJ and Newark due to the pandemic.

9. *Overview*

This review consists of observations made in the three community surveys relevant to the Use of Force. Selection of these areas was made according to scope of information available and relevancy to subject matter areas of the Consent Decree.

a. **Use of Force**

- Relevant to concerns about NPD officers use of excessive force in 2016/2017, Newark residents responded: “Twenty-eight percent of all residents are “very” concerned and another 24% are “somewhat” concerned that a Newark police officer will use excessive force on them if they are stopped.” (Eagleton, p. 164).
- In the 2018 report, Newark residents indicated that 16% said they felt “somewhat concerned” and 37% indicated they were “not at all concerned” (SUPRC 2018, p. 6) about excessive force being used on them if they were stopped by a Newark officer.
- In 2020, SUPRC recorded a “6-point increase is seen among those who answered “very concerned” that excessive force will be used on them, and a 10 point decrease among those who were “not concerned at all” (SUPRC 2020, p. 8).
- In terms of the racial breakdown relevant to residents’ concern of NPD officers use of excessive force, the 2018 report noted that: “The racial breakdown of this question aligns Hispanic residents closer to White residents than Black; 48% of White respondents said they were “not at all concerned”

compared to 32% of Black respondents and 42% of Hispanics.” (SUPRC 2018, p. 6).

- The SUPRC 2020 report noted “clear divisions among race when it comes to fear over excessive force, as 40% of Black respondents are “very concerned” that excessive force will be used on them, versus 15% of White and 29% of Hispanic respondents. When these responses are compared to the nearly half of all White respondents, (47%) answer that they are “not at all concerned” about excessive force, it is obvious that Black and White respondents are viewing excessive force as very different threats to their wellbeing.” (SUPRC 2020, p. 8).

Based on the limitations of this review of the surveys as discussed above, the Monitoring Team does not draw any further conclusions beyond the above summaries. The Monitoring Team believes that the data-driven portion of the outcome assessment provides a more robust and accurate picture of the progress NPD has made to date.

### **Conclusion**

The Monitoring Team has observed significant improvements in NPD’s on-the-street practices with regard to use of force between 2019 and 2021. NPD’s substantive compliance with its own use of force policies, and other applicable laws and policies, is commendable for the years 2019 and 2021. Moreover, NPD’s documentation practices showed substantial improvement. The Monitoring Team believes that this improvement reflects the Consent Decree-mandated changes NPD has adopted.

**III. APPENDICES**

- A. Compliance Chart**
- B. *First Searches Audit***
- C. *Second Use of Force Audit***
- D. *First Audit of Arrests With or Without A Warrant***
- E. *Third Body-Worn Camera and Second In-Car Camera Audit***

# **APPENDIX A**

**Consent Decree Compliance and Implementation  
(March 30, 2016 to December 31, 2022)**

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## **I. Definitions**

NPD's compliance with the deadlines set forth in the Consent Decree and the Second-Year Monitoring Plan will be assessed using the following categories: (1) not assessed, (2) initial development, (3) preliminary compliance, (4) operational compliance, (5) non-compliance, (6) administrative compliance, and (7) full compliance. Each of these terms is defined below.

### **1. Not Assessed**

"Not Assessed" means that the Monitoring Team did not assess the Consent Decree provision during this reporting period. Acceptable reasons for why a requirement was not assessed may include that the deadline has not passed or some other substantive reason.

### **2. Initial Development**

"Initial Development" means that during the auditing period, NPD has taken meaningful steps toward achieving compliance with a Consent Decree requirement that is not yet scheduled for completion. Initial Development will be noted only if NPD's efforts are consistent with established timeframes in the Monitoring Plan or Consent Decree. Where NPD was expected to have achieved at least Initial Development during the auditing period, and has not, NPD has been found not to be in compliance.

### **3. Preliminary Compliance**

"Preliminary Compliance" means that during the reporting period, NPD has developed, and the Independent Monitor, DOJ, and City have approved, respective policies or standard operating procedures ("SOPs") and related training materials that are consistent with a Consent Decree requirement. This category only applies to SOPs and training.

### **4. Operational Compliance**

"Operational Compliance" means that NPD has satisfied a Consent Decree requirement by demonstrating routine adherence to the requirement in its day-to-day operations or by meeting the established deadline for a task or deliverable that is specifically required by the Consent Decree or Monitoring Plan. NPD's compliance efforts must be verified by reviews of data systems, observations from the Monitoring Team, and other methods that will corroborate its achievement. In this report, the Monitoring Team only will assess NPD for compliance with established deadlines.

### **5. Non-Compliance**

"Non-Compliance" means that NPD has either made no progress towards accomplishing compliance, or has not progressed beyond Initial Development at the point in time when NPD is expected to have at least achieved Preliminary Compliance for the reporting period.

**6. Administrative Compliance**

“Administrative Compliance” means that during the auditing period, NPD has completed all necessary actions to implement a Consent Decree requirement, but General Compliance has not yet been demonstrated in NPD’s day-to-day operations.

**7. Full Compliance**

“Full Compliance” means that all Monitor reviews have determined that NPD has maintained Operational Compliance for the two-year period.

**8. Effective Date**

The “Effective Date” is March 30, 2016. *See* Consent Decree, Section II(4)(s).

**9. Operative Date**

The “Operational Date” is July 12, 2016. *See* Consent Decree, Section II(4)(ff).

## II. General Officer Training

Achievement	Consent Decree Paragraph	Consent Decree Deadline for Achievement <sup>1</sup>	Status	Discussion
NPD will provide officers at least 40 hours of in-service training each year.	¶ 9	Within two years of the Effective Date (March 30, 2018) and then annually thereafter	Ongoing	Eight hours of community policing training was provided in 2019.
NPD will provide training to officers regarding the requirements of the Consent Decree, and the timeline for their implementation.	¶ 10	Within 90 days of the Operational Date (October 10, 2016)	Preliminary Compliance	See First Quarterly Report, Section IV(B).
NPD will ensure that officers have received, read and understand their responsibilities pursuant to the policy or procedure and that the topic is incorporated into the in-service training required.	¶ 11	Within 60 days after approval of individual policies	N/A	The status for training requirements for each Consent Decree area (e.g., use of force, bias-free policing), are located in those sections of this Chart.
NPD will maintain complete and consistent training records for all officers.	¶ 12	Within two years of the Effective Date (March 30, 2018) <sup>2</sup>	Compliant	See Sixteenth Quarterly Report, Appendix C.

<sup>1</sup> Deadlines in the Compliance Chart reflect the original deadlines set forth in the Consent Decree. The deadlines do not reflect deadlines established as part of the First or Second-Year Monitoring Plans.

<sup>2</sup> Consent Decree Paragraph 5 provides that “NPD will develop comprehensive and agency-wide policies and procedures that are consistent with and incorporate all substantive requirements of this Agreement. Unless otherwise noted, NPD will develop and implement all such policies, procedures, and manuals within two years of the Effective Date.”

**III. Community Engagement and Civilian Oversight (including Community Policing)**

<b>Achievement</b>	<b>Consent Decree Paragraph</b>	<b>Consent Decree Deadline for Achievement</b>	<b>Status</b>	<b>Discussion</b>
NPD will review and revise its current community policing policy or policies to ensure compliance with Consent Decree.	§ V; ¶ 5	Within two years of the Effective Date (March 30, 2018)	Preliminary Compliance	See Ninth Quarterly Report, Appendix D.
NPD will ensure that officers have received, read and understand their responsibilities pursuant to the policy or procedure and that the topic is incorporated into the in-service training required.	¶ 11	Within 60 days after approval of policy	Administrative Compliance	See Sixteenth Quarterly Report, Appendix C.
<b>Civilian Oversight (¶ 13)</b>				
The City will implement and maintain a civilian oversight entity.	¶ 13	Within 365 days of the Effective Date (March 30, 2017)	Administrative Compliance	See Fifteenth Quarterly Report, Section II(C).
<b>Community Engagement Measures and Training (¶¶ 14-21)</b>				
NPD will provide 8 hours of in-service training on community policing and problem-oriented policing methods and skills for all officers, including supervisors, managers and executives, and at least 4 hours annually thereafter.	¶ 14	July 9, 2017	Administrative Compliance	See Sixteenth Quarterly Report, Appendix C.
NPD will assess and revise its staffing allocation and personnel deployment to support community policing and problem solving initiatives, and will modify deployment strategies that are incompatible with community policing. NPD's assessment and modified strategy must be approved by the DOJ and Monitor.	¶ 15	July 9, 2017	Administrative Compliance	See Eighteenth Quarterly Report, Appendix D.

**Community Engagement and Civilian Oversight (including Community Policing) Continued**

<b>Achievement</b>	<b>Consent Decree Paragraph</b>	<b>Consent Decree Deadline for Achievement</b>	<b>Status</b>	<b>Discussion</b>
NPD will assign two officers to each precinct to work with residents to identify and address communities' priorities, and who are not assigned to answer calls for service except in exigent circumstances.	¶ 16	Pending completion of the assessment required in ¶ 15; two officers have been assigned.	Administrative Compliance	See Eighteenth Quarterly Report, Appendix D.
NPD will implement mechanisms to measure the breadth, extent, and effectiveness of its community partnerships and problem-solving strategies, including officer outreach, particularly outreach to youth.	¶ 17	Within 210 days of the Operational Date (February 7, 2017)	Administrative Compliance	See Eighteenth Quarterly Report, Appendix D.
NPD will prepare a publicly available report of its community policing efforts overall and in each precinct.	¶ 18	Within 240 days of the Operational Date March 9, 2017	Administrative Compliance	See Eighteenth Quarterly Report, Appendix D.
NPD and the City will implement practices to seek and respond to input from the community about the Consent Decree's implementation. Such practices may include direct surveys, comment cards and town hall meetings.	¶ 19	Within two years of the Effective Date (March 30, 2018)	Administrative Compliance	See Eighteenth Quarterly Report, Appendix D.
All NPD studies, analyses, and assessments required by this Agreement will be made publicly available, including on NPD and City websites, in English, Spanish, and Portuguese, to the fullest extent permitted under law.	¶ 20	Within two years of the Effective Date (March 30, 2018)	Non-Compliance	See Eighteenth Quarterly Report, Appendix D.

**Community Engagement and Civilian Oversight (including Community Policing) Continued**

<b>Achievement</b>	<b>Consent Decree Paragraph</b>	<b>Consent Decree Deadline for Achievement</b>	<b>Status</b>	<b>Discussion</b>
NPD will implement a policy to collect and maintain all data and records necessary to facilitate transparency and wide public access to information related to NPD policies and practices, as permitted by law.	¶ 21	Within two years of the Effective Date (March 30, 2018)	Administrative Compliance	See Eighteenth Quarterly Report, Appendix D.
NPD and the City will cooperate with the design and conduct of the Monitor's surveys by, for example, helping to organize focus groups of officers and obtaining and providing previous survey instruments and data. The reports of the baseline and annual surveys will be provided to the Court and be publicly distributed and available on the City's and NPD's websites.	¶ 24	N/A	Non-Compliance	See Eighteenth Quarterly Report, Appendix D.

**IV. Stops, Searches, and Arrests**

<b>Achievement</b>	<b>Consent Decree Paragraph</b>	<b>Consent Decree Deadline for Achievement</b>	<b>Status</b>	<b>Discussion</b>
<b>Investigatory Stops and Detentions (¶¶ 25-28)</b>				
NPD will review and revise its current stop, search, and arrest policy or policies to ensure compliance with Consent Decree, consistent with Paragraphs 25-28.	¶ 5	Within two years of the Effective Date (March 30, 2018)	Administrative Compliance	See Nineteenth Quarterly Report, Appendix C.
NPD will ensure that officers have received, read and understand their responsibilities pursuant to the stop, search, and arrest policies or procedure and that the topic is incorporated into the in-service training required.	¶ 11	Within 60 days after approval of policy	Administrative Compliance	See Sixteenth Quarterly Report, Appendix C.
NPD will train officers to use specific and individualized descriptive language in reports or field inquiry forms.	¶ 26	Within two years of the Effective Date (March 30, 2018)	Administrative Compliance	See Nineteenth Quarterly Report, Appendix C.
<b>Searches (¶¶ 29-34)</b>				
NPD will review and revise its current stop, search, and arrest policy or policies to ensure compliance with Consent Decree, consistent with Paragraphs 29-34.	¶ 5	Within two years of the Effective Date (March 30, 2018)	Preliminary Compliance	See Ninth Quarterly Report, Appendix D.
NPD will ensure that officers have received, read and understand their responsibilities pursuant to the stop, search, and arrest policies or procedure and that the topic is incorporated into the in-service training required.	¶ 11	Within 60 days after approval of policy	Preliminary Compliance	See Sixteenth Quarterly Report, Appendix C.

**Stops, Searches, and Arrests Continued**

<b>Achievement</b>	<b>Consent Decree Paragraph</b>	<b>Consent Decree Deadline for Achievement</b>	<b>Status</b>	<b>Discussion</b>
<b>Arrests (¶¶ 35-42)</b>				
NPD will review and revise its current stop, search, and arrest policy or policies to ensure compliance with Consent Decree, consistent with Paragraphs 35-42.	¶ 5	Within two years of the Effective Date (March 30, 2018)	Preliminary Compliance	See Ninth Quarterly Report, Appendix D.
NPD will ensure that officers have received, read and understand their responsibilities pursuant to the stop, search, and arrest policies or procedure and that the topic is incorporated into the in-service training required.	¶ 11	Within 60 days after approval of policy	Preliminary Compliance	See Sixteenth Quarterly Report, Appendix C.
<b>Stop, Search, and Arrest Training (¶¶ 43-50)</b>				
NPD will provide 16 hours of training to all NPD personnel on the First and Fourth Amendments, including the topics set forth in ¶ 43 of the Consent Decree, and at least an additional 4 hours on an annual basis thereafter.	¶ 43	November 1, 2017	Preliminary Compliance	See Nineteenth Quarterly Report, Appendix C.
NPD supervisors will take appropriate action to address violations or deficiencies in stops, detentions, searches, and arrests; maintain records; and identify repeat violators.	¶ 48	Ongoing	Not Assessed	See Twenty-Second Report, Appendix B, D
<b>Stop, Search, and Arrest Data Collection and Review (¶¶ 51-54)</b>				
NPD will modify its procedures as set out below to collect and preserve stop, search, and arrest data sufficient to determine the nature and scope of demographic disparities in stop and search practices, as well as which stop, search, and arrest practices are most effective and efficient.	¶ 51	Within two years of the Effective Date (March 30, 2018)	Initial Development	See Nineteenth Quarterly Report, Appendix C.

**Stops, Searches, and Arrests Continued**

<b>Achievement</b>	<b>Consent Decree Paragraph</b>	<b>Consent Decree Deadline for Achievement</b>	<b>Status</b>	<b>Discussion</b>
NPD will implement use of data collection form, in written or electronic report form, to collect data on all investigatory stops and searches, as approved by the DOJ and Monitor.	¶ 52	September 9, 2017	Initial Development	See Nineteenth Quarterly Report, Appendix C. <sup>3</sup>
NPD will develop a protocol for comprehensive analysis of stop, search and arrest data, subject to the review and approval of the DOJ and Monitor.	¶ 53	Within two years of the Effective Date (March 30, 2018)	Initial Development	See Nineteenth Quarterly Report, Appendix C. In May 2021 NPD developed protocol for comprehensive analysis of Stop, Search, and Arrest data.
NPD will ensure that all databases comply fully with federal and state privacy standards governing personally identifiable information. NPD will restrict database access to authorized, identified users who will be permitted to access the information only for specific, legitimate purposes.	¶ 54	Within two years of the Effective Date (March 30, 2018)	Non-Compliance	See Nineteenth Quarterly Report, Appendix C.
<b>First Amendment Right to Observe, Object to, and Record Officer Conduct (¶¶ 55-62)</b>				
NPD will require or prohibit officer conduct to comply with ¶¶ 55-62 of the Consent Decree.	¶¶ 55-62	Within two years of the Effective Date (March 30, 2018)	Administrative Compliance	See Nineteenth Quarterly Report, Appendix C.

<sup>3</sup> The Monitoring Team understands that after the relevant Audit Period in the First Stop Audit, NPD implemented a revised Stop Report to collect data on all investigatory stops and searches.

**V. Bias-Free Policing**

<b>Achievement</b>	<b>Consent Decree Paragraph</b>	<b>Consent Decree Deadline for Achievement</b>	<b>Status</b>	<b>Discussion</b>
NPD will review and revise its current bias-free policing policy to ensure compliance with Consent Decree, consistent with Section VII.	¶ 5	Within two years of the Effective Date (March 30, 2018)	Compliant	See Ninth Quarterly Report, Appendix D.
NPD will ensure that officers have received, read and understand their responsibilities pursuant to the policy or procedure and that the topic is incorporated into the in-service training required.	¶ 11	Within 60 days after approval of policy	Compliant	See Ninth Quarterly Report, Appendix C.
NPD will provide all NPD personnel with a minimum of eight hours of training on bias-free policing, including implicit bias, procedural justice, and police legitimacy, and at least four hours annually thereafter.	¶ 63	July 1, 2017	Compliant	See Ninth Quarterly Report, Appendix C.
NPD will prohibit officers from considering any demographic category when taking, or refraining from taking, any law enforcement action, except when such information is part of an actual and credible description of a specific suspect in an ongoing investigation that includes other appropriate non-demographic identifying factors. NPD will also prohibit officers from using proxies for demographic category, including language ability, geographic location, mode of transportation, or manner of dress.	¶ 64	Within two years of the Effective Date (March 30, 2018)	Administrative Compliance	See Ninth Quarterly Report, Appendix D.
NPD will conduct quarterly demographic analyses of its enforcement activities to ensure officer, unit and Division compliance with the bias-free policing policy.	¶ 65	Within two years of the Effective Date (March 30, 2018) and then Quarterly thereafter.	Non-Compliance	See Fourth Quarterly Report, Section III(B)(4).

**VI. Use of Force**

<b>Achievement</b>	<b>Consent Decree Paragraph</b>	<b>Consent Decree Deadline for Achievement</b>	<b>Status</b>	<b>Discussion</b>
<b>Use of Force Policy (§§ 66-70)</b>				
NPD will develop and implement a use of force policy or set of policies that cover all force techniques, technologies, and weapons that are available to NPD officers consistent with §§ 66-70. The policy or policies will clearly define each force option and specify that unreasonable use of force will subject officers to discipline.	¶ 66	Within two years of the Effective Date (March 30, 2018)	Compliant	See Eighteenth Quarterly Report, Appendix C.
NPD will ensure that officers have received, read and understand their responsibilities pursuant to the use of force policy or procedure and that the topic is incorporated into the in-service training required.	¶ 11	Within 60 days after approval of policy	Compliant	See Sixteenth Quarterly Report, Appendix C.
NPD will provide resources for officers to maintain proper weapons certifications and will implement sanctions for officers who fail to do so.	¶ 70	Ongoing	Not Assessed	The Monitor will assess this requirement during compliance audits/reviews.
<b>Use of Firearms (§§ 71-74)</b>				
NPD will develop and implement a use of firearms policy consistent with §§ 71-74.	¶ 5	Within two years of the Effective Date (March 30, 2018)	Compliant	See Eighteenth Quarterly Report, Appendix C; Twenty-Second Report, Appendix C
NPD will ensure that officers have received, read and understand their responsibilities pursuant to the use of force policy or procedure and that the topic is incorporated into the in-service training required.	¶ 11	Within 60 days after approval of policy	Compliant	See Sixteenth Quarterly Report, Appendix C.

**Use of Force Continued**

<b>Achievement</b>	<b>Consent Decree Paragraph</b>	<b>Consent Decree Deadline for Achievement</b>	<b>Status</b>	<b>Discussion</b>
Officers will be prohibited from using unauthorized weapons or ammunition in connection with or while performing policing duties. In addition, all authorized firearms carried by officers will be loaded with the capacity number of rounds of authorized ammunition.	¶ 71	Within two years of the Effective Date (March 30, 2018)	Administrative Compliance	See Eighteenth Quarterly Report, Appendix C; Twenty-Second Report, Appendix C
NPD will prohibit officers from discharging a firearm at a moving vehicle unless a person in the vehicle is immediately threatening the officer or another person with deadly force.	¶ 72	Within two years of the Effective Date (March 30, 2018)	Compliant	See Eighteenth Quarterly Report, Appendix C; Twenty-Second Report, Appendix C
NPD will prohibit officers from unholstering or exhibiting a firearm unless the officer reasonably believes that the situation may escalate to create an immediate threat of serious bodily injury or death to the officer or another person.	¶ 73	Within two years of the Effective Date (March 30, 2018)	Compliant	See Eighteenth Quarterly Report, Appendix C; Twenty-Second Report, Appendix C
NPD will require that officers successfully qualify at least twice a year with each firearm they are authorized to use or carry while on duty.	¶ 74	Within two years of the Effective Date (March 30, 2018)	Administrative Compliance	See Eighteenth Quarterly Report, Appendix C; Twenty-Second Report, Appendix C
<b>Use of Force Reporting and Investigation (¶¶ 75-85)</b>				
NPD will adopt a use of force reporting system and a supervisor Use of Force Report, separate from the NPD's arrest and incident reports, and which includes individual officers' accounts of their use of force.	¶ 75	Within two years of the Effective Date (March 30, 2018)	Compliant	See Eighteenth Quarterly Report, Appendix C; Twenty-Second Report, Appendix C

**Use of Force Continued**

<b>Achievement</b>	<b>Consent Decree Paragraph</b>	<b>Consent Decree Deadline for Achievement</b>	<b>Status</b>	<b>Discussion</b>
NPD will require that officers notify their supervisor as soon as practicable following any reportable use of force.	¶ 76	Within two years of the Effective Date (March 30, 2018)	Administrative Compliance	See Eighteenth Quarterly Report, Appendix C; Twenty-Second Report, Appendix C
NPD, in consultation with Monitor and DOJ, will categorize force into levels to report, investigate, and review each use of force. The levels will be based on the factors set forth in ¶ 77.	¶ 77	Within two years of the Effective Date (March 30, 2018)	Compliant	See Eighteenth Quarterly Report, Appendix C; Twenty-Second Report, Appendix C
NPD will establish a Serious Force Investigation Team (“SFIT”) to review Serious Force Incidents, conduct criminal and administrative investigations of Serious Force incidents, and determine whether incidents raise policy, training, tactical, or equipment concerns. Lower or intermediate force incidents will be investigated by line supervisors.	¶ 78	Within two years of the Effective Date (March 30, 2018)	Compliant	See Eighteenth Quarterly Report, Appendix C; Twenty-Second Report, Appendix C
Every level of force reporting and review will include the requirements set forth in ¶ 79.	¶ 79	Within two years of the Effective Date (March 30, 2018)	Compliant	See Eighteenth Quarterly Report, Appendix C; Twenty-Second Report, Appendix C
Upon arrival at the scene, the supervisor will identify and collect evidence sufficient to establish the material facts related to use of force, where reasonably available.	¶ 80	Within two years of the Effective Date (March 30, 2018)	Administrative Compliance	See Eighteenth Quarterly Report, Appendix C; Twenty-Second Report, Appendix C

**Use of Force Continued**

<b>Achievement</b>	<b>Consent Decree Paragraph</b>	<b>Consent Decree Deadline for Achievement</b>	<b>Status</b>	<b>Discussion</b>
All officers who used force above Low Level will provide an oral Use of Force statement in person to the supervisor on the scene prior to the subject's being booked, or released, or the contact otherwise concluded, unless impractical under the circumstances.	¶ 81	Within two years of the Effective Date (March 30, 2018)	Administrative Compliance	See Eighteenth Quarterly Report, Appendix C; Twenty-Second Report, Appendix C
Pursuant to policy and as necessary to complete a thorough, reliable investigation, supervisors will comply with the requirements of ¶ 82.	¶ 82	Within two years of the Effective Date (March 30, 2018)	Not Assessed	See Eighteenth Quarterly Report, Appendix C; Twenty-Second Report, Appendix C
Supervisors will investigate and evaluate in writing all uses of force for compliance with law and NPD policy, as well as any other relevant concerns.	¶ 83	Within two years of the Effective Date (March 30, 2018)	Compliant	See Eighteenth Quarterly Report, Appendix C; Twenty-Second Report, Appendix C
Supervisors' documentation of the investigation and evaluation will be completed within 72 hours of the use of force, unless the supervisor's commanding officer approves an extension.	¶ 84	Within two years of the Effective Date (March 30, 2018)	Administrative Compliance	See Eighteenth Quarterly Report, Appendix C; Twenty-Second Report, Appendix C
NPD will analyze the data captured in officers' force reports and supervisors' investigative reports on an annual basis to identify significant trends, to correct deficient policies and practices, and to document its findings in an annual report that will be made publicly available pursuant to Section XV of the Consent Decree.	¶ 85	Within two years of the Effective Date and annually thereafter (March 30, 2018)	Administrative Compliance	See Eighteenth Quarterly Report, Appendix C; Twenty-Second Report, Appendix C
<b>Use of Force Review (¶¶ 86-89)</b>				

**Use of Force Continued**

<b>Achievement</b>	<b>Consent Decree Paragraph</b>	<b>Consent Decree Deadline for Achievement</b>	<b>Status</b>	<b>Discussion</b>
The chain-of-command supervisor reviewing the investigative report will ensure that the investigation is thorough, complete, and makes the necessary and appropriate findings of whether the use of force was lawful and consistent with policy. Each higher-level supervisor in the chain of command will review the investigative report to ensure that it is complete, the investigation was thorough, and that the findings are supported by a preponderance of the evidence.	¶ 86	Within two years of the Effective Date (March 30, 2018)	Administrative Compliance	See Eighteenth Quarterly Report, Appendix C; Twenty-Second Report, Appendix C
A supervisor should ensure that additional investigation is completed when it appears that additional relevant and material evidence may assist in resolving inconsistencies or improve the reliability or credibility of the findings.	¶ 87	Within two years of the Effective Date (March 30, 2018)	Compliant	See Eighteenth Quarterly Report, Appendix C; Twenty-Second Report, Appendix C
When the precinct or unit commander finds that the investigation is complete and the evidence supports the findings, the investigation file will be forwarded to the Use of Force Review Board.	¶ 88	Within two years of the Effective Date (March 30, 2018)	Compliant	See Eighteenth Quarterly Report, Appendix C; Twenty-Second Report, Appendix C
<b>Reporting and Investigation of Serious Force Incidents (¶¶ 90-94)</b>				
NPD will create a multi-disciplinary Serious Force Investigation Team (“SFIT”) to conduct both the criminal and administrative investigations of Serious Force incidents, and to determine whether these incidents raise policy, training, tactical, or equipment concerns. SFIT will operate consistent with ¶¶ 91-94.	¶¶ 90-94	Within two years of the Effective Date (March 30, 2018)	Compliant	See Eighteenth Quarterly Report, Appendix C <sup>4</sup> ; Twenty-Second Report, Appendix C

<sup>4</sup> NPD has created an All Force Investigation Team (“AFIT”) to address this Consent Decree requirement.

**Use of Force Continued**

<b>Achievement</b>	<b>Consent Decree Paragraph</b>	<b>Consent Decree Deadline for Achievement</b>	<b>Status</b>	<b>Discussion</b>
NPD will develop and implement a SFIT training curriculum and procedural manual. NPD will ensure that officers have received, read and understand their responsibilities pursuant to the General Order establishing the AFIT and General Orders establishing line supervisors' responsibilities to investigate lower and intermediate use of force incidents and that the topic is incorporated into the in-service training required.	¶¶ 11, 90	Within 60 days after approval of policies	Administrative Compliance	See Eighteenth Quarterly Report, Appendix C; Twenty-Second Report, Appendix C
<b>Use of Force Review Board (¶¶ 95-102)</b>				
NPD will implement a General Order establishing the Use of Force review Board ("UFRB"), ensure that it is staffed consistent with the Consent Decree provisions, and ensure that the responsibilities assigned are consistent with Consent Decree provisions.	¶¶ 95-102	Within two years of the Effective Date (March 30, 2018)	Compliant <sup>5</sup>	See Eighteenth Quarterly Report, Appendix C; Twenty-Second Report, Appendix C
NPD's UFRB will conduct timely, comprehensive, and reliable reviews of all Intermediate and Serious Force incidents. The UFRB also will conduct the administrative review of incidents in which the ECPO has completed an investigation pursuant to New Jersey Attorney General Directive 2006-05.	¶¶ 95-102	Ongoing	Compliant	See Eighteenth Quarterly Report, Appendix C; Twenty-Second Report, Appendix C

<sup>5</sup> NPD has not yet been able to implement Consent Decree Paragraph 101, which requires the Division to "include the civilian oversight entity in the review of completed SFIT investigations, as permitted by law." That deficiency results not from any failure by NPD, but rather due to ongoing litigation brought by the Fraternal Order of Police (FOP), a Newark police union.

**Use of Force Continued**

<b>Achievement</b>	<b>Consent Decree Paragraph</b>	<b>Consent Decree Deadline for Achievement</b>	<b>Status</b>	<b>Discussion</b>
Each member of the UFRB will receive a minimum of eight hours of training on an annual basis, including legal updates regarding use of force and the Training Section's current use of force curriculum.	¶ 97	Within 60 days after approval of policies	Administrative Compliance	See Eighteenth Quarterly Report, Appendix C; Twenty-Second Report, Appendix C
The NPD will include the civilian oversight entity in the review of completed SFIT investigations, as permitted by law.	¶ 101	Within two years of the Effective Date (March 30, 2018)	Not Assessed	The Monitor will assess this requirement during a future compliance audit/review.

**VII. In-Car and Body-Worn Cameras**

<b>Achievement</b>	<b>Consent Decree Paragraph</b>	<b>Consent Decree Deadline for Achievement</b>	<b>Status</b>	<b>Discussion</b>
NPD will develop, implement and maintain a system of video recording officers' encounters with the public with body-worn and in-car cameras. NPD will develop a policy to designate which cars and officers are exempt from the general in-car and body-worn camera requirements and a policy regarding footage and audio recordings from its in-car and body-worn cameras.	Section IX, ¶¶ 103-104	Within two years of the Effective Date (March 30, 2018)	Preliminary Compliance	See Ninth Quarterly Report, Appendix D.  The Monitor will assess this requirement during compliance audits.
NPD will ensure that officers have received, read and understand their responsibilities pursuant to the policy or policies and that the topic is incorporated into the in-service training required.	¶ 11	Within 60 days after approval of policy	Administrative Compliance	See Sixteenth Quarterly Report, Appendix C.
NPD will equip all marked patrol cars with video cameras, and require all officers, except certain officers engaged in only administrative or management duties, to wear body cameras and microphones with which to record enforcement activity.	¶ 103	Within two years of the Effective Date (March 30, 2018)	Preliminary Compliance	See Eighth Quarterly Report, Section II(C); Twenty-Second Report, Appendix E

**VIII. Theft (including Property and Evidence Management)**

<b>Achievement</b>	<b>Consent Decree Paragraph</b>	<b>Consent Decree Deadline for Achievement</b>	<b>Status</b>	<b>Discussion</b>
NPD will ensure that in all instances where property or evidence is seized, the responsible officer will immediately complete an incident report documenting a complete and accurate inventory of the property or evidence seized, and will submit the property or evidence seized to the property room before the end of tour of duty.	¶ 105	Within two years of the Effective Date (March 30, 2018)	Not Assessed	The Monitor will assess this requirement during compliance audits.
NPD will conduct regular, targeted, and random integrity audits to detect and deter theft by officers. NPD will employ tactics such as increased surveillance, stings, and heightened scrutiny of suspect officers' reports and video-recorded activities.	¶ 106	Ongoing	Not Assessed	The Monitor will assess this requirement during compliance audits.
NPD will conduct periodic reviews of the disciplinary histories of its officers who routinely handle valuable contraband or cash, especially those in specialized units, to identify any patterns or irregularities indicating potential risk of theft by officers.	¶ 107	Ongoing	Non-Compliance	N/A

**Theft (including Property and Evidence Management) Continued**

<b>Achievement</b>	<b>Consent Decree Paragraph</b>	<b>Consent Decree Deadline for Achievement</b>	<b>Status</b>	<b>Discussion</b>
To the extent permitted by law and NPD's collective bargaining agreements, NPD will transfer officers with any sustained complaint of theft, or two not sustained or unfounded complaints of theft occurring within one year, out of positions where those officers have access to money, property, and evidence. Aspects of officers' disciplinary histories that relate to honesty and integrity will be considered in making decisions regarding reassignment, promotions, and similar decisions.	¶ 108	Ongoing	Not Assessed	See First Quarterly Report, Section V(C)(6).
NPD will report all theft allegations to the New Jersey Department of Law and Public Safety and will continue to report such allegations to the Essex County Prosecutor. Officers who have been the subject of multiple theft allegations will be identified as such in said reports.	¶ 109	Ongoing	Not Assessed	The Monitor will assess this requirement during compliance audits.
NPD will create a chain of custody and inventory policy or policies to ensure compliance with ¶ 110 of the Consent Decree.	¶¶ 5; 110	Within two years of the Effective Date (March 30, 2018)	Preliminary Compliance	See Ninth Quarterly Report, Appendix D.
NPD will ensure that officers have received, read and understand their responsibilities pursuant to the chain of custody and inventory policy or policies and that the topic is incorporated into the in-service training required.	¶ 11	Within 60 days after approval of policies	Non-Compliance	See Ninth Quarterly Report, Appendix C.

**Theft (including Property and Evidence Management) Continued**

<b>Achievement</b>	<b>Consent Decree Paragraph</b>	<b>Consent Decree Deadline for Achievement</b>	<b>Status</b>	<b>Discussion</b>
NPD will conduct and document periodic audits and inspections of the property room and immediately correct any deficiencies.	¶ 111	Ongoing	Initial Development	See Seventh Quarterly Report, Section II(B)

**IX. Internal Affairs: Complaint Intake and Investigation**

<b>Achievement</b>	<b>Consent Decree Paragraph</b>	<b>Consent Decree Deadline for Achievement</b>	<b>Status</b>	<b>Discussion</b>
<b>Complaint Process (¶¶ 112-120)</b>				
NPD will create an Internal Affairs: Complaint Intake and Investigation policy or policies to ensure compliance with Section XI of the Consent Decree.	¶ 5, Section XI	Within two years of the Effective Date (March 30, 2018)	Preliminary Compliance	
NPD will ensure that officers have received, read and understand their responsibilities pursuant to the Internal Affairs: Complaint Intake and Investigation policy or procedure and that the topic is incorporated into the in-service training required.	¶ 11	Within 60 days after approval of policy	Preliminary Compliance	See Ninth Quarterly Report, Appendix C.
The City and NPD, in collaboration with the civilian oversight entity or other community input, will develop and implement a program to effectively publicize to the Newark community how to make misconduct complaints.	¶ 112	Within 365 days of the Operational Date (July 12, 2017)	Not Assessed	
NPD and the City will revise and make forms and other materials outlining the complaint process and OPS contact information available on their website and appropriate government properties.	¶ 113	Within two years of the Effective Date (March 30, 2018)	Initial Development	See Fifth Quarterly Report, Section III(C)(4).
NPD will accept all complaints, by all methods and forms detailed in ¶ 114.	¶ 114	Ongoing	Initial Development	See Fifth Quarterly Report, Section III(C)(4).

**Internal Affairs: Complaint Intake and Investigation Continued**

<b>Achievement</b>	<b>Consent Decree Paragraph</b>	<b>Consent Decree Deadline for Achievement</b>	<b>Status</b>	<b>Discussion</b>
NPD will provide civilians, including complainants and witnesses to alleged police misconduct, with full access to NPD's complaint process. NPD will review and revise its policies for releasing complaints and misconduct allegations to make such complaints and allegations publicly available and ensure compliance with the Consent Decree.	¶ 115	Ongoing	Initial Development	See Eighth Quarterly Report, Section II(D)(2).
NPD will train all police personnel, including dispatchers, to properly handle complaint intake; the consequences for failing to take complaints; and strategies for turning the complaint process into positive police-civilian interaction.	¶ 116	Within 180 days of the Operational Date (January 8, 2017)	Non-Compliance	
NPD will conduct regular, targeted, and random integrity audits to identify officers or other employees who refuse to accept or discourage the filing of misconduct complaints, fail to report misconduct or complaints, or provide false or misleading information about filing a misconduct complaint.	¶ 117	Ongoing	Non-Compliance	See Seventh Quarterly Report, Section II(C).
NPD will review the results of the audits conducted pursuant to ¶ 117 and take appropriate action to remedy any problematic patterns or trends.	¶¶ 117-118	Ongoing	Not Assessed	See Sixth Quarterly Report, Section III(F)(2)(a).

**Internal Affairs: Complaint Intake and Investigation Continued**

<b>Achievement</b>	<b>Consent Decree Paragraph</b>	<b>Consent Decree Deadline for Achievement</b>	<b>Status</b>	<b>Discussion</b>
NPD will require that all officers and employees report allegations of criminal behavior or administrative misconduct by another NPD officer toward a member of the public, that they may observe themselves or receive from another source, to a supervisor or directly to OPS for review and investigation. When a supervisor receives such allegations, the supervisor will promptly document and report this information to OPS.	¶ 119	Within two years of the Effective Date (March 30, 2018)	Preliminary Compliance	See Ninth Quarterly Report, Appendix D.
NPD will investigate as a misconduct complaint any information or testimony arising in criminal prosecutions or civil lawsuits that indicate potential officer misconduct not previously investigated by NPD.	¶ 120	Ongoing	Not Assessed	The Monitor will assess this requirement during compliance audits.
<b>Complaint Classification and Assignment of Investigative Responsibility (¶¶ 121-125)</b>				
NPD will adopt and implement a complaint classification protocol that is based on the nature of the alleged misconduct, in order to guide OPS in determining where a complaint should be assigned for investigation.	¶ 121	Within two years of the Effective Date (March 30, 2018)	Preliminary Compliance	See Fifth Quarterly Report, Section III(A)(5).
NPD will ensure that officers have received, read and understand their responsibilities pursuant to the policy or procedure and that the topic is incorporated into the in-service training required.	¶ 11	Within 60 days after approval of protocol	Non-Compliance	
NPD's OPS will investigate all allegations of Serious Misconduct as defined in the Consent Decree.	¶ 122	Ongoing	Not Assessed	The Monitor will assess this requirement during compliance audits.

**Internal Affairs: Complaint Intake and Investigation Continued**

<b>Achievement</b>	<b>Consent Decree Paragraph</b>	<b>Consent Decree Deadline for Achievement</b>	<b>Status</b>	<b>Discussion</b>
NPD shall develop a protocol for determining whether other complaints will be assigned to the subject officer's supervisor, the precinct's Integrity Compliance Officer, or retained by OPS for an administrative investigation. OPS will also determine whether the misconduct complaint warrants a referral to federal or state authorities for a criminal investigation.	¶ 123	Within two years of the Effective Date (March 30, 2018)	Preliminary Compliance	
OPS will routinely monitor investigations referred to officers' precincts and specialized units for quality, objectivity and thoroughness, and take appropriate action if investigations are deficient. OPS will identify trends in investigative or leadership deficiencies.	¶ 124	Ongoing	Not Assessed	See Sixth Quarterly Report, Section III(B)(6).
OPS will routinely monitor investigations referred to officers' precincts and specialized units for quality, objectivity and thoroughness, and take appropriate action if investigations are deficient. OPS will also identify trends in investigative or leadership deficiencies.	¶ 124	Ongoing	Not Assessed	The Monitor will assess this requirement during compliance audits.
NPD will maintain a centralized numbering and tracking system for all misconduct complaints.	¶ 125	Within two years of the Effective Date (March 30, 2018)	Initial Development	See Fifth Quarterly Report, Section III(C)(4).
<b>Misconduct Complaint Investigation (¶¶ 126-136)</b>				
NPD will review and revise its policies for releasing complaints and misconduct allegations to incorporate the requirements set out in ¶¶ 126-136.	¶¶ 126-136	Within two years of the Effective Date (March 30, 2018)	Preliminary Compliance	

**Internal Affairs: Complaint Intake and Investigation Continued**

<b>Achievement</b>	<b>Consent Decree Paragraph</b>	<b>Consent Decree Deadline for Achievement</b>	<b>Status</b>	<b>Discussion</b>
NPD will ensure that officers have received, read and understand their responsibilities pursuant to the policy or procedure and that the topic is incorporated into the in-service training required.	¶ 11	Within 60 days after approval of protocol	Non-Compliance	
<b>Parallel Administrative and Criminal Investigations of Officer Misconduct (¶¶ 137-140)</b>				
If after a reasonable preliminary inquiry into an allegation of misconduct, or at any other time during the course of an administrative investigation, the OPS has cause to believe that an officer or employee might have engaged in criminal conduct, the OPS will refer the matter to the ECPO, DOJ, or other law enforcement agency as appropriate.	¶ 137	Ongoing	Not Assessed	The Monitor will assess this requirement during compliance audits.
Notwithstanding the referral and unless otherwise directed by the prosecutive agency, NPD will proceed with its administrative investigations. Under no circumstances will OPS compel a statement from the subject officer without first consulting with the Chief or Director and with the prosecuting agency.	¶ 138	Ongoing	Not Assessed	The Monitor will assess this requirement during compliance audits.
NPD will not automatically end its administrative investigation in matters in which the prosecuting agency declines to prosecute or dismisses after initiation of criminal charges. Instead, NPD will require investigators to conduct a complete investigation and assessment of all relevant evidence.	¶ 139	Ongoing	Not Assessed	The Monitor will assess this requirement during compliance audits.
NPD will work with DOJ, the ECPO, and the New Jersey Attorney General's Office as appropriate to improve its processes for investigations of use of force incidents and referrals of complaints of police misconduct for criminal investigation.	¶ 139	Ongoing	Not Assessed	The Monitor will assess this requirement during compliance audits.

**Internal Affairs: Complaint Intake and Investigation Continued**

<b>Achievement</b>	<b>Consent Decree Paragraph</b>	<b>Consent Decree Deadline for Achievement</b>	<b>Status</b>	<b>Discussion</b>
<b>Review and Analysis of Investigations (§§ 141-143)</b>				
NPD will train OPS supervisors to ensure that investigations are thorough and complete, and that investigators' conclusions and recommendations that are not adequately supported by the evidence will not be approved or accepted.	¶ 141	Within 60 days after approval of policy	Preliminary Compliance	
NPD will develop and implement a protocol for regular supervisory review and assessment of the types of complaints being alleged or sustained to identify potential problematic patterns and trends.	§§ 142-143	Within two years of the Effective Date (March 30, 2018)	Non-Compliance	
<b>Staffing and Training Requirements (§§ 144-149)</b>				
Within 30 days of the Operational Date, NPD will review staffing of OPS and ensure that misconduct investigators and commanders possess appropriate investigative skills, a reputation for integrity, the ability to write clear reports with recommendations supported by the evidence, and the ability to assess fairly and objectively whether an officer has committed misconduct.	§§ 144, 145	Within 30 days of the Operational Date (August 11, 2016)	Operational Compliance (achieved after deadline)	See Second Quarterly Report.
NPD will use a case management system to track and maintain appropriate caseloads for OPS investigators and promote the timely completion of investigations by OPS.	¶ 146	Within two years of the Effective Date (March 30, 2018)	Not Assessed	The Monitor will assess this requirement during compliance audits.
NPD will require and provide appropriate training for OPS investigators upon their assignment to OPS, with refresher training at periodic intervals. At a minimum, NPD will provide 40 hours of initial training and eight hours additional in-service training on an annual basis.	§§ 147, 148	Within 60 days after approval of protocol and annually thereafter	Preliminary Compliance	

**Internal Affairs: Complaint Intake and Investigation Continued**

<b>Achievement</b>	<b>Consent Decree Paragraph</b>	<b>Consent Decree Deadline for Achievement</b>	<b>Status</b>	<b>Discussion</b>
NPD will improve OPS' complaint tracking and assessment practices in accordance with ¶ 149.	¶ 149	Within two years of the Effective Date (March 30, 2018)	Non-Compliance	See Eighth Quarterly Report, Section II(C).

**X. Compliance Reviews and Integrity Audits**

<b>Achievement</b>	<b>Consent Decree Paragraph</b>	<b>Consent Decree Deadline for Achievement</b>	<b>Status</b>	<b>Discussion</b>
<p>NPD will conduct integrity audits and compliance reviews to identify and investigate all officers who have engaged in misconduct including unlawful stops, searches, seizures, excessive uses of force; theft of property or other potential criminal behavior; racial or ethnic profiling and bias against lesbian, gay bisexual and transgender persons.</p> <p>The integrity audits will also seek to identify officers who discourage the filing of complaints, fail to report misconduct or complaints, or otherwise undermine NPD's integrity and accountability systems.</p>	¶¶ 150, 151	Within two years of the Effective Date (March 30, 2018)	Preliminary Compliance	NPD has begun to conduct some integrity audits (e.g., body-worn cameras, and stops). See Seventh Quarterly Report, Section II(D)(2).

**XI. Discipline**

<b>Achievement</b>	<b>Consent Decree Paragraph</b>	<b>Consent Decree Deadline for Achievement</b>	<b>Status</b>	<b>Discussion</b>
NPD will adopt policies that are consistent and fair in their application of officer discipline, including establishing a formal, written, presumptive range of discipline for each type of violation.	Section XIII	Within two years of the Effective Date (March 30, 2018)	Preliminary Compliance	
NPD will ensure that officers have received, read and understand their responsibilities pursuant to the policy or procedure and that the topic is incorporated into the in-service training required.	¶ 11	Within 60 days after approval of guidance	Non-Compliance	See Ninth Quarterly Report, Appendix C.
NPD will apply discipline for sustained allegations of misconduct based on the nature and severity of the policy violation and defined mitigating and aggravating factors, rather than the officer's identity, rank or assignment; relationship with other individuals; or reputation in the broader community.	¶ 152	Ongoing	Not Assessed	The Monitor will assess this requirement during compliance audits.
NPD will implement disciplinary guidance for its personnel that addresses the topics addressed in ¶ 153 of the Consent Decree.	¶ 153	Within 90 days of the Operational Date (October 10, 2016)	Non-Compliance	
NPD will establish a unified system for reviewing sustained findings and applying the appropriate level of discipline pursuant to NPD's disciplinary guidance.	¶ 154	Within two years of the Effective Date (March 30, 2018)	Not Assessed	The Monitor will assess this requirement during compliance audits.
NPD will conduct annual reviews of its disciplinary process and actions.	¶ 155	Annually	Non-Compliance	

**XII. Data Systems Improvement**

<b>Achievement</b>	<b>Consent Decree Paragraph</b>	<b>Consent Decree Deadline for Achievement</b>	<b>Status</b>	<b>Discussion</b>
<b>Early Warning System (¶¶ 156-161)</b>				
NPD will enhance its Early Warning System (“EWS”) to support the effective supervision and management of NPD officers.	¶ 156	Within one year of the Effective Date (March 30, 2017)	Non-Compliance	See Ninth Quarterly Report, Section II(A).
City will provide sufficient funding to NPD to enhance its EWS.	¶ 156	Within one year of the Effective Date (March 30, 2017)	Non-Compliance	See Ninth Quarterly Report, Section II(A).
NPD will develop and implement a data protocol describing information to be recorded and maintained in the EWS.	¶ 157	Within two years of the Effective Date (March 30, 2018)	Non-Compliance	See Ninth Quarterly Report, Section II(A).
NPD will revise its use of EWS as an effective supervisory tool. To that end, the EWS will use comparative data and peer group analysis to identify patterns of activity by officers and groups of officers for supervisory review and intervention.	¶ 158-160	Within two years of the Effective Date (March 30, 2018)	Non-Compliance	See Ninth Quarterly Report, Section II(A).
NPD will continue to use its current IAPro software's alert and warning features to identify officers for intervention while further developing and implementing an EWS that is fully consistent with this Agreement.	¶ 161	Ongoing	Initial Development	The Monitor will assess this requirement during compliance audits.
<b>Records Management System (“RMS”) (¶¶ 162-163)</b>				
NPD will revise its use and analysis of its RMS to make efficient and effective use of the data in the System and improve its ability to interface with other technology systems.	¶ 162	Within two years of the Effective Date (March 30, 2018)	Initial Development	See Ninth Quarterly Report, Section II(A).

**Data Systems Improvement Continued**

<b>Achievement</b>	<b>Consent Decree Paragraph</b>	<b>Consent Decree Deadline for Achievement</b>	<b>Status</b>	<b>Discussion</b>
City will provide sufficient funding and personnel to NPD so NPD can revise its use and analysis of its Record Management System.	¶ 163	N/A	Non-Compliance	See Ninth Quarterly Report, Section II(A).

**XIII. Transparency and Oversight**

<b>Achievement</b>	<b>Consent Decree Paragraph</b>	<b>Consent Decree Deadline for Achievement</b>	<b>Status</b>	<b>Discussion</b>
NPD will make its policies publicly available, and will regularly report information regarding officer use of force; misconduct complaints; and stop/search/arrest data.	¶ 164	Ongoing	Not Assessed	
NPD will work with the civilian oversight entity to overcome impediments to the release of information consistent with law and public safety considerations.	¶ 165	N/A	Not Assessed	
On at least an annual basis, NPD will issue reports, summarizing and analyzing the stop, search, arrest and use of force data collected, the analysis of that data, and the steps taken to correct problems and build on successes.	¶¶ 85, 168	Annually	Non-Compliance	

**XIV. Consent Decree Implementation and Enforcement**

<b>Achievement</b>	<b>Consent Decree Paragraph</b>	<b>Consent Decree Deadline for Achievement</b>	<b>Status</b>	<b>Discussion</b>
<b>Consent Decree Implementation Unit</b>				
The City and NPD will form an interdisciplinary unit to facilitate the implementation of the Consent Decree.	¶ 196	Within 180 days after the Effective Date (September 26, 2016)	Operational Compliance	
The City implementation unit will file a status report with the Court, delineating the items set forth in the Consent Decree.	¶ 197	Within 180 days after the Effective Date (September 26, 2016) and every six months thereafter	Operational Compliance	

# **APPENDIX B**

**Report of the Independent Monitor's First Audit of the City of Newark and Newark Police  
Division's Searches With or Without a Search Warrant  
August 23, 2022**

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This report presents the findings of the Independent Monitor, Peter C. Harvey, regarding the Independent Monitoring Team's *First* Audit of the City of Newark's (the "City's") and Newark Police Division's ("NPD's") compliance with Consent Decree requirements relating to search practices with or without a search warrant.

## I. Reviewers

The following members of the Independent Monitoring Team participated in this audit:

Linda Tartaglia - Director, Rutgers University  
Center on Policing Daniel Gomez - Lieutenant,  
Los Angeles Police Department (ret.) Sekou  
Kinebrew - Staff Inspector, Philadelphia Police  
Department (ret.) Roger Nunez - Sergeant, Los  
Angeles Police Department  
Rosalyn Parks, Ph.D. - Rutgers University  
Center on Policing Jonathan Norrell - Rutgers  
University Center on Policing

## II. Introduction

Paragraph 173 of the Consent Decree instructs the Independent Monitoring Team, led by Independent Monitor Peter C. Harvey, to audit the City's and NPD's compliance with Consent Decree reforms. Pursuant to Paragraph 180 of the Consent Decree, the Independent Monitor issued notice to the City, NPD, and the United States Department of Justice ("DOJ") (collectively, the "Parties"), by letter on July 13, 2021, that the Monitoring Team would begin its first audit of NPD's compliance with certain provisions of the Consent Decree relating to searches with or without a warrant, and specifically, Section VI (Paragraphs 26 and 27, 29-34, 51, 53, and 55-62), and Section XVI (Paragraph 174(a)).<sup>1</sup> (*See Appendix A* (July 13, 2021 45-day notice letter)).

As a general matter, the above-referenced paragraphs of the Consent Decree require NPD to, in part:

- Ensure that NPD officers do not consider any demographic category in determining whether to conduct a search or seek a search warrant without reasonable articulable suspicion (Paragraph 29).

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<sup>1</sup> The topical areas of Stops and Arrests were not the subject of this Audit, but they will be the subject of separate audit(s). However, this Audit includes Stop, Search, and Arrest Training (Section VI D, Paragraph 43 as it pertains to content of the required annual training), which encompasses all three topical areas. Additionally, the Monitoring Team did not audit supervisory reviews of Searches during the First Audit of Searches. The Monitoring Team intends to include a supervisory review of Searches in a subsequent Supervisory Audit.

Specifically, Paragraph 33 also requires NPD Supervisors to "review the video and written documentation of consent prior to approving an arrest based on evidence obtained via a consent search". NPD's compliance with this portion of the provision will be covered in a subsequent audit of NPD's compliance with supervisory obligations (*see Appendix A* (July 13, 2021 45-day notice letter)).

- Ensure that NPD officers do not rely on information that is incorrect or materially false to justify a warrantless search or obtain a search warrant (Paragraph 30).
- Ensure that NPD officers have reasonable articulable suspicion that a search will reveal evidence of a crime prior to seeking consent to search a vehicle—and that NPD officers document in writing the basis for this suspicion (Paragraph 31).
- Ensure that NPD’s consent to search form includes separate signature lines for officers to certify that they have advised the subject of the right to refuse a search (Paragraph 34).
- Ensure that NPD has modified its procedures to collect and preserve stop, search, and arrest data to determine what practices are most effective and efficient and ensure that the NPD maintains a database that is equipped to analyze such data. (Paragraphs 51 and 53).
- Ensure that NPD officers respect the First Amendment rights of bystanders who record or comment on police activity during a search event (Paragraphs 55-62)
- Maintain policies and procedures for the conduct of searches with or without a warrant according to Consent Decree requirements (Section VI, Introductory Paragraph).

### III. Review Period

In this Audit, the Monitoring Team reviewed NPD’s searches with or without an arrest warrant for a two-month time period, specifically **from June 1, 2021 up to and including July 31, 2021** (the “Audit Period”).

On July 13, 2021, the Monitoring Team provided NPD with notice of its intent to conduct this audit. The Monitoring Team also informed NPD that this *first* audit of its searches with or without a search warrant would require in-person activities by members of the Monitoring Team, and that the Monitoring Team’s Subject Matter Experts (SMEs) would observe Centers for Disease Control and Prevention (“CDC”) guidelines while conducting this audit. *See Appendix A*. The SMEs conducted their activities on-site from October 2021 through February 2022, and remotely during the month of March, 2022.<sup>2</sup>

### IV. Executive Summary

The Monitoring Team’s First Audit of NPD’s compliance with Consent Decree requirements relating to Search practices with or without a search warrant analyzed whether:

- (1) NPD’s policies that govern searches contained the Consent Decree required provisions (as listed above) and

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<sup>2</sup> The Audit sessions (both on-site and remote) exceeded anticipated duration due to the unforeseen volume of body-worn and in-car camera footage associated with each search event.

(2) NPD’s personnel demonstrated routine adherence to NPD’s own Search policies in their day-to-day operations, described here as “Overall Compliance.”

On the first component of this audit—NPD’s policies and procedures regarding searches with or without a search warrant—the Monitoring Team previously approved NPD’s General Order 18-15, *Searches With or Without a Search Warrant*, dated May 27, 2021 (see **Appendix B**) and General Order 18-12, *First Amendment Right to Observe, Object to and Record Police Activity*, dated June 12, 2019 (see **Appendix C**). related written directives, and related In-Service Training Bulletins. Additionally, the Monitoring Team reviewed relevant sections (specifically focused on the paragraphs addressing Searches) of NPD’s *Memorandum # 19-18, entitled Implementation of G.O. 18-14, 18-15, 18-16 RE: Stop, Search And Arrest Policies* (see **Appendix D**). The Monitoring Team determined that these NPD General Orders contained each Search With or Without a Warrant policy requirement specified in the Consent Decree.

The Monitoring Team also reviewed NPD’s General Order 21-04, *Protocol for Analyzing Stop, Search, and Arrest Data*, dated May 27, 2021 (see **Appendix E**). The Consent Decree and the Protocol requires NPD to produce analyses to improve the efficacy of its stop, search, and arrest practices to increase public safety and promote police legitimacy in the Newark community. The Monitoring Team determined that NPD’s protocol contained the requirements specified in the Consent Decree.

For the second component of this audit—whether NPD had demonstrated routine adherence to its Searches With or Without a Warrant policy, thereby achieving “Overall Compliance” with the mandates of the Consent Decree—the Monitoring Team considered whether NPD officers conducting a Search (a) had legal justification for the Search and whether or not the mechanics of the Search were within legal and policy-related parameters, described in this audit as *substantive compliance*<sup>3</sup> and (b) completed required reports and accurately documented the Search in the narrative section of the report, described in this audit as *documentation compliance*. If any Search event was deficient, either substantively or with respect to documentation, that Search event was deemed “Non-Compliant.”

The Monitoring Team utilized a 95% Search event compliance standard for this audit.

NPD achieved “Overall Compliance” when it satisfied both substantive and documentation compliance for 95% of the events in the sample reviewed by the Monitoring Team.<sup>4</sup>

The Monitoring Team found that 48.00% of events reviewed were compliant both

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<sup>3</sup> For the purpose of assessing substantive compliance, the SMEs limited their evaluations to the actions of the initiating officers and the officers responsible for conducting the searches.

<sup>4</sup> By separately assessing NPD’s substantive compliance and documentation compliance, the Monitoring Team affords NPD the ability to more easily identify areas in which it may focus its resource to address deficiencies, if any, in its Searches or Without a Search Warrant practices

substantively and with respect to documentation requirements. In other words, 96 out of 200 events reviewed by the Monitoring Team achieved Overall Compliance.

When further separated by substantive and documentation compliance, the audit revealed that NPD attained a score of 65.00 % for substantive compliance (130 out of 200 events assessed for substantive compliance were determined to be compliant).

NPD's documentation compliance score was 52.50% (105 out of 200 events assessed for documentation compliance were determined to be compliant).

This table presents an overview of NPD's compliance in the Monitoring Team's First Audit of Searches with or without a Search Warrant.

<b>Overview of First Searches Audit Results</b>		
<b>Audit Area/Subject</b>	<b>Consent Decree Paragraph</b>	<b>Compliance?</b>
<b>Without a Search Warrant Policy and Related Policies</b>	See Appendix B	Yes.
<b>Stop, Search and Arrest Analysis Protocol</b>	Paragraph 53	Yes. <sup>5</sup>
<b>Overall Compliance</b> <i>Whether NPD demonstrated overall compliance in its Searches with or without a Search Warrant practices (Substantive and Documentation).</i>	Paragraphs 25-34 (Section VI(A))	No. Overall, 48.00 % of Search events reviewed were compliant both substantively and with respect to documentation.
<b>Substantive Compliance</b> <i>Whether the responsible NPD officer adhered to NPD policy by demonstrating that legal justification for the search existed and that the search was within legal and policy-related parameters.</i>	Paragraphs 25-34; 55-62 (First Amendment)	No. NPD was deemed substantively compliant in 65.00 % of Search events reviewed.

<sup>5</sup> The Monitoring Team has previously approved NPD's methodology, and NPD has submitted a preliminary analysis. Some aspects of that analysis, however, were incomplete when assessed by NPD's own methodology. In the future, the Monitoring Team expects NPD will be able to adhere strictly to its proposed methodology.

<p><b>Documentation Compliance</b></p> <p><i>Whether the responsible NPD officer adhered to NPD policy by demonstrating that all reporting and related narrative requirements were met as determined by NPD policy and the Consent Decree.</i></p>	<p>Section VI (Omnibus Statement); Paragraphs 26, 27, 29-34</p>	<p>No. NPD was deemed compliant with respect to documentation in 52.50 % of Search events reviewed.</p>
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**V. Methodology**

The Monitoring Team used the following methodology to guide this audit:

**A. Definition of “Search Event”**

The unit of review for the audit is the Search Event. For the purpose of this audit, a “Search Event” occurs whenever a police officer makes physical contact with a citizen, or the citizen’s garments, property or vehicle, for the purpose of detecting the presence of evidence, contraband, or weapons.

The Monitoring Team limited its evaluation to the actions of the initiating, primary officer(s) for a Search Event. Ancillary officers not directly involved with the Search were not included in the assessment of compliance for a Search Event. If an ancillary officer conducted a Search while assisting the main officer, this Search was assessed for compliance.

**B. Parameters of Search Audit**

This Audit was limited to Searches that commenced after the initiation of a Stop (and which therefore are documented on corresponding reports). The Monitoring Team randomly selected 200 unique event numbers for this Audit (June 1, 2021, up to and including July 31, 2021). Additionally, multiple reports may correspond to a given “event.”

Upon review, five events were removed by the SMEs from the sample. Additionally, five events were added to the sample.<sup>6</sup> Therefore, a total of 200 events were reviewed by SMEs for this Audit.<sup>7</sup>

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<sup>6</sup> One event was removed because it fell outside the date range of the Audit time frame. Three events did not include a Search and therefore were removed from the sample. One event was removed because it was found to be part of an unspecified unit. For several Search Events that were randomly selected, more than one Search action was included. This resulted in five additional reviews.

<sup>7</sup> See **Appendix F** for the list of events that were removed or added.

1. *Search Event by Category*

The Monitoring Team recognizes that a Search Event can include one or various combinations of the following five categories. The Monitoring Team reviewed the actions of the officer(s) in one or more of the categories.

- Protective Pat-Down
- Probable Cause Search (without Arrest)
- Consent Search
- Inventory Search
- Search Incident to Arrest

2. *Documents and Materials requested*

To conduct a comprehensive audit, the Monitoring Team required that NPD provide the following documents and materials for each Search event identified in the sample, including but not limited to:

- Stop Report (DP1; 1388)
- Body-Worn Camera Footage
- In-Car Camera Footage
- Consent Search Documentation (where applicable)
  - Consent by citizen
  - Approval by supervisor
- Inventory Search Documentation (where applicable)
- Arrest Reports

3. *Search Event Compliance*

Search Event compliance was assessed using a 95% standard. To be compliant, NPD was required to demonstrate that it complied with all substantive and documentation provisions of constitutional, federal, state, and relevant case law, policies and procedures. The Monitoring Team categorized this Audit into *substantive* and *documentation* components, as this provides NPD an opportunity to remediate any failures identified in this compliance assessment. Specifically, *substantive* and *documentation* compliance for each search event was assessed as follows:

To assess NPD's Substantive Compliance, the Monitoring Team considered whether officers conducting a search had a legal justification for the search, and whether the mechanics of the search was within legal and policy-related parameters.

For the purpose of determining a substantive "pass" or failure," the Monitoring Team limited its evaluations to the actions of the initiating officers and the officers responsible for conducting the searches and policies associated with their actions. The Monitoring Team recognized that in some instances, the initiating officers were also the officers who conducted (or should conduct) the searches, while in other instances, secondary officers (*e.g.* transporting officers) may have been responsible for conducting the searches.

To assess Documentation Compliance, the Monitoring Team considered three criteria:

- i) Whether the reports were completed in full;
- ii) Whether a report's narrative section contained an accurate (and non *pro forma*) description of the event; and,
- iii) Whether the associated body-worn and in-car camera footage was captured and were consistent with narrative descriptions in officers' reports.

## **VI. Analysis**

### **A. NPD's Search Policy and Related Policies**

The Consent Decree requires NPD to implement policies directing officers to adhere to certain procedures in their search practices. Prior to this audit, the Monitoring Team reviewed and approved NPD's Search policies, as specified in General Order 18-15, *Searches With or Without a Search Warrant*, dated May 27, 2021 (*see Appendix B*) and NPD's General Order 18-12, *First Amendment Right to Observe, Object to and Record Police Activity*, dated June 12, 2019 (*see Appendix C*), related written directives, and related In- Service Training Bulletins.

Before approving these policies, the Monitoring Team conducted a formal review to determine whether the policies contained each requirement relevant to Searches With or Without a Search Warrant as specified in the Consent Decree. The Monitoring Team determined that the Consent Decree's policy requirements in this area were reflected in NPD's General Orders.

### **B. NPD's Stop, Search and Arrest Analysis Protocol (Consent Decree Paragraph 53)**

Paragraph 53 of the Consent Decree requires NPD to develop a protocol for comprehensive analysis of stop, search, and arrest data. The protocol must establish steps for determining the nature and scope of demographic disparities in stop and search practices, and whether any such disparities can be decreased or eliminated, as well as steps for determining which stop, search, and arrest practices are most effective and efficient in increasing public safety and police legitimacy within the Newark community. The analysis includes an assessment of the efficacy and any demographic disparities in the use of pretext stops and consent searches. This protocol is subject to the review and approval of the Monitor and DOJ (Consent Decree,

Paragraph 53).

Prior to this audit, the Monitoring Team reviewed and approved NPD's Stop Search and Arrest Protocol, General Order 21-04, dated May 27, 2021.

### **C. Overall Compliance: Substantive and Documentation**

The Monitoring Team generated a random sample of 200 events from the Audit Period (June 1 through July 31, 2021) to analyze for this Audit. This random sample of 200 events was drawn from a total population of 373 events for the Audit Period. The final Audit sample was 200 events after SME review (*see Appendix F: List of Events Removed & Added to Sample*).

An event was compliant for purposes of determining Overall Compliance only if the responsible officer was compliant **both** in terms of substantive and documentation requirements for the event assessed. If the officer's actions relevant to that event were with substantively non-compliant, or non-compliant with respect to documentation, or both, then that event was non-compliant for the purposes of determining Overall Compliance.

To assess Substantive Compliance for each event, the Monitoring Team evaluated whether the officer involved had legal justification for the Search (*i.e.*, reasonable articulable suspicion), and whether the mechanics of the Search were within legal and policy-related parameters.<sup>8</sup> The Monitoring Team limited its evaluations to the actions of the initiating officers and the officers responsible for conducting the Searches and policies associated with their actions.<sup>9</sup>

To assess Documentation Compliance for each event, the Monitoring Team identified three criteria for assessment in this audit: (1) the report had to be completed in full; (2) the report narrative had to be descriptive of the event; and (3) the camera video footage had to match the report narrative.

To further determine Documentation Compliance, the Monitoring Team also reviewed associated body-worn and in-car camera videos from the Audit Period (June 1, 2021 through July 31, 2021) to corroborate the written description set forth in the reports.

#### *1. Overall Compliance*

NPD achieved an overall compliance score of 48.00 %. In total, 96 of the 200 events reviewed by the Monitoring Team were compliant both substantively and in terms of

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<sup>8</sup> The mechanics of a search are within legal and policy-related parameters if the responsible officer properly executes "protective sweeps incident to arrest," has sufficient probable cause to conduct a search without a warrant, and, does not use pro forma or conclusory language without supporting detail in required reports (*see Appendix A* (July 13, 2021 45-day notice letter)).

<sup>9</sup> The Monitoring Team recognizes that in some instances, the initiating officers also will be the officers who conduct (or should conduct) the searches, while in other instances, secondary officers (*e.g.*, transporting officers) may be responsible for conducting the searches.

documentation. Accordingly, 104 events were found to be overall non-compliant (52.00%). For a list of events that were determined to be non-compliant overall, *see* **Appendices G-I**.

Total Number of Events Reviewed	Number of Events Deemed Overall Compliant	Compliance Score
200	96	48.00 %

Below is a summary of the 104 events that were found to be substantively non-compliant, documentation non-compliant, or both substantively and documentation non-compliant.

Summary of Non-Compliant Events		
Non-Compliance Type	Number of Non-Compliant Events	Percentage
Non-Compliant (Substantive)	9	8.65 %
Non-Compliant (Documentation)	34	32.69 %
Non-Compliant (Both)	61	58.65 %
Total	104	100.00%

## 2. Substantive Compliance

To determine whether NPD achieved Substantive Compliance, the Monitoring Team analyzed whether the responsible NPD officer complied with NPD policy in terms of reasonable articulable suspicion, properly executed “protective sweeps incident to arrest,” had sufficient probable cause to conduct a search without a warrant; and whether or not that officer *used pro forma* or conclusory language without supporting detail in their reporting.<sup>10</sup> If the Monitoring Team determined that the responsible officer had not followed correct procedure, the event was assessed to be substantively non-compliant.

A breakdown of substantive compliance scores follows. (Table of Substantive Compliance).

Total Number of Events Reviewed	Number of Events Deemed Substantively Compliant	Compliance Score
200	130	65.00 %

For a list of events that were determined to be non-compliant with respect to the substantive requirement, *see* **Appendix G**.

<sup>10</sup> Use of *pro forma* language is specifically prohibited by Consent Decree Paragraph 27(b). Accordingly, the Monitoring Team considers use of such language to be a substantive deficiency.

### 3. *Documentation Compliance*

To determine whether NPD achieved documentation compliance, the Monitoring Team assessed whether or not the NPD responsible officer for each event had adhered to all relevant reporting and documentation requirements for this audit as defined by NPD policy and Consent Decree requirements.

NPD achieved a Documentation Compliance score of 52.50 %. In 105 of the 200 events reviewed, the responsible officers completed documentation/reporting requirements according to NPD policy.

Total Number of Events Reviewed	Number of Events Deemed Documentation Compliant	Compliance Score
200	105	52.50 %

Of the 200 events reviewed by the Monitoring Team, 95 (47.50 %) were non-compliant due to documentation/reporting related deficiencies. For a list of events that were determined to be non-compliant with respect to documentation, *see Appendix H*.

#### **D. Outcome Assessments**

Paragraph 174(a) of the Consent Decree requires NPD to provide the Monitor with data to allow the Monitoring Team to undertake outcome assessments. Outcome Assessment data will be reported out separately in a bi-annual report.

## **VII. Observations and Recommendations**

For the First Search Audit, the Monitoring Team made five (5) principal observations and corresponding recommendations, as summarized below:

### *1. Legality, Constitutionality, and Propriety of Searches*

**Observation:** It can be neither overstated nor overamplified that the great majority of the searches reviewed by the Subject Matter Experts (SMEs) were exhaustively lawful, constitutional, and were conducted pursuant to circumstances under which a reasonable police officer would undertake the same course of action.

In addition, video footage captured on body-worn and in-car cameras confirmed that, in the overwhelming majority of interactions with members of the community, Newark Police Division officers comported themselves in a professional manner, maintained a courteous and respectful demeanor, and exercised laudable restraint during often tense situations.

**Recommendation:** The Monitoring Team recommends that NPD continue training officers in strategies related to healthy community engagement, and implement (or augment) a formalized “rewards and recognition” protocol for officers who demonstrate superior de-escalation and conflict resolution proclivities.

2. *Searching Officer Not Identified On Written Reports:*

**Observation:** For many Search Events, the officer who actually conducted the Search was *not* identified on any of the attendant written documentation. Compounding matters, in many instances, the officer who prepared the Stop Report (for consistency, designated the “primary officer” by the Monitoring Team), was *not* the officer who conducted the Search. Moreover, for a number of Search Events, corresponding video clearly evidences that the primary officer was not present when the Search was conducted.

This reality gives rise to grave concern regarding the accuracy and reliability of much of the written documentation. It also directly correlates to the next two observations made by the Monitoring Team.

**Recommendation:** The Monitoring Team recommends that NPD update its policy relating to searches to include a requirement that either the officer who actually conducts a Search (or initiating the interaction that leads to a Search) prepare the Stop Report, or (at minimum), that the searching officer be clearly identified within the contents of the Stop Report.

3. *Material Inconsistencies Between Written Documentation and Events Captured on Corresponding Video:*

**Observation:** For numerous Search Events, in material aspects, information recorded on written documents did not match events captured on corresponding BWC or ICC Video. These inconsistencies can be broadly categorized by the following:

- Search action affirmatively indicated on Stop Report, but, not supported by BWC or ICC video footage.
- Search action either undocumented or negatively indicated on Stop Report, while BWC or ICC video footage clearly depicts a Search.

**Recommendation:** The Monitoring Team recommends that supervisory and management personnel adopt a more proactive posture with regard to inspecting reports and corresponding video footage. The Monitoring Team further recommends that organizationally, NPD place greater emphasis on the critical importance of ensuring that all forms of documentation are prepared with completeness and accuracy, and are inspected for comprehensiveness and consistency prior to final submission. Success in this area may require the institution of intense training and progressive discipline for officers and supervisors.

4. *Flawed or Misguided Understanding of Critical Legal Principles:*

**Observation:** During the audit the SMEs observed that NPD officers consistently demonstrated an erroneous or complete lack of understanding of the distinction between a protective pat-down (PPD) and a Search incident to arrest, and the conditions under which each is appropriate.

In numerous instances, within the contents of the Stop Report, officers indicated that a PPD was conducted “incident to arrest.” However, by definition and under prevailing case

law (e.g., *Terry v. Ohio*), such action cannot be possible, as a PPD is only conducted when an officer has developed reasonable suspicion to detain an individual **and** there exists additional indicia that a weapon may be present. At that point in a police-citizen encounter, an arrest has not occurred, and under such circumstances, only a limited pat-down (i.e., “Terry Frisk”) of a person’s outer garments for weapons is permissible.

If, however, an arrest has occurred, the subsequent search action is, by definition, a “search incident to arrest,” and not a “protective pat-down” (regardless of the level of intrusion made by the officer). This legal principle prevails even if the searching officer only makes physical contact with the arrested person’s outer garments.

**Recommendation:** The Monitoring Team recommends additional training with regard to these basic, but salient, legal precepts, particularly for officers and front-line supervisors. A simplified “decision matrix” may assist in clarifying the officers’ understanding of the distinction between a PPD and a search incident to arrest, and when each is appropriate. For example:

Level of Legal Sufficiency		Type of Police-Citizen Encounter		Corresponding Search Action
Reasonable Suspicion & Indicia of Weapon	+	Temporary Detainment	=	Protective Pat-Down
Probable Cause	+	Arrest	=	Search Incident to Arrest

5. *Documentation Compliance Issues/Deficiencies*

**Observation:** Of the total number of events for which an overall score of non-compliance was assessed, 95 events contained deficiencies related directly to documentation. These deficiencies can be categorized as follows:

- Narrative sections of Stop Report completely blank, or lacking clear articulation of legal sufficiency for search or protective pat-down.
- Reports indicate that officers lack understanding of difference between a PPD and a search.
- “Search Beyond PPD” field checked “no” when BWC video shows (an otherwise lawful) performance of a search beyond a PPD.

**Recommendation:** The Monitoring Team believes that deficiencies of this type may be overcome with specific training and increased scrutiny by line supervisors. The Monitoring Team further recommends that attention to issues of this type be integrated into existing accountability protocols for command-level personnel (e.g., CompStat, executive meetings, etc.).

The Consent Decree requires that both the City and NPD post this Audit Report on their websites. See Consent Decree Paragraph 20 (“All NPD studies, analyses, and assessments required by this agreement will be made publicly available, including on NPD and City websites... to the fullest extent permitted under law.”), Paragraph 166 (“all NPD audits, reports, and outcomes analyses... will be made available, including on City and NPD websites, to the

fullest extent permissible under law.”).

The Monitor expects the City and NPD to do so expeditiously.

DATED: August \_\_, 2022

Peter C. Harvey

Independent Monitor

**List of Appendices**

Appendix A: 45-day Notice

Appendix B: General Order 18-15 *Searches With or Without a Search Warrant*, dated May 27, 2021

Appendix C: General Order 18-12 *First Amendment Right to Observe, Object to and Record Police Activity*, dated June 12, 2019

Appendix D: Memorandum 19-18 *Implementation of G.O. 18-14, 18-15, 18-16 RE: Stop, Search and Arrest Policies*, dated January 10, 2019

Appendix E: General Order 21-04 *Protocol for Analyzing Stop, Search, and Arrest Data*, dated May 27, 2021

Appendix F: List of Events Removed & Added to Sample

Appendix G: List of Non-Compliant Events (Substantive)

Appendix H: List of Non-Compliant Events (Documentation)

Appendix I: List of Non-Compliant Events (Substantive and Documentation)

# Appendix A

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July 13, 2021

**VIA EMAIL**

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Re: First Searches With or Without a Search Warrant Audit: 45-Day Notice

Dear City of Newark and the Newark Police Division (“NPD”):

Pursuant to Consent Decree Paragraphs 173 and 180, I write to provide notice that, starting no sooner than 45 days from the date of this letter, the Monitoring Team will conduct its first audit of the City of Newark’s (the “City”) Newark Police Division’s (“NPD”) Searches With or Without a Search Warrant (also referred to as “Searches”). This audit will cover the period from June 1, 2021 up to and including July 31, 2021 (the “Audit Period”). The purpose of this audit is to assess whether NPD has complied with certain sections of the Consent Decree, including Section VI (specifically, ¶¶ 29-34, 43, 51-53, and 55-62); and Section XVI (specifically, ¶ 174(a)).

This first audit of Searches With or Without a Search Warrant will be conducted by the following Monitoring Team Subject Matter Experts: Staff Inspector Sekou Kinebrew (Ret.) of the Philadelphia Police Department and Lieut. Daniel Gomez (Ret.) of the Los Angeles Police Department.

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## I. SCOPE

As agreed upon by the City, NPD and the United States Department of Justice (“DOJ”) (referred to collectively as the “Parties”) and the Independent Monitor, this audit will focus on the relevant paragraphs as they pertain to Searches.

The topical areas of Stops and Arrests will *not* be the subject of this audit. However, they will be the subject of separate audit(s). That stated, this audit will include Consent Decree Section VI.D., *Stop, Search, and Arrest Training* (specifically, ¶ 43, as it pertains to content of the required annual training), which encompasses all three topical areas.

Additionally, the Monitoring Team will not audit supervisory reviews of Searches during the First audit of Searches. The Monitoring Team intends to include a supervisory review of Searches in a subsequent supervisory audit.

## II. METHODOLOGY

To assess compliance, the Monitoring Team will evaluate whether NPD is following its own policies, protocols, and procedural guidelines, as well as notification, and reporting requirements, as outlined in NPD’s Memorandum #19-18, entitled *Implementation of G.O. 18-14, 18-15, 18-16 – RE: Stop, Search, and Arrest Policies*, dated January 11, 2019 (specifically focusing on the paragraphs addressing Searches); *General Order 18-15 – Searches With or Without a Search Warrant*, dated December 31, 2018; *General Order 18-12 – First Amendment Right to Observe Object to and Record Police Activity*, dated June 12, 2019; related written directives; and related In-Service Training Bulletins.

The following outlines how the Monitoring Team will evaluate compliance with the above-cited Consent Decree paragraphs:

### Consent Decree Paragraphs 29-34

Consent Decree Paragraph 29 requires NPD to “prohibit officers from considering any demographic category in determining whether to conduct a search or to seek a search warrant, except that officers may rely on a demographic category in a specific suspect description, where the description is from a trustworthy source that is relevant to the locality and time.”

Consent Decree Paragraph 30 requires NPD to “prohibit officers from relying on information known to be materially false or incorrect to justify a warrantless search or to seek a search warrant.”

Consent Decree Paragraph 31 requires NPD to “prohibit officers from seeking consent to search a motor vehicle unless the officer has a reasonable and articulable suspicion that the search will reveal evidence of a crime. Officers will document in writing the basis for this suspicion or other legal authority.”

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Consent Decree Paragraph 32 calls for NPD to “require that officers obtain the approval of a supervisor prior to conducting a search of an individual or a home based upon consent.”

Consent Decree Paragraph 33 calls for NPD to “require that an officer seeking consent for a search will affirmatively inform the subject of the right to refuse and to revoke consent at any time. The officer will record this notification and the subject’s grant or denial of consent on his or her body-worn camera, and on a written form that explains these rights.”<sup>1</sup>

Consent Decree Paragraph 34 requires NPD to “ensure that the consent to search form includes separate signature lines for officers to certify that they have advised the subject of the right to refuse a search and for the subject to affirm that they understand that right.”

To assess compliance with Paragraphs 29-34, the Monitoring Team will retrieve, inspect and analyze the Stop Reports, related Search forms, and associated body-worn camera and/or in-car video footage for all search incidents identified in a randomized sample. The Monitoring Team will draw a randomized sample from all searches conducted by NPD officers during the Audit Period. The Monitoring Team will randomly select twenty percent (20%) of the completed “Stop Reports” (form DP1:1388) involving a search conducted by NPD officers during the Audit Period. The Monitoring Team will assess for completeness – ensuring that data elements prescribed on the Stop Report Forms, by the Consent Decree, and relevant policies/General Orders are, in fact, being captured. The Monitoring Team will also review all documents associated with the Stop Report Forms, which were prepared in connection with the search, including the completion of a “Consent to Search form (DP1:1493-10M)” when required. The Monitoring Team will review relevant documentation to evaluate whether officers:

- had articulable suspicion for protective searches;
- properly executed “protective sweeps incident to arrest”;
- had sufficient probable cause to conduct a search without a warrant; and
- used *pro forma* or conclusionary language without supporting detail.

Finally, the Monitoring Team will identify a sample of the reports selected and review the associated body-worn and in-car camera videos in order to verify the veracity of the reports. The Monitoring Team requests that NPD mark all body-worn and in-car camera videos from the Audit Period (June 1, 2021 through July 31, 2021) for retention indefinitely, so that all

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<sup>1</sup> Consent Decree Paragraph 33 also requires NPD Supervisors to “review the video and written documentation of consent prior to approving an arrest based on evidence obtained via a consent search.” NPD’s compliance with this portion of the provision will be covered in a subsequent audit of NPD’s compliance with supervisory obligations.

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video will be available for review for this audit. That is, no video from the Audit Period should be deleted or erased until the Monitoring Team has informed NPD that the audit has concluded.

To achieve compliance, 95% of the searches included in the sample must be found to be compliant based on the criteria described above.

#### Consent Decree Paragraph 43

Consent Decree Paragraph 43 requires NPD to “provide all officers with at least 16 hours of training on stops, searches, arrests, and at least an additional 4 hours on an annual basis thereafter.”

Training with regard to Paragraph 43 was previously reviewed and approved by the Monitoring Team in January 2020, prior to this Audit Period. Additionally, the Monitoring Team determined in a previous audit that NPD had administered Stop, Search and Arrest training to at least 95% of relevant officers. *See* the Monitoring Team’s Amended Second Training Records Audit. NPD will achieve compliance with Consent Decree Paragraph 43 if its Stop, Search and Arrest training is taught by a qualified legal instructor and addresses the topics listed in Consent Decree Paragraph 43(a)-(d).

#### Consent Decree Paragraph 51

Consent Decree Paragraph 51 requires NPD to “modify its procedures . . . to collect and preserve stop, search, and arrest data sufficient to determine the nature and scope of demographic disparities in stop and search practices, as well as which stop, search, and arrest practices are most effective and efficient.”

To assess compliance with Consent Decree Paragraph 51, the Monitoring Team will analyze the efficacy of NPD’s Stop Report in capturing the relevant demographic data. The Monitoring Team will also inspect NPD for the presence of a functional database sufficient to capture, maintain and analyze structured data. To achieve compliance, NPD’s Stop Report must capture all relevant demographic and other data, as described in the Consent Decree and related policies/General Orders and NPD must maintain a functional database sufficient to capture, maintain and analyze structured data.

#### Consent Decree Paragraph 52

Consent Decree Paragraph 52 requires NPD to “develop a written or electronic report format to collect data on all investigatory stops and searches, whether or not they result in an arrest or issuance of a summons or citation.” This paragraph also provides that “[t]his system will be integrated into NPD’s [Early Warning System] and allow for the information in stop and search records to be searched and summarized electronically.” The report is required to capture the data listed in Consent Decree Paragraph 52(a)-(l).

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The Monitoring Team previously approved NPD's report format pursuant to Paragraph 52 on April 17, 2019, prior to this Audit Period. The Monitoring Team understands that NPD's New Stops Report form (DP1: 1388) was sent to Enforsys for incorporation into NPD's RMS on May 16, 2019. NPD will achieve compliance if their written or electronic report format collects all of the necessary data listed in Consent Decree Paragraph 52(a)-(1), was in use throughout the entire Audit Period.

The Monitoring Team understands that NPD has not yet integrated this data into an Early Warning System (EWS), but that it is in the process of acquiring an EWS that will enable this type of integration. As such, this specific requirement will be assessed in a subsequent compliance review or audit of NPD's Data Systems and EWS.

#### Consent Decree Paragraph 53

Consent Decree Paragraph 53 requires NPD to "develop a protocol for comprehensive analysis of stop, search, and arrest data. The protocol will establish steps for determining the nature and scope of demographic disparities in stop and search practices, and whether any such disparities can be decreased or eliminated, as well as steps for determining which stop, search, and arrest practices are most effective and efficient in increasing public safety and police legitimacy within the Newark community. The analysis will include an assessment of the efficacy and any demographic disparities in the use of pretext stops and consent searches. This protocol will be subject to the review and approval of the Monitor and DOJ."

To assess compliance with Consent Decree Paragraph 53, the Monitoring Team will inspect for the presence of an effective guiding protocol. The Monitoring Team understands that NPD will not have completed analysis pursuant to the approved protocol by the end of the Audit Period. Therefore, NPD's analysis conducted pursuant to its protocol will be assessed in a future audit or compliance review. NPD will achieve compliance if it (1) develops a protocol for comprehensive analysis of stop, search and arrests data and (2) conducts analysis with respect to disparities as contemplated by this Paragraph.

#### Consent Decree Paragraphs 55-62

Consent Decree Paragraph 55 calls for NPD to "require that officers respect the legal rights of onlookers or bystanders to witness, observe, record, and comment on or complain about officer conduct, including stops, detentions, searches, arrests, or uses of force. NPD will train officers that the exercise of these rights, secured and protected by the Constitution and laws of the United States, serves important public purposes."

Consent Decree Paragraph 56 requires NPD to "prohibit officers from detaining, arresting, or threatening to detain or arrest, individuals based on activity protected by the First Amendment, including verbal criticism, questioning police actions, or gestures. NPD will also prohibit officers from using or threatening force in response to mere verbal criticism or gestures that do not give rise to reasonable fear of harm to the officers or others."

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Consent Decree Paragraph 57 calls for NPD to require that officers take no law enforcement action against a bystander unless certain enumerated exceptions apply.

Consent Decree Paragraph 58 requires NPD to “permit individuals observing stops, detentions, arrests, and other incidents to remain in the proximity of the incident” unless certain enumerated exceptions apply.

Consent Decree Paragraph 59 calls for NPD to permit individuals to record police officer enforcement activities by camera, video recorder, cell phone recorder, or other means, unless one of the conditions in paragraph 57 is met.

Consent Decree Paragraph 60 requires NPD to “prohibit officers from threatening, intimidating, or otherwise discouraging an individual from remaining in the proximity of or recording law enforcement activities and from intentionally blocking or obstructing cameras and recording devices.”

Consent Decree Paragraph 61 requires NPD to “prohibit officers from detaining, prolonging the detention of, or arresting an individual for remaining in the proximity of, recording or verbally commenting on officer conduct directed at the individual or a third party” unless certain enumerated exceptions apply.

Consent Decree Paragraph 62 provides in part that “NPD will prohibit officers from destroying, seizing, or otherwise coercing a bystander to surrender recorded sounds or images made of officers in the course of their duties, without first obtaining a warrant. Nor may officers order a bystander to destroy any such recording.”

To assess compliance with Paragraphs 55-62, the Monitoring Team will retrieve, inspect and analyze body-worn camera footage and all other documentation for a subset of all search incidents identified in the randomized sample that involve onlookers or bystanders who witness, observe, record, comment on or complain about officer conduct, including searches.

To achieve compliance, 95% of the searches included in the subset of search incidents must be found to be compliant based on the requirements of General Order 18-12, *First Amendment Right to Observe Object to and Record Police Activity*.

#### Consent Decree Paragraph 174(a)

Consent Decree Paragraph 174(a) requires the Monitor to conduct outcome assessments that will include collecting and analyzing data related to searches and training to assess change over time.

To assess compliance with Consent Decree Paragraph 174(a), the Monitoring Team will inspect NPD for the presence of a functional database sufficient to capture, maintain and analyze aggregate data. The Monitoring Team will also inspect for, and evaluate, search-related training implemented attendant to the Consent Decree.

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III. REQUIRED DATA

In preparation for the audit, at least two (2) weeks prior to the start of the audit, and no later than September 17, 2021, the Monitoring Team requires that NPD provide it with the following data and records for the Audit Period:

- A. Copies of any and all written directives or training bulletins related to the topic of Searches issued subsequent to the issuance of G.O. #18-15 – Searches With or Without a Search Warrant.
- B. The event numbers for all searches conducted by NPD officers during the Audit Period regardless of whether the search arose out of a stop: (i) protective searches, (ii) open/plain view searches, (iii) consent searches, (iv) searches as result of exigent circumstances, (v) protective vehicle searches/vehicle searches, (vi) pat-down or frisk searches, (vii) searches incidental to an arrest, and/or (viii) custodial services.
- C. Access to an NPD Subject Matter Expert to facilitate a demonstration of NPD's Stop, Search and Arrest data collection process in its RMS. (§§ 51, 52)
- D. A written protocol containing the methodology NPD uses to determine the nature and scope of demographic disparities in its stop and search practices, as well as which stop, search, and arrest practices are most effective and efficient, along with a copy of the most recently generated report that used this methodology (§§ 51, 53).
- E. Data sufficient to enable the Monitoring Team to establish a baseline for outcome assessments pursuant to Consent Decree Paragraph 174(a), as it relates to Searches. The Monitoring Team understands that the rates referenced in Paragraph 174(a) will be compiled and computed by NPD from IA Pro which is utilized by the Office of Professional standards and the Auditing Unit.

With respect to the aforementioned data and records request, NPD should indicate what data and/or records requests cannot be fully satisfied, either in part or in its entirety. In instances where the request cannot be fully satisfied, NPD should provide an explanation as to why it cannot fully respond to the request.

One week after receiving the requested information, the Monitoring Team will provide the City and NPD with the incident numbers of those cases related to searches it seeks to review. All reports and body-worn camera video associated with the requested events will be made available to the Monitoring Team on the day(s) of the audit in the workplace provided to

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the Monitoring Team. In addition, upon the Monitoring Team's request, NPD will provide the Monitoring Team with secure remote access to the requested materials.

Best regards,

/s/ Peter C. Harvey

Peter C. Harvey

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# Appendix B



# NEWARK POLICE DIVISION GENERAL ORDER



<b>SUBJECT:</b>	<b>GENERAL ORDER NO.</b>
<b>Searches With or Without a Search Warrant</b>	<b>18-15</b>
<b>SUPERCEDES:</b>	<b>DATED:</b>
<b>G.O. 18-15 (December 31, 2018)</b>	<b>May 27, 2021</b>

**Related Policies:**

General Order 17-06 “Bias Free Policing”

General Order 17-02 “Body-Worn Cameras”

General Order 2002-2 “Strip Search-Body Cavity Search”

General Order 18-23 “Property and Evidence Management”

This Order contains the following numbered Sections:

- I. PURPOSE
- II. POLICY
- III. RESPONSIBILITY FOR COMPLIANCE
- IV. DEFINITIONS
- V. PROHIBITED ACTIONS
- VI. SEARCHES WITH A WARRANT
- VII. SEARCHES WITHOUT A WARRANT
- VIII. STRIP SEARCHES AND BODY CAVITY SEARCHES
- IX. SEARCHES OF ELECTRONIC DEVICES AND WIRETAPPING
- X. REPORTING REQUIREMENTS
- XI. SUPERVISOR RESPONSIBILITIES
- XII. ADMINISTRATIVE REVIEW



# NEWARK POLICE DIVISION GENERAL ORDER



## XIII. TRAINING

## XIV. EFFECT OF THIS ORDER

### I. PURPOSE

The purpose of this General Order is to ensure that members of the Newark Police Division engage in lawful practices when conducting searches during the course of their official duties. This policy serves as a guide for Officers as to when they need to obtain a search warrant and when situations may fall within an exception to the search warrant requirement.

All sworn officers will conduct searches in accordance with the rights secured or protected by the United States Constitution, the New Jersey State Constitution, federal and state law. All personnel will conduct searches fairly and respectfully as part of an overall crime prevention strategy that is consistent with community priorities for enforcement.

Conducting searches without proper supporting justification violates both the 4<sup>th</sup> Amendment to the U.S. Constitution, and Article 1, Paragraph 7 of the New Jersey Constitution, as well as federal and state law and Division policy. It is important to understand that an illegal search will render any evidence found during the search inadmissible in court. Any officer who engages in an illegal search is subject to administrative discipline (including termination), civil liability, and/or criminal prosecution.

### II. POLICY

It is the policy of the Newark Police Division that officers will conduct all searches in accordance with the U.S. Constitution, New Jersey Constitution, federal and state law. Searches are lawful when they meet the requirements of the 4<sup>th</sup> Amendment to the U.S. Constitution and Article 1, Paragraph 7 of the New Jersey Constitution. Officers must note that all searches require a search warrant, unless proper exigent circumstances exist.

Searches must be supported by probable cause to believe that the search will uncover evidence of a crime. Even with appropriately established probable cause and a search warrant signed by a magistrate, searches carry limitations. Search warrants are intended for law enforcement to seek evidence for the specific violation of law that was explained in the probable cause document for which the warrant was issued.

The Newark Police Division strictly prohibits officers from considering a person's demographic category in determining whether to conduct a search or to seek a search warrant. Searches of people based solely on a demographic category are illegal. Officers may only use demographic categories to describe a specific person where the description is from a trustworthy source that is relevant to the locality and time. (See Newark Police General Order 17-06 Bias Free Policing)



# NEWARK POLICE DIVISION GENERAL ORDER



Officers should realize that searching a person is an interference with a persons' liberty that can be humiliating, embarrassing or demeaning and that officers shall therefore make all reasonable efforts, that do not compromise officer safety, to conduct the search of a person with respect, dignity, courtesy and in a professional manner.

During searches officers should keep in mind and utilize de-escalation techniques during all situations where appropriate.

Whenever practicable, an officer of the same gender as the person to be searched should conduct the search. If an officer of the same gender is not reasonably available and officer safety permits, a witnessing officer or Supervisor shall be present during a search of a person who is not of matching gender.

### III. RESPONSIBILITY FOR COMPLIANCE

All Division personnel are responsible for complying with this Order. Supervisory and Command Officers shall insure that subordinates are aware of, understand, and comply with this Order. All sworn officers will be subject to discipline for a violation of the contents of this Order.

### IV. DEFINITIONS

- A. **Bias-Based Policing** – The differential treatment of any person by members motivated by the specific characteristics, perceived or actual, of that person. This conduct is specifically prohibited. (See Newark Police General Order 17-06 Bias-Free Policing for more information).
- B. **Blue Team** - A computer application extension of IAPro. The application allows users to enter collected data from incidents, such as police pursuits, citizen contacts or stops, events where force is used, complaints on police, police involved accidents and administration of discipline to facilitate the complete capture of activities and allow for tracking.
- C. **Community Policing** - a philosophy that promotes organizational strategies that support the systematic use of partnerships with community residents and problem-solving techniques to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime.
- D. **Conclusory** – A statement (oral or written) that contains a conclusion without providing the specific facts that explain or justify how the conclusion was reached.
- E. **Consensual Citizen Contact** - A voluntary and consensual conversation between a person and the police that can be used to gather information about crime or quality of life issues. Under this type of contact, an officer has no reasonable suspicion or probable cause to stop or detain the person with whom the officer is speaking. Therefore, the officer has no authority to stop or detain an individual who chooses to participate in the contact.



# NEWARK POLICE DIVISION GENERAL ORDER



- F. Demographic Category** - A shared common characteristic of a population, including but not limited to, age, race, ethnicity, national origin, gender, gender identity, language ability, disability, political belief, sexual orientation, immigration status, economic status, or housing status.
- G. Exigent Circumstances** – A compelling urgency or true emergency that a member can specifically describe not using vague terms or boilerplate language. Circumstances that cause a reasonable person to believe that prompt action is necessary can be an immediate threat to public safety, an active attempt by a suspect to destroy evidence of a crime or escape, or in instances of community caretaking.
- H. Express Consent** – When a person makes an affirmative statement to convey to officers that they are willing to grant officers consent for a search. This consent or statement usually occurs orally and/or in writing. A person may choose to withdraw consent to search or the person granting consent may state that he or she wishes to change the conditions under which the search is to be conducted. A person may withdraw consent at any time prior to the conclusion of a search.
- I. Investigatory Stop / Detention** - A seizure of a person for investigative purposes. This seizure occurs when a police officer stops a citizen from moving about freely, by means of physical force or show of authority, in order to investigate a matter. The seizure may also occur if an officer uses words, actions or demeanor that would make a reasonable person believe that he or she is not free to leave. Stops of this manner need to be based on reasonable and articulable suspicion that a violation of law has occurred, is occurring or is about to occur. An investigatory stop can come in different forms (i.e. pedestrian, motor vehicle, bicycle, etc.). Also known as a “Terry Stop.”
- J. Pretext Stop** – An investigatory stop or detention for a violation of law that an officer has reasonable and articulable suspicion for, but the officer's true motivation is to investigate a different offense, for which there is no reasonable suspicion at the outset of the investigatory stop or detention. A pretext stop also can mean that reason an officer presents for conducting a stop of a person is false and the justification is offered to mask the true motivation for conducting the stop.
- K. Pro Forma** – A standard use of wording, document or form used to justify an action that does not tie to the underlying events.
- L. Probable Cause** – Specific, and articulable facts to permit a reasonable person to believe that a subject committed a violation of the law or that evidence of a crime would be found in a search. Probable cause is a higher standard of evidence than having reasonable suspicion, but is less than the beyond a reasonable doubt standard needed for conviction. Probable cause is a practical, non-technical probability.



# NEWARK POLICE DIVISION GENERAL ORDER



- M. Reasonable Suspicion** – Specific, and articulable facts that, within the totality of the circumstances, would lead an officer to reasonably believe that a person has, is in the process of, or is about to engage in criminal activity. A person’s mere presence in an identified high crime neighborhood or area taken alone, does not rise to the level of reasonable suspicion. Reasonable suspicion is a lower standard than probable cause.
- N. Terry Frisk** - A limited frisk or pat-down of the outer clothing of legally stopped subjects to determine whether the subjects possess weapons if officers reasonably suspect the subject(s) is armed and presently dangerous. It is not a generalized search of the entire person. The frisk for weapons is strictly limited to what is necessary to discover weapons that might be used to harm the officer or others nearby. **The frisk must be limited to a pat-down of outer clothing.** Once the officer ascertains that no weapon is present after the frisk is completed, the officer’s limited authority to frisk is completed and the frisk must stop.
- O. Vehicles** - in the context of probable cause searches are cars, SUVs, vans, motorcycles, bicycles, boats, recreational vehicles (“RVs”) and other motor homes—except those that are being used solely as residences (e.g. on blocks).

## V. PROHIBITED ACTIONS

Newark Police Officers are prohibited from:

- A.** Conducting a search of a person, dwelling or personal belonging when an officer lacks probable cause to believe that the person has committed, is about to commit, or is in the process of committing a violation of law and evidence of a crime will be found.
- B.** Using pro forma or conclusory language, such as wording which makes claims without supporting evidence, or has little true meaning or importance. All supporting details shall be clearly documented for all investigatory stops or detentions. Examples of pro forma or conclusory language are “the suspect was frisked for officer safety,” or “the suspect was detained based upon reasonable suspicion;”
- C.** Using or relying on information known to be materially false or incorrect to justify a warrantless search or to seek a search warrant, and in stating the reason for the search to the person who has an expectation of privacy over the area searched,”
- D.** Seeking consent to search a motor vehicle unless the officer has a reasonable and articulable suspicion that the search will reveal evidence of a crime. Officers will document in writing the basis for this suspicion or other legal authority;
- E.** Conducting a search of an individual or home based upon consent without first obtaining the approval of a Supervisor;



# NEWARK POLICE DIVISION GENERAL ORDER



- F. Considering any demographic category (i.e., using biased criteria) in determining whether to conduct a search or seek a search warrant, except that officers may rely on a demographic category in a specific suspect description, from a victim or a witness, where the description is from a trustworthy source that is relevant to the locality and time, and then only in combination with other detailed descriptors;
- G. Basing searches solely on an individual being in the company of other people suspected of criminal activity;
- H. Taking any steps, through words or conduct, that would make a person feel he/she is required to authorize consent to search;
- I. Officers shall not search or physically examine any person for the sole purpose of determining which genitalia they possess. If the person's gender or status is unknown, it may be determined during conversations with the person, and/or by reviewing other available records in order to make a good faith determination.

## VI. SEARCHES WITH A WARRANT

The 4<sup>th</sup> Amendment to the U.S. Constitution reads, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Article 1, Paragraph 7 of the New Jersey Constitution states: "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized."

Searches of all kinds generally require a valid search warrant, however searches without a warrant, coupled with exigent circumstances to believe that evidence may be lost or destroyed, can be legally permissible. Search warrants require that an officer is able to articulate probable cause to believe that evidence of a crime exists, that the evidence sought was once located at the place to be searched and that the evidence is still there.

Search warrants generally require an affidavit explaining the probable cause supporting the search, prosecutorial review of the facts of the case, and a judge's authorization. Search warrants contain limitations as to time, place and manner of execution that officers must adhere to, as explained in the warrant. According to NJ Court Rule 3:5-5(a) a search warrant "must be executed within 10 days after its issuance and within the hours fixed therein by the judge issuing it". A judge may, however, authorize the execution of a search warrant "at any time of the day or night" by entering such authorization on the face of the warrant "for good cause shown".



# NEWARK POLICE DIVISION GENERAL ORDER



While a valid search warrant grants officers authorization to search a particular structure for evidence of a crime, they are limited in scope. Once within the authorized area to be searched, an officer must have a reasonable belief that the type of evidence sought in the warrant could be present in the area of the structure where the officer searches (i.e., if an officer obtains a search warrant for an apartment specifically believed to house stolen window air conditioners, a search of the medicine cabinet, although within the apartment allowed access by the warrant, may not be permissible unless supported by a reasonable belief that evidence of stolen air conditioners can be contained within).

## VII. SEARCHES WITHOUT A WARRANT

There are some situations when searches and seizures can be conducted lawfully without a warrant. In these instances, the officer bears the burden of properly articulating the facts, with sufficient detail, so that is clear which exception to the search warrant requirement applies. Exceptions to the search warrant requirement include:

### A. Consent Searches

Consent to search a structure must be given knowingly and voluntarily, without threat of force or intimidation from others. The party granting consent must have actual, or common authority over the area to be searched. If an officer wishes to obtain consent to search a motor vehicle, the officer needs reasonable and articulable suspicion that a search will yield evidence of a crime (as outlined in *State vs. Carty*, 170 N.J. 632 (2002)).

Officers should carefully weigh the choice between applying for a search warrant and obtaining legal consent to search. Officers need to keep in mind that although someone may be willfully granting consent at the moment of the search, she or he has the option of withdrawing consent during the search or challenging the legality of the search in court, based on whether s/he was properly informed of their rights or that they felt intimidated or threatened at the moment, even if it was not true.

Additionally, under New Jersey law, the burden is on the officer to show that the individual giving consent to the search knows that she or he had a choice not to consent to the search. Also, for consent to search an automobile or its occupants to be valid, before seeking consent to search, an officer must have reasonable and articulable suspicion of criminal wrongdoing, beyond the initial valid motor vehicle stop. (*State vs. Carty*)

The Newark Police Division requires that an officer seeking consent for a search affirmatively inform the consenting party of the right to refuse and to revoke consent at any time. The officer must use the Consent to Search form (DP1:1493-10M) and explain its terms to the consenting party. The officer will have the consenting party, if the person granting consent wishes, sign the Consent to Search form only if the party understands the waiver of their rights.



# NEWARK POLICE DIVISION GENERAL ORDER



The officer will record this notification and the consenting party's grant or denial of consent on an available body-worn camera, in vehicle camera or other authorized electronic recording device. For additional information on Body Worn Camera recordings, refer to the Newark Police Division's General Order on Body Worn Cameras (General Order 17-02).

If the officer is unable to capture interaction in a recording then the officer shall articulate, in writing or on camera, all the reasons why they were unable to record the event. The officer must also record this information when completing the required "Stop Report" (DP1:1388) within the Newark Police Division Records Management System, and/or in the corresponding incident report, if one is applicable.

Officers will ensure that the Consent to Search form is properly filled out, with separate signature lines completed by officers to certify that they have advised the subject of the right to refuse a search and for the subject to affirm that they understand that right, if they are willing to sign it.

The Newark Police Division requires that officers obtain the approval of a Supervisor prior to conducting the actual search of an individual or a home based upon consent. The approving Supervisor's name and approval shall be noted on the Consent to Search form.

The consenting person may modify the scope of consent or withdraw consent altogether at any time. If evidence is found before the withdrawal or modification of consent, the legality of the seizure will be upheld and a search warrant may be required to continue to search. A withdrawal or restriction of consent may be express or implied. Withdrawal or restriction of consent does not amount to reasonable suspicion or probable cause.

Examples of implied withdrawal of consent:

- Where a suspect consented to a search of his home and the officer went outside to call for backup; while the officer was outside on the police radio, the suspect shut and locked the front door.
- When asked for the keys to the trunk of his car, a suspect who had consented to a search of it threw the keys into some bushes.
- Where an officer was conducting a consent search of an apartment was about to enter a bedroom when the consenting person "raced in front of the officer and started to close the partially open door."

During a consensual search officers will allow the person who granted consent to be present during the actual search. The consenting party is free to waive their right to be present during the search, if they wish.



# NEWARK POLICE DIVISION GENERAL ORDER



Types of consent searches include:

1. **First party / Owner Consent** – The person who holds legal authority over the area to be searched.
2. **Third-Party Consent** – Absent a nonconsenting owner who is not present, a third party may grant consent to search a place or thing for which they share common authority, through:
  - a. Joint ownership;
  - b. Joint use; or
  - c. Joint access or control.

Consent cannot be given by a third party over areas which are **exclusively controlled** by an absent person (i.e., places owned by the third party, but are leased to someone else who has not abandoned the area; areas of a structure to be searched where access is restricted by someone who has not granted consent.

A landlord generally lacks authority to consent to the search of a tenant's home. *Chapman v. United States*, 365 U.S. 610, 616-17 (1961). Even if the landlord has the right to access the tenant's room for "limited purposes," that circumstance does not give the landlord the power to consent to a search by police. *State v. Coyle*, 119 N.J. 194, 574 A.2d 951 (1990).

If there are **multiple people with common authority** over a place where the police wish to obtain consent to search, even if one party wishes to grant officers consent to search, it will not override an objection to search made by the other person present with common authority (*Georgia v. Randolph* 547 U.S. 103, 106 (2006)).

Consent can be given by a remaining third party with common authority after an objecting party has been removed by the police for good cause. The U.S. Supreme Court ruled in *Fernandez v. California*, 571 U.S. 292 (2014), that even if an objection was made by one spouse or one half of an unmarried couple, the consent given by the other half overrides the objection if the following circumstances existed. First, the consent was given after the officers had removed the objecting spouse from the premises and secondly, they had good cause to remove him. Police may not unlawfully detain a person to prevent the person from objecting to a co-tenant's provision of consent. See *State v. Coles*, 218 N.J. 322, 339-340, 95 A.3d 136, 146 (2014).



# NEWARK POLICE DIVISION GENERAL ORDER



## B. Exigent Circumstances

Exigent circumstances exist where there is an immediate threat to public safety, an active attempt by a suspect to destroy evidence or escape, or in instances of community caretaking (e.g. an objectively reasonable basis to believe there is a need to protect or preserve life or avoid serious injury) where an immediate response is required. **Officers cannot create the exigent circumstances to permit a warrantless search.**

## C. Open View and Plain View Doctrines

Officers can seize evidence that is found to be in plain view, with no expectation of privacy if:

- a. The officer can see it from a place where they are permitted to be;
- b. The officer knows that what is seen is in fact evidence of a crime; and/or
- c. The officer has a legal right to enter the place where the evidence was located.

## D. Protective Searches

- a. **Terry Frisk** – an officer must have reasonable and articulable suspicion that the person they lawfully stopped is in possession of a weapon and is a danger to him/herself or the public. This is usually conducted by the officer running their hands over the outermost garments of a subject in order to ensure the person is not in possession of anything that could be used as a weapon. During the course of the Terry Frisk, if an officer feels something that becomes immediately recognizable as a specific type of contraband, the officer may seize the contraband as evidence. An officer may also search any area where the subject has immediate control of and could produce a weapon.
- b. **Protective Sweeps** – Officers may conduct protective sweeps of an area for people, limited to places where a person can hide.
  - i. **General Protective Sweep** (see *State v. Davila*, 203 N.J. 97 (2010):
    - police officers are lawfully within private premises for a **legitimate purpose**, including situations in which they have been given **consent to enter**; and
    - the officers on the scene **have a reasonable and articulable suspicion** that the area to be swept harbors an individual posing a danger.
    - The sweep will be upheld only if it is conducted quickly and it is restricted to places or areas where the person posing a danger could hide. Page **10** of **21**



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- ii. **Protective Sweep Incident to Arrest** (see *State v. Cope*, 224 N.J. 530(2016)):
- This is a quick and limited search of premises, **incident to an arrest**, conducted to protect the safety of police officers or others.
  - The permissible scope of the sweep depends on the range of danger facing the officers.
  - Officers may look in closets and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched
  - The search can be **conducted without probable cause or reasonable suspicion**.
  - The sweep must be narrowly limited to a brief visual inspection of those places in which a person could be hiding.
  - The sweep should last no longer than is necessary to dispel the possibility of danger or to complete the arrest and leave the premises.
- iii. **Immediate Area Searches** - Officers are permitted to search areas where, under all circumstances, there is a **reasonable possibility** that the arrestee could access a weapon or destructible evidence in the container or area being searched. This requires more than a mere theoretical possibility (i.e. a gym bag that happens to be situated at the feet of a handcuffed subject **may not be enough** to justify the search). *U.S. v Shakir*, 616 F.3d 315, 321 (3d Cir.2010)
- c. **Protective Vehicle Searches** - Officers who have detained an occupant of a vehicle may conduct a protective frisk of the vehicle if the officers reasonably believe that there is a weapon inside of the vehicle and the detainee or arrestee had potential access to the passenger compartment (*State v. Lund*, 119 N.J. 35 (1990)). Such factors either alone, or in the totality of the circumstances which could give rise to the reasonable belief of the presence of a weapon could be, but are not limited to:
- The hour of the stop (very early in the morning or very late at night);
  - The absence of other traffic in the area leading to the isolation of the officer;
  - Knowledge that the area of the stop is a “high crime” area;
  - Highly erratic driving before the stop;
  - Additional evasive action of part of the motorist, such as an unreasonable delay in stopping the vehicle upon being signaled to do so by the officer;



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- Other evasive action on the part of the driver or a passenger, including a full unobstructed view of the driver or a passenger reaching under the seat in an attempt to grab something or hide something (i.e., a “very pronounced” threatening gesture);
- The occupants of the vehicle outnumbering the officer(s) present;
- The plain-view observation of a weapon, ammunition or holster;
- The plain-view observation of a large and suspicious or threatening bulge protruding from the driver’s or passenger’s clothing;
- The absence of a driver’s license or satisfactory identification, either for the motorist or the vehicle;
- Lying to the police, such as when asked about a witnessed “furtive movement” the occupant denies making such a movement;
- Prior knowledge that the driver or occupant is armed;
- Prior knowledge that the driver or an occupant is a “substantial dealer in narcotics”;
- An affirmative reason the investigating officer that he feared he was in danger.

## E. Vehicle Searches

Officers may search a vehicle without a warrant if they have probable cause to believe that the vehicle contains evidence of a crime and the circumstances giving rise to the probable cause were unforeseen and spontaneous. This is commonly known as the “automobile exception” or a “probable cause search” of a vehicle. In the context of probable cause searches vehicles are defined as cars, SUVs, vans, motorcycles, bicycles, boats, recreational vehicles (“RVs”) and other motor homes, except those that are being used solely as residences (e.g. on blocks). (*State v. Witt*, 223 N.J. 409, 414, 447-48 (2015).

Officers are prohibited from seeking consent to search a motor vehicle unless the officer has a reasonable and articulable suspicion that the search will reveal evidence of a crime. Officers will document in writing the basis for this suspicion or other legal authority. (*State v. Carty* 170 N.J. 632 (2002) (New Jersey Supreme Court).

## F. Motor Vehicle Impoundment and Inventory

Officers may impound a motor vehicle under the following circumstances:

- There is probable cause that the vehicle contains evidence of a crime (in this case officers must always apply for a search warrant or obtain lawful consent to search);
- The vehicle is a reported stolen vehicle;
- The vehicle poses a danger to the public because of where it is parked or its condition;
- The vehicle is unregistered under N.J.S.A. 39:3-4;



# NEWARK POLICE DIVISION GENERAL ORDER



- The vehicle is uninsured as required by N.J.S.A. 39:6B-2;
- After obtaining a warrant of impoundment in accordance with N.J.S.A. 39:3-29.1a;
- The operator's driver's license is suspended or revoked pursuant to N.J.S.A. 39:3-40;
- The driver of a motor vehicle has been charged with Driving While Intoxicated under N.J.S.A. 39:4-50; or
- The vehicle is disabled, unattended or abandoned and blocks traffic under N.J.S.A. 39:4-136.

Officers may inventory the contents of an impounded motor vehicle under the following circumstances (*South Dakota v. Opperman*, 428 U.S. 373 (1976)):

- The impoundment of the vehicle must be lawful; and
- The inventory of the items in the vehicle must be reasonable. Reasonableness is determined by:
  - a. The police need to protect the property in police custody;
  - b. The police need to protect the police department from potential civil lawsuits regarding lost or stolen property; and
  - c. The police necessity to protect themselves.

The New Jersey Supreme Court repeatedly mandated in *State v. Ercolano* (1979), *State v. Mangold* (1980), and *State v. Slockbower* (1979), that before an inventory is conducted the police must provide the owner or operator the opportunity to remove the items in the vehicle or make reasonable arrangements to have the items removed by a third party. The police also may obtain the consent of the owner or operator to inventory the items in the vehicle.

If any officer wishes to inventory a motor vehicle the owner and/or user/operator of the motor vehicle must be afforded the opportunity to remove his/her possessions from the vehicle before the inventory of the vehicle, in the absence of a search warrant or indicia of criminality. Additionally, the owner and/or user/operator shall be offered the opportunity to be present when the inventory search is conducted.

Verbal conversations with an owner and/or user/operator shall be memorialized on body worn camera (or other Division authorized recording devices), as well as in all other appropriate police reports, including but not limited to, a continuation report (DP1:795) filed under the Event Number and/or Central Complaint Number for which the motor vehicle was towed.

- Should the owner or user refuse this opportunity, an inventory can then be undertaken.
- If the owner or user/operator cannot be located after a reasonable attempt, the vehicle can be inventoried.



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- The owner and/or user/operator also may provide knowing and voluntary consent to the police inventory of the items in the motor vehicle. In cases where consent is granted the officer shall utilize the Consent to Search form (DP1:1493-10M) to ensure the individual is properly informed of their right to refuse. The executed Consent to Search form (DP1:1493-10M) shall be submitted in accordance General Order 18-23 “Property & Evidence Management”.

Any inventory of a motor vehicles shall be captured on one continuous body worn camera recording, to include but not limited to:

- Footage and officer’s narration of the physical location of where the inventory is taking place (i.e. 191 Orange Street Newark, NJ parking lot, bay 3 garage of 472 Orange St. Newark, NJ, etc.);
- Footage and officer’s verbal identification (to include title, name, and identification number) of all officers conducting the inventory, as well as any additional individuals present;
- Footage of the exterior condition of the vehicle before the inventory is conducted;
- Footage of the interior, including compartments and trunk, of the vehicle before the inventory is conducted;
- Footage of the inventory process as it is being conducted, including all items contained within the vehicle; and
- Footage of the vehicle as it is secured (i.e. doors locked, trunk latched, etc.) after the inventory is complete (as required or necessary).

## G. Search Incident to Arrest of a Person or Area

As a matter of officer safety, as dictated by case law, officers may lawfully search a person and the areas that are reasonably accessible to the arrestee at the time of the search, as long as the following conditions are met:

- a. The arrest is lawfully supported by probable cause;
- b. The officer will be required to transport the suspect due to the arrest; and
- c. The arrest and search take place within a substantially short time period

## H. Custodial Search

Once it is determined that the arrestee will be transported to a custodial setting officers shall search the arrestee for safety, to prevent escape and to prevent the destruction of evidence. If the arrestee is transported by a second or subsequent officer, every officer responsible for handling or transporting the arrestee shall conduct an independent search of the arrestee.



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The search of the arrestee can be a full search. Any type of strip or body cavity searches requires additional levels of suspicion or a court order. The officer can search the arrestee's clothing and containers the arrestee was carrying when the search occurs. If an arrestee wishes to take an item with them and officers permit it, the officers may search that item also. Officers may not compel the arrestee to take a certain item in order to be allowed to search it thereafter.

## I. Probation and Parole Searches

Unlike parole officers, police officers are not granted the same search warrant exemptions for individuals who are on probation or parole. Police searches of people or property of individual who are on probation or parole require the same amount of justification that would be needed for anyone else the officer comes in contact with.

## VIII. STRIP SEARCHES AND BODY CAVITY SEARCHES

Strip searches and body cavity searches will be conducted in accordance with General Order 2002-2 "Strip Search – Body Cavity Search" and N.J.S.A. 2A:161A-8b "New Jersey Attorney General's Strip Search and Body Cavity Search Requirement and Procedures for Police Officers."

## IX. SEARCHES OF ELECTRONIC DEVICES AND WIRETAPPING

- A. Officers are reminded that searches of electronic devices, such as cellular telephones, are not inherently exigent. In most circumstances the electronics devices require properly obtained consent or a valid search warrant. However, if there is probable cause to believe such a device contains evidence of a crime then the electronic device may be seized for examination pending the proper authority (consent or a valid search warrant) to examine it.
- B. N.J.S.A. 2A:156A-9 requires, in the application for a wiretapping order, among other things, the applying officer must:
  - 1. Establish probable cause to believe the wire or electronic communication involves criminal activity; and
  - 2. Articulate that normal investigative procedures have failed or are unlikely to succeed if tried or would be dangerous to the officer.

## X. REPORTING REQUIREMENTS

- A. Documenting the incident is required for all events where a search and/or frisk occurs. Officers shall clearly articulate the appropriate level of suspicion established to conduct the search and/or frisk. At a minimum, a Field Inquiry Report (D.P.I. 1388) will be executed for all incidents where a search occurs. If contraband is seized or found property is recovered from a search and/or frisk the proper reports will be executed to coincide with the required enforcement action.



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- B. Information for each person searched must be documented by completing a report into the “Stop Report” (DP1:1388) within the Newark Police Division Records Management System, and/or in the corresponding incident report, if one is applicable. **A separate record shall be generated for each person that was searched.** The entries shall be crossed referenced under the same Event Number if multiple people were searched during or surrounding one specific incident. If a motor vehicle was searched, the registration, make, model and vehicle identification number information shall be included in the entry.
- C. All data entries of search information must have a corresponding Event Number. If an officer is on a dispatched assignment and conducts a search, the officer will use the Event Number from the dispatched assignment; otherwise, the officer will generate a new Event Number for the appropriate type of police action taken in order to complete the entry of the search data.
- D. The following information is required to be entered in an officer’s report for all stops:
1. date and time of the stop;
  2. the officer’s name and badge number;
  3. location of the stop;
  4. start time, end time and duration of the stop;
  5. clearly articulated reasonable suspicion justifying the investigative stop;
  6. if a vehicle stop results in a search, the presence and number of any passengers and the officer’s perception of the gender, race, ethnicity, national origin, and age of each passenger, unless such data collection creates an undue delay by prolonging the stop (i.e. passenger bus filled with people);
  7. if a vehicle stop, whether the driver or any passenger was required to exit the vehicle, and the reason for doing so, unless such data collection creates an undue delay by prolonging the stop (i.e. passenger bus filled with people);
  8. if a non-vehicle stop such as a pedestrian or bicycle, the number of individuals stopped and the officer’s perception of the gender, race, ethnicity, national origin, and age of each person;
  9. reason for the stop, including a description of the facts creating reasonable suspicion and whether it was a pretext stop;
  10. whether any individual was asked to consent to a search and whether such consent was given; whether a pat-down, frisk or other search was performed on any individual, including a description of the facts justifying the action;



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11. a full description of any contraband or evidence seized for any individual;
12. whether a probable cause search was performed on any individual, including a brief description of the facts creating probable cause; and
13. disposition of the stop, including whether a citation or summons was issued to or an arrest was made of any individual;
14. If a person has been stopped lawfully refuses to identify him/herself, the officer will still attempt to confirm the reasonable and articulable suspicion for which the stop was originally based upon. If probable cause is not established within a reasonable amount of time, officers will allow the person to depart and will document the stop in a "Stop Report (DP1: 1388)" just as any other. The officer reporting the information about the stop shall then enter "REFUSED" in the appropriate spaces of the report generated for the subject's information that this officer could not obtain. The officer will record the subject of the report's physical description information.

## **XI. SUPERVISOR RESPONSIBILITIES**

All reports generated from an incident where an officer searches and/or conducts a frisk will be reviewed and approved by the appropriate desk, MAPS, or specialized Unit Supervisor by the end of the submitting officer's tour of duty, who will ensure that the entry is properly completed. The entry must show sufficient facts exist to justify the search and/or protective frisk.

Reports failing to meet the appropriate suspicion standard shall be rejected and returned to the officer so the reporting person can include all necessary factual information from the search and/or frisk. The Supervisor will ensure the officer(s) who conducted the search and/or frisk and are completing the required report(s) fully understand the legal standards and reporting requirements surrounding such an action.

Supervisors approving reports will review all written documentation of investigatory stops and detentions, searches, and arrests for boilerplate language, accuracy, completeness and adherence to law and division policy.

For every search or arrest involving the recovery of contraband evidence, the arresting officer's Desk Lieutenant or Unit Commander will review the circumstances of the encounter, including video from body-worn cameras alongside the corresponding Incident Report (DP1:802), to assess the appropriateness of the seizure. The Supervisor will memorialize that review in writing and will include an assessment of the circumstances under which the search was conducted, the evidence was recovered and/or the probable cause for the arrest was ascertained.

Supervisors will also review all relevant view recordings for all incidents where the Supervisor suspects that the officers' conduct may not have complied with law and Division policy.



# NEWARK POLICE DIVISION GENERAL ORDER



On a continuous basis, Supervisors will also review a random selection of video recordings of stops and detentions, searches and arrests amounting to a minimum of 10 percent of all stops and detentions, searches, and arrests.

Upon reviewing videos of investigatory stops and detentions, searches, and arrests, Supervisors shall submit an administrative report (DP1:1001) filed under the event number for the corresponding video reviewed by the end of their tour of duty, listing:

- The event number
- The name(s) of the officer(s) who recorded the video(s) and type of video they recorded (e.g. body worn camera video, in-car video, or both)
- The reason for reviewing the video (e.g. random review, recovery of contraband, stop, search, detention, arrest, suspected non-compliance with NPD policy or law)

Supervisor reviews will also identify the following:

- searches and/or frisks that appear to be without legal justification or are in violation of Division policy;
- stops or searches that, while comporting with law and policy, indicate a need for corrective action or review of agency policy, strategy, tactics, or training to support effective and legitimate policing principles.

All Supervisors, in consultation with the Unit Commander (or command-level official) of the officer who submitted an inadequate report, will take appropriate action to address all apparent violations or deficiencies in investigatory stops or detentions, searches, and arrests. The nature of some errors may require retraining while others may warrant initiating disciplinary action. Appropriate action may include recommending non-disciplinary corrective action for the involved officers, or referring the incident for administrative or criminal investigation.

For each subordinate, the Supervisor will maintain a record of each violation or deficiency and any corrective action taken in BlueTeam. The Supervisor will document each violation or deficiency in the officer's performance evaluations and Newark Police Division's Early Warning System to identify officers needing repeated corrective action. Supervisors shall submit their reviews to the unit commander for additional review.

The approving Supervisor will document for review by her or his chain of command in an Administrative Report (D.P.I. 1001) and in BlueTeam for:

- searches and/or frisks that appear to be without legal justification or are in violation of Division policy;
- stops or searches that, while comporting with law and policy, indicate a need for corrective action or review of agency policy, strategy, tactics, or training to support effective and legitimate policing principles.



# NEWARK POLICE DIVISION GENERAL ORDER



Within seven days of receipt, a Command-Level Official will confirm in writing that he or she has reviewed any stop or detention, search, and arrest conducted by the officer under their command that another Supervisor determined were: (i) not supported by probable cause; (ii) were in violation of NPD policy or this Agreement; or (iii) that indicated a need for corrective action or review of agency policy, strategy, tactics, or training.

The Commander will evaluate the Supervisor's assessment and recommendations and take all appropriate corrective action, including referring the incident to the Office of Professional Standards for investigation, if warranted.

The Commander also will take appropriate corrective or disciplinary action against Supervisors who fail to conduct complete, thorough, and accurate reviews of officers' investigatory detentions, searches, and arrests.

Supervisor and Commander performance evaluations will take into account the quality and completeness of supervisory and commander reviews of officer stops, searches, and arrests.

## **XII. ADMINISTRATIVE REVIEW**

Cumulative and quarterly demographic analyses of the enforcement activities of Newark Police Division officers will be conducted by the Commander of the Office of Professional Standards, or her/his designee, to ensure that the tenets of this General Order are implemented and adequately monitored.

The Commander of the Office of Professional Standards, or her/his designee, will identify and evaluate trends, outliers, or other relevant indicators. This data will be analyzed and weighed based on the type of enforcement activities, officer unit or assignment, demographics of subjects, shift or time of day, force used and resistance encountered, and peer comparisons.

This data shall be based on accurate, complete, and reliable information, including but not limited to:

- a) Misconduct complaints;
- b) Stop, detention and arrest data;
- c) Use of force analysis; and
- d) Enforcement practices based on community input.

Officers, including Supervisors found to have violated this Order will be subject to disciplinary action (including counseling, mediation and training) up to and including termination.



# NEWARK POLICE DIVISION GENERAL ORDER



## XIII. TRAINING

Newark Police Division shall provide training on this topic to all new recruits and current members of the Division.

Newark Police Division will ensure that all members initially receive at least sixteen (16) hours of comprehensive and interdisciplinary training on stops, searches and arrests, which includes voluntary police citizen contacts and investigatory stops.

Thereafter, a minimum of four (4) hours of training shall be given **annually** based on New Jersey law, federal law and/or NPD policy. Training will include:

- A. the requirements of the 4<sup>th</sup> Amendment of the U.S. Constitution, New Jersey Constitution Article 1, Paragraph 7, and NPD policies regarding investigatory stops and detentions, searches and seizures, including:
  1. the differences between the scope and degree of intrusion of various police contacts; between probable cause, reasonable suspicion and mere speculation; and between voluntary consent and mere acceptance to police authority;
  2. the types of facts and circumstances that may be considered in initiating, conducting, terminating, and expanding an investigatory stop or detention;
  3. the level of permissible intrusion when conducting searches, such as “pat-downs” or “frisks;”
  4. the permissible nature and scope of other pre-arrest searches, including those conducted pursuant to probation or parole release provisions; and
  5. the permissible nature and scope of searches incident to arrest.
- B. procedures for executing searches, and the handling, recording, and taking custody of seized property or evidence; and
- C. the effect that differing approaches to stops, searches, and arrests can have on community perceptions of police legitimacy and public safety.



# NEWARK POLICE DIVISION GENERAL ORDER



## XIV. EFFECT OF THIS ORDER

All previous Orders and Memorandums which are inconsistent or in conflict with this Order are hereby repealed.

By Order of:

A blue ink signature of Brian A. O'Hara, written in a cursive style, is positioned above a horizontal line. Below the line, the name "BRIAN A. O'HARA" and the title "PUBLIC SAFETY DIRECTOR" are printed in a bold, black, sans-serif font.

BRIAN A. O'HARA  
PUBLIC SAFETY DIRECTOR

BAO/CM/MA:jg

Attachment A – Stop Report (DP1:1388)

Attachment B – Consent to Search Form (DP1:1493-10M)

# Appendix C



# NEWARK POLICE DIVISION GENERAL ORDER



<b>SUBJECT:</b> <b>FIRST AMENDMENT RIGHT TO OBSERVE, OBJECT TO, AND RECORD POLICE ACTIVITY</b>	<b>GENERAL ORDER NO.</b> <b>18-12</b>
<b>SUPERSEDES:</b> <b>NEW</b>	<b>DATED:</b> <b>JUNE 12, 2019</b>

**Related Policies:**

1. General Order 18-15 – Searches With or Without a Search Warrant
2. General Order 63-26 – Consent to Search Form
3. General Order 65-14 – Department Press Relations and Issuance of Press Cards
4. General Order 18-25 – Complaint Intake and Investigation Process
5. General Order 18-24 – Property and Evidence Division
6. General Order 18-23 – Property and Evidence Management

**This order contains the following numbered Sections:**

- I. PURPOSE**
- II. POLICY**
- III. RESPONSIBILITY FOR COMPLIANCE**
- IV. DEFINITIONS**
- V. PROCEDURES**
- VI. RESPONSIBILITIES OF THE FIELD SUPERVISOR**
- VII. RESPONSIBILITIES OF THE INVESTIGATIVE SUPERVISOR**
- VIII. EFFECT OF THIS ORDER**



# NEWARK POLICE DIVISION GENERAL ORDER



## I. PURPOSE

This policy provides officers with guidance for dealing with situations in which members of the public (i) comment on or object to an officer's conduct and (ii) situations in which members of the public or press are observing and/or recording officer conduct, which includes photographing, videotaping, audiotaping, or any combination thereof.

## II. POLICY

The First Amendment enshrines five of the most essential liberties guaranteed by both the United States Constitution and the Constitution of the State of New Jersey; freedom of religion, freedom of speech, freedom of the press, freedom of assembly and the right to petition government. Both the First Amendment to the U.S. Constitution and Article I, Paragraph 6 of the New Jersey Constitution are the core of all free speech and free association rights. As such, the Newark Police Division recognizes that members of the public have a constitutionally protected right to witness, observe, video-record, photograph, audio-record and comment on or complain about Newark Police Officers while they are conducting official business or while acting in an official capacity in any public setting. Division personnel are prohibited from interfering with a person's exercise of her/his First Amendment and Article I, Paragraph 6 rights, except in the limited circumstances outlined in Section V of this Order. Additionally, Division members violate Fourth and Fourteenth Amendment rights when they seize, search, and/or destroy recordings without a warrant or due process. Division personnel should assume and comport themselves as if they are being recorded at all times when on duty.

In its decision, *Fields v. City of Philadelphia*, 862 F.3d 353 (2017), the United States Court of Appeals for the Third Circuit decided that First Amendment's protections extended to two people who used their smartphones to record police interactions with another person. The Court ruled: "Simply put, the First Amendment protects the act of photographing, filming or otherwise recording police officers conducting their official duties in public."



# NEWARK POLICE DIVISION GENERAL ORDER



### III. RESPONSIBILITY FOR COMPLIANCE

All Division personnel are responsible for complying with this Order. Supervisory and Command Officers shall ensure that subordinates are aware of, understand, and comply with this Order. All sworn officers will be subject to discipline for a violation of the contents of this Order.

### IV. DEFINITIONS

- A. **BYSTANDER:** a member of the public who is present but not taking part in a situation or event.
- B. **EXIGENT CIRCUMSTANCES:** A compelling urgency or true emergency that a member can specifically describe not using vague terms or boilerplate language. Circumstances that cause a reasonable person to believe that prompt action is necessary which can be an immediate threat to public safety, an active attempt by a suspect to destroy evidence of a crime or escape, or in instances of community caretaking.
- C. **FIELD SUPERVISOR:** A Lieutenant or Sergeant assigned to the field to supervise field personnel.
- D. **INVESTIGATIVE SUPERVISOR:** A Lieutenant or Sergeant assigned to an investigative unit to supervise investigative personnel.
- E. **MEDIUM:** The storage source for visual and/or audio recordings, whether by film, analog, or digital means.
- F. **PROBABLE CAUSE:** Specific, and articulable facts to permit a reasonable person to believe that a subject committed a violation of the law or that evidence of a crime would be found in a search. Probable cause is a higher standard of evidence than having reasonable suspicion, but is less than the beyond a reasonable doubt standard needed for conviction. Probable cause is a practical, non-technical probability.
- G. **PUBLIC SETTING:** An indoor or outdoor area, whether privately or publicly owned, to which the public has access by right or by invitation, expressed or implied, whether by payment of money or not.
- H. **RECORDING:** Capturing of images, audio and/or video by means of a camera, cell phone, audio recorder, or other device.



# NEWARK POLICE DIVISION GENERAL ORDER



## V. PROCEDURES

A bystander has the right under the First Amendment and Article I, Paragraph 6 to witness, observe, record, photograph, audio record and comment on or complain about Newark Police Division officers in the public discharge of their duties.

A. A Bystander's right to record an Officer's conduct.

1. A bystander has the same right to make recordings as a member of the press, as long as the bystander has a legal right to be present where he or she is, such as on a public street or in public settings.
2. Public settings include parks, sidewalks, streets, locations of public protests, common areas of public and private facilities and buildings, and any other public or private facility at which the bystander has a legal right to be present, including a bystander's home or business.
3. The fact that a bystander has a camera or other recording device does not entitle the bystander to cross a police line, to enter an area that is closed to the public, or to enter any area designated as a crime scene.
4. As long as the recording takes place in a setting in which the bystander has a legal right to be present and does not interfere with an officer's safety or lawful duties, the officer shall **not**:
  - a. Tell or instruct a bystander that the recording of police officers, police activity, or persons who are the subject of a police action; is not allowed; that recording police activity requires a permit; or that recording requires the officer's consent.
  - b. Subject a bystander to a *Terry* stop (*Terry v. Ohio, 392 U.S. 1 (1968)*) or arrest solely on the basis that the bystander is recording police conduct;
  - c. Order the bystander to cease such activity;
  - d. Demand that bystander's identification;
  - e. Demand that the bystander state a reason why he or she is taking photographs or recording;



# NEWARK POLICE DIVISION GENERAL ORDER



- f. Detain, arrest, or threaten to arrest bystanders based on activity protected by the First Amendment, including the bystander's verbal criticism, questioning police actions, or gestures;
- g. Intentionally block or obstruct cameras or recording devices; or
- h. In any way threaten, intimidate, or otherwise discourage a bystander from remaining in the proximity of, recording or verbally commenting on officer conduct directed at the officer's enforcement activities.

## B. Limitations on a Bystander's Right to Record an Officer's Conduct

- 1. Nothing in this General Order prohibits officers from questioning or detaining for a reasonable period of time any individual they reasonably suspect has committed, is committing, or is about to commit a crime or incite others to violate the law.
- 2. Officers are reminded that a person commits an offense under N.J.S.A. 2C:29-1 if the person purposely (a) obstructs, impairs or perverts the administration of law or other governmental function, or (b) prevents or attempts to prevent a public servant from lawfully performing an official function by means of flight, intimidation, force, violence, or physical interference or obstacle, or by means of any independently unlawful act.
- 3. If a bystander is recording police activity from a position that materially impedes or interferes with the safety of officers or their ability to perform their duties, or that threatens the safety of members of the public, an officer may direct the bystander to move to a position that will not interfere. However, an officer shall **not** order the bystander to stop recording.
- 4. Credentialed media personnel may be granted closer access to incident scenes or be allowed to cross police lines with the approval of the public information officer and the highest investigative supervisor on the scene, refer to **General Order 65-14 - Department Press Relations and Issuance of Press Cards**. This right does **not** extend to a bystander.

## C. A Bystander's Right to Complain about or Criticize an Officer's Conduct

Newark Police Officers shall not use or threaten to use force or their arrest authority in response to mere criticism or gestures so long as that expression neither gives rise to an objectively reasonable fear of harm to the officer(s) or others, violates the law or incites others to violate the law.



# NEWARK POLICE DIVISION GENERAL ORDER



## D. Seizure of a Bystander's Recording Device or Medium

1. An officer's seizure of a recording device, without a warrant, is not permitted and is presumed to be illegal under the Fourth Amendment, except in the narrowly defined exceptions outlined below.
2. An officer may seize a bystander's recording device incident to the lawful arrest of the bystander. However, the seizure of a recording device incident to a lawful arrest does not allow an officer to search or view the contents of the recording device without a warrant (e.g. Communications Data Warrant).
3. If an officer has probable cause to believe that a recording device contains images or sounds that are evidence of a crime (i.e., First, Second, and Third degree), the officer shall immediately notify a Field Supervisor and request that the recording bystander, where possible and practical, and in the presence of the officer, voluntarily consent to transmitting the recording via electronic mail to the officer's official city electronic mail account. If the bystander cannot or will not transmit the recording via electronic mail, the officer should request that the recording party voluntarily consent to providing the device or recording medium (e.g., the memory chip) to the officer.
4. Consent to take possession of a recording device or medium must be given voluntarily. A Field Supervisor must be present and a Consent to Search form must be completed. For additional information on Consent to Search forms, refer to **General Order 18-15 - Searches with or without a Search Warrant** (Section VI).
5. If the person voluntarily consents to providing the recording device to the officer, the officer shall:
  - a. Contact the On-Call Detective responsible for the highest charge (i.e., most serious crime) and the Field Supervisor and notify them of the evidence; and
  - b. Submit the recording device into evidence, consistent with **General Order 18-24 – Property and Evidence Division** and **General Order 18-23 – Property and Evidence Management**.
  - c. Absent the exigent circumstances outlined below in VI.E.3, officers **shall not** attempt to download, or otherwise access any material contained within the device without a warrant.



# NEWARK POLICE DIVISION GENERAL ORDER



6. If the bystander refuses to consent to providing the recording device, the officer may seize the recording device without a warrant under certain “exigent circumstances.” Specifically, it is appropriate for an officer to seek the warrantless seizure of a bystander’s recording device when the officer has:
  - a. probable cause to believe that a serious crime involving violence that may result in serious bodily injury or death has been committed;
  - b. a good-faith belief that there is evidence of that crime on the recording device or medium; **and**
  - c. a good-faith belief that evidence will be lost or destroyed absent seizure.
  
7. When an officer reasonably believes that these exigent circumstances exist, the officer may request the recording bystander remain on the scene **voluntarily** with the recording device, for a reasonable amount of time, until a Field Supervisor arrives on the scene. If the bystander refuses to wait to speak with the Supervisor then they must be allowed to leave the scene unless the officer reasonably believes the bystander has committed, is committing, or is about to commit any crime or has incited others to violate the law. If an officer seeks to seize a recording device without a warrant and requests the recording bystander to remain on the scene, the officer must request the assistance of a Field Supervisor. Once on the scene, the Field Supervisor will determine if a warrantless seizure of the recording device is necessary.

All Division members are reminded, however, that the detention of a bystander without proper supporting justification is a violation of the 4<sup>th</sup> Amendment to the United States Constitution, Article 1, Paragraph 7 of the New Jersey Constitution and **General Order 18-14 - Consensual Citizen Contacts and Investigatory Stops**.

8. If a recording device or medium is seized, due care must be exercised in its safekeeping. It should be properly identified by serial number or other identifier on a Property and Evidence Receipt (D.P.1: 152), with a copy given to the owner when feasible. (See **General Order 18-24 – Property and Evidence Division** and **General Order 18-23 – Property and Evidence Management**). Information shall be provided to the owner concerning where, when, and how to recover the property.



# NEWARK POLICE DIVISION GENERAL ORDER



## E. Searching a Bystander's Recording Device or Medium

1. An officer's search of a recording device or medium is not permitted and presumed to be illegal under the warrant requirement of the Fourth Amendment to the U.S. Constitution and Article I, Paragraph 7 of the New Jersey Constitution, except in the narrowly defined exceptions outlined below.
2. If an officer has probable cause to believe that a recording device contains images or sounds that are evidence of a Crime (First, Second, and Third degree), the officer shall immediately notify a Field Supervisor and request that the recording bystander, where possible and practical, and in the presence of the officer, voluntarily consent to transmitting the recording via electronic mail to the officer's official city electronic mail account. If the bystander cannot or will not transmit the recording via electronic mail, the officer should request that the recording party voluntarily consent to providing the device or recording medium (e.g., the memory chip) to the officer.
3. Recordings obtained by consent shall be viewed by the Detective responsible for investigating the crime believed to be captured on the device. Otherwise, an officer shall obtain a search warrant before viewing photographs or listening to recordings on a camera or memory chip that has been seized as evidence.
4. However, if it is objectively reasonable for an officer to believe information contained in a recording device or medium could **prevent imminent death or serious bodily harm**, an officer **shall** contact the highest ranking Investigative Supervisor available to receive authorization to immediately review recordings that have been seized without a warrant. If the Investigative Supervisor grants authorization, the officer may immediately search the recording device or medium for photographs and recordings that are related to the exigent purpose.
5. Recordings that have been seized as evidence and are not directly related to the exigent purpose shall not be reviewed until a warrant has been secured.
6. Recordings that have been seized as evidence that are not directly related to the exigent purpose shall be reviewed by the Detective responsible for investigating the crime believed to be on the device after a warrant has been secured.



# NEWARK POLICE DIVISION GENERAL ORDER



7. Any recording devices or recording medium taken into custody shall be returned as soon as practicable.
- F. Safekeeping and Preservation of Recording Device or Recording Medium contained therein
1. Officers shall not under any circumstances intentionally damage or destroy, or instruct any other person to damage or destroy any recording device or medium being used to record police activity.
  2. Officers shall not, under any circumstances, intentionally erase or delete, or instruct any other person to erase or delete, any recorded images or sounds from any camera or other recording.
- G. Recordings that may contain evidence of Police misconduct.
1. It is the policy of the Newark Police Division to accept and investigate all complaints of alleged Police misconduct from any individual or organization including complaints that have accompanying recorded evidence. Refer to **General Order 18-25 Complaint Intake and Investigation Process** (Section IX-F), for more information on the handling of recordings that may contain evidence of police misconduct.
  2. If a complainant expresses fear or concerns about turning over recordings that may contain evidence of Police misconduct when making a complaint about a member of the Newark Police Division directly to the Newark Police Division, he or she should be referred to the Essex County Prosecutor's Office, Professional Standards Bureau. Refer to **General Order 18-25 Complaint Intake and Investigation Process** (Section IX-O), for more information on complaint referrals.

## VI. RESPONSIBILITIES OF THE FIELD SUPERVISOR

- A. A Field Supervisor shall respond to the scene where any bystander recording of police officers engaged in the public discharge of their duties:
1. has become confrontational, provoking, or otherwise adversarial with the officers;
  2. may possess evidentiary material;
  3. has her/his recording or recording device or medium seized by officers based upon probable cause; or



# NEWARK POLICE DIVISION GENERAL ORDER



4. has jeopardized the safety of the officer, the suspect or others in the immediate vicinity, violated the law, incited others to violate the law, or actually obstructed an officers official duties.
- B. Once on scene, the Field Supervisor shall:
1. Consult with the on-scene officers and gather all available facts.
  2. Attempt to de-escalate or otherwise intercede to prevent the incident from escalating.
  3. If it was necessary to detain the recording party before the Field Supervisor's arrival, review the facts and circumstances to determine if the detention was appropriate in that the officers reasonably believed the recording party has committed, is committing, or is about to commit any crime or incite others to violate the law.
  4. If responding to the scene because an officer believes exigent circumstances require that the recording device or medium be seized without a warrant, the Field Supervisor shall:
    - a. In consultation with the highest-ranking Investigative Supervisor available at that time, determine whether exigent circumstances permit the seizure of the device without a warrant. A warrantless seizure is permissible only when there is:
      - i. probable cause to believe that a serious crime involving violence that may result in serious bodily harm or death has been committed;
      - ii. a good faith belief that there is evidence of that crime on the recording device or medium; **and**
      - iii. a good faith belief that evidence will be lost or destroyed absent seizure.
    - b. If there is no immediate law enforcement need to view the recording device and/or media, ensure that the recording device and/or media is not viewed by officers until a search warrant has been obtained.
    - c. If the immediate seizure was not based upon the narrowly defined exigent circumstances outlined above in VI.B.4., immediately



# NEWARK POLICE DIVISION GENERAL ORDER



return the recording device and/or media to the owner. The Field Supervisor shall contact the Detective responsible for the highest charge (most serious crime) and his or her Supervisor (i.e., Investigative Supervisor) with all pertinent information for the assigned detective to begin an application for a search warrant.

5. If responding to a scene where any media or recording device or medium was voluntarily provided to the police, the Field Supervisor shall review the circumstances of any consent provided confirming that the consent to search was made voluntarily and that the proper documentation of such consent was completed by the officer in accordance with **General Order 18-15 Searches with or without a Search Warrant**.
6. Ensure officers do not copy and/or disseminate any information or images from seized or provided devices or media that are not evidence of a crime or otherwise required for any official purpose.

## VII. RESPONSIBILITIES OF THE INVESTIGATIVE SUPERVISOR

- A. Upon being notified that possible evidence of a crime was captured on a recording device and/or medium, which was voluntarily provided to police, the Investigative Supervisor shall assign a Detective to take the necessary actions to copy/preserve the evidence and return the recording device and/or media to the owner as soon as possible. While the evidence was voluntarily provided, it shall be at the discretion of the Investigative Supervisor, based on the facts and circumstances, whether a search warrant (e.g. Communications Data Warrant) will also be obtained.
- B. Upon being notified by a Field Supervisor that probable cause exists that evidence of a crime was captured on a recording device and/or media and the evidence was properly seized by Police, the Investigative Supervisor, shall nonetheless, assign a Detective to apply for a search warrant (e.g. Communications Data Warrant).
- C. Ensure Detectives do not copy and/or disseminate any information or images from such devices or media seized or provided, that is not evidence of a crime or otherwise required for any official purpose.



# NEWARK POLICE DIVISION GENERAL ORDER



## VIII. EFFECT OF THIS ORDER

This order shall become effective immediately. All previous Division orders and memoranda governing the First Amendment right to observe, object to, and record police activity, which are inconsistent or in conflict with this order are hereby rescinded.

BY ORDER OF

A handwritten signature in blue ink, appearing to be "A. Ambrose", written over a horizontal line.

ANTHONY F. AMBROSE  
PUBLIC SAFETY DIRECTOR

AFA:BO/lc

# Appendix D



**DEPARTMENT OF PUBLIC SAFETY**  
**MEMORANDUM**



**TO:** POLICE DIVISION **DATE:** JANUARY 10, 2019

**FROM:** ANTHONY AMBROSE **NUMBER:** 19 - 18  
PUBLIC SAFETY DIRECTOR **TICKLER:** None

**SUBJECT:** IMPLEMENTATION OF G.O. 18-14, 18-15, 18-16 **FILE REF:** PUB4  
RE: STOP, SEARCH AND ARREST POLICIES

The purpose of this memorandum is to announce the issuance of the Newark Police Division's new *General Order 18-14 Consensual Citizen Contacts and Investigatory Stops, General Order 18-15 Searches With or Without a Search Warrant, and General Order 18-16 Arrests With or Without An Arrest Warrant.*

**ALL THREE GENERAL ORDERS WILL BECOME EFFECTIVE IMMEDIATELY.**

The new Consensual Citizen Contacts and Investigatory Stops General Order #18-14 supersedes **Procedures for the Execution, Distribution and Storage of Field Inquiry Reports General Order #97-8** which is hereby **rescinded immediately.**

The new Searches With or Without a Search Warrant General Order #18-15 supersedes **Search & Seizure General Order #14-12 and Consent to Search Form General Order# 63-26** which are hereby **rescinded immediately.**

The three General Orders were developed based on the requirements of the Consent Decree, police best practices, Attorney General Guidelines, and the law. Review and feedback from the community, U.S. Department of Justice, Newark Police Division Independent Monitor, NPD members, CCRB, and Police Unions was also received, considered, and included.

The new *Consensual Citizen Contacts and Investigatory Stops General Order #18-14* encompasses most of the provisions contained in the old Procedures for the Execution, Distribution and Storage of Field Inquiry Reports General Order #97-8, however, there are data collection limitations caused by the current version of the Stop Report (DPI:1388), formerly known as the Field Inquiry Report.

Officers will continue to collect only the data allowed by the fields contained within the current version of the Stop Report (DPI:1388). An updated version of the Stop Report (DPI:1388) has been developed and is awaiting Department of Justice and Independent Monitoring Team approval based on the reporting requirements dictated by the Consent Decree, which were incorporated into the new policy. Once the Stop Report (DPI:1388) has been updated, it will be made available in the Newark Police Division Records Management System (RMS), and officers will begin to collect all the data fields available to them which are required by the new policy.

The new ***Searches With or Without a Search Warrant General Order #18-15*** encompasses most of the provisions contained in the old Search & Seizure General Order #14-12 and Consent to Search Form General Order# 63-26, however, the new general order contains updated case law guidance and mandatory Consent Decree provisions.

For every search with or without an arrest involving the recovery of contraband evidence, the desk lieutenant or unit commander will review the circumstances of the encounter, including video from body-worn cameras, to assess the adequacy of the seizure. The supervisor will memorialize that review in writing and will include an assessment of the circumstances under which the search was conducted, the evidence was recovered, and / or the probable cause for the arrest. Detective Supervisors are responsible for the review of every search or arrest involving the recovery of contraband evidence directed by Detectives.

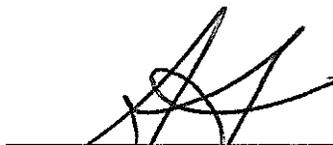
The Office of Professional Standards has enabled a Non-Disciplinary Corrective Action tracking mechanism within the Blue Team/ IAPro system to allow for the documentation of any deficiencies in compliance with Consent Decree mandates. Supervisors shall submit all Non-Disciplinary Corrective Actions to their respective Commander via Blue Team. Commanders shall then evaluate the supervisors assessment and recommendations and take all appropriate corrective action, including referring the incident to the OPS for investigation if warranted. The commander will also take appropriate corrective or disciplinary action against supervisors who fail to conduct complete, thorough, and accurate reviews of officers' investigatory detentions, searches, and arrests. Commanders shall memorialize this review in Blue Team within seven days.

The **Commander of the Consent Decree and Planning Division** shall ensure that the Compliance Unit conducts inspections and audits for compliance with this directive.

**Commanders** shall ensure that this memorandum is the subject of roll call training for as long as needed until the policies have been fully implemented.

**All Police Division members** shall acknowledge receipt, understanding, and compliance with the tenets of this Memorandum via PowerDMS by **January 31, 2019**.

**BY ORDER OF:**

  
**ANTHONY F. BROSE**  
**PUBLIC SAFETY DIRECTOR**

AFA/BO:jg

Attachment:

c: Damell Herny, Chief of Police

# NEWARK POLICE DIVISION

## GENERAL ORDER

SUBJECT: Consensual Citizen Contacts and Investigatory Stops		GENERAL ORDER NO. 18-14
SUPERCEDES: 97-8	DATED: 12/31/2018	SECTION CODE:

Related Policies:

General Order 17-06 "Bias-Free Policing"

This Order contains the following numbered Sections:

- I. PURPOSE
- II. POLICY
- III. RESPONSIBILITY FOR COMPLIANCE
- IV. DEFINITIONS
- V. PROHIBITED ACTIONS
- VI. PROCEDURES
- VII. REPORTING REQUIREMENTS
- VIII. SUPERVISOR RESPONSIBILITIES
- IX. ADMINISTRATIVE REVIEW
- X. TRAINING
- XI. EFFECT OF THIS ORDER

# NEWARK POLICE DIVISION

## GENERAL ORDER

### I. PURPOSE

To ensure all officers of the Newark Police Division engage in best practices when interacting with people in the community at all times. All officers are guided by this General Order when they either informally come into contact with people in the community as part of a consensual contact or part of an investigatory stop.

Conducting investigative stops of people without proper supporting justification is a violation of the 4<sup>th</sup> Amendment to the United States Constitution and Article 1, Paragraph 7 of the New Jersey Constitution. Such violations are a detriment to the positive relationship the Newark Police Division needs to have with the community.

### II. POLICY

NPD will conduct all investigatory stops, searches, and arrests in accordance with the United States Constitution, the Constitution of the State of New Jersey, federal and state law. NPD will conduct investigatory stops, searches, and arrests fairly and respectfully as part of an effective overall crime prevention strategy that is consistent with community priorities for enforcement.

Investigatory stops must be supported by reasonable and articulable suspicion that a person is about to commit a crime, is in the middle of committing a crime, or has just committed a crime. Even with appropriately established reasonable suspicion, investigatory stops have limitations and are intended for police to confirm or dispel their suspicions.

Investigative stops are lawful to the extent they meet the requirements of the 4<sup>th</sup> Amendment to the U. S. Constitution, which provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." Unlawful investigative stops can never be justified.

Article 1, Paragraph 7 of the New Jersey Constitution states: "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized."

The U.S. Supreme Court has set the investigative stop case law standard to be *Terry v. Ohio*, 392 U.S. 1 (1968). Pursuant to *Terry v. Ohio*, an officer can briefly detain a person, based upon reasonable suspicion of criminal activity, long enough to dispel the suspicion or to allow it to rise to the level of probable cause for an arrest. The officer in some circumstances is also permitted to conduct a limited "frisk" of the person without a warrant. Before the officer can frisk the subject, the officer must:

# NEWARK POLICE DIVISION

## GENERAL ORDER

1. Have reasonable grounds, based on specific and articulable facts that the person is and presently dangerous.
2. Limit the search to **patting down the outer garments** of the suspect to feel for objects that are believed to be weapons and only reach inside the clothing after feeling such objects.

The stopping of citizens based solely on a demographic category is illegal and morally wrong. It also constitutes bias-based policing and violates NPD's policies. (See Newark Police General Order 17-06 Bias-Free Policing). Any officer who engages in this activity is subject to discipline, civil liability, and/or criminal prosecution.

### III. RESPONSIBILITY FOR COMPLIANCE

All Division personnel are responsible for complying with this Order. Supervisory and Command Officers shall ensure that subordinates are aware of, understand, and comply with this Order. All sworn officers will be subject to discipline for a violation of the contents of this Order.

### IV. DEFINITIONS

- A. Bias-Based Policing** - The differential treatment of any person by members motivated by the specific characteristics, perceived or actual, of that person. This conduct is specifically prohibited. (See Newark Police General Order 17-06 Bias-Free Policing for more information).
- B. BlueTeam** - A computer application extension of IAPro. The application allows users to enter collected data from incidents, such as police pursuits, citizen contacts or stops, events where force is used, complaints regarding police, police involved accidents and administration of discipline to facilitate a complete capture of activities and allow for tracking.
- C. Community Policing** - A philosophy that promotes organizational strategies that support the systematic use of community partnerships and problem-solving techniques to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime.
- D. Conclusory** - Consisting of or relating to writing a conclusion without providing the explanation or justification for how the conclusion was reached.
- E. Consensual Citizen Contact** - A voluntary and consensual conversation between a person and the police that can be used to gather information about crime or quality of life issues. Under this type of contact an officer has no reasonable suspicion or probable cause, and the officer therefore has no power to stop or detain an individual who chooses not to participate in the contact.

# NEWARK POLICE DIVISION

## GENERAL ORDER •

- F. Demographic Category** - A shared common characteristic of a population, including but not limited to, age, race, ethnicity, national origin, gender, gender identity, language ability, disability, political belief, sexual orientation, immigration status, economic status, or housing status.
- G. Event Number** - A number used by the Newark Police Division that is either linked to a particular call received from a member of the public requesting police services or can be generated by an officer of the Division to record that they are taking an action.
- H. Investigatory Stop / Detention** - A seizure of a person for investigative purposes. This seizure occurs when a police officer stops a citizen from moving about freely, by means of physical force or show of authority, in order to investigate a matter. The seizure may also occur if an officer uses words, actions or demeanor that would make a reasonable person believe that he or she is not free to leave. Stops of this manner need to be based on reasonable and articulable suspicion that a violation of law has just occurred, is occurring or is about to occur. An investigatory stop can come in different forms (i.e. pedestrian, motor vehicle, bicycle, etc.). Also known as a "Terry Stop."
- I. Pretext Stop** - An investigatory stop or detention for a violation of law that an officer has reasonable and articulable suspicion for, but the officer's true motivation is to investigate a different offense, for which there is no reasonable suspicion at the outset of the investigatory stop or detention. A pretext stop can also mean that reason an officer presents for conducting a stop of a person is false and the justification is offered to mask the true motivation for conducting the stop.
- J. Pro Forma** - A standard use of wording, document or form used to justify an action that does not tie to the underlying events.
- K. Probable Cause** - Specific, and articulable facts to permit a reasonable person to believe that a subject committed a violation of the law or that evidence of a crime would be found in a search. Probable cause is a higher standard of evidence than having reasonable suspicion, but is less than then the beyond a reasonable doubt standard needed for conviction. Probable cause is a practical, non-technical probability.
- L. Reasonable Suspicion** - Specific, and articulable facts that, within the totality of the circumstances, would lead an officer to reasonably believe that a person has, is in the process of, or is about to engage in criminal activity. A person's mere presence in an identified high crime neighborhood or area taken alone, does not rise to the level of reasonable suspicion. Reasonable suspicion is a lower standard than probable cause.

# NEWARK POLICE DIVISION

## • GENERAL ORDER •

**M. Terry Frisk** - A limited frisk or pat-down of the outer clothing of legally stopped subjects to determine whether the subjects possess weapons if officers reasonably suspect the subject(s) is armed and presently dangerous. It is not a generalized search of the entire person. The frisk for weapons is **strictly limited** to what is necessary to discover weapons that might be used to harm the officer or others nearby. **The frisk must be limited to a pat-down of outer clothing.** Once the officer ascertains that no weapon is present after the frisk is completed, the officer's limited authority to frisk is completed and the frisk must stop.

### V. PROHIBITED ACTIONS

Newark Police Officers are prohibited from:

- A. Conducting a stop of a person when an officer lacks reasonable suspicion that the person has committed, is about commit, or is in the process of committing a violation of law;
- B. Conducting "pretext stops / detentions" of people or vehicles without prior approval of a Supervisor, unless it is not reasonably practical to obtain such approval. If officers cannot obtain supervisory approval prior to a "pretext" vehicle stop, they will obtain such approval as soon as possible after conducting the stop and will document why it was not practical to obtain prior approval;
- C. Using *pro forma* or conclusory language in a report, such as wording that makes claims without supporting evidence, or has little true meaning or importance. All supporting details shall be clearly documented for all investigatory stops or detentions. Examples of *pro forma* or conclusory language are "the suspect was frisked for officer safety" or "the suspect was detained based upon reasonable suspicion;"
- D. Using information known to be materially false or incorrect in effecting an investigatory stop or detention, in documenting the stop or detention, and in stating the reason for the stop or detention to the person was not free to leave;
- E. Using an individual's geographic location, without any other reliable indicator(s) that when added together in examining the totality of the circumstances amounts to reasonable suspicion, as a basis for an investigatory stop / detention. Examples of such include, but are not limited to, presence of a person in a high crime area or proximity of a person to the scene of suspected or reported crime;
- F. Basing investigatory stops / detentions solely on an individual's response to the presence of police officers, such as an individual's attempt to avoid contact with an officer;

# NEWARK POLICE DIVISION

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- G. Basing investigatory stops / detentions solely on information or evidence discovered after the stop was initiated (e.g. open warrants) or the fact that the individual was ultimately arrested. Information learned during the stop can lead to additional reasonable suspicion or probable cause that a crime has occurred and may lengthen the legally allowed time for the stop, but cannot provide justification for the original stop;
- H. Basing investigatory stops / detentions solely upon the fact that a person is in close proximity to someone who is suspected of criminal activity;
- I. Using any demographic category as a factor to any degree in establishing reasonable suspicion or probable cause during an unplanned enforcement activity. This conduct will be considered bias-based policing. The only exception to this is in circumstances where the specific suspect's description is from a trustworthy source relevant to place and time, and then only in combination with other detailed descriptors.
- J. Taking any steps, through words or conduct, that would make a person feel he/she is not free to leave during a voluntary citizen contact.
- K. Relocating someone who is the subject of an investigative stop / detention, and is not under arrest, a significant distance away from where they were stopped in order to conduct a show-up identification for a suspected offense. An officer conducting an investigative detention for eyewitness identification should "use the least intrusive investigative techniques reasonably available to verify or dispel his suspicion in the shortest period of time reasonably possible" (See *State v. Davis*, 104 N.J. 490,504,517 A.2d 859,867 (1986));
- L. Asking for consent to search a motor vehicle unless the officer has a reasonable and articulable suspicion that the search will turn up evidence of a crime. Officers will document in writing the basis for this suspicion or other legal authority (See *State v. Carty*, 170 N.J. 632 (2002));
- M. Detaining, arresting, using force against, or threatening to detain, arrest or use force against individuals in response to activity protected by the First Amendment, including verbal criticism, questioning police actions, or gestures that do not give rise to reasonable fear of harm to officers or others; and
- N. Detaining, prolonging the detention of, arresting, using force against or threatening to detain, prolong the detention of, arrest, or use of force against an individual for remaining in the proximity of, recording or verbally commenting on officer conduct unless it violates the law, incites others to violate the law or refuses to comply with an officer's lawful order to observe or record from an alternate location because the bystander's presence would jeopardize a crime scene or the safety of an officer, the suspect or others.

# NEWARK POLICE DIVISION

## GENERAL ORDER

### III. PROCEDURES

#### A. Consensual Citizen Contact

Consensual citizen contact occurs when an officer comes into contact with a person within the community, either by chance or after responding to a specific call for service, who is not under suspicion of committing a crime and is free to leave at any point. Consensual citizen contacts can be a valuable opportunity to strengthen our bonds with the community and gather information that may help the Police Division act more effectively.

Citizen contacts may:

- be initiated when the officer believes that it may serve the interests of a community as a whole,
- occur absent any type of suspicion or probable cause and should not be treated as an investigatory stop, detention or arrest,
- occur wherever the officer has a legal right to be, such as in a public space, or somewhere the officer was freely invited into, or a place where a legal document (such as an arrest warrant or search warrant) grants them access.

During any type of voluntary citizen contact, a person may lawfully refuse to speak to officers, refuse to identify themselves, or otherwise not cooperate without consequence.

"The Fourth Amendment proscribes unreasonable searches and seizures; it does not proscribe voluntary cooperation," as noted in *Florida v. Bostick* 501 U.S. 429, 437 (1991). Absent reasonable suspicion and/or probable cause, people have a constitutional right not to engage the police. Under these circumstances, people can choose to engage with officers, but can also decide to end the contact at any point.

If an officer perceives that a person's action indicates an attempt to avoid police interaction (e.g. refusal to stop, failure of a person to respond to officer's questions, remaining silent, not providing identification, or not wishing to give specific details during a citizen contact), the officer cannot use that behavior alone to justify transforming a citizen contact into an investigatory stop or detention.

During a consensual citizen contact, an officer may not take any steps, through words or conduct, that would make a reasonable person feel he/she is not free to leave during a voluntary citizen contact. Any such steps would convert the contact into an investigative stop, or in some cases, an arrest. Both of which would require adequate levels of suspicion and would require an officer to

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document the specific facts that support that suspicion in the officer's report.

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## GENERAL ORDER

After coming into contact with a person in the community, either initiated by the officer or by the person, the officers shall be courteous, respectful, and professional.

During consensual citizen contacts officers should keep in mind and utilize de-escalation techniques during all situations where appropriate.

### B. Investigatory Stop / Detention

During an investigatory stop and where the subject of the stop is not under arrest, an officer may not relocate the subject of an investigatory stop / detention a significant distance away from the stop location to conduct a show-up identification for a suspected offense.

In order to conduct an investigatory stop / detention an officer must be able to articulate facts amounting to reasonable suspicion that the person they wish to stop has just committed a violation of the law, is about to violate the law, or is currently violating of the law.

These facts must be documented in the officer's report. The report cannot simply include *pro forma* or conclusory language, but rather must contain specific, individualized descriptive language that establishes the existing reasonable suspicion. If officers wish to stop or detain multiple people, then the officer needs individualized reasonable and articulable suspicion for each person who is stopped.

The purpose of an investigatory stop or detention is to determine, within a reasonable amount of time, that an officer can establish enough facts to determine if there is probable cause that the person has committed a crime.

- If probable cause is not established, then the person is free to leave and the stop will be reported in a "Stop Report" (DPI:1388) within the Newark Police Division Records Management System.
- If probable cause is established, then the officer will take the appropriate enforcement action, such as issuing a summons or executing an arrest, and will document the investigatory stop accordingly.

The reasonableness of an investigatory stop is based on the totality of the circumstances, the officer's training and experience, and what the officer knew **before** the stop was initiated. Information learned during the stop cannot provide justification for the original stop, but can lead to additional reasonable suspicion or probable cause that a crime has occurred.

When an officer has reasonable and articulable suspicion that a person(s) is about to violate the law, has violated the law or is in the process of violating the law, the officer may stop the person and:

1. Will be courteous, respectful, and professional.

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## GENERAL ORDER

2. As early in the contact as safety permits, officers shall introduce him or herself to the citizen (providing name, rank or title, agency affiliation and that the stop is being recorded, if applicable), and state the reason for the stop. This information shall be provided to the subject prior to requesting their information.
3. Request identification. If the person does not have available identification or refuses to provide identification, the officer shall obtain all the available information necessary to complete a "Stop Report" (DPI:1388) within the Newark Police Division Records Management System in accordance with section "VI. Reporting Requirements" of this General Order.
4. Upon belief and reasonable and articulable suspicion that the person stopped is carrying something that could be used as a weapon and is a danger to officers or others, officers should conduct a protective "Terry Frisk" of the person they believe may be armed.
5. Detain the person for only the reasonable amount of time that is needed to confirm or dispel the officer's suspicion for the violation of law. Any delays or extension of the detention period in order for officers to complete necessary actions must be objectively reasonable; officers may not extend the detention of a person solely to await the arrival of a supervisor. Officers will take all reasonable measures to ensure the citizen understands the purpose of reasonable any delays.
6. If an officer has reasonable and articulable suspicion to believe a weapon or contraband is present and wishes to obtain consent from a citizen to conduct a search, officers will affirmatively inform the subject of their right to refuse and to revoke consent at any time. The Consent to Search form (DPI:1493-10M) will be used and explained to the consenting party and completed by the officer. Officers will have the consenting party, if they wish, sign the Consent to Search form only if the person affirms that they understand the waiver of their rights.

The officer will make every possible attempt to record this interaction on an issued Body Worn Camera, In Vehicle Camera or other authorized electronic recording device. If the officer is unable to capture the interaction in a recording then the officer shall articulate, in writing or on camera, all the reasons why they were unable to record the event.

7. If a vehicle is involved in the investigatory stop, an officer is prohibited from asking for consent to search the motor vehicle unless the officer has a reasonable and articulable suspicion that the search will turn up evidence of a crime. Officers will document in writing the basis for this suspicion or other legal authority. (*State vs. Carty*, 170 N.J. 632 (2002)).

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8. If probable cause is found to exist before the end of the investigatory stop / detention, then the officer will execute the appropriate enforcement action(s) and complete the necessary reports to document the incident.
9. Officers will answer any questions the citizen may have, including explaining options for traffic summons dispositions, if relevant.
10. Officers will provide his or her name, badge number and Event Number for the investigative stop / detention when requested, in writing or on a business card (if authorized).
11. Officers will offer an explanation for the circumstances and reasons for the stop.
12. Officers will fully document all stops as soon as possible, but no later than by the end of the officer's workday.

Information or descriptions resulting from an anonymous tip is **not sufficient**, by itself, to establish reasonable suspicion or probable cause that could justify a stop, frisk, detention, or arrest. If acting on an anonymous tip, the officer must further develop the information provided in the tip into reasonable and articulable suspicion prior to stopping a subject. An officer's observations at the scene, additional information secured from the anonymous caller and other circumstances can establish reasonable suspicion that the subject has violated or is about to violate the law, but such information must be collected before a stop is conducted.

If a person who has been stopped lawfully refuses to identify him/herself, the officer will still attempt to confirm the reasonable and articulable suspicion for which the stop was originally based upon. If probable cause is **not** established within a reasonable amount of time, officers will allow the person to depart and will document the stop just as any other. The officer reporting the information about the stop shall then:

- a. enter REFUSED in the appropriate spaces of the report generated for the subject's information which was unable to be obtained.
- b. record all physical description information of the subject of the report.
- c. record information of a motor vehicle, if involved.
- d. enter the time, date, location, and duration of the stop.
- e. enter any necessary remarks, and submit the information for approval by the supervisor.

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While performing investigatory stops / detentions officers should keep in mind and utilize de-escalation techniques during all situations where appropriate to assist agitated or anxious people understand, manage and resolve their concerns.

### VI. REPORTING REQUIREMENTS

- A. Documentation of an interaction between a person and the police is **required when the person stopped does not feel free to leave**. Because a stopped person's perception should be considered in determining what must be reported, it is incumbent on the officer to make sure that people know that they are free to leave, or are being stopped / detained.
- B. Information for each person stopped must be documented by completing a "Stop Report" (DPI:1388) within the Newark Police Division Records Management System. If a motor vehicle was involved as part of the stop, the registration, make, model and vehicle identification number information shall be included in the entry. A separate record shall be generated for each person that was stopped. The entries shall be cross referenced under the same Event Number if multiple people were stopped during or surrounding one specific incident.
- C. All data entries of stop information must have a corresponding Event Number. If an officer is on a dispatched assignment and conducts an investigatory stop/detention, the officer will use the Event Number from the dispatched assignment; otherwise, the officer will generate a new Event Number for the appropriate type of police action taken in order to complete the entry of the stop data.
- D. The following information is required to be entered in an officer's report for all stops:
  1. date and time of the stop;
  2. the officer's name and badge number;
  3. location of the stop;
  4. start time, end time and duration of the stop;
  5. clearly articulated reasonable suspicion justifying the investigative stop;
  6. if a vehicle stop results in a search, the presence and number of any passengers and the officer's perception of the gender, race, ethnicity, national origin, and age of each passenger, unless such data collection creates an undue delay by prolonging the stop (i.e. passenger bus filled with people);
  7. if a vehicle stop, whether the driver or any passenger was required to exit the vehicle, and the reason for doing so, unless such data collection creates an undue delay by prolonging the stop (i.e. passenger bus filled with people);

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8. if a non-vehicle stop such as a pedestrian or bicycle, the number of individuals stopped and the officer's perception of the gender, race, ethnicity, national origin, and age of each person;
9. reason for the stop, including a description of the facts creating reasonable suspicion and whether it was a pretext stop;
10. whether any individual was asked to consent to a search and whether such consent was given; whether a pat-down, frisk or other search was performed on any individual, including a description of the facts justifying the action;
11. a full description of any contraband or evidence seized for any individual;
12. whether a probable cause search was performed on any individual, including a brief description of the facts creating probable cause; and
13. disposition of the stop, including whether a citation or summons was issued to or an arrest was made of any individual.
14. If a person has been stopped lawfully refuses to identify him/herself, the officer will still attempt to confirm the reasonable and articulable suspicion for which the stop was originally based upon. If probable cause is not established within a reasonable amount of time, officers will allow the person to depart and will document the stop just as any other. The officer reporting the information about the stop shall then enter "REFUSED" in the appropriate spaces of the report generated for the subject's information that this officer could not obtain. The officer will record the subject of the report's physical description information.

### VII. SUPERVISOR RESPONSIBILITIES

All entered investigative stop data information will be reviewed and approved by the appropriate desk, MAPS, or specialized Unit Supervisor by the end of the submitting officer's tour of duty, who will ensure that the entry is properly completed. The entry must show sufficient facts exist to justify the investigative stop and, if necessary, protective frisk.

Investigative stop entries failing to meet the reasonable suspicion standard shall be rejected and returned to the officer so the reporting person can include all necessary factual information from the stop. The Supervisor will ensure the officer(s) who conducted the investigative stop and are completing the required report(s) fully understand the legal standards and reporting requirements surrounding such an action.

Supervisors approving reports will review all written documentation of investigatory stops and detentions, searches, and arrests for boilerplate language, accuracy, completeness and adherence to law and division policy.

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Supervisors will also review all relevant view recordings for all incidents where the supervisor suspects that the officers' conduct may not have complied with law and Division policy.

On a continuous basis, supervisors will also review a random selection of video recordings of stops and detentions, searches and arrests amounting to a minimum of 10 percent of all stops and detentions, searches, and arrests.

Upon reviewing videos of investigatory stops and detentions, searches, and arrests, Supervisors shall submit an administrative report (DP1:1001) filed under the event number for the corresponding video reviewed by the end of their tour of duty, listing:

- The event number
- The name(s) of the officer(s) who recorded the video(s) and type of video they recorded (e.g. body worn camera video, in-car video, or both)
- The reason for reviewing the video (e.g. random review, recovery of contraband, stop, search, detention, arrest, suspected non-compliance with NPD policy or law)

Supervisor reviews will also identify the following:

- investigatory stops and detentions that appear unsupported by reasonable and articulable suspicion, or that are otherwise in violation of Division policy;
- searches that appear to be without legal justification or are in violation of Division policy;
- stops or searches that, while comporting with law and policy, indicate a need for corrective action or review of agency policy, strategy, tactics, or training to support effective and legitimate policing principles.

All Supervisors, in consultation with the Unit Commander (or command-level official) of the officer who submitted an inadequate report, will take appropriate action to address all apparent violations or deficiencies in investigatory stops or detentions, searches, and arrests. The nature of some errors may require retraining while others may warrant initiating disciplinary action. Appropriate action may include recommending non-disciplinary corrective action for the involved officers, or referring the incident for administrative or criminal investigation.

For each subordinate, the supervisor will maintain a record of each violation or deficiency and any corrective action taken in BlueTeam. The supervisor will document each violation or deficiency in the officer's performance evaluations and Newark Police Division's Early Warning System to identify officers needing repeated corrective action. Supervisors shall submit their reviews to the unit commander for additional review.

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The approving supervisor will document for review by their chain of command in an Administrative Report (D.P.I. 1001) and in BlueTeam:

- investigatory stops and detentions that appear unsupported by reasonable and articulable suspicion, or that are otherwise in violation of Division policy;
- searches that appear to be without legal justification or are in violation of Division policy;
- stops or searches that, while comporting with law and policy, indicate a need for corrective action or review of agency policy, strategy, tactics, or training to support effective and legitimate policing principles.

Within seven days of receipt, a command-level official will confirm in writing that he or she has reviewed any stop or detention, search, and arrest conducted by the officer under their command that another Supervisor determined were: not supported by probable cause; were in violation of NPD policy or this Agreement; or that indicated a need for corrective action or review of agency policy, strategy, tactics, or training.

The Commander will evaluate the Supervisor's assessment and recommendations and take all appropriate corrective action, including referring the incident to the Office of Professional Standards for investigation, if warranted. The Commander will also take appropriate corrective or disciplinary action against Supervisors who fail to conduct complete, thorough, and accurate reviews of officers' investigatory detentions, searches, and arrests.

Supervisory and Commander performance evaluations will take into account the quality and completeness of Supervisor and Commander reviews of officer stops, searches, and arrests.

### VIII. ADMINISTRATIVE REVIEW

Cumulative and quarterly demographic analyses of the enforcement activities of Newark Police Division officers will be conducted by the Commander of the Office of Professional Standards, or his/her designee, to ensure that the tenets of this General Order are implemented and adequately monitored.

The Commander of the Office of Professional Standards, or his/her designee, to identify and evaluate trends, outliers, or other relevant indicators. This data will be analyzed and weighed based on the type of enforcement activities, officer unit or assignment, demographics of subjects, shift or time of day, force used and resistance encountered, and peer comparisons.

This data shall be based on accurate, complete, and reliable information, including but not limited to:

- a) Misconduct complaints;
- b) Stop, detention and arrest data;
- c) Use of force analysis; and

# NEWARK POLICE DIVISION

## GENERAL ORDER

d) Enforcement practices based on community input.

Officers, including supervisors found to have violated this Order will be subject to disciplinary action (including counseling, mediation and training) up to and including termination.

### IX. TRAINING

Newark Police Division shall provide training on this topic to all new recruits and current officers of the Newark Police Division.

NPD will ensure that all officers receive, at a minimum, an initial sixteen (16) hours of comprehensive and interdisciplinary training on stops, searches and arrests, which includes voluntary police citizen contacts and investigatory stops.

Thereafter, a minimum of four (4) hours of training shall be given annually based on New Jersey law, federal law and/or NPD policy. Training will include:

- A. The requirements of the 4th Amendment to the United States Constitution, Article 1, Paragraph 7 of the New Jersey Constitution, Attorney General Directives and related law, NPD policies (General Orders), and the Consent Decree regarding investigatory stops and detentions, searches and seizures, including:
  1. the differences among the scope and degree of intrusion of various police contacts; between probable cause, reasonable and articulable suspicion and mere speculation; and between voluntary consent and mere submission to police authority;
  2. the types of facts and circumstances that may be considered in initiating, conducting, terminating, and expanding an investigatory stop or detention;
  3. the level of permissible intrusion when conducting searches, such as "pat-downs" or "Terry Frisks";
  4. the permissible nature and scope of other pre-arrest searches, including those conducted pursuant to probation or parole release provisions; and
  5. the permissible nature and scope of searches incident to arrest.
- B. The effect that differing approaches to stops, searches, and arrests can have on community perceptions of police legitimacy and public safety.

# NEWARK POLICE DIVISION

## GENERAL ORDER

### XI. EFFECT OF THIS ORDER

All previous Orders and Memorandums which are inconsistent or in conflict with this Order are hereby repealed.

**BY ORDER OF:**



Anthony F. Ambrose  
Public Safety Director

AFA/BO/jg

Attachment A- Stop Report (DPI:1388)

Attachment B - Consent to Search Form (DPI:1493-10M)

NEWARK POLICE

STOP REPORT

NEWARK, NJ

<b>GENERAL</b>	SECTOR	LOCATION	DATE	TIME START	TIME END	CC#	EVENT#	
	<input type="checkbox"/> ISSUED WARNING <input type="checkbox"/> ISSUED SUMMONS <input type="checkbox"/> ARRESTED		NAME (LAST, FIRST, MIDDLE) 0 PRESENTED VALID IDENTIFICATION		ALIAS(ES)			
	ADDRESS		APT/FLR	CITY	STATE	ZIP CODE	CELLPHONE#	HOMEPHONE#
	SS#	DL#	DL STATE	0.0.B.	OCCUPATION DR	0 UNEMPLOYED	<input type="checkbox"/> - INDIVIDUAL 15 A STUDENT	
								<b>SELECT SCHOOL</b>
<b>PHYSICAL DESCRIPTION (PERCEIVED OR ACTUAL)</b>								
AGE	SEX	RACE	COMPLEXION	EYES	HEIGHT	WEIGHT	FACIAL HAIR	
	<b>M</b>	<b>A</b>	<b>LIGHT</b>	<b>BRN</b>			<b>SHAVEN</b>	
HAIR COLOR	HAIR LENGTH	HAIR STYLE	SCARS, DISTINGUISHING FEATURES, TATTOOS			CLOTHING WORN		
<b>BROWN</b>	<b>BALD</b>	<b>SHAVED</b>						
ARREST/CRIMINAL HISTORY - <input type="checkbox"/> DENIES			GANG AFFILIATION-0 DENIES		GANG TATTOOS, COLORS, ETC. OBSERVED-0 NONE VISIBLE			

**MUST BE COMPLETED**

<b>INQUIRY INFORMATION</b>	INDIVIDUAL MATCHED:	<input type="checkbox"/> GENERAL BROADCAST	0 TELETYPE	DESCRIBE OTHER ALERT	REASON FOR INQUIRY		
		<input type="checkbox"/> BULLETIN / FLYER	<input type="checkbox"/> OTHER:	<b>CITIZEN CONTACT</b>			
	DESCRIBE REASONABLE SUSPICION FOR THE STOP:						
	<input type="checkbox"/> WARRANT CHECK CONDUCTED		RESULTS OF WARRANT CHECK	0R	REASON FOR NOT CONDUCTING WARRANT CHECK		
	NAME OF PERSON CONDUCTING WARRANT CHECK		ID#	COMMAND	SBI#- 0 NONE FOUND		
INDICATE THE NUMBER OF PERSONS IN COMPANY OF SUBJECT:							
NAME(S) OF PERSON(S) IN COMPANY OF SUBJECT		D.O.B.	AGE	ADDRESS, CITY, STATE, ZIP		F.I.	
LAST NAME, FIRST NAME, MIDDLE NAME						<input type="checkbox"/>	
						<input type="checkbox"/>	
						<input type="checkbox"/>	
						<input type="checkbox"/>	

**MUST BE COMPLETED**

<b>FRISK / SEARCH</b>	INDIVIDUAL:	IF YES, SELECT REASON FRISKED:	IF YES, EXPLAIN HOW YOUR SAFETY WAS AT RISK:
	<input type="checkbox"/> - WAS FRISKED	<b>N/A</b>	
	INDIVIDUAL:	IF YES, SELECT REASON SEARCHED:	WHAT AREAS WERE SEARCHED?
	<input type="checkbox"/> WAS SEARCHED	<b>N/A</b>	
VEHICLE SEARCHED?	IF YES, SELECT REASON:	WHAT AREAS WERE SEARCHED?	
<input type="checkbox"/> - YES    0-NO    0-N/A	<b>N/A</b>		
EVIDENCE/CONTRABAND FOUND?	IF YES, SELECT TYPE FOUND:		
<input type="checkbox"/> - YES <input type="checkbox"/> -NO	<b>N/A</b>		

**MUST BE COMPLETED**

<b>VEHICLE</b>	VEHICLE MATCHED:	<input type="checkbox"/> GENERAL BROADCAST	<input type="checkbox"/> TELETYPE	DESCRIBE OTHER ALERT:			
		<input type="checkbox"/> BULLETIN / FLYER	<input type="checkbox"/> OTHER:				
	REASON FOR MOTOR VEHICLE STOP:						
	<b>N/A</b>						
	0 VEHICLE INVOLVED IN FULLY DESCRIBE SUSPECTED CRIME: CRIMINAL ACTIVITY						
YEAR	MAKE	MODEL	TYPE	COLOR	PLATE	STATE	EXPIRATION
VEHICLE IDENTIFICATION NUMBER		DISTINGUISHING CHARACTERISTICS					
REGISTERED OWNER		ADDRESS		CITY		STATE	ZIP CODE

OUTSIDE AGENCY OFFICER INVOLVED	RANK	ID#	AGENCY	REASON PRESENT?		
REPORT SUBMITTED BY:	RANK	ID#	GENDER	R CE	COMMAND	DATE & TIME COMPLETED
			<b>M</b>	<b>A</b>		
SUPERIOR APPROVING REPORT			ID#			DATE & TIME COMPLETED



**NEWARK POLICE DIVISION****GENERAL ORDER**

<b>SUBJECT:</b> Searches With or Without a Search Warrant		<b>GENERAL ORDER NO.</b> <b>18-15</b>
<b>SUPERCEDES:</b> <b>04-12 &amp; 63-26</b>	<b>DATED:</b> <b>12/31/2018</b>	<b>SECTION CODE:</b>

**Related Policies:**

General Order 17-06 "Bias Free Policing"

General Order 17-02 "Body-Wom Cameras"

General Order 2002-2 "Strip Search-Body Cavity Search"

This Order contains the following numbered Sections:

- I. **PURPOSE**
- II. **POLICY**
- III. **RESPONSIBILITY FOR COMPLIANCE**
- IV. **DEFINITIONS**
- V. **PROHIBITED ACTIONS**
- VI. **SEARCHES WITH A WARRANT**
- VII. **SEARCHES WITHOUT A WARRANT**
- VIII. **STRIP SEARCHES AND BODY CAVITY SEARCHES**
- IX. **SEARCHES OF ELECTRONIC DEVICES AND WIRETAPPING**
- X. **REPORTING REQUIREMENTS**
- XI. **SUPERVISOR RESPONSIBILITIES**
- XII. **ADMINISTRATIVE REVIEW**
- XIII. **TRAINING**

# NEWARK POLICE DIVISION

## GENERAL ORDER

### XIV. EFFECT OF THIS ORDER

#### I. PURPOSE

The purpose of this General Order is to ensure that members of the Newark Police Division engage in lawful practices when conducting searches during the course of their official duties. This policy serves as a guide for Officers as to when they need to obtain a search warrant and when situations may fall within an exception to the search warrant requirement.

All sworn officers will conduct searches in accordance with the rights secured or protected by the United States Constitution, the New Jersey State Constitution, federal and state law. All personnel will conduct searches fairly and respectfully as part of an overall crime prevention strategy that is consistent with community priorities for enforcement.

Conducting searches without proper supporting justification violates both the 4<sup>th</sup> Amendment to the U.S. Constitution, and Article 1, Paragraph 7 of the New Jersey Constitution, as well as federal and state law and Division policy. It is important to understand that an illegal search will render any evidence found during the search inadmissible in court. Any officer who engages in an illegal search is subject to administrative discipline (including termination), civil liability, and/or criminal prosecution.

#### II. POLICY

It is the policy of the Newark Police Division that officers will conduct all searches in accordance with the U.S. Constitution, New Jersey Constitution, federal and state law. Searches are lawful when they meet the requirements of the 4<sup>th</sup> Amendment to the U.S. Constitution and Article 1, Paragraph 7 of the New Jersey Constitution. Officers must note that all searches require a search warrant, unless proper exigent circumstances exist.

Searches must be supported by probable cause to believe that the search will uncover evidence of a crime. Even with appropriately established probable cause and a search warrant signed by a magistrate, searches carry limitations. Search warrants are intended for law enforcement to seek evidence for the specific violation of law that was explained in the probable cause document for which the warrant was issued.

The Newark Police Division strictly prohibits officers from considering a person's demographic category in determining whether to conduct a search or to seek a search warrant. Searches of people based solely on a demographic category are illegal. Officers may only use demographic categories to describe a specific person where the description is from a trustworthy source that is relevant to the locality and time. (See Newark Police General Order 17-06 Bias Free Policing)

# NEWARK POLICE DIVISION

## GENERAL ORDER

Officers should realize that searching a person is an interference with a persons' liberty that can be humiliating, embarrassing or demeaning and that officers shall therefore make all reasonable efforts, that do not compromise officer safety, to conduct the search of a person with respect, dignity, courtesy and in a professional manner.

During searches officers should keep in mind and utilize de-escalation techniques during all situations where appropriate.

Whenever practicable, an officer of the same gender as the person to be searched should conduct the search. If an officer of the same gender is not reasonably available and officer safety permits, a witnessing officer or Supervisor shall be present during a search of a person who is not of matching gender.

### 111.RESPONSIBILITY FOR COMPLIANCE

All Division personnel are responsible for complying with this Order. Supervisory and Command Officers shall insure that subordinates are aware of, understand, and comply with this Order. All sworn officers will be subject to discipline for a violation of the contents of this Order.

### IV. DEFINITIONS

- A. Bias-Based Policing** - The differential treatment of any person by members motivated by the specific characteristics, perceived or actual, of that person. This conduct is specifically prohibited. (See Newark Police General Order 17-06 Bias-Free Policing for more information).
- B. Blue Team** - A computer application extension of IAPro. The application allows users to enter collected data from incidents, such as police pursuits, citizen contacts or stops, events where force is used, complaints on police, police involved accidents and administration of discipline to facilitate the complete capture of activities and allow for tracking.
- C. Community Policing** - a philosophy that promotes organizational strategies that support the systematic use of partnerships with community residents and problem-solving techniques to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime.
- D. Conclusory** -A statement (oral or written) that contains a conclusion without providing the specific facts that explain or justify how the conclusion was reached.
- E. Consensual Citizen Contact** - A voluntary and consensual conversation between a person and the police that can be used to gather information about crime or quality of life issues. Under this type of contact, an officer has no reasonable suspicion or probable cause to stop or detain the

person with whom the officer is speaking. Therefore, the officer has no authority to stop or detain an individual who chooses not to participate in the contact.

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- F. Demographic Category** - A shared common characteristic of a population, including but not limited to, age, race, ethnicity, national origin, gender, gender identity, language ability, disability, political belief, sexual orientation, immigration status, economic status, or housing status.
- G. Exigent Circumstances** - A compelling urgency or true emergency that a member can specifically describe not using vague terms or boilerplate language. Circumstances that cause a reasonable person to believe that prompt action is necessary can be an immediate threat to public safety, an active attempt by a suspect to destroy evidence of a crime or escape, or in instances of community caretaking.
- H. Express Consent** - When a person makes an affirmative statement to convey to officers that they are willing to grant officers consent for a search. This consent or statement usually occurs orally and/or in writing. A person may choose to withdraw consent to search or the person granting consent may state that he or she wishes to change the conditions under which the search is to be conducted. A person may withdraw consent at any time prior to the conclusion of a search.
- I. Investigatory Stop / Detention** - A seizure of a person for investigative purposes. This seizure occurs when a police officer stops a citizen from moving about freely, by means of physical force or show of authority, in order to investigate a matter. The seizure may also occur if an officer uses words, actions or demeanor that would make a reasonable person believe that he or she is not free to leave. Stops of this manner need to be based on reasonable and articulable suspicion that a violation of law has occurred, is occurring or is about to occur. An investigatory stop can come in different forms (i.e. pedestrian, motor vehicle, bicycle, etc.). Also known as a "Terry Stop."
- J. Pretext Stop** - An investigatory stop or detention for a violation of law that an officer has reasonable and articulable suspicion for, but the officer's true motivation is to investigate a different offense, for which there is no reasonable suspicion at the outset of the investigatory stop or detention. A pretext stop also can mean that reason an officer presents for conducting a stop of a person is false and the justification is offered to mask the true motivation for conducting the stop.
- K. Pro Forma** - A standard use of wording, document or form used to justify an action that does not tie to the underlying events.
- L. Probable Cause** - Specific, and articulable facts to permit a reasonable person to believe that a subject committed a violation of the law or that evidence of a crime would be found in a search. Probable cause is a higher standard of evidence than having reasonable suspicion, but is less than the beyond a reasonable doubt standard needed for conviction. Probable cause is a practical, non-technical probability.

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- M. Reasonable Suspicion** - Specific, and articulable facts that, within the totality of the circumstances, would lead an officer to reasonably believe that a person has, is in the process of, or is about to engage in criminal activity. A person's mere presence in an identified high crime neighborhood or area taken alone, does not rise to the level of reasonable suspicion. Reasonable suspicion is a lower standard than probable cause.
- N. Terry Frisk-A** limited frisk or pat-down of the outer clothing of legally stopped subjects to determine whether the subjects possess weapons if officers reasonably suspect the subject(s) is armed and presently dangerous. It is not a generalized search of the entire person. The frisk for weapons is strictly limited to what is necessary to discover weapons that might be used to harm the officer or others nearby. **The frisk must be limited to a pat-down of outer clothing.** Once the officer ascertains that no weapon is present after the frisk is completed, the officer's limited authority to frisk is completed and the frisk must stop.
- O. Vehicles** - in the context of probable cause searches are cars, SUVs, vans, motorcycles, bicycles, boats, recreational vehicles ("RVs") and other motor homes-except those that are being used solely as residences (e.g. on blocks).

### V. PROHIBITED ACTIONS

Newark Police Officers are prohibited from:

- A.** Conducting a search of a person, dwelling or personal belonging when an officer has probable cause to believe that the person has committed, is about to commit, or is in the process of committing a violation of law and evidence of a crime will be found.
- B.** Using pro forma or conclusory language, such as wording which makes claims without supporting evidence, or has little true meaning or importance. All supporting details shall be clearly documented for all investigatory stops or detentions. Examples of pro forma or conclusory language are "the suspect was frisked for officer safety," or "the suspect was detained based upon reasonable suspicion;"
- C.** Using or relying on information known to be materially false or incorrect to justify a warrantless search or to seek a search warrant, and in stating the reason for the search to the person who has an expectation of privacy over the area searched,"
- D.** Seeking consent to search a motor vehicle unless the officer has a reasonable and articulable suspicion that the search will reveal evidence of a crime. Officers will document in writing the basis for this suspicion or other legal authority;
- E.** Conducting a search of an individual or home based upon consent without first obtaining the approval of a Supervisor;

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- F. Considering any demographic category (i.e., using biased criteria) in determining whether to conduct a search or seek a search warrant, except that officers may rely on a demographic category in a specific suspect description, from a victim or a witness, where the description is from a trustworthy source that is relevant to the locality and time, and then only in combination with other detailed descriptors;
- G. Basing searches solely on an individual being in the company of other people suspected of criminal activity;
- H. Taking any steps, through words or conduct, that would make a person feel he/she is required to authorize consent to search;
- 1. Officers shall not search or physically examine any person for the sole purpose of determining which genitalia they possess. If the person's gender or status is unknown, it may be determined during conversations with the person, and/or by reviewing other available records in order to make a good faith determination.

## VI. SEARCHES WITH A WARRANT

The 4<sup>th</sup> Amendment to the U.S. Constitution reads, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Article 1, Paragraph 7 of the New Jersey Constitution states: "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized."

Searches of all kinds generally require a valid search warrant, however searches without a warrant, coupled with exigent circumstances to believe that evidence may be lost or destroyed, can be legally permissible. Search warrants require that an officer is able to articulate probable cause to believe that evidence of a crime exists, that the evidence sought was once located at the place to be searched and that the evidence is still there.

Search warrants generally require an affidavit explaining the probable cause supporting the search, prosecutorial review of the facts of the case, and a judge's authorization. Search warrants contain limitations as to time, place and manner of execution that officers must adhere to, as explained in the warrant. According to NJ Court Rule 3:5-S(a) a search warrant "must be executed within 10 days after its issuance and within the hours fixed therein by the judge issuing it". A judge may, however, authorize the execution of a search warrant "at any time of the day or night" by entering such authorization on the face of the warrant "for good cause shown".

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While a valid search warrant grants officers authorization to search a particular structure for evidence of a crime, they are limited in scope. Once within the authorized area to be searched, an officer must have a reasonable belief that the type of evidence sought in the warrant could be present in the area of the structure where the officer searches (i.e., if an officer obtains a search warrant for an apartment specifically believed to house stolen window air conditioners, a search of the medicine cabinet, although within the apartment allowed access by the warrant, may not be permissible unless supported by a reasonable belief that evidence of stolen air conditioners can be contained within).

### VII. SEARCHES WITHOUT A WARRANT

There are some situations when searches and seizures can be conducted lawfully without a warrant. In these instances, the officer bears the burden of properly articulating the facts, with sufficient detail, so that is clear which exception to the search warrant requirement applies. Exceptions to the search warrant requirement include:

#### A. Consent Searches

Consent to search a structure must be given knowingly and voluntarily, without threat of force or intimidation from others. The party granting consent must have actual, or common authority over the area to be searched. If an officer wishes to obtain consent to search a motor vehicle, the officer needs reasonable and articulable suspicion that a search will yield evidence of a crime (as outlined in *State vs. Carty*, 170 N.J. 632 (2002)).

Officers should carefully weigh the choice between applying for a search warrant and obtaining legal consent to search. Officers need to keep in mind that although someone may be willfully granting consent at the moment of the search, she or he has the option of withdrawing consent during the search or challenging the legality of the search in court, based on whether s/he was properly informed of their rights or that they felt intimidated or threatened at the moment, even if it was not true.

Additionally, under New Jersey law, the burden is on the officer to show that the individual giving consent to the search knows that she or he had a choice not to consent to the search. Also, for consent to search an automobile or its occupants to be valid, before seeking consent to search, an officer must have reasonable and articulable suspicion of criminal wrongdoing, beyond the initial valid motor vehicle stop. (*State vs. Carty*)

The Newark Police Division requires that an officer seeking consent for a search affirmatively inform the consenting party of the right to refuse and to revoke consent at any time. The officer must use the Consent to Search form (DP1:1493-1OM) and explain its terms to the consenting party. The officer will have the consenting party, if the person granting consent wishes, sign the

Consent to Search **NEWARK POLICE DIVISION** the party understands the nature of their rights.

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The officer will record this notification and the consenting party's grant or denial of consent on an available body-worn camera, in vehicle camera or other authorized electronic recording device. For additional information on Body Worn Camera recordings, refer to the Newark Police Division's General Order on Body Worn Cameras (General Order 17-02).

If the officer is unable to capture interaction in a recording then the officer shall articulate, in writing or on camera, all the reasons why they were unable to record the event. The officer must also record this information when completing the required "Stop Report" (DPI:1388) within the Newark Police Division Records Management System, and/or in the corresponding incident report, if one is applicable.

Officers will ensure that the Consent to Search form is properly filled out, with separate signature lines completed by officers to certify that they have advised the subject of the right to refuse a search and for the subject to affirm that they understand that right, if they are willing to sign it.

The Newark Police Division requires that officers obtain the approval of a Supervisor prior to conducting the actual search of an individual or a home based upon consent. The approving Supervisor's name and approval shall be noted on the Consent to Search form.

The consenting person may modify the scope of consent or withdraw consent altogether at any time. If evidence is found before the withdrawal or modification of consent, the legality of the seizure will be upheld and a search warrant may be required to continue to search. A withdrawal or restriction of consent may be express or implied. Withdrawal or restriction of consent does not amount to reasonable suspicion or probable cause.

Examples of implied withdrawal of consent:

- Where a suspect consented to a search of his home and the officer went outside to call for backup; while the officer was outside on the police radio, the suspect shut and locked the front door.
- When asked for the keys to the trunk of his car, a suspect who had consented to a search of it threw the keys into some bushes.
- Where an officer was conducting a consent search of an apartment was about to enter a bedroom when the consenting person "raced in front of the officer and started to close the partially open door."

During a consensual search officers will allow the person who granted consent to be present during the actual search. The consenting party is free to waive their right to be present during the search, if they wish.

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Types of consent searches include:

1. **First party / Owner Consent** - The person who holds legal authority over the area to be searched.
2. **Third-Party Consent**- Absent a nonconsenting owner who is not present, a third party may grant consent to search a place or thing for which they share common authority, through:
  - a. Joint ownership;
  - b. Joint use; or
  - c. Joint access or control.

Consent cannot be given by a third party over areas which are **exclusively controlled** by an absent person (i.e., places owned by the third party, but are leased to someone else who has not abandoned the area; areas of a structure to be searched where access is restricted by someone who has not granted consent.

A landlord generally lacks authority to consent to the search of a tenant's home. *Chapman v. United States*, 365 U.S. 610, 616-17 (1961). Even if the landlord has the right to access the tenant's room for "limited purposes," that circumstance does not give the landlord the power to consent to a search by police. *State v. Coyle*, 119 N.J. 194, 574 A.2d 951 (1990).

If there are **multiple people with common authority** over a place where the police wish to obtain consent to search, even if one party wishes to grant officers consent to search, it will not override an objection to search made by the other person present with common authority (*Georgia v. Randolph* 547 U.S. 103, 106 (2006)).

Consent can be given by a remaining third party with common authority after an objecting party has been removed by the police for good cause. The U.S. Supreme Court ruled in *Fernandez v. California*, 571 U.S. 292 (2014), that even if an objection was made by one spouse or one half of an unmarried couple, the consent given by the other half overrides the objection if the following circumstances existed. First, the consent was given after the officers had removed the objecting spouse from the premises and secondly, they had good cause to remove him. Police may not unlawfully detain a person to prevent the person from objecting to a co-tenant's provision of consent. See *State v. Coles*, 218 N.J. 322, 339-340, 95 A.3d 136, 146 (2014).

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### B. Exigent Circumstances

Exigent circumstances exist where there is an immediate threat to public safety, an active attempt by a suspect to destroy evidence or escape, or in instances of community caretaking (e.g. an objectively reasonable basis to believe there is a need to protect or preserve life or avoid serious injury) where an immediate response is required. **Officers cannot create the exigent circumstances to permit a warrantless search.**

### C. Open View and Plain View Doctrines

Officers can seize evidence that is found to be in plain view, with no expectation of privacy if:

- a. The officer can see it from a place where they are permitted to be;
- b. The officer knows that what is seen is in fact evidence of a crime; and/or
- c. The officer has a legal right to enter the place where the evidence was located.

### D. Protective Searches

- a. **Terry Frisk** - an officer must have reasonable and articulable suspicion that the person they lawfully stopped is in possession of a weapon and is a danger to him/herself or the public. This is usually conducted by the officer running their hands over the outermost garments of a subject in order to ensure the person is not in possession of anything that could be used as a weapon. During the course of the Terry Frisk, if an officer feels something that becomes immediately recognizable as a specific type of contraband, the officer may seize the contraband as evidence. An officer may also search any area where the subject has immediate control of and could produce a weapon.
- b. **Protective Sweeps** - Officers may conduct protective sweeps of an area for people, limited to places where a person can hide.
  1. **General Protective Sweep** (see *State v. Davila*, 203 N.J. 97 (2010):
    - police officers are lawfully within private premises for a **legitimate purpose**, including situations in which they have been given **consent to enter**; and
    - the officers on the scene **have a reasonable and articulable suspicion** that the area to be swept harbors an individual posing a danger.
    - The sweep will be upheld only if it is conducted quickly and it is restricted to places or areas where the person posing a danger could

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hide.

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11. **Protective Sweep Incident to Arrest** (see *State v. Cape*, 224 N.J. 530(2016)):

- This is a quick and limited search of premises, **incident to an arrest**, conducted to protect the safety of police officers or others.
- The permissible scope of the sweep depends on the range of <langer facing the officers.
- Officers may look in closets and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched
- The search can be **conducted without probable cause or reasonable suspicion.**
- The sweep must be narrowly limited to a brief visual inspection of those places in which a person could be hiding.
- The sweep should last no longer than is necessary to dispel the possibility of <langer or to complete the arrest and leave the premises.

111. **Immediate Area Searches** - Officers are permitted to search areas where, under all circumstances, there is a **reasonable possibility** that the arrestee could access a weapon or destructible evidence in the container or area being searched. This requires more than a mere theoretical possibility (i.e. a gym bag that happens to be situated at the feet of a handcuffed subject **may not be enough** to justify the search). *US. v Shakir*, 616 F.3d 315, 321 (3d Cir.2010)

c. **Protective Vehicle Searches** - Officers who have detained an occupant of a vehicle may conduct a protective frisk of the vehicle if the officers reasonably believe that there is a weapon inside of the vehicle and the detainee or arrestee had potential access to the passenger compartment (*State v. Lund*, 119 N.J. 35 (1990)). Such factors either alone, or in the totality of the circumstances which could give rise to the reasonable belief of the presence of a weapon could be, but are not limited to:

- The hour of the stop (very early in the morning or very late at night);
- The absence of other traffic in the area leading to the isolation of the officer;
- Knowledge that the area of the stop is a "high crime" area;
- Highly erratic driving before the stop;
- Additional evasive action of part of the motorist, such as an unreasonable delay in stopping the vehicle upon being signaled to do so by the officer;

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- Other evasive action on the part of the driver or a passenger, including a full unobstructed view of the driver or a passenger reaching under the seat in an attempt to grab something or hide something (i.e., a "very pronounced" threatening gesture);
- The occupants of the vehicle outnumbering the officer(s) present;
- The plain-view observation of a weapon, ammunition or holster;
- The plain-view observation of a large and suspicious or threatening bulge protruding from the driver's or passenger's clothing;
- The absence of a driver's license or satisfactory identification, either for the motorist or the vehicle;
- Lying to the police, such as when asked about a witnessed "furtive movement" the occupant denies making such a movement;
- Prior knowledge that the driver or occupant is armed;
- Prior knowledge that the driver or an occupant is a "substantial dealer in narcotics";
- An affirmative reason the investigating officer that he feared he was in danger.

### E. Vehicle Searches

Officers may search a vehicle without a warrant if they have probable cause to believe that the vehicle contains evidence of a crime and the circumstances giving rise to the probable cause were unforeseen and spontaneous. This is commonly known as the "automobile exception" or a "probable cause search" of a vehicle. In the context of probable cause searches vehicles are defined as cars, SUVs, vans, motorcycles, bicycles, boats, recreational vehicles ("RVs") and other motor homes, except those that are being used solely as residences (e.g. on blocks). (*State v. Witt*, 223 N.J. 409,414, 447-48 (2015).

Officers are prohibited from seeking consent to search a motor vehicle unless the officer has a reasonable and articulable suspicion that the search will reveal evidence of a crime. Officers will document in writing the basis for this suspicion or other legal authority. (*State v. Carty* 170 N.J. 632 (2002) (New Jersey Supreme Court).

### F. Search Incident to Arrest of a Person or Area

As a matter of officer safety, as dictated by case law, officers may lawfully search a person and the areas that are reasonably accessible to the arrestee at the time of the search, as long as the following conditions are met:

- a. The arrest is lawfully supported by probable cause;
- b. The officer will be required to transport the suspect due to the arrest; and

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- c. The arrest and search take place within a substantially short time period

### G. Custodial Search

Once it is determined that the arrestee will be transported to a custodial setting officers shall search the arrestee for safety, to prevent escape and to prevent the destruction of evidence. If the arrestee is transported by a second or subsequent officer, every officer responsible for handling or transporting the arrestee shall conduct an independent search of the arrestee.

The search of the arrestee can be a full search. Any type of strip or body cavity searches requires additional levels of suspicion or a court order. The officer can search the arrestee's clothing and containers the arrestee was carrying when the search occurs. If an arrestee wishes to take an item with them and officers permit it, the officers may search that item also. Officers may not compel the arrestee to take a certain item in order to be allowed to search it thereafter.

### H. Probation and Parole Searches

Unlike parole officers, police officers are not granted the same search warrant exemptions for individuals who are on probation or parole. Police searches of people or property of individual who are on probation or parole require the same amount of justification that would be needed for anyone else the officer comes in contact with.

## VIII. STRIP SEARCHES AND BODY CAVITY SEARCHES

Strip searches and body cavity searches will be conducted in accordance with General Order 2002-2 "Strip Search-Body Cavity Search" and N.J.S.A. 2A:161A-8b "New Jersey Attorney General's Strip Search and Body Cavity Search Requirement and Procedures for Police Officers."

## IX. SEARCHES OF ELECTRONIC DEVICES AND WIRETAPPING

- A. Officers are reminded that searches of electronic devices, such as cellular telephones, are not inherently exigent. In most circumstances the electronics devices require properly obtained consent or a valid search warrant. However, if there is probable cause to believe such a device contains evidence of a crime then the electronic device may be seized for examination pending the proper authority (consent or a valid search warrant) to examine it.
- B. N.J.S.A. 2A:156A-9 requires, in the application for a wiretapping order, among other things, the applying officer must:

1. Establish that the procedure to be followed by the wiretapping of the communication involves criminal activity; and

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2. Articulate that normal investigative procedures have failed or are unlikely to succeed if tried or would be dangerous to the officer.

#### X. REPORTING REQUIREMENTS

- A. Documenting the incident is required for all events where a search and/or frisk occurs. Officers shall clearly articulate the appropriate level of suspicion established to conduct the search and/or frisk. At a minimum, a Field Inquiry Report (D.P.I. 1388) will be executed for all incidents where a search occurs. If contraband is seized or found property is recovered from a search and/or frisk the proper reports will be executed to coincide with the required enforcement action.
- B. Information for each person searched must be documented by completing a report into the "Stop Report" (DPI:1388) within the Newark Police Division Records Management System, and/or in the corresponding incident report, if one is applicable. **A separate record shall be generated for each person that was searched.** The entries shall be cross referenced under the same Event Number if multiple people were searched during or surrounding one specific incident. If a motor vehicle was searched, the registration, make, model and vehicle identification number information shall be included in the entry.
- C. All data entries of search information must have a corresponding Event Number. If an officer is on a dispatched assignment and conducts a search, the officer will use the Event Number from the dispatched assignment; otherwise, the officer will generate a new Event Number for the appropriate type of police action taken in order to complete the entry of the search data.
- D. The following information is required to be entered in an officer's report for all stops:
  1. date and time of the stop;
  2. the officer's name and badge number;
  3. location of the stop;
  4. start time, end time and duration of the stop;
  5. clearly articulated reasonable suspicion justifying the investigative stop;
  6. if a vehicle stop results in a search, the presence and number of any passengers and the officer's perception of the gender, race, ethnicity, national origin, and age of each passenger, unless such data collection creates an undue delay by prolonging the stop (i.e. passenger bus filled with people);

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7. if a vehicle stop, whether the driver or any passenger was required to exit the vehicle, and the reason for doing so, unless such data collection creates an undue delay by prolonging the stop (i.e. passenger bus filled with people);
8. if a non-vehicle stop such as a pedestrian or bicycle, the number of individuals stopped and the officer's perception of the gender, race, ethnicity, national origin, and age of each person;
9. reason for the stop, including a description of the facts creating reasonable suspicion and whether it was a pretext stop;
10. whether any individual was asked to consent to a search and whether such consent was given; whether a pat-down, frisk or other search was performed on any individual, including a description of the facts justifying the action;
11. a full description of any contraband or evidence seized for any individual;
12. whether a probable cause search was performed on any individual, including a brief description of the facts creating probable cause; and
13. disposition of the stop, including whether a citation or summons was issued to or an arrest was made of any individual;
14. If a person has been stopped lawfully refuses to identify him/herself, the officer will still attempt to confirm the reasonable and articulable suspicion for which the stop was originally based upon. If probable cause is not established within a reasonable amount of time, officers will allow the person to depart and will document the stop in a "Stop Report (DPI: 1388)" just as any other. The officer reporting the information about the stop shall then enter "REFUSED" in the appropriate spaces of the report generated for the subject's information that this officer could not obtain. The officer will record the subject of the report's physical description information.

### **XI. SUPERVISOR RESPONSIBILITIES**

All reports generated from an incident where an officer searches and/or conducts a frisk will be reviewed and approved by the appropriate desk, MAPS, or specialized Unit Supervisor by the end of the submitting officer's tour of duty, who will ensure that the entry is properly completed. The entry must show sufficient facts exist to justify the search and/or protective frisk.

Reports failing to meet the appropriate suspicion standard shall be rejected and returned to the officer so the reporting person can include all necessary factual information from the search and/or frisk. The Supervisor will ensure the officer(s) who conducted the search and/or frisk and are completing the required report(s) fully understand the legal standards and reporting requirements surrounding such an action.

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Supervisors approving reports will review all written documentation of investigatory stops and detentions, searches, and arrests for boilerplate language, accuracy, completeness and adherence to law and division policy.

For every search or arrest involving the recovery of contraband evidence, the arresting officer's Desk Lieutenant or Unit Commander will review the circumstances of the encounter, including video from body-worn cameras alongside the corresponding Incident Report (DPI:802), to assess the appropriateness of the seizure. The Supervisor will memorialize that review in writing and will include an assessment of the circumstances under which the search was conducted, the evidence was recovered and/or the probable cause for the arrest was ascertained.

Supervisors will also review all relevant view recordings for all incidents where the Supervisor suspects that the officers' conduct may not have complied with law and Division policy.

**On a continuous basis, Supervisors will also review a random selection of video recordings of stops and detentions, searches and arrests amounting to a minimum of 10 percent of all stops and detentions, searches, and arrests.**

Upon reviewing videos of investigatory stops and detentions, searches, and arrests, Supervisors shall submit an administrative report (DPI:1001) filed under the event number for the corresponding video reviewed by the end of their tour of duty, listing:

- The event number
- The name(s) of the officer(s) who recorded the video(s) and type of video they recorded (e.g. body worn camera video, in-car video, or both)
- The reason for reviewing the video (e.g. random review, recovery of contraband, stop, search, detention, arrest, suspected non-compliance with NPD policy or law)

Supervisor reviews will also identify the following:

- searches and/or frisks that appear to be without legal justification or are in violation of Division policy;
- stops or searches that, while comporting with law and policy, indicate a need for corrective action or review of agency policy, strategy, tactics, or training to support effective and legitimate policing principles.

All Supervisors, in consultation with the Unit Commander (or command-level official) of the officer who submitted an inadequate report, will take appropriate action to address all apparent violations or deficiencies in investigatory stops or detentions, searches, and arrests. The nature of some errors may require retraining while others may warrant initiating disciplinary action. Appropriate action may include recommending non-disciplinary corrective action for the involved officers, or referring the incident for administrative or criminal investigation.

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For each subordinate, the Supervisor will maintain a record of each violation or deficiency and any corrective action taken in BlueTeam. The Supervisor will document each violation or deficiency in the officer's performance evaluations and Newark Police Division's Early Warning System to identify officers needing repeated corrective action. Supervisors shall submit their reviews to the unit commander for additional review.

The approving Supervisor will document for review by her or his chain of command in an Administrative Report (D.P.I. 1001) and in BlueTeam for:

- searches and/or frisks that appear to be without legal justification or are in violation of Division policy;
- stops or searches that, while comporting with law and policy, indicate a need for corrective action or review of agency policy, strategy, tactics, or training to support effective and legitimate policing principles.

Within seven days of receipt, a Command-Level Official will confirm in writing that he or she has reviewed any stop or detention, search, and arrest conducted by the officer under their command that another Supervisor determined were: (i) not supported by probable cause; (ii) were in violation of NPD policy or this Agreement; or (iii) that indicated a need for corrective action or review of agency policy, strategy, tactics, or training.

The Commander will evaluate the Supervisor's assessment and recommendations and take all appropriate corrective action, including referring the incident to the Office of Professional Standards for investigation, if warranted.

The Commander also will take appropriate corrective or disciplinary action against Supervisors who fail to conduct complete, thorough, and accurate reviews of officers' investigatory detentions, searches, and arrests.

Supervisor and Commander performance evaluations will take into account the quality and completeness of supervisory and commander reviews of officer stops, searches, and arrests.

## XII. ADMINISTRATIVE REVIEW

Cumulative and quarterly demographic analyses of the enforcement activities of Newark Police Division officers will be conducted by the Commander of the Office of Professional Standards, or her/his designee, to ensure that the tenets of this General Order are implemented and adequately monitored.

The Commander of the Office of Professional Standards, or her/his designee, will identify and evaluate trends, outliers, or other relevant indicators. This data will be analyzed and weighed based on the type of enforcement activities, officer unit or assignment, demographics of subjects, shift or time of day,

force used and resistance and injuries and peer comparisons

# NEWARK POLICE DIVISION

# NEWARK POLICE DIVISION

## GENERAL ORDER

This data shall be based on accurate, complete, and reliable information, including but not limited to:

- a) Misconduct complaints;
- b) Stop, detention and arrest data;
- c) Use of force analysis; and
- d) Enforcement practices based on community input.

Officers, including Supervisors found to have violated this Order will be subject to disciplinary action (including counseling, mediation and training) up to and including termination.

### XIII. TRAINING

Newark Police Division shall provide training on this topic to all new recruits and current members of the Division.

Newark Police Division will ensure that all members initially receive at least sixteen (16) hours of comprehensive and interdisciplinary training on stops, searches and arrests, which includes voluntary police citizen contacts and investigatory stops.

Thereafter, a minimum of four (4) hours of training shall be given **annually** based on New Jersey law, federal law and/or NPD policy. Training will include:

- A. the requirements of the 4<sup>th</sup> Amendment of the U.S. Constitution, New Jersey Constitution Article 1, Paragraph 7, and NPD policies regarding investigatory stops and detentions, searches and seizures, including:
  1. the differences between the scope and degree of intrusion of various police contacts; between probable cause, reasonable suspicion and mere speculation; and between voluntary consent and mere acceptance to police authority;
  2. the types of facts and circumstances that may be considered in initiating, conducting, terminating, and expanding an investigatory stop or detention;
  3. the level of permissible intrusion when conducting searches, such as "pat-downs" or "frisks;"
  4. the permissible nature and scope of other pre-arrest searches, including those conducted pursuant to probation or parole release provisions; and
  5. the permissible nature and scope of searches incident to arrest.

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- B. procedures for executing searches, and the handling, recording, and taking custody of seized property or evidence; and
- C. the effect that differing approaches to stops, searches, and arrests can have on community perceptions of police legitimacy and public safety.

### XIII. EFFECT OF THIS ORDER

All previous Orders and Memorandums which are inconsistent or in conflict with this Order are hereby repealed.

BYO \_\_\_\_\_

\_\_\_\_\_  
Anthony F. Ambrose  
Public Safety Director

AFAIBO/jg

Attachment A - Stop Report (DPI:1388)

Attachment B - Consent to Search Form (DPI:1493-IOM)

<b>GENERAL</b>	SECTOR	LOCATION	DATE	TIME START	TIME END	CC#	EVENT#	
	<input type="checkbox"/> ISSUED WARNING <input type="checkbox"/> ISSUED SUMMONS <input type="checkbox"/> ARRESTED		NAME (LAST, FIRST, MIDDLE) 0		PRESENTED VALID IDENTIFICATION		ALIAS(ES)	
	ADDRESS		APT/FLR	CITY	STATE	ZIPCODE	CELL PHONE#	HOME PHONE#
	SS#	DL#	DL STATE	D.O.B.	OCCUPATION OR	UNEMPLOYED		<input type="checkbox"/> INDIVIDUAL ISA STUDENT
								<b>SELECT SCHOOL</b>

MUST BE COMPLETED

<b>INQUIRY INFORMATION</b>	INDIVIDUAL MATCHED: <input type="checkbox"/>	GENERAL BROADCAST <input type="checkbox"/>	BULLETIN/ FLYER <input type="checkbox"/>	TELETYPE <input type="checkbox"/>	DESCRIBE OTHER ALERT	REASON FOR INQUIRY	
	<b>CITIZEN CONTACT</b>						
	DESCRIBE REASONABLE SUSPICION FOR THE STOP:						
	<input type="checkbox"/> WARRANT CHECK CONDUCTED         RESULTS OF WARRANT CHECK OR REASON FOR NOT CONDUCTING WARRANT CHECK						
	NAME OF PERSON CONDUCTING WARRANT CHECK		ID#	COMMAND	SBI # - <input type="checkbox"/> NONE FOUND		

INDICATE THE NUMBER OF PERSONS IN COMPANY OF SUBJECT:						
NAME(S) OF PERSON(S) IN COMPANY OF SUBJECT LAST NAME, FIRST NAME, MIDDLE NAME	D.O.B.	AGE	ADDRESS, CITY, STATE, ZIP			F.I.
						<input type="checkbox"/>
						<input type="checkbox"/>
						<input type="checkbox"/>
						<input type="checkbox"/>

MUST BE COMPLETED

<b>FRISK / SEARCH</b>	INDIVIDUAL:	IF YES, SELECT REASON FRISKED:	IF YES, EXPLAIN HOW YOUR SAFETY WAS AT RISK:
	<input type="checkbox"/> - WAS FRISKED	N/A	
	INDIVIDUAL:	IF YES, SELECT REASON SEARCHED:	WHAT AREAS WERE SEARCHED?
	<input type="checkbox"/> - WAS SEARCHED	N/A	
VEHICLE SEARCHED?	IF YES, SELECT REASON:	WHAT AREAS WERE SEARCHED?	
<input type="checkbox"/> - YES <input type="checkbox"/> - NO <input type="checkbox"/> - N/A	N/A		
EVIDENCE/CONTRABAND FOUND?	IF YES, SELECT TYPE FOUND:		
<input type="checkbox"/> - YES <input type="checkbox"/> - NO	N/A		

MUST BE COMPLETED

<b>VEHICLE</b>	VEHICLE MATCHED: <input type="checkbox"/>	GENERAL BROADCAST <input type="checkbox"/>	BULLETIN / FLYER <input type="checkbox"/>	TELETYPE <input type="checkbox"/>	DESCRIBE OTHER ALERT:		
	REASON FOR MOTOR VEHICLE STOP:						
	N/A						
	<input type="checkbox"/> VEHICLE INVOLVED IN CRIMINAL ACTIVITY FULLY DESCRIBE SUSPECTED CRIME:						
	YEAR	MAKE	MODEL	TYPE	COLOR	PLATE	STATE

VEHICLE IDENTIFICATION NUMBER	DISTINGUISHING CHARACTERISTICS			
REGISTERED OWNER	ADDRESS	CITY	STATE	ZIPCODE

OUTSIDE AGENCY OFFICER INVOLVED	RANK	ID#	AGENCY	REASON PRESENT?		
REPORT SUBMITTED BY:	RANK	ID#	GENDER	RACE	COMMAND	DATE & TIME COMPLETED
			M	A		
SUPERIOR APPROVING REPORT	RANK	ID#				DATE & TIME COMPLETED



**NEWARK POLICE DIVISION****GENERAL ORDER**

<b>SUBJECT:</b> Arrests With or Without an Arrest Warrant	<b>GENERAL ORDER NO.</b> 18-16
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<b>SUPERCEDES:</b> New	<b>DATED:</b> 12/31/2018	<b>SECTION CODE:</b>
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**Related policies:**

General Order 17-06 "Bias-Free Policing"

General Order 14-16 "Stationhouse Adjustments"

New Jersey Attorney General Law Enforcement Directive No. 2008-2 "Attorney General Guidelines for Stationhouse Adjustment of Juvenile Delinquency Offenses"

General Order 87-03 "Administrative Reporting Unusual Events"

This Order contains the following numbered Sections:

- I. PURPOSE**
- II. POLICY**
- III. RESPONSIBILITY FOR COMPLIANCE**
- IV. DEFINITIONS**
- V. PROHIBITED ACTIONS**
- VI. PROBABLE CAUSE**
- VII. INVESTIGATIVE STOP/DETENTION CONVERTED INTO ARREST/ DEFACTO ARREST**
- VIII. ARRESTS WITH AN ARREST WARRANT**
- IX. ARRESTS WITHOUT AN ARREST WARRANT**
- X. ENTRY INTO A STRUCURE TO EFFECT AN ARREST**
- XI. ARRESTPROCEDURES**
- XII. VOIDING ARRESTS**

# NEWARK POLICE DIVISION

## GENERAL ORDER

### **XIII. SUPERVISOR RESPONSIBILITIES**

### **XIV. ADMINISTRATIVE REVIEW**

### **XV. TRAINING**

### **XVI. EFFECT OF THIS ORDER**

#### **I. PURPOSE**

The purpose of this General Order is to ensure that officers of the Newark Police Division engage in lawful practices when conducting arrests during their official duties. Officers are guided by this order when making an arrest, with or without an arrest warrant. Officers who effect an improper arrest are subject to discipline, including termination, civil liability, and/or criminal prosecution.

The Newark Police Division are invested in their communities and therefore the Newark Police Division will not tolerate arrests prefaced upon discrimination against any demographic category. The Newark Police Division will hold all officers accountable for when they are found to be operating outside of the confines of the law in order to ensure community members' rights are not violated.

#### **II. POLICY**

It is the policy of the Newark Police Division to conduct all arrests in accordance with both the U.S. Constitution, and Article 1, Paragraph 7 of the New Jersey Constitution, as well as federal, and state law. Arrests are lawful to the extent they meet the requirements of the Fourth Amendment to the Constitution, which safeguards "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Separate from the United States Constitution, arrests must comply with the New Jersey State Constitution that provides in Article 1, Paragraph 7: "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized."

Arrests must be supported by probable cause to believe that the person has committed, is about to commit, or is in the process of committing a crime.

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Officers shall not consider age, race, ethnicity, national origin, gender, gender identity, language ability, disability, political belief, sexual orientation, immigration status, economic status, or housing status in effecting an arrest, except as part of a credible description of a specific suspect or suspects in any investigation into a violation of the law, and then only in combination with other detailed descriptors. Such conduct constitutes biased-based policing. Aside from being unlawful, biased-based policing violates Newark Police General Order 17-06.

Officers should realize that arresting a person is an interference with a person's liberty that can be humiliating, embarrassing or demeaning and that officers shall therefore make all reasonable efforts, that do not compromise officer safety, to conduct the arrest of a person with respect, dignity, courtesy and in a professional manner.

Arrests of minors can have lifelong effects on the arrestee. Officers will examine the possibility of using "Stationhouse Adjustments" as an alternative to effecting the arrest of a minor. Officers are guided by General Order# 14-16 "Stationhouse Adjustments" and the New Jersey Attorney General Law Enforcement Directive No. 2008-2 "Attorney General Guidelines for Stationhouse Adjustment of Juvenile Delinquency Offenses" in utilizing Stationhouse Adjustments when applicable.

### III. RESPONSIBILITY FOR COMPLIANCE

All Division members shall be responsible for complying with this policy. Command and Supervisory Officers will review, understand and comply with this policy and shall also ensure that all subordinate personnel read and acknowledge understanding of this directive.

### IV. DEFINITIONS

- A. Arrest** - the exercise of control or custody over a person by restricting that person's liberty of movement for a significant period of time. Arrests can be made "actually" or "constructively." Actual arrests take place when an officer has physically restrained a person's ability to leave. Constructive arrests occur when an officer's words or actions prevent a person from leaving. All arrests must be based upon probable cause.
- B. Bias-Based Policing** - The differential treatment of any person by members motivated by the specific characteristics, perceived or actual, of that person. This conduct is specifically prohibited. (See Newark Police General Order 17-06 Bias-Free Policing for more information).
- C. Blue Team** - A computer application extension of I/A-Pro. The application allows users to enter collected data from incidents, such as police pursuits, citizen contacts or stops, events where force is used, complaints on police, police-involved accidents, and administration of discipline to facilitate a complete capture of activities and allow for tracking.
- D. Conclusory** - A statement (oral or written) that contains a conclusion without providing the specific facts that explain or justify how the conclusion was reached.

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- E. Demographic Category** - A shared common characteristic of a population, including but not limited to, age, race, ethnicity, national origin, gender, gender identity, language ability, disability, political belief, sexual orientation, immigration status, economic status, or housing status.
- F. Exigent Circumstances** - A compelling urgency or true emergency that a member can specifically describe not using vague terms or boilerplate language. Circumstances that cause a reasonable person to believe that prompt action is necessary can be an immediate threat to public safety, an active attempt by a suspect to destroy evidence of a crime or escape, or in instances of community caretaking.
- G. Investigatory Stop / Detention** - A seizure of a person for investigative purposes. This seizure occurs when a police officer stops a citizen from moving about freely, by means of physical force or show of authority, in order to investigate a matter. The seizure may also occur if an officer uses words, actions or demeanor that would make a reasonable person believe that he or she is not free to leave. Stops of this manner need to be based on reasonable and articulable suspicion that a violation of law has just occurred, is occurring or is about to occur. An investigatory stop can come in different forms (i.e. pedestrian, motor vehicle, bicycle, etc.). Also known as a "Terry Stop."
- H. Pro Forma** - A standard use of wording, document or form used to justify an action that does not tie to the underlying events.
- I. Probable Cause** - Specific, and articulable facts to permit a reasonable person to believe that a subject committed a violation of the law or that evidence of a crime would be found in a search. Probable cause is a higher standard of evidence than having reasonable suspicion, but is less than the beyond a reasonable doubt standard needed for conviction. Probable cause is a practical, non-technical probability.
- J. Reasonable Suspicion** - Specific, and articulable facts that, within the totality of the circumstances, would lead an officer to reasonably believe that a person has, is in the process of, or is about to engage in criminal activity. A person's mere presence in an identified high crime neighborhood or area taken alone, does not rise to the level of reasonable suspicion. Reasonable suspicion is a lower standard than probable cause.

### V. PROHIBITED ACTIONS

Newark Police Officers are prohibited from:

- A.** Arresting an individual unless the officer has probable cause to do so;
- B.** Considering a subject's demographic category to justify an arrest or seek an arrest warrant, except that officers may rely on a demographic category in a specific suspect description where the description is from a trustworthy source that is relevant to the locality and time, (e.g. from a victim or a witness) and then only in combination with other detailed descriptors;

# NEWARK POLICE DIVISION GENERAL ORDER

- C. Using pro forma or conclusory language, such as wording that makes claims without supporting evidence, or has little true meaning or importance. All supporting details, which combined add up to probable cause, shall be clearly documented for all arrests. Examples of pro forma or conclusory language are "the suspect was frisked for officer safety" or "the suspect was detained based upon reasonable suspicion";
- D. Relying on information known to be materially false or incorrect to justify an arrest or seek an arrest warrant;
- E. Basing an arrest solely on information or evidence discovered after the arrest was executed;
- F. Basing an arrest solely on an individual's presence with or near other people suspected of criminal activity;
- G. Detaining, arresting, using force against, or threatening to detain, arrest or use force against individuals in response to activity protected by the First Amendment, including verbal criticism, questioning police actions, or gestures that do not give rise to reasonable fear of harm to officers or others; and
- H. Detaining, prolonging the detention of, arresting, using force against or threatening to detain, prolong the detention of, arrest, or use of force against an individual for remaining in the proximity of, recording or verbally commenting on officer conduct unless it violates the law, incites others to violate the law or refuses to comply with an officer's lawful order to observe or record from an alternate location because the bystander's presence would jeopardize a crime scene or the safety of an officer, the suspect or others.

## VI. PROBABLE CAUSE

- A. All arrests will be made in accordance with the Fourth Amendment of the United States Constitution, which provides:

"The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the places to be searched, and the persons or things to be seized."
- B. Although the word "arrest" does not appear in the Fourth Amendment to the United States Constitution, courts have consistently equated "arrest" with "seizure." The United States Supreme Court has stated: "it is the command of the Fourth Amendment that no warrants either for searches or arrests shall issue except upon probable cause."

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- C. All arrests also must be made in accordance with Article 1, Paragraph 7 of the New Jersey State Constitution which states: "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized."
- D. Probable cause may be obtained by collecting facts of sufficient quantity and quality to determine that there is a well-grounded suspicion that an individual has committed a crime, is about to commit a crime, or is in the process of committing a crime.
1. Vague hunches or suspicions are not enough.
  2. A well-grounded suspicion must be supported by articulable facts.
  3. An officer's training and experience can be **one factor** that can support probable cause.
- E. Before making the arrest, the officer must be able to articulate the facts forming the basis for probable cause.
- F. The actions of an arrestee, words expressed by an arrestee, or evidence obtained after the arrest cannot form the original basis for probable cause, although these actions or words may be used to support the arrest in later reports.
- G. Officers have established probable cause when they can point to a sufficient number of facts that could convince a neutral and detached magistrate that it is reasonable to believe, that there is a fair probability, the person under arrest has committed or is committing an offense.
- H. There is no limit to the types of information that can be used to support probable cause, but the information must be credible, not be vague, and must be able to be documented. Officers can rely upon:
1. observed facts **surrounding a specific incident**, such as but not limited to the behavior, appearance and location of the suspect, or the suspect's height and weight.
  2. familiarity with the suspect, such as but not limited to, knowledge of the suspect's prior record, or prior observation and contacts with the suspect.
  3. reports from others, such as but not limited to, accounts given by witnesses or reliable informants.
- I. Multiple sources of information can lead to a determination of probable cause, but some may require corroboration by other facts if they are to be given due consideration; the information will be judged on the totality of the circumstances.

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- J. Each additional piece of incriminating evidence that an officer can point to increases the officer's ability to obtain reasonable suspicion and probable cause. When basing reasonable suspicion and probable cause on the totality of the circumstances, the whole is greater than the sum of its parts.

### VII. INVESTIGATIVE STOP/DETENTION CONVERTED INTO ARREST (*DE FACTO* ARREST)

There is no "bright line" test to determine when an investigative stop becomes *ade facto* arrest, however *ade facto* arrest occurs when the officer's conduct is more intrusive than necessary for an investigative stop. (*State v. Dickey*, 152 N.J. 468, 478, 706, A.2d 180, 185 (1998)). **Courts may consider, several factors** to determine whether an investigative stop / detention has elevated into an arrest, defined by the Fourth Amendment and Article 1, Paragraph 7 of the New Jersey State Constitution, **including, but not limited to:**

- A. Whether contact with the police was consensual or non-consensual;
- B. The basis for an investigative stop and whether the officer had reasonable **and** articulable suspicion to believe a criminal offense had occurred, including the grounds for that belief;
- C. The duration of the encounter;
- D. The investigative methods employed to confirm or dispel suspicions;
- E. Whether the officer informed the person that he or she is the subject of an investigation;
- F. Whether the officer informed the person that he or she is not free to leave;
- G. Whether the officer blocked the person's path or impeded their progress;
- H. Whether police weapons were displayed or officers used force in any other way to threaten a person;
- I. The number of police personnel on the scene and their demeanor;
- J. The location of the encounter; whether it occurred in a public or private space;
- K. The level to which the officer controlled the individual, physically or constructively;
- L. Whether the person was moved to another location without their consent, how far the person was moved, and/or the reason for moving them;
- M. Whether the person was free to choose between continuing or ending the encounter with the police;  
and
- N. Whether the person was handcuffed or confined in a police vehicle.

# NEWARK POLICE DIVISION GENERAL ORDER

## VIII. ARREST WITH AN ARREST WARRANT

- A. An arrest warrant is a court order directing officers to bring a certain person in front of the court to answer to charges. Officers have an obligation, not an option, to effect arrest warrants (*NJ Court Rufe 3:2-3*).

It is preferable to obtain a warrant before arresting any individual when the circumstances allow it. Courts favor that officers seek arrest warrants when possible because, as the United States Supreme Court explained (in *Steagald v. United States*, 451 US. 204, 212 (1981)), they prefer to have "a neutral judicial officer assess whether the police have probable cause."

- B. Arrest warrants require that an officer is able to articulate probable cause to believe that a person has committed or intends to commit a crime and that an impartial magistrate or judge who hears the facts relied on by the officer agrees and affirms that probable cause exists. The arrest warrant serves to protect individuals from unreasonable seizures.
- C. Whenever an officer possesses an arrest warrant for an individual, the officer has the right to serve the warrant anywhere in this state. The officer who established the probable cause necessary to obtain an arrest warrant need not be the actual arresting officer. Any officer who discovers a person has a valid arrest warrant is compelled to bring that person to court to answer to the charges.
- D. Arrest warrants are issued for offenses for which probable cause is established and are unique to an individual. Thus, before arresting someone based on an arrest warrant officers must:
1. Make sure the warrant is valid on its face. They may not ignore information that reasonably indicates the warrant was invalid because it has been executed or recalled, or because probable cause no longer existed to support the charges contained in the arrest warrant;
- AND
2. Attempt to ensure the person in front of them is the person the arrest warrant was issued for.

## IX. ARRESTS WITHOUT AN ARREST WARRANT

- A. The United States Constitution permits an officer to arrest a person in any public place without a warrant if there is probable cause to believe that the person has committed or is committing a criminal offense.
1. The Fourth Amendment permits such warrantless criminal arrests even if the officer had sufficient time to obtain an arrest warrant. (*United States v. Watson* (1976) 423 US. 411, 423 (1976))

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2. New Jersey strictly follows the common law of arrest that allows a police officer to effect a warrantless arrest upon probable cause that a crime has been or is being committed by the person being arrested.
  3. New Jersey law grants municipal police officers the authority to effect an arrest anywhere in the state for a crime that is committed in his or her presence. N.J.S.A. 40A:14-152.1 provides: "Notwithstanding the provisions of N.J.S.A. 40A:14-152 or any other law to the contrary, any full-time, permanently appointed municipal police officer shall have full power of arrest for any crime committed in said officer's presence and committed anywhere in the territorial limits of the State of New Jersey."
- B.** When dealing with disorderly persons and petty disorderly persons offenses, state statute (N.J.S.A. 2A:169-3) provides: "[w]henever an offense is committed in his presence, any constable or police officer shall, and any other person may, apprehend without warrant or process any disorderly person and take him before any magistrate of the county where apprehended."
1. This statute clearly dictates that in order for a police officer to effect a warrantless arrest of a **disorderly person**, the offense must be committed in the officer's presence.
    - a. In *State of New Jersey v. Morse* 54 NJ 32(1969), 252 A.2d.723, the New Jersey Supreme Court held that a defendant's admission to a police officer of the facts that establish the alleged offense satisfied the requirement that the officer knew of the event by use of his senses.
  2. State statutes also permit a police officer to effect the warrantless arrest of a person who the officer has probable cause to believe has committed certain specific disorderly or petty disorderly persons offenses, even though the offense did not take place in the officer's presence. The offenses are:
    - a. Shoplifting-- N.J.S.A. 2C:20-11e
    - b. Theft of Library Materials -- N.J.S.A. 2C:20-14b
    - c. Domestic Violence -- N.J.S.A. 2C:25-21
    - d. Driving While Intoxicated -- N.J.S.A. 39:5-25
- C.** With respect to **municipal ordinance violations**, N.J.S. 40A:14-152 states: "The officers of a police department and force, within the territorial limits of the municipality, shall have all the powers of peace officers and upon view may apprehend and arrest any disorderly person or any person committing a breach of the peace."

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This statute imposes two requirements before an officer may arrest:

1. The offense must have occurred "upon view" of the officer

**AND**

2. There must be a "breach of the peace."

### **X. ENTRY OF STRUCTURE TO EFFECT AN ARREST**

- A.** There are several types of court orders that authorize police to enter an arrestee's primary residence to effect an arrest:

1. Parole or Probation Warrant;
2. Grand Jury indictment Warrant;
3. Bench Warrant for failure to appear;
4. Arrest Warrant; or
5. Search Warrant;

- B.** Officers can enter a structure with the purpose of executing an arrest warrant if:

1. The police have reason to believe that the place they wish to enter is one of the arrestee's primary residences (it cannot merely be a place where the arrestee occasionally stays) and the police reasonably believe the subject of the arrest warrant is inside. (*Payton v. New York*, 445 US. 573, 603 (1980)) **or**
2. Consent is obtained by officers from a person with authority over the third-party residence.

- C.** Officers can enter any structure to effect the arrest of someone who has committed an indictable offense without an arrest or search warrant if exigent circumstances exist. Examples of exigent circumstances include:

1. **Hot pursuit** - This means that an officer has probable cause to arrest a suspect and the pursuit of the fleeing felon (for an indictable offense) was set in motion in a public place.
2. **Threat to Public Safety** - This is a situation where officers have probable cause to arrest a suspect because (a) the suspect is reasonably believed to be armed or dangerous, (b) the suspect is inside a structure, (c) the suspect has injured or threatened to injure themselves or others; and (d) the suspect has refused to surrender to authorities or is in the process of causing bodily harm to someone. (*Ryburn v. Huff*, 132 S.Ct. 987 (2012))

# NEWARK POLICE DIVISION GENERAL ORDER

3. **Destruction of Evidence** - Officers are authorized to enter a structure to effect an arrest, absent any type of warrant, if there is a serious threat that incriminating evidence on the premises being entered would be destroyed if officers take the time to obtain a search warrant and/or arrest warrant.

- To justify this type of entry to arrest, officers must have probable cause to believe that if the police took the time to obtain a search and/or arrest warrant: (i) there is evidence that can be destroyed on the premises, (ii) the offense being investigated must carry a potential jail sentence, and (iii) officers must have reason to believe that the suspect or someone else on the premises would attempt to destroy evidence, or undermine its value in court.

**D.** Third-party residences require consent or a search warrant to enter in order to effect an arrest. Consent can only be given if it is given freely knowingly and intelligently from a person who is authorized to give it. Giving consent freely means that it was given absent pressure, promises, threats, or other form of coercion by the police. Giving consent knowingly and intelligently means that while requesting consent, officers must make known their true intentions.

## XI. ARREST PROCEDURES

- A.** To effect any arrest, officers must identify themselves as police officers and clearly advise the subject to be arrested that he or she is under arrest.
1. Officers dressed in uniform effecting an arrest do not need to verbally identify themselves if it is plainly evident to a reasonable person that they are members of the police department.
  2. Non-uniformed officers **must** verbally identify themselves as police officers and exhibit their department-issued identification and badge as evidence of their authority.
- B.** During arrests, officers should keep in mind and utilize de-escalation techniques during all situations where appropriate.
- C.** As soon as practicable, officers shall inform the arrestee of the reason for the arrest. If a situation arises where the safety of officers or the public is an issue, the person to be arrested does not need to be advised of the reason for arrest until the safety of all is no longer in jeopardy.
- D.** Officers shall advise subjects of their Miranda Rights at the time of arrest or before any custodial interrogation.
- E.** After effecting an arrest, officers shall immediately notify central communications of the arrest. In most situations it is preferable that this notification be made over police radio.

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- F.** If the arrestee has a visible injury or complains of pain, the officer will immediately request, over the police radio or otherwise, medical assistance from an appropriate Emergency Medical Service ("EMS") for evaluation. Upon evaluation by a medical professional, if warranted, the arrestee will be transported to a proper medical facility to receive further treatment or appropriate evaluation.
- G.** An officer will notify a Supervisor and request their presence immediately after effecting an arrest:
- where the officer used force;
  - where an officer unholstered or pointed a firearm in response to a perceived human threat;
  - for obstructing the administration of law;
  - for resisting arrest;
  - for disorderly conduct;
  - for a violation where there is a breach of the peace; or
  - for a motor vehicle infraction.
    - o Although N.J.S.A. 39:5-25 authorizes arrests for motor vehicle violations, custodial arrests for motor vehicle violations are limited to only serious infractions (*State v. Pierce*, 136 N.J. 184 (1994)).
- H.** An arrestee shall be secured with handcuffs behind their back, unless a physical or medical condition precludes it, at the earliest practical opportunity. When faced with an unusual situation that makes it unfeasible or impossible to employ accepted handcuffing practices, officers should rely on common sense and good judgment to determine the most practical means for securing the individual.
- I.** The arrestee will be transported to the processing facility dictated by Newark Police Division orders without unnecessary delay so the arrestee may be processed.
- J.** A Preliminary Arrest Report, (DPI:2036), will be executed prior to escorting an arrestee into a police building for processing, unless exigent circumstances prevent the officer from doing so.
- K.** All reports relating to lawful arrests will be executed and submitted to the appropriate supervisor for review. An additional entry into Blue Team, or other authorized database, is required if force is used during an arrest.
- L.** Officers are required to make all reasonable efforts to safely secure all arrestees in NPD transport vehicles.

## XII. VOIDING ARRESTS

If an arrest is made by an officer and, while still in the field, it is determined by further investigation that the person arrested did not commit the offense in question or the probable cause standard cannot be met, the officer's Supervisor shall be notified of the circumstances. The officer will advise their Supervisor of the circumstance that led to the arrest and the circumstances that dictate voiding the arrest. The Supervisor will evaluate the totality of the circumstances and if warranted, authorize the immediate release of the arrestee.

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If an officer's immediate Field Supervisor is not available, officers will exhaust all other measures to contact another Supervisor from their command to make the determination. If a Supervisor from the officer's command is not able to be reached, the officer continues to pursue all other logical means to obtain input of an on-duty Newark Police Division Supervisor for final determination.

As a final and last resort, if no Newark Police Division Supervisor is available to make the determination and the officer has reason to believe that the probable cause which initially existed to make the arrest no longer exists, the officer will immediately release the arrestee.

If the person has already been lodged in the precinct and good cause for voiding an arrest is discovered, the Desk Supervisor shall be notified of all the circumstances leading to the arrest, and the circumstances that dictate voiding the arrest and, if warranted, authorize the immediate release of the arrestee. The Desk Supervisor shall then enter all pertinent information into the desk blotter and notify the Communications Division, *refer to General Order 87-03 Administrative Reporting Unusual Events*.

**If** it is determined that the arrest shall be voided, the arrestee shall be released immediately.

If a Central Arrest number has been issued, the Desk Supervisor shall notify the Communications Division and the command responsible for distributing Central Arrest number that the Central Arrest Number has been voided. The Communications Division and the command responsible for distributing Central Arrest numbers shall indicate in their blotter that the Central Arrest has been voided and the Division member who authorized voiding the arrest.

In all instances the arresting officer shall document the entire incident on an Incident Report (DPI:802), indicating everything learned in a clearly explained chronological order of events. The report will include the probable cause that was initially believed to authorize the arrest, and the circumstances of the investigation that led to the probable cause being debunked.

In all cases where another officer or a Supervisor makes the arresting officer aware that probable cause does not exist, or no longer exists, the Desk Supervisor shall immediately explain to the arresting officer why the arrest was not valid. This shall be documented by the arresting officer(s) *via* an Administrative Report (DP1:1001) and will require that the officer(s) receive formal training in the near future. The training provided will be relevant to the subject matter in which the officer was found to be deficient.

### XIII. SUPERVISOR RESPONSIBILITIES

#### A. Field Supervisors

1. Field Supervisors will respond to the incident scene, absent exceptional circumstances, to approve arrests made by officers:

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- where the officer used force;

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- where an officer unholstered or pointed a firearm in response to a perceived human threat;
  - for obstructing the administration of law;
  - for resisting arrest;
  - for disorderly conduct;
  - for a violation where there is a breach of the peace;
  - for a custodial arrest for a motor vehicle infraction
2. If the officer's immediate Supervisor is unable to respond to the scene to approve the arrest, the officer will notify the Central Communications Unit. The Central Communications Unit will attempt to locate another available supervisor from the field to respond to the incident scene for arrest approval.
  3. If a Field Supervisor is unable to respond to the incident scene, the Supervisor who is unable to respond will document the circumstances preventing his or her presence in the case file. This documentation can be done by executing an Administrative Report (D.P.I. 1001) under the specific event number and/or central complaint number in the Records Management System for the incident.
  4. The Field Supervisor will approve or disapprove the officer's arrest recommendation, based on existence of justifiable probable cause and NPD policy.
  5. The Field Supervisor will take appropriate actions to address a violation or deficiencies in the officer's arrest recommendation, including:
    - immediately releasing the subject;
    - recommending non-disciplinary corrective action for the involved officer and/or;
    - referring the incident for administrative or criminal investigation.
- B. Desk Supervisor Receiving Arrestee (MAPS Supervisor/Desk Supervisor/Watch Commander)

Upon the arrestee entering the police-processing facility, the Desk Supervisor will be responsible for:

- visually inspecting each arrested person for injury;
- ask the arrestee if he or she has complaints of pain;
- ensuring that the arrestee receives medical attention from an appropriate medical provider, if necessary;
- documenting the results of the visual inspection in the desk blotter;
- reviewing all officer reports for completeness and the proper documentation of the necessary probable cause for arrests;

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- reviewing all officer reports to ensure that officers are not using *pro forma* or conclusory statements;
- reviewing all officer reports for information that is not current, authentic or correct;
- reviewing the available video and written documentation of consent prior to approving an arrest based on evidence obtained via a consent search;
- For every search or arrest involving the recovery of contraband evidence, the arresting officer's Desk Lieutenant or Unit Commander will review the circumstances of the encounter, including video from body-worn cameras alongside the corresponding Incident Report (DPI:802), to assess the appropriateness of the seizure. The Supervisor will memorialize that review in writing and will include an assessment of the circumstances under which the search was conducted, the evidence was recovered and/or the probable cause for the arrest was ascertained.
- On an on-going basis, Supervisors will also review a random selection of video recordings of stops and detentions, searches and arrests amounting to a minimum of 10 percent of all stops and detentions, searches, and arrests.
- Upon reviewing videos of investigatory stops and detentions, searches, and arrests, Supervisors shall submit an administrative report (DPI:1001) filed under the event number for the corresponding video reviewed by the end of their tour of duty, listing:
  - o The event number;
  - o The name(s) of the officer(s) who recorded the video(s) and type of video they recorded (e.g. body worn camera video, in-car video, or both);
  - o The reason for reviewing the video (e.g. random review, recovery of contraband, stop, search, detention, arrest, suspected non-compliance with NPD policy or law);
- approving or disapproving the officer's arrest recommendation, based on existence of justifiable probable cause and NPD policy; and
- taking appropriate actions to address violation or deficiencies in the officer's arrest recommendation, including:
  - o releasing the subject;
  - o recommending non-disciplinary corrective action for the involved officer; or
  - o referring the incident for administrative or criminal investigation.

### C. Unit Commander

1. The Unit Commander, or their Supervisor Designee, will review each arrest report by officers under their command and will memorialize the review in writing within 24 hours of the arrest absent exceptional circumstances. The deadline for review will be extended for an objectively reasonable amount of time dictated by the initial reason(s) for delay.
2. The Unit Commander will review reports and forms for deficiencies including:
  - *pro forma* or conclusory language;

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- inconsistent information;
  - insufficient articulation of the factual and/or legal basis for the police action;
  - any indications that the information in the reports or forms is not correct or complete;
  - arrests following stops based solely on information or evidence discovered after the stop was initiated (e.g., open warrants);
  - arrests made without plausible justification for the initial stop or search; and
  - arrests that are unsupported by probable cause, or are otherwise in violation of federal or state law, or NPD policy.
3. The Unit Commander will document for review by their chain of command:
- investigatory stops and detentions that appear unsupported by reasonable and articulable suspicion, or that are otherwise in violation of NPD policy;
  - searches that appear to be without legal justification or are in violation of NPD policy; and
  - stops or searches that, while comporting with law and policy, indicate a need for corrective action or review of agency policy, strategy, tactics or training to support effective and legitimate policing principles.
4. For every search or arrest involving the recovery of contraband evidence, the Desk Lieutenant or Unit Commander will review the circumstances of the encounter, including video from body-worn cameras, to assess the appropriateness of the seizure. The Supervisor will memorialize that review in writing and will include an assessment of the circumstances under which the search was conducted, the evidence was recovered and/or the probable cause for the arrest was ascertained.

### D. Command-Level Supervisors

Within seven days, a Command-Rank Officer will confirm in writing that he or she has reviewed any stop or detention, search, and arrest that another Supervisor determined:

- was not supported by probable cause;
- was in violation of Newark Police Division policy;
- a possible need for corrective action; and

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- a possible need for review of agency policy, strategy, tactics or training.

The Commander will evaluate the Supervisor's assessment and recommendations and take all appropriate corrective actions, including referring the incident to the Office of Professional Standards for investigation, if warranted.

The Commander also will take appropriate corrective or disciplinary action against Supervisors who fail to conduct complete, thorough and accurate reviews of officers' investigatory detentions, searches and arrests.

### E. All Police Supervisors

All police Supervisors will take appropriate actions to address all apparent violations or deficiencies in investigatory stops or detentions, searches and arrests. Appropriate actions may include recommending non-disciplinary corrective action for the involved officers, or referring the incident for administrative or criminal investigation.

Supervisors will document each violation or deficiency and any corrective action taken in the officer's performance evaluations and in Blue Team, which will provide data for the Newark Police Division's Early Warning System to identify officers needing repeated corrective action.

## XIV. ADMINISTRATIVE REVIEW

The Commander of the Professional Standards Unit, or his/her designee, will conduct **cumulative** and **quarterly** demographic analyses of the enforcement activities of Newark Police Division members to ensure that the tenants of this General Order are implemented and adequately monitored.

The Commander of Professional Standards Unit, or his/her designee, will identify and evaluate trends, outliers, or other relevant indicators. This data will be analyzed and weighed based on the type of enforcement activities, member unit or assignment, demographics of subjects, shift or time of day, force used and resistance encountered, and peer comparisons.

This data shall be based on accurate, complete and reliable information, including but not limited to:

- a) Misconduct complaints;
- b) Stop, detention and arrest data;
- c) Use of force analysis; and
- d) Enforcement practices based on community input.

Members, including Supervisors, found to have violated this Order will be subject to disciplinary action

(including counseling, mediation, training, group counseling, and including test results)  
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## XV. TRAINING

Newark Police Divisionshall provide training on this topic to all new recruits and current members of the Newark Police Division.

Newark Police Division will ensure that all members receive, at a minimum, an initial sixteen (16) hours of comprehensive and interdisciplinary instruction on stops, searches and arrests, which includes voluntary police-citizen contacts and investigatory stops.

Thereafter, a minimum offour (4) hours oftraining shall be given **annually**. Training will include:

- A. the requirements of Fourth Amendment, the New Jersey Constitution, and related law and NPD policies regarding investigatory stops and detentions, searches and seizures;
- B. the differences among the scope and degree of intrusion ofvarious police contacts; between probable cause, reasonable suspicion and mere speculation; and between voluntary consent and mere deference to police authority; and
- C. the effect that differing approaches to stops, searches, and arrests can have on c01mnunity perceptions of police legitimacy and public safety.

## XVI. EFFECT OF THIS ORDER

This Order is effective immediately upon promulgation. Any previous Orders, Memoranda, Directives, or portions thereof that conflict with this Orderare hereby rescinded.

**BYORD**

  
**Anthony F. Ambrose**  
**Public Safety Director**

AFAIBO/jg

Attachment A- Preliminary Arrest Report (DPI:2036)

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**PRELIMINARY ARREST REPORT**

(PRINT CLEARLY)

ARRESTEE'S LAST NAME		FIRST	MIDDLE	TIME AND DATE OF ARREST		SECTOR	COMMAND	ARREST NO		
PRISONER'S ADDRESS			FLOOR	APT	ALIASES (OR MAIDEN NAME IF FEMALE)		OTHER AGENCY #	COMPLTNO		
ADDRESS ARRESTED		DATE OF BIRTH	PLAGE OF BIRTH	AGE	HEIGHT	WEIGHT	HAIR	EYES	COMPLEXION	
RAGE	SEX	O-HISPANIC	O-MARRIED	CLOTHING						
SOCIAL SEC NUMBER		DRIVERS LICENSE NO	STATE	VEHICLE REG. NO	F.B.I.#		S.B.I.#			
OCCUPATION	NAME OF EMPLOYER OR GOVERNMENT AGENCY			SCARS MARKS AND OTHER DESCRIPTIVE DATA						
TIME AND DATE OF OCCURRENCE		TYPE OF PREMISES		PLAGE OF OCCURRENCE			OCCURRED ON PUBLIC HOUSING PROPERTY? O-YES <input type="checkbox"/> -NO			
VICTIM OR COMPLAINANT'S NAME		1 VICTIM OR COMPLAINT'S ADDRESS			1 COMPLAINANTS TEL NO'S: HOME & BUSINESS					
EVENT#	ARRESTEE PROPERTY BAG #		MONEY IN ARRESTEE'S POSSESSION		DOM.VIOLENCE RELATED		STRANGER TO STRANGER CRIME O-YES O-NO O-YES O-NO O-UNKNOWN			
<b>USE THIS SECTION FOR COMMENTS/INSTRUCTIONS</b>										
<b>THIS SECTION TO BE COMPLETED BY THE ARRESTING OFFICER AND THE ON-DUTY ASSISTANT PROSECUTOR</b>										
PRELIMINARY CHARGE	CHARGE AUTHORIZED BY AP		SUMMONS WARRANT	PRELIMINARY CHARGE	CHARGE AUTHORIZED BY AP		SUMMONS WARRANT			
			0-S 0-W				0-S 0-W			
			0-S 0-W				0-S 0-W			
			0-S 0-W				<input type="checkbox"/> -s 0-W			
			0-S 0-W				0-S 0-W			
			<input type="checkbox"/> -s 0-W				0-S 0-W			
ASSISTANT PROSECUTOR'S NAME (PRINT)			ASSISTANT PROSECUTOR'S SIGNATURE			DATE&TIME				
ARRESTING OFFICER'S NAME		ARRESTING OFFICER'S SIGNATURE		ID#	RANK	UNIT#	COMMAND			
M.A.P.S. SUPERVISOR'S NAME		M.A.P.S. SUPERVISOR SIGNATURE		ID#	RANK		TIME ARRESTEE ARRIVED			
DNA COLLECTION REQUIRED <input type="checkbox"/>	DNA COLLECTED <input type="checkbox"/>	DNA PROFILE IN CODIS <input type="checkbox"/>	COLLECTED & ENTERED BY				ID#			
HOLDING SUPERVISOR'S NAME		HOLDING SUPERVISOR SIGNATURE		ID#	RANK		TIME ARRESTEE ARRIVED			
O-ORIGINAL-ARRESTING OFFICERS		O-1S COPY-MAPS		-2- COPY-LIVSCAN		O-3 COPY-INTAKE SUPERVISOR				

# Appendix E



# NEWARK POLICE DIVISION GENERAL ORDER



<b>SUBJECT:</b> <b>Protocol for Analyzing Stop, Search, and Arrest Data</b>	<b>GENERAL ORDER NO.</b> <b>21-04</b>
<b>SUPERCEDES:</b> <b>New</b>	<b>DATED:</b> <b>05/27/2021</b>

**Related Policies:**

- General Order 17-06 “Bias-Free Policing”
- General Order 18-14 “Consensual Citizen Contacts and Investigatory Stops”
- General Order 18-15 “Searches With or Without a Search Warrant”
- General Order 18-16 “Arrests With or Without an Arrest Warrant”

This Order contains the following numbered Sections:

- I. PURPOSE**
- II. POLICY**
- III. RESPONSIBILITY FOR COMPLIANCE**
- IV. PROSPECTIVE DATA POINTS TO BE EXAMINED**
- V. ANALYSES TO BE CONDUCTED**
- VI. ADMINISTRATIVE REVIEW OF ANALYSES OUTCOMES**
- VII. STOP, SEARCH, AND ARREST OUTCOME COMMITTEE**
- VIII. POLICY AND TRAINING RECOMMENDATIONS**
- IX. EFFECT OF THIS ORDER**



# NEWARK POLICE DIVISION GENERAL ORDER



## I. PURPOSE

The Newark Police Division will periodically analyze the information collected in police reports to determine (1) if disparities exist in the Division's stop, search, and arrest practices, and (2) whether any such disparities can be decreased or eliminated.

In addition, the analysis will attempt to determine which stop, search, and arrest practices are most effective and efficient, as well as which ones are the least effective and efficient, in order to increase public safety and promote police legitimacy within the Newark community. The Newark Police Division will use this information to eliminate or reduce practices that contribute to disparities to the greatest extent legally possible.

## II. POLICY

NPD will conduct all investigatory stops, searches, and arrests in accordance with the United States Constitution, the Constitution of the State of New Jersey, and federal and state law. NPD will conduct investigatory stops, searches, and arrests fairly and respectfully as part of an effective overall crime prevention strategy that is consistent with community priorities for enforcement.

The Newark Police Division will analyze stop, search, and arrest data **biannually** to determine if demographic disparities exist in its stop, search, and arrest practices, including the use of pretext stops and consent searches. The Newark Police Division will use this information to determine if any identified disparities can be decreased or eliminated through policy changes, training methods, field deployments, police practices, and/or modification of supervision.

The Newark Police Division will ensure that its stop, search, and arrest practices are effective and efficient, with the intent of increasing public safety and promoting police legitimacy.

## III. RESPONSIBILITY FOR COMPLIANCE

All Division personnel are responsible for complying with this Order. Supervisory and Command Officers shall ensure that subordinates are aware of, understand, and comply with this Order. Executive and Command Rank Officers shall be responsible for implementing, supervising, and monitoring modifications made to police strategies with the intent of reducing or eliminating identified disparities. All sworn officers will be subject to discipline for violating the contents of this Order.



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## IV. PROSPECTIVE DATA POINTS TO BE EXAMINED

### A. Event

1. Date
2. Time
3. Sector
4. Duration of encounter

### B. Subject

1. Apparent race/ethnicity/national origin
2. Apparent gender
3. Apparent age
4. Whether the subject was required to exit the vehicle (if a motor vehicle stop)

### C. Individual(s) in the company of the subject

1. Total number of individuals with the subject
2. Apparent race/ethnicity/national origin of each individual in the company of the subject
3. Apparent gender of each individual in the company of the subject
4. Apparent age of each individual in the company of the subject
5. If a motor vehicle stop, whether an individual in the company of the subject was required to exit the vehicle

### D. Reason for the interaction

1. Facts creating **reasonable suspicion** or **probable cause**
2. Whether the activity was prompted by a dispatched call or was an officer initiated police action.
3. Whether the interaction was a pretext stop

### E. Searches

1. Was consent to search requested?
2. Was consent to search granted?
  - Was contraband recovered as a result of the consent search?
  - What type of contraband was recovered as a result of the consent search?
3. Was a protective pat down conducted?
  - Was contraband recovered as a result of the protective pat down?
  - What type of contraband was recovered as a result of the protective pat down?



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4. Was a probable cause search conducted?
  - Was contraband recovered as a result of the probable cause search?
  - What type of contraband was recovered as a result of the probable cause search?

### F. Disposition

1. Was summons issued?
2. Was arrest made?
3. Was warning issued?

Dispositions will be further analyzed in relation to offense, charge, and violation data to help discover, detect and determine any stop, search and arrest disparities, best practices, and opportunities to enhance training. Particular focus will be given to events where an individual is charged with obstruction of the administration of law, resisting arrest, disorderly conduct, and aggravated assault on a police officer.

## V. ANALYSES TO BE CONDUCTED

The Supervisor assigned to the Technology Unit shall be responsible for ensuring the data necessary to conduct the analysis required by this General Order is collected, preserved, and provided to the Commander of the Consent Decree and Planning Division in electronic format.

The Commander of the Consent Decree and Planning Division, or their designee, shall ensure that the **biannual** analysis required by this General Order is conducted for the following data collection periods:

- May 1<sup>st</sup> through September 30<sup>th</sup> – Report to be published **no later** than October 31<sup>st</sup>
- October 1<sup>st</sup> through April 30<sup>th</sup> – Report to be published **no later** than May 31<sup>st</sup>

The analysis report will highlight any significant disparities. It shall also contain graphs and/or charts with numerical values depicting the following comparisons for the current period, as well as a comparison to the cumulative data collected during the previous twelve months:

### A. Stops Analysis

1. Aggregate data of stops analysis
  - Pedestrian
    - Compute the number of pedestrian stops categorized by gender, age, and race.
    - Compare by command assigned, precinct and sector of occurrence, common police work shifts, and stop disposition.



# NEWARK POLICE DIVISION GENERAL ORDER



- Motor Vehicle
    - Compute the number of motor vehicle stops categorized by gender, age, and race.
    - Compare by command assigned, precinct and sector of occurrence, common police work shifts, and stop disposition.
  - 2. Aggregate data of protective pat down analysis
    - Compute the number of protective pat downs categorized by gender, age, and race.
    - Compare by command assigned, precinct and sector of occurrence, common police work shifts, and discovery of contraband.
  - 3. Reasonable suspicion to stop audit
    - Conducted under the guidance of U.S. Government Accountability Office, Generally Accepted Government Auditing Standards (2018 Revision) with a sample size obtained using the one-tail test with a 95 percent confidence level and error rate of five percent
  - 4. Reasonable suspicion to conduct protective pat down audit
    - Conducted under the guidance of U.S. Government Accountability Office, Generally Accepted Government Auditing Standards (2018 Revision) with a sample size obtained using the one-tail test with a 95 percent confidence level and error rate of five percent
- B. Searches Analysis
- 1. Aggregate data of searches analysis
    - Compute the number of searches categorized by gender, age, and race.
    - Compare by command assigned, precinct and sector of occurrence, common police work shifts, and discovery of contraband.
  - 2. Probable cause to search audit
    - Conducted under the guidance of U.S. Government Accountability Office, Generally Accepted Government Auditing Standards (2018 Revision) with a sample size obtained using the one-tail test with a 95 percent confidence level and error rate of five percent



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## C. Arrests Analysis

1. Aggregate data of arrests analysis
  - Compute the number of arrests categorized by gender, age, and race.
  - Compare by command assigned, precinct and sector of occurrence, and common police work shifts.
2. Probable cause to arrest audit
  - Conducted under the guidance of U.S. Government Accountability Office, Generally Accepted Government Auditing Standards (2018 Revision) with a sample size obtained using the one-tail test with a 95 percent confidence level and error rate of five percent

## D. Consent to Search aggregate data analysis

- Compute the number of consents to search categorized by gender, age, and race.
- Compare by command assigned, precinct and sector of occurrence, common police work shifts, and discovery of contraband.

## E. Pretext Stops aggregate data analysis

- Compute the number of pretext categorized stops by gender, age, and race.
- Compare by command assigned, precinct and sector of occurrence, and common police work shifts.

## VI. ADMINISTRATIVE REVIEW OF ANALYSIS OUTCOMES

Upon completing the analyses contained in this General Order, the Commander of the Consent Decree and Planning Division shall provide the Public Safety Director and the Chief of Police with the report for review and approval.

Upon approval, the report shall be forwarded to the Comstat/UCR Unit, and all other Newark Police Division Command Rank Supervisors will be provided the finalized Analysis of Stop, Search, and Arrest Data Report.

A 30-calendar day review period will commence immediately following the issuance of the report. All Command Rank Supervisors shall scrupulously examine all relevant analyses, shall be prepared to discuss the contents during the subsequent Comstat meeting, and shall provide recommendations and strategies to eliminate or reduce any identified disparities within their commands, as well as throughout the Newark Police Division.



# NEWARK POLICE DIVISION GENERAL ORDER



Command Rank Supervisors shall attempt to determine which stop, search, and arrest practices are **most** effective and efficient. They shall also attempt to determine which stop, search and arrest practices are the **least** effective and efficient, in order to increase public safety and promote police legitimacy within the Newark community.

Command Rank Supervisors will use the analysis outcomes to **explore, modify, employ, or require police practices that focus on reducing or eliminating unwarranted disparities**, as well as **reduce, deemphasize, or abandon the use of police practices that may be creating unwarranted disparities** to the greatest extent legally possible.

Command Rank Supervisors shall explore the possibility that the existence of a disparity may be beyond the control of law enforcement (e.g., based on crime trends and community priorities for enforcement to which the Police Division may have been reacting during the time period analyzed.)

## VII. STOP, SEARCH, AND ARREST ANALYSIS OUTCOME COMMITTEE

The Public Safety Director, or his/her designee, shall incorporate the Analysis of Stop, Search, and Arrest Data Report in the Comstat meeting following the report review period. During this Comstat meeting, **all attendees** shall discuss the contents of the report and provide recommendations and strategies designed to reduce any identified disparities throughout the Newark Police Division.

The Public Safety Director, or his/her designee, shall delegate tasks, such as, but not limited to:

- Potential policy changes
- Additional or changes in training methods
- Modification of field deployment
- Changes in police practices
- Modification of supervision techniques

These measures will serve to further our efforts in reducing disparities, optimizing stop, searches, and arrests practices, and ultimately increasing public safety and police legitimacy.

Any outcomes stemming from this portion of the Comstat meeting shall be recapped during the following Comstat session, wherein the next Analysis of Stop, Search, and Arrest Data Report will be discussed. All modifications will be examined by Command Rank Supervisors to determine if the changes resulted in a decrease or elimination of any unintended demographic disparity.



# NEWARK POLICE DIVISION GENERAL ORDER



## VIII. POLICY AND TRAINING RECOMMENDATIONS

Modifications to General Orders, Memoranda, proscribed police practices, or the creation of pilot programs shall be made at the discretion of the Public Safety Director. The Commander of the Consent Decree and Planning Division shall modify existing General Orders, Memoranda, or proscribed police practices as ordered by the Public Safety Director.

Modifications to training schedules, required classes, class content, and examination of student feedback shall be the responsibility of the Commander of the Training Division, at the direction and approval of the Public Safety Director.

## IX. EFFECT OF THIS ORDER

All previous Orders and Memorandums which are inconsistent or in conflict with this Order are hereby repealed.

By Order of:

A handwritten signature in blue ink, appearing to read "BAO", written over a horizontal line.

**BRIAN A. O'HARA  
PUBLIC SAFETY DIRECTOR**

BAO/CM/MA:jg

# Appendix F

**Appendix F: List of Events Removed & Added to Sample**

<b>Search Audit: List of Events Removed from the Sample</b>			
<b>Count</b>	<b>Event Number</b>	<b>SME(s)</b>	<b>Reason(s)</b>
1	P21213236	SK	* This event occurred outside of audit date range. All actions related to this event occurred on 05/02/2021 * "On one of the reports (either the Stop Report or Arrest Report), a date within our sample range was erroneously entered. "
2	P21305002	SK	* Incident does not match the criteria for a "search event". Removed from sample. * "This was a motor vehicle stop where no search occurred, nor was a search warranted."
3	P21311818	SK	This was a motor vehicle stop where no search occurred, nor was a search warranted.
4	P21321377	DG	* Protective Pat-Down was indicated in the report, but none observed - traffic stop only. Likely a mistake causing this to be added to the audit searches. Recommend removing from sample. * "This event does not meet the criteria for a "search incident," and should be removed from the sample set. (This was a motor vehicle stop where no search occurred, nor was warranted.)"
5	P21327703	NPD	* Body-Worn Camera video unavailable due to special unit.

<b>Search Audit: List of Events Added to the Sample</b>			
<b>Count</b>	<b>Event Number</b>	<b>SME(s)</b>	<b>Reason</b>
1	P21272272-2	SK	Additional search identified during review of event by SME
2	P21317978-2	DG	Additional search identified during review of event by SME
3	P21330522-2	SK	Additional search identified during review of event by SME
4	P21335169-2	SK	Additional search identified during review of event by SME
5	P21335169-3	SK	Additional search identified during review of event by SME

# Appendix G

**Appendix G: List of Non-Compliant Substantive Events**

<b>Search Audit: List of Non-Compliant Substantive Events</b>		
<b>Count</b>	<b>Event Number</b>	<b>Explanation</b>
1	P21272272	Search Action (Protective Pat-Down) Exceeded Lawful Scope
2	P21301097	Search Action (Protective Pat-Down) Exceeded Lawful Scope
3	P21306046	Search Action (Protective Pat-Down) Exceeded Lawful Scope
4	P21324896	BWC footage does not match information recorded on corresponding reports.
5	P21330506	Video of search not available at time of audit.
6	P21332144	Video of search not available at time of audit.
7	P21336457	Video of search not available at time of audit.
8	P21347253	Search Action (Protective Pat-Down) Exceeded Lawful Scope
9	P21354534	BWC footage not available or does not match information recorded on corresponding reports.

# Appendix H

**Appendix H: List of Non-Compliant Documentation Events**

<b>Search Audit: List of Non-Compliant Documentation Events</b>		
<b>Count</b>	<b>Event Number</b>	<b>Explanation</b>
1	P19437817	BWC video fails to corroborate information recorded on Stop Report (Re: Weapon Recovery).
2	P21192311	Type of search misstated (search was incident to arrest; not PPD). Search not captured on BWC or ICC. Officer conducting the search not identified on corresponding reports.
3	P21263189	Type of search misstated (search was incident to arrest; not PPD).
4	P21263437	Type of search misstated (search was incident to arrest; not PPD).
5	P21263675	PPD narrative incorrectly described.
6	P21264209	Written reports demonstrate a lack of understanding of the difference between protective pat-down and search incident to arrest, and the circumstances under which each is appropriate.
7	P21265468	Type of search misstated (search was incident to arrest; not PPD).
8	P21265537	Incomplete Stop Report (missing multiple fields). Search action not clearly stated.
9	P21266047	Type of search misstated (search was incident to arrest; not PPD).
10	P21266238	Reasoning for search not sufficiently articulated in written reports.
11	P21266239	Stop report inconsistent with BWC in material ways: Stop Report says protective pat-down conducted when there was none, and “no search beyond PPD” when there was a search incident to arrest.

12	P21270198	Narrative unclear. Video of officer conducting PPD not available at time of audit.
13	P21270396	Written reports demonstrate a lack of understanding of the difference between protective pat-down and search incident to arrest, and the circumstances under which each is appropriate. BWC video fails to corroborate information recorded on Stop Report (Re: Weapon Recovery).
14	P21271715	Type of search misstated (search was incident to arrest; not PPD).
15	P21272272-2	Required form missing (Re: Consent).
16	P21273307	BWC video fails to corroborate information recorded on Stop Report (Re: Vehicle Information).
17	P21274701	Written reports demonstrate a lack of understanding of the difference between protective pat-down and search incident to arrest, and the circumstances under which each is appropriate.
18	P21277174	Type of search misstated (search action was PPD; not incident to arrest).
19	P21277493	Type of search misstated (search action was PPD; not incident to arrest).
20	P21280434	Video of search (for first searching officer) not available at time of audit.
21	P21282755	Video of search not available at time of audit. Narrative unclear.
22	P21289685	Narrative unclear.
23	P21298654	BWC video fails to corroborate information recorded on Stop Report.
24	P21301247	Stop Report states that no search beyond a PPD was conducted, when search incident to arrest occurred.

25	P21304178	Narrative section of Stop Report completely blank.
26	P21304879	Stop report inconsistent with BWC in material ways: Stop Report says protective pat-down conducted when there was none, and “no search beyond PPD” when there was a search incident to arrest.
27	P21317978-2	Video of search not available at time of audit.
28	P21325426	Stop Report states that PPD was conducted. BWC video provided doesn't show PPD or search incident to arrest.
29	P21331284	Stop Report states that no search beyond a PPD was conducted, when search incident to arrest occurred.
30	P21333479	Type of search misstated (search was incident to arrest).
31	P21343233	Reasoning for search beyond PPD not sufficiently articulated in written reports.
32	P21349214	BWC video fails to corroborate information recorded on Stop Report (Re: Consent).
33	P21350193	Incomplete Stop Report (Re: Consent).
34	P21353681	Type of search misstated (search was incident to arrest; not PPD).

# Appendix I

**Appendix I: List of Non-Compliant Substantive & Documentation Events**

<b>Search Audit: List of Non-Compliant Substantive &amp; Documentation Events</b>		
<b>Count</b>	<b>Event Number</b>	<b>Explanation</b>
1	P21267253	Exceeded frisk search. Viewed on partner BWC, search went into suspects pocket. Report did not document secondary search, beyond pat-down frisk, in the appropriate section (indicated no search) or in the narrative.
2	P21272086	Written reports demonstrate a lack of understanding of the difference between protective pat-down and search incident to arrest, and the circumstances under which each is appropriate.  Also, primary officer did not clearly distinguish between detention and arrest.
3	P21272677	Searching officer failed to activate BWC. Video footage provided does not depict search action. Type of search misstated (search was incident to arrest; not PPD).
4	P21274278	Written reports demonstrate a lack of understanding of the difference between protective pat-down and search incident to arrest, and the circumstances under which each is appropriate.
5	P21279798	Written reports demonstrate a lack of understanding of the difference between protective pat-down and search incident to arrest, and the circumstances under which each is appropriate. Video of search not available at time of search.
6	P21282248	Search action (PPD) exceeded lawful scope. Video does not match information recorded on written documents.
7	P21282349	Written reports demonstrate a lack of understanding of the difference between protective pat-down and search incident to arrest, and the circumstances under which each is appropriate. Video does not match information recorded on written documents.
8	P21282407	Written reports demonstrate a lack of understanding of the difference between protective pat-down and search incident to arrest, and the circumstances under which each is appropriate. Video does not match information recorded on written documents. Incomplete narrative.
9	P21282753	Written reports demonstrate a lack of understanding of the difference between protective pat-down and search incident to arrest, and the circumstances under which each is appropriate. Video does not match information recorded on written documents. Inaccurate information on Stop Report (Re: Search of Vehicle).

10	P21283590	Written reports demonstrate a lack of understanding of the difference between protective pat-down and search incident to arrest, and the circumstances under which each is appropriate. Video of search not available at time of audit. Incomplete narrative.
11	P21284529	BWC footage does not match information recorded on corresponding reports.
12	P21291291	Stop report inconsistent with BWC in material ways: Stop Report says protective pat-down conducted when there was none, and “no search beyond PPD” when there was a search incident to arrest.
13	P21292350	BWC footage does not match information recorded on corresponding reports. Relevant video not available at time of audit.
14	P21292722	Written reports demonstrate a lack of understanding of the difference between protective pat-down and search incident to arrest, and the circumstances under which each is appropriate. BWC footage does not match information recorded on corresponding reports. Incomplete Stop Report.
15	P21293253	Video footage does not match information recorded on corresponding reports.
16	P21293751	Video footage does not match information recorded on corresponding reports.
17	P21294460	Video of search not available at time of audit. Insufficient articulation in narrative section.
18	P21296953	Search action (PPD) exceeded lawful scope. Video footage does not match information recorded on corresponding reports.
19	P21298372	Video footage does not match information recorded on corresponding reports.
20	P21299640	Video footage does not match information recorded on corresponding reports (no search evident on videos provided).

21	P21301543	Stop report inconsistent with BWC in material ways: Stop Report says protective pat-down conducted when there was none, and “no search beyond PPD” when there was a search incident to arrest. Witten reports do not identify officer who conducted search.
22	P21302143	Stop report inconsistent with BWC in material ways: Stop Report says protective pat-down conducted when there was none, and “no search beyond PPD” when there was a search incident to arrest.
23	P21309789	Video of search not available at time of audit.
24	P21312329	Search action (PPD) exceeded lawful scope. Video footage does not match information recorded on corresponding reports.
25	P21313319	No video footage from searching officer. However, what is listed on the Stop Report as a PPD appears to be a search beyond a PPD.
26	P21313597	No video footage from searching officer. Video footage does not match information recorded on corresponding reports.
27	P21313687	Written reports demonstrate a lack of understanding of the difference between protective pat-down and search incident to arrest, and the circumstances under which each is appropriate. No search action is evident in videos provided.
28	P21314395	Written reports demonstrate a lack of understanding of the difference between protective pat-down and search incident to arrest, and the circumstances under which each is appropriate. Unclear articulation on written reports. No search action is evident in videos provided.
29	P21314405	Search action (PPD) exceeded lawful scope. Video footage does not match information recorded on corresponding reports.
30	P21314747	Video of search not available at time of audit.
31	P21315021	Written reports demonstrate a lack of understanding of the difference between protective pat-down and search incident to arrest, and the circumstances under which each is appropriate. No search action is evident in videos provided. Numerous errors in written documents.
32	P21315377	Video footage does not match information recorded on corresponding reports. Narrative missing.

33	P21315936	Video footage does not match information recorded on corresponding reports.
34	P21316693	Video of search not available at time of audit
35	P21316960	Video footage does not match information recorded on corresponding reports. Some relevant video not available at time of audit.
36	P21318353	Video footage does not match information recorded on corresponding reports. Narrative unclear.
37	P21319046	Video of search not available at time of audit. Reasoning for search not clearly articulated. Incomplete Stop Report (fields missing, etc.).
38	P21320026	Video footage does not match information recorded on corresponding reports. Missing or incomplete narrative sections.
39	P21320236	Video of search not available at time of audit. Failure to complete required additional documents for all persons searched (four searches/one report).
40	P21320425	Video footage does not match information recorded on corresponding reports. Narrative missing.
41	P21322116	Video of search not available at time of audit. Officer who conducted search not identified in written reports. Type of search misstated (search was incident to arrest, not PPD).
42	P21322374	Video of search not available at time of audit. Narrative unclear.
43	P21323498	Video of search not available at time of audit.
44	P21324498	Stop report inconsistent with BWC in material ways: Stop Report says protective pat-down conducted when there was none, and “no search beyond PPD” when there was a search incident to arrest.
45	P21324685	Stop report inconsistent with BWC in material ways: Stop Report says protective pat-down conducted when there was none, and “no search beyond PPD” when there was a search incident to arrest.
46	P21325062	Stop report inconsistent with BWC in material ways: Stop Report says protective pat-down conducted when there was none, and “no search beyond PPD” when there was a search incident to arrest.
47	P21326550	Written reports demonstrate a lack of understanding of the difference between protective pat-down and search incident to arrest, and the circumstances under which each is appropriate.

48	P21330793	Officer who conducted search is not identified in written reports. Video from searching officer not available at time of audit. Other video footage does not match information recorded on corresponding reports.
49	P21331160	Video of search action not available at time of audit. Officer who conducted search not identified in written reports.
50	P21333941	Video footage does not match information recorded on corresponding reports.
51	P21334711	Video footage does not match information recorded on corresponding reports. Stop Report not signed by officer.
52	P21335601	Video footage does not match information recorded on corresponding reports (Re: Search of female prisoner).
53	P21336377	Search action exceeded lawful scope (as articulated in Stop Report).
54	P21338162	Video footage does not match information recorded on corresponding reports (no search action evident on videos).
55	P21338244	Video footage does not match information recorded on corresponding reports (no search action evident on videos).
56	P21339672	Video footage does not match information recorded on corresponding reports (no search action for initial arrest evident on videos).
57	P21342299	Video footage does not match information recorded on corresponding reports (no search action evident on videos prior to transportation to MAPS).
58	P21343323	Video footage does not match information recorded on corresponding reports (no search action evident on videos).
59	P21344509	Video footage does not match information recorded on corresponding reports (no search action evident on videos). Officers lacked legal sufficiency for search.
60	P21351194	Video footage does not match information recorded on corresponding reports (no search action evident on videos).
61	P21352942	Officers actions and attendant documentation are in violation of NPD policy.

# APPENDIX C

**Report of the Independent Monitor's Second Audit of the City of Newark and Newark  
Police Division's Use of Force**

**August 11, 2022**

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This report presents the findings of the Independent Monitor Peter C. Harvey, regarding the Independent Monitoring Team’s *second* audit of the City of Newark’s (the “City”) and Newark Police Division’s (“NPD”) compliance with Consent Decree requirements relating to the use of force.

## I. REVIEWERS:

The following members of the Independent Monitoring Team participated in this audit:

Wayne Fisher, Ph.D., Rutgers University Center on Policing

Lieutenant Daniel Gomez (Ret.), Los Angeles Police Department

Linda Tartaglia, Director, Rutgers University Center on Policing

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Jonathan Norrell, Rutgers University Center on Policing

## II. INTRODUCTION

Paragraph 173 of the Consent Decree instructs the Independent Monitor to audit the City’s and NPD’s implementation of and compliance with Consent Decree reforms. Consistent with the Consent Decree, the Independent Monitor issued notice to the City, NPD, and U.S. Department of Justice (“DOJ”) (collectively, “the Parties”), by letter dated March 2, 2022, that the Independent Monitoring Team would begin its *second* audit of NPD’s compliance with certain provisions of the Consent Decree relating to the use of force and specifically, Consent Decree Paragraphs 66-102 (more specifically, Consent Decree Paragraphs 66, 67, 71, 72, 75-77, 79 (a and c), and 174(b) (i)-(ix)).<sup>1</sup> See **Appendix A** (March 2, 2022 45-day notice letter).

As a general matter, the above-referenced paragraphs of the Consent Decree require NPD to:

- Develop and implement policies and training directing that the use of force by NPD officers accords with the rights secured and protected by the Constitution and state and federal law (Section VIII, Opening Statement, Consent Decree).
- Develop and implement a Use of Force policy or set of policies that comply with applicable law and requirements of the Consent Decree (Paragraph 66).
- Follow specific provisions regarding the use of force including, but not limited to, implementation of verbal commands in place of the use of force whenever possible, prohibit the use of force against restrained individuals; prohibit the use of retaliatory force; implement de-escalation strategies whenever possible; reduce the need for force

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<sup>1</sup> Consent Decree Paragraphs 68-70, 74, 85-87, and 89-102 were not covered in the Monitoring Team’s Use of Force audit. The Monitoring Team deems NPD to be in compliance with the policy requirements in Paragraphs 68-70, and 74. See Report of the Independent Monitor’s First Audit of the City of Newark and Newark Police Division’s Use of Force, Section V A. Consent Decree Paragraphs 85-87 and 89-102 will be covered in future audits relating to the areas of Supervision and Internal Affairs (*see Appendix A*: 45-day letter, dated March 2, 2022).

whenever possible; explicitly prohibit the use of neck holds except where lethal force is authorized: ensure that a supervisor inspects and observes subjects for injury or complaints of pain resulting from the use of force and immediately obtain medical care (Paragraph 67 (a)-(l)).

- Prohibit officers from possessing or using unauthorized firearms or ammunition. In addition, all authorized firearms carried by officers will be loaded with the capacity number of rounds of authorized ammunition (Paragraph 71).
- Prohibit officers from discharging a firearm at a moving vehicle unless a person in the vehicle is immediately threatening the officer or another person with deadly force (Paragraph 72).
- Prohibit officers from unholstering or exhibiting a firearm unless the officer reasonably believes that the situation may escalate to create an immediate threat of serious bodily injury or death to the officer or another person (Paragraph 73).
- Adopt a use of force reporting system and a supervisor Use of Force Report that is separate from NPD's arrest and incident reports and includes individual officers' accounts of their use of force (Paragraph 75).
- Require that officers notify their supervisor as soon as practicable following any reportable use of force (Paragraph 76).
- Categorize force into levels for the purposes of reporting, investigating, and reviewing each use of force (Paragraph 77).
- Ensure that every level of force reporting includes the requirements specified in the Consent Decree (Paragraph 79 (a and c)).
- Provide nine categories of Use of Force data to allow the Monitoring Team to undertake use of force-related outcome assessments (Paragraph 174 (b) (i)- (ix)).

*See* Consent Decree Section VIII.

### **III. REVIEW PERIOD**

In this audit, the Monitoring Team reviewed NPD's police activities and records for a three-month period from July 1, 2021, through September 30, 2021 (the "Audit Period").

### **IV. EXECUTIVE SUMMARY**

This report contains the results of the Monitoring Team's comprehensive audit of NPD's use of force during the three-month Audit Period. To that end, the Monitoring Team analyzed whether (1) NPD's use of force policies contained the Consent Decree-required provisions; (2) NPD demonstrated routine adherence to its own use of force policies in its day-to-day operations, described here as "Operational Compliance"; and, (3) NPD was able to produce police data concerning its use of force that was sufficient for the Monitoring Team to conduct aggregate data analysis as required by Consent Decree Paragraph 174(b), known as an "outcome assessment."<sup>2</sup>

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<sup>2</sup> Outcome Assessments as described in Consent Decree Paragraph 174(b) will be included in an upcoming Monitoring Team bi-annual report, and will not be included in this audit.

With respect to the first component of this audit, namely NPD's use of force policies, the Monitoring Team previously determined in the *first* Audit of NPD's Use of Force, that the policies embody each of the Consent Decree requirements. These policies therefore remain compliant for this second audit.

With respect to the second component of this audit – whether NPD had demonstrated routine adherence to its use of force policies in its day-to-day operations, the Monitoring Team considered (a) whether NPD officers' actions were lawful and compliant with the four (4) fundamental principles of NPD's Use of Force policy,<sup>3</sup> described in this audit as *substantive compliance*; and (b) whether all officers involved in a use of force incident, meaning those actually employing force, witnessing force, or present in a supervisory capacity, complied with the documentation requirements contained in NPD's policy, described in this audit as *documentation compliance*. As in the *first* Audit of Use of Force, NPD achieves Overall Operational Compliance only when it satisfies both metrics (*i.e.*, substantive compliance and documentation compliance) 95% of the time in the sample that the Monitoring Team reviewed.

In terms of substantive compliance, the Monitoring Team found that NPD achieved substantive compliance with its use of force incidents—meaning that NPD officers used force in a manner consistent with its policies, the Consent Decree, New Jersey law, and federal law 94.23% of the time, just below the 95% threshold for compliance. NPD officers failed to employ force in a manner consistent with applicable law and policy in only 6 of the 104 incidents reviewed.

In terms of documentation compliance, the Monitoring Team found that NPD again achieved compliance. NPD was compliant in 92.31% of the 104 incidents of use of force reviewed, and found non-compliant in 8 incidents reviewed.

The Monitoring Team determined that NPD achieved full and effective compliance with the Consent Decree based on these figures. In terms of both substantive use of force and documentation, NPD was compliant in well over 90% of incidents reviewed. Importantly, NPD was 100% compliant in every intermediate and serious use of force incident. While 95% remains the relevant threshold under the Consent Decree, the Monitoring Team believes that based on the sample of use of force incidents reviewed, NPD demonstrated commendable adherence to both its substantive use of force and documentation policies.

Although, statistically speaking, NPD achieved an Overall Operational Compliance score of 86.54%, that number is not determinative with respect to full and effective compliance. A total of 90 of the 104 Use of Force incidents were found to be compliant. The real measure of reform is what NPD does on a day-to-day basis in its interactions with Newark residents and its consistent ability to document its work in the required reports on a daily basis. NPD has made significant progress from the first use of force audit to the second. Specifically, NPD has demonstrated both substantive and documentation compliance in this audit.

Table 1 presents an overview of NPD's compliance with the Monitoring Team's Second Audit of NPD's Use of Force.

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<sup>3</sup> The four principles are as follows: (1) authorization to initiate force; (2) appropriate cessation of force; (3) last resort; (4) minimization (*see Appendix B* General Order 18-20 Use of Force).

<b>Table 1</b>		
<b>Overview of Second Use of Force Audit Results</b>		
<b>Audit Subject</b>	<b>Consent Decree Paragraph(s)</b>	<b>Compliance? (Requirement: 95%)</b>
<b>Use of Force Policies</b>	Paragraphs 67-102	Yes <sup>4</sup> .
<b>Substantive Operational Compliance</b>  <i>Whether all officers who employed force acted consistently with the fundamental principles of NPD's Use of Force policy.</i>	Paragraphs 66, 67, 71, 72, 76, 77	Yes. 94.23% of use of force incidents reviewed by the Monitoring Team complied with the substantive requirements. This constitutes full and effective compliance pursuant to Consent Decree Paragraphs 223-225.
<b>Documentation Operational Compliance</b>  <i>Whether NPD officers complied with NPD's use of force reporting requirements.</i>	Paragraphs 66, 75, 77, 79 (a and c)	Yes. 92.31% of use of force incidents reviewed by the Monitoring Team complied with the documentation requirements. This constitutes full and effective compliance pursuant to Consent Decree Paragraphs 223-225.
<b>Outcome Assessments</b>  <i>NPD's production of aggregate use of force data required by the Consent Decree</i>	Paragraph 174(b)(i)-(ix)	Outcome assessment data will be reported out separately in a bi-annual report.

**V. METHODOLOGY**

This audit followed the same methodology to determine compliance as the first Audit of NPD's Use of Force (*See Appendix A Second Use of Force Audit: 45-Day Notice*, dated March 2, 2022 for a detailed methodology).

For this second Audit of NPD's Use of Force, the Monitoring Team reviewed all Serious, Intermediate, and Low-Level use of force incidents. The Monitoring Team will also assess NPD's compliance in constructive authority incidents and use the same methodology in this assessment as was used for other use of force incidents.<sup>5</sup>

<sup>4</sup> These Consent Decree Paragraphs and the associated NPD policies were reviewed and approved by the Monitoring Team, and were found to be in compliance in the first Use of Force audit, and remain so now.

<sup>5</sup> The Monitoring Team will begin its review of constructive authority incidents subsequent to its review of other use of force incidents as part of this Second Use of Force audit. At a later date, the Monitoring Team will issue a letter apprising NPD and the City of the reports, video, and other material necessary to complete the constructive authority portion of the Second Use of Force Audit (*see Appendix A: 45-day notice letter*, dated March 2, 2022).

## VI. ANALYSIS

### A. NPD's Use of Force Policies

NPD has three policies that address the Consent Decree's use of force requirements. These policies, known as General Orders, govern how NPD officers use force, report use of force incidents, and maintain weapons. The Monitoring Team approved each of these policies prior to the First Use of Force Audit. Specifically, *General Order 18-20, Use of Force*, was approved by the Monitoring Team on September 29, 2017 (see **Appendix B**); NPD's *General Order 18-21 Use of Force Reporting, Investigation and Review* was approved on March 16, 2018 (see **Appendix C**); and, NPD's *General Order 18-22, Firearms and Other Weapons* was also approved on March 16, 2018 (see **Appendix D**). Each of these policies were issued by NPD on November 8, 2018.

The Monitoring Team previously reviewed and approved these policies, and a "Crosswalk" outlining each Consent Decree paragraph, and corresponding policy item was established (see **Appendix E**). A "crosswalk" means that the reforms described in detail in the many paragraphs of the Consent Decree are embodied in the new and revised policies written and adopted by NPD.

### B. Operational Compliance: Whether NPD is Complying with its Use of Force Policies in Practice

To determine whether NPD is complying with its use of force policies, the Monitoring Team analyzed the actions of each officer involved in a use of force incident, including whether all reporting requirements had been satisfied. As in the first audit of NPD's Use of Force, for this analysis, the Monitoring Team divided operational compliance into two components: (1) substantive incident compliance (*i.e.*, considering whether NPD had legal authorization to initiate force, used the minimum amount of force necessary, exhausted all other reasonable means, and stopped using force once it was no longer necessary); and (2) documentation compliance (*i.e.*, considering whether NPD accurately completed and submitted all the reports concerning a use of force that are required by NPD policy). The results of this analysis are discussed below. A sufficient percentage of officers involved with, supervising, or witnessing a use of force incident complied with the core aspects of NPD's use of force policies and relevant state and federal laws for NPD to be deemed compliant.

#### 1. Overall Operational Compliance

To determine whether NPD had demonstrated routine adherence to its use of force policies in its day-to-day operations, thereby achieving Overall Operational Compliance, the Monitoring Team considered: (a) whether NPD officers' actions were lawful and compliant with the four (4) fundamental principles of NPD's Use of Force policy, described in this audit as *substantive compliance*; and (b) whether all officers involved in a use of force incident, meaning those actually employing force, witnessing force, or present in a supervisory capacity, complied with the documentation requirements contained in NPD's policy, described in this audit as *documentation compliance*. As in the first Audit of Use of Force, NPD achieves Overall Operational Compliance only when it satisfies both metrics (*i.e.*, substantive compliance and documentation compliance) 95% of the time among the sample that the Monitoring Team reviewed.

While the Monitoring Team found that NPD achieved 86.54% Overall Operational Compliance, as a total of 90 of the 104 Use of Force incidents reviewed were found to be in compliance, the Monitoring Team determined that NPD was in full and effective compliance with the relevant provisions of the Consent Decree. NPD achieved well over 90% compliance in terms of both Substantive Compliance and Documentation Compliance. The Overall Operational Compliance score of 86.54% is thus not determinative of NPD’s progress with respect to using force or documenting its use of force.

Table 2 summarizes the Overall Operational Compliance result.

<b>Table 2</b>		
<b>Incidents Reviewed</b>	<b>Overall Operationally Compliant</b>	<b>Score</b>
104	90	86.54%

## 2. *Substantive Compliance*

To determine whether NPD achieved substantive incident compliance, the Monitoring Team analyzed whether NPD officers’ actions were lawful and compliant with four fundamental principles in NPD’s use of force policy: (1) authorization to initiate force (*i.e.*, whether the officer initiated force consistent with NPD policy); (2) appropriate cessation of force (*i.e.*, whether the officer ceased using force consistent with NPD policy); (3) last resort (*i.e.* whether the officer exhausted all other reasonable means, including de-escalation and alternative resolution); and (4) minimization (*i.e.*, whether the amount of force applied was the minimum amount necessary). *See Appendix B* (NPD *General Order 18-20, Use of Force*). As in the first Use of Force Audit, an individual officer’s actions were determined to be compliant if they satisfied each of these four criteria. A use of force incident was deemed compliant if each officer using force was compliant.

To conduct its assessment, the Monitoring Team reviewed 104 use of force incidents during the three-month Audit Period. For a complete list of the use of force numbers associated with each use of force incident reviewed, *see Appendix F*. These incidents included:

- (1) All “serious” use of force incidents (2 of 104 incidents reviewed). The Consent Decree defines a “serious” force incident as one involving loss of consciousness; a canine bite; a strike; blow, or kick against a handcuffed or restrained person, or any head, neck, or throat strike or neck hold resulting in injury that is not investigated by the Essex County Prosecutor’s Office pursuant to New Jersey Attorney General Directive 005-06. *See* Consent Decree Paragraph 4 (rr).
- (2) All “intermediate” use of force incidents (8 of 104 incidents). The Consent Decree defines an “intermediate” use of force incident as one involving the use of chemical spray; use of an impact weapon to strike a person, but where not contact is made, use of a baton for non-striking purposes (*e.g.* prying limbs, moving or controlling a person), or weaponless defense techniques (*e.g.*, elbow strikes, kicks, leg sweeps, and takedowns). *See* Consent Decree Paragraph 4 (x).

- (3) All “low” level use of force incidents that occurred during the audit period (94 of 104 incidents). The Consent Decree defines a “low” level use of force incident as one involving the use of hand controls or escort techniques (e.g., elbow grip, wrist grip, or shoulder grip) applied as pressure point compliance techniques or that result in injury or complaint of injury. See Consent Decree Paragraph 4 (z).

Table 3 provides a summary of all levels of use of force incidents reviewed.

<b>Table 3</b>		
<b>Summary of Level of Use of Force Incidents</b>		
<b>Level of Force</b>	<b>Use of Force Incidents</b>	<b>Percent</b>
Low	94	90.38%
Intermediate	8	7.69%
Serious	2	1.92%
Total	104	100.0%

For the 104 incidents reviewed, the Monitoring Team reviewed all available and relevant reports, documentation and video footage associated with each use of force incident, including: (1) Use of Force Reports; (2) Incident Reports (DPI 802); (3) Arrest Reports (DPI 800); (4) Continuation Reports (DPI 795); (5) Stop Reports (DPI 1388); (6) Supervisor Review Routing Reports; (7) Debriefing Forms (DPI 2004); (8) Body-Worn Camera (“BWC”) Video; and (9) Supervisor Use of Force Investigation Reports (DPI 1005). However, not every use of force incident called for the creation of each category of record cited above. For example, arrest reports were not available for incidents where no arrest was made.

The total of 104 use of force incidents reviewed involved 169 different NPD officers, some of whom used force more than once. Hence the Monitoring Team reviewed a total of 245 instances of an NPD officer using force upon a member of the public. In total, 98 of the 104 (94.23%) incidents reviewed were substantively compliant.

Table 4 provides a summary of the substantive compliance score.

<b>Table 4</b>			
<b>Level of Force</b>	<b>Substantive</b>	<b>Total</b>	<b>Percent</b>
Low	88	94	93.62%
Intermediate	8	8	100.00%
Serious	2	2	100.00%
Total	98	104	94.23%

Table 5 shows the number of officers who used force in one or more incidents reviewed by the Monitoring Team.

<b>Table 5</b>	
<b>Individual Officer Reports of Force</b>	
<b>Number of Officers Who Used Force in One or More Instances</b>	<b>Total Number of Instances of an Officer Using Force</b>
126 Officers used force once	126
25 Officers used force twice	50
8 Officers used force three times	24
7 Officers used force four times	28
1 Officer used force five times	5
2 Officers used force six times	12
Total	245

Table 6 provides a summary of the substantively non-compliant incidents reviewed by the Monitoring Team, including the circumstances relevant to each incident.

<b>Table 6</b>	
<b>Substantively Non-Compliant Incidents</b>	
<b>Event Number</b>	<b>Circumstances</b>
21-229	Use of Force — Officer used more than minimum force necessary.
21-240	Use of Force — Officer used more than minimum force necessary and failed to cease using force at proper time.
21-243	Use of Force — Officer used more than minimum force necessary. and failed to cease using force at proper time.
21-246	Use of Force — Officer used more than minimum force necessary and failed to cease using force at proper time.
21-263	Use of Force — Officer used more than minimum force necessary.
21-268	Use of Force — Officer used more than minimum force necessary.

### 3. Documentation Compliance

The Monitoring Team assessed whether each officer involved in the 104 use of force incidents had fulfilled the documentation requirements in NPD’s *General Order 18-21, Use of Force Reporting, Investigation and Review*. See **Appendix C**. If one officer in a use of force

incident did not comply, the Monitoring Team found the entire incident non-compliant except for situations where NPD’s own internal review process identified and remediated documentation deficiencies.

NPD’s compliance rate for Documentation Compliance was 92.31%. In 96 of the 104 incidents reviewed all officers involved—including those using force, witnessing the use of force, or supervising the use of force—documented their actions consistent with applicable NPD policy.

Table 7 provides a summary of the documentation compliance score.

<b>Table 7</b>			
<b>Level of Force</b>	<b>Documentation</b>	<b>Total</b>	<b>Percent</b>
Low	87	94	92.55%
Intermediate	7	8	87.50%
Serious	2	2	100.00%
Total	96	104	92.31%

Table 8 provides a summary of the documentation non-compliant incidents reviewed by the Monitoring Team, including the circumstances relevant to each incident.

<b>Table 8</b>	
<b>Summary of Documentation Non-Compliance Incidents</b>	
<b>Event Number</b>	<b>Circumstances</b>
21-234	Missing Report – Witness: no report from Police Officer identified via BWC as witnessing force
21-254	Missing Report – Witness: no report from Supervisor identified via BWC as witnessing force
21-262	Missing Report – Witness: no report from Police Officer identified via video as witnessing force
21-300	Missing Report – Witness: no report from Supervisor identified via BWC as witnessing force
21-305	Missing Report – Supervisor: no report from Supervisor; Witness: no report from Police Officer identified via BWC as witnessing force
21-310	Missing Report – Use of Force: no report from Police Officer identified via BWC as using force
21-322	Missing Report – Witness: no report from Police Officer identified via BWC as witnessing force
21-323	Missing Report - Witness: no report from Police Officer identified via BWC as witnessing force

**C. Outcome Assessment Data**

Paragraph 174(b)(i)-(ix) of the Consent Decree requires NPD to provide the Monitor with nine (9) categories of use of force data to allow the Monitoring Team to undertake use of force-related outcome assessments. NPD is compliant when it provides each of the nine (9) categories of data to the Monitoring Team.

Outcome Assessment data will be reported separately in a bi-annual report.

## **VII. OBSERVATIONS & RECOMMENDATIONS**

The Monitoring Team made the following Observations and Recommendations specific to this Audit.

As was the case in the first audit, the Monitoring Team found NPD's rate of substantive compliance, the most consequential indicator of individual officer performance, to be commendable by any of the compliance measures used for that purpose in this audit.

In a marked departure from the first audit, the Monitoring Team found the NPD's rate of documentation compliance to be commendable as well. The Monitoring Team found significant improvement in the documentation of force incidents by both officers employing force and those witnessing the incidents. It was evident to the Monitoring Team that the measures taken to address shortcomings noted in the first audit accomplished their objective.

The Monitoring Team did take note of several incidents in which documentation deficiencies were identified and successfully remediated as a result of AFIT's review process. It was evident to the Monitoring Team that a substantial portion of the deficiencies noted by AFIT could have, and should have, been addressed by way of supervisory review at the command level.

In the course of its individual incident review process, the Monitoring Team noted that, as was the case in the first audit, a significant proportion of the use of force incidents contained documentation indicating that the force subject was an emotionally disturbed person (EDP). These are subjects with social, mental, or behavioral problems that manifest as erratic behavior, including potentially hurting themselves or others. The proportion of subjects deemed EDPs was consistent in both the first and second audits (25.0% and 22.1%). The Monitoring Team noted in both audits that in each incident involving an EDP, the actions of all officers who used force was substantively compliant with applicable NPD policy. Nonetheless, the Monitoring Team recommends that officer training specifically addressing this topic be included, or continue to be included, as an ongoing component of in-service use of force training.

The area of most concern to the Monitoring Team in the course of this audit was supervision. Specifically, the Monitoring Team noted the absence of a supervisor responding to the scene in a substantial portion of the incidents reviewed. This circumstance persisted notwithstanding the provision in G.O. 18-20 requiring the notification and response of a non-involved supervisor to the location of the force incident. In a number of the incidents reviewed for this audit that response did *not* take place. The absence of that response was not deemed sufficient to merit a finding of non-compliance for any individual use of force incident. The circumstance noted here with respect to use of force incidents will, however, be addressed as a component of a broader audit of agency-wide supervision.

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The Consent Decree requires that both the City and NPD post this report on their websites. See Consent Decree Paragraph 20 ("All NPD studies, analyses, and assessments required by this agreement will be made publicly available, including on NPD and City websites --- to the fullest extent permitted under law."); Paragraph 166 ("all NPD audits,

reports, and outcomes analyses ... will be made available, including on city and NPD websites, to the fullest extent permissible under law.”). The Monitor expects the City and NPD to do so expeditiously.

Dated: August 11, 2022

Peter C. Harvey  
Independent Monitor

**List of Appendices**

Appendix A Second Use of Force Audit: 45-Day Notice, dated March 2, 2022

Appendix B: *General Order 18-20, Use of Force*, dated November 8, 2018

Appendix C: *General Order 18-21 Use of Force Reporting, Investigation and Review*, dated November 8, 2018

Appendix D: *General Order 18-22, Firearms and Other Weapons*, dated November 8, 2018

Appendix E: List of NPD Policies and Consent Decree Paragraphs (“Crosswalk”).

Appendix F: List of Use of Force Numbers Associated with each Use of Force Incident (Low level/Intermediate/Serious Level Use of Force)

# APPENDIX A

## Patterson Belknap Webb & Tyler LLP

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March 2, 2022

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### Re: **Second Use of Force Audit: 45-Day Notice**

Dear Mr. Stewart and Director O'Hara:

Pursuant to Consent Decree Paragraphs 173 and 180, I write to provide notice that, starting no sooner than, April 16, 2022, the Monitoring Team will conduct its Second Audit of the Use of Force by members of the Newark Police Division ("NPD"). The Audit will cover the following period: **July 1, 2021, through September 30, 2021 (the "Audit Period")** to assess whether NPD is in compliance with Section VIII of the Consent Decree. (See ¶¶ 66-102)<sup>1</sup>

Section VIII of the Consent Decree requires, among other things, that "NPD will develop and implement policies and training directing that the use of force by NPD officers accords with the rights secured and protected by the Constitution and state and federal law." Paragraph 173 of the Consent Decree requires the Monitor to "conduct reviews or audits as necessary to determine whether the City and NPD have implemented and continue to comply with the requirements" of the Consent Decree. The Monitoring Team must assess whether the City and NPD have "implemented

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<sup>1</sup> Consent Decree Paragraphs 68-70, 74, 85-87, and 89-102 will not be covered in the Monitoring Team's Use of Force audit. The Monitoring Team deems NPD to be in compliance with the policy requirements in Paragraphs 68-70 and 74. See Report of the Independent Monitor's First Audit of the City of Newark and Newark Police Division's Use of Force, Section V.A. Consent Decree Paragraphs 85-87 and 89-102 will be covered in future audits relating to the areas of Supervision and Internal Affairs.

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the [Use of Force] requirements into practice.” (See Consent Decree ¶ 173.)

Additionally, Consent Decree Paragraph 174(b) requires the Monitor to collect and analyze the following data as part of its Use of Force outcome assessments:

- i. the rate of force used per arrest by NPD;
- ii. the rate of force by types of force used;
- iii. the rate of force by geographic data and type of arrest;
- iv. the rate of force used, measured against the subject’s race or ethnicity, gender, and age;
- v. the rate of force complaints that are sustained, overall and by force type; sources of complaint (internal or external); types of arrest; types of force complained of;
- vi. uses of force that were found to violate policy overall and by the following subsets: type of arrest; force implement used; and number of officers involved;
- vii. the number and rate of use of force administrative investigations/reviews in which each finding is supported by a preponderance of the evidence;
- viii. the number of officers who have more than one instance of force found to violate policy; and
- ix. claims and lawsuits filed regarding uses of force, judgments entered or cases settled.

#### **I. Subject Matter Experts**

This Second Use of Force Audit will be carried out by the following Monitoring Team Subject Matter Experts: Wayne Fisher, Ph.D., Rutgers University Center on Policing, and Lieutenant Daniel Gomez (Ret.) of the Los Angeles Police Department.

#### **II. Request for Information**

In preparation for the Audit, at least two (2) weeks prior to the start of the Audit, and no later than April 1, 2022, the Monitoring Team requires NPD and the City to provide the following data and records for the Audit Period:

- Records showing the total number of arrests made by the NPD;
- A list of all event numbers and Use of Force numbers for all Use of Force incidents including the level of force designation (General Order 18-20 Section VII.A.3; Consent Decree Paragraphs 4(x), 4(z), 4(rr)) for each incident;
- A list of event numbers and Use of Force Numbers for all Use of Force Incidents in which there was a finding of “Policy Non-Compliant” for any officer;
- A list of all IOP (Investigation of Personnel) numbers for all excessive force complaints, or complaints regarding any use of force policy violation,

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received or reaching disposition (Sustained, Not Sustained, Exonerated, Unfounded).

NPD and the City of Newark (the “City”) also should provide the Monitoring Team with data sufficient to enable the Monitoring Team to conduct all required outcome assessments pursuant to 174(b). The Monitoring Team understands that the rates referenced in 174(b) will be compiled and computed from data provided by the NPD from IA Pro which is utilized by the Office of Professional Standards (OPS) and the All Force Investigation Team (AFIT). For data required by Consent Decree Paragraph 174(b)(ix)—claims and lawsuits filed regarding uses of force, judgments entered or cases settled—the City should provide data covering the entire 2021 calendar year.

After receiving this information, the Monitoring Team will, in a timely manner, provide the City and NPD with the Use of Force and IOP numbers of the cases it seeks to review. All reports and body-worn camera video associated with the event, Use of Force, and IOP numbers included in the sample will be made available to the Monitoring Team on the day(s) of the Audit in the workplace NPD provides to the Team. The Monitoring Team requests that the NPD identify all videos associated with the event numbers and Use of Force incident numbers identified for review and organize that content within the Panasonic digital evidence program **prior** to onsite review by the Monitoring Team. Toward that end, NPD should mark all BWC and ICC videos for the Audit Period for indefinite retention to further ensure that all videos will be available for SME review. In the event that onsite review is not feasible, NPD should download the identified videos in a non-proprietary format (converted from Panasonic) onto a Monitoring Team-provided secure encrypted drive.

### **III. Methodology**

This Second Use of Force Audit will utilize the same methodology as was employed in the *First* Use of Force audit to determine NPD’s *Operational Compliance* and NPD’s provision of aggregate Use of Force data required by Consent Decree Paragraph 174(b). (*See* Report of the Independent Monitor’s First Audit of the City of Newark and Newark Police Division’s Use of Force, dated June 7, 2021.) Additionally, the Monitoring Team will use a similar methodology to assess NPD’s compliance in constructive authority incidents.<sup>2</sup>

For the Audit Period, the Monitoring Team will review: (1) all Serious and Intermediate Level use of force incidents; (2) all Use of Force incidents in which NPD made a finding of “Policy Non-Compliant”; (3) all excessive force complaint incidents; and (4) a sample of all Lower-Level use of force incidents. To do so, the Monitoring Team will require workspace at the All-Force Investigations Team Office (22 Franklin St., 4<sup>th</sup> Floor Annex) and electronic access to body-worn and in-car video.

#### **Consent Decree Paragraphs 66, 67, 71 and 72**

Consent Decree Paragraph 66 requires NPD to “develop and implement a Use of Force policy or set of policies that comply with applicable law and requirements of [the Consent

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<sup>2</sup> The Monitoring Team will begin its review of constructive authority incidents subsequent to its review of other use of force incidents as part of this Second Use of Force audit. At a later date, the Monitoring Team will issue a letter apprising NPD and the City of the reports, video, and other material necessary to complete the constructive authority portion of the Second Use of Force Audit.

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Decree].”

Consent Decree Paragraph 67 requires NPD’s Use of Force policies to contain the following provisions outlined in subparagraphs (a)-(i) and (k)-(l):

- Officers will use advice, warnings, and verbal persuasion, when possible, before resorting to force (Paragraph 67(a));
- Force will be appropriately de-escalated as resistance decreases (Paragraph 67(b));
- When feasible, officers will rely on area containment; employ surveillance; wait out subjects; summon reinforcements; or call in specialized tactical units, in order to reduce the need for force and increase officer and civilian safety (Paragraph 67(c));
- Officers will allow individuals the opportunity to submit to arrest before force is used wherever possible (Paragraph 67(d));
- NPD will explicitly prohibit neck holds, except where lethal force is authorized (Paragraph 67(e));
- NPD will explicitly prohibit head strikes with hard objects, except where lethal force is authorized (Paragraph 67(f));
- NPD policy will prohibit the gratuitous use of force against restrained individuals. The use of force against a restrained individual is presumptively unreasonable. An officer may overcome that presumption by showing that the force used was necessary to protect the safety of the subject or another individual (Paragraph 67(g));
- NPD will prohibit the use of force beyond unresisted handcuffing to overcome passive resistance, except that physical removal is permitted as necessary and objectively reasonable (Paragraph 67(h));
- NPD will explicitly prohibit the use of retaliatory force by officers, including: force used after a threat has diminished or that is otherwise not reasonably necessary; force used to punish individuals for fleeing or otherwise resisting arrest; and force used in response to disrespectful language or actions (Paragraph 67(i));
- NPD will prohibit officers from using force to effect compliance with a command that is knowingly unlawful (67(Paragraph k));
- Immediately following a use of force, officers and, upon arrival, a supervisor will inspect and observe subjects for injury or complaints of pain resulting from the use of force, and immediately obtain any necessary medical care. If qualified to do so, an officer will be expected to provide emergency first aid until professional medical care providers are on scene (Paragraph 67(l)).

Consent Decree Paragraph 71 requires NPD to “prohibit officers from possessing or using unauthorized firearms or ammunition in connection with or while performing policing duties.”

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Consent Decree Paragraph 72 requires NPD to “NPD will prohibit officers from discharging a firearm at a moving vehicle unless a person in the vehicle is immediately threatening the officer or another person with deadly force.”

To determine whether NPD has complied with Consent Decree Paragraphs 66, 67, 71 and 72, the Monitoring Team will utilize the same methodology as was employed in the *First Use of Force* audit to determine NPD’s *Operational Compliance*. Specifically, the Monitoring Team will analyze whether NPD officers’ actions were lawful and compliant with four fundamental principles in NPD’s use of force policy, *General Order 18-20, Use of Force*: (1) *authorization to initiate force* (*i.e.*, whether the officer initiated force consistent with NPD policy); (2) *appropriate cessation of force* (*i.e.*, whether the officer ceased using force consistent with NPD policy); (3) *last resort* (*i.e.*, whether the officer exhausted all other reasonable means, including de-escalation and 7 alternative resolution); and (4) *minimization* (*i.e.*, whether the amount of force applied was the minimum amount necessary).<sup>3</sup>

An officer’s actions will be determined to be compliant in connection with a Use of Force incident if the officer satisfies each of these four criteria. A Use of Force incident will be deemed compliant if each officer using force is compliant with respect to the four criteria.

### **Consent Decree Paragraphs 67(j) and 73**

Consent Decree Paragraph 67(j) requires NPD to put in place policies that state that “Unholstering a firearm and pointing a firearm at a person will be documented and tracked and used only when objectively and reasonably necessary to accomplish a lawful police objective (67(j));

Consent Decree Paragraph 73 requires NPD to “prohibit officers from unholstering or exhibiting a firearm unless the officer reasonably believes that the situation may escalate to create an immediate threat of serious bodily injury or death to the officer or another person. Under those circumstances, the officer will place his or her finger outside the trigger guard and have it ready for self-defense. The finger is only to be placed on the trigger when on target and ready to engage a threat.”

The Monitoring Team will begin its review of constructive authority incidents subsequent to its review of other use of force incidents as part of this Second Use of Force audit. At a later date, the Monitoring Team will issue a letter apprising NPD and the City of the reports, video, and other material necessary to complete the constructive authority portion of the Second Use of Force Audit, which will cover Consent Decree Paragraphs 67(j) and 73.

### **Consent Decree Paragraphs 75 – 84 and 88**

Consent Decree Paragraphs 77-84 and 88 require NPD to adopt a Use of Force

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<sup>3</sup> The Monitoring Team will review all available and relevant reports, documentation and video footage associated with each use of force incident, including: (1) Use of Force Reports; (2) Incident Reports (DPI 802); (3) Arrest Reports (DPI 800); (4) Continuation Reports (DPI 795); (5) Stop Reports (DPI 1388); (6) Supervisor Review Routing Reports; (7) Debriefing Forms (DPI 2004); (8) Body-Worn Camera (“BWC”) Video; and (9) Supervisor Use of Force Investigation Reports (DPI 1005). While not every Use of Force incident will require the creation of each category of record, where these records are available and where they shed light on the context of a particular use of force incident, the Monitoring Team may review such records.

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reporting system and a supervisor Use of Force Report and sets forth the processes that shall be included in NPD's reporting of use of force incidents. that is separate from NPD's arrest and incident reports and includes individual officers' accounts of their Use of Force.

To assess NPD's compliance with Consent Decree Paragraphs 77-84 and 88, which relate to Use of Force reporting requirements, the Monitoring Team will review all reports concerning a Use of Force that are required by NPD policy to assess whether each officer involved in the sampled use of force incidents fulfilled the reporting requirements in NPD's *General Order 18-21, Use of Force Reporting, Investigation and Review*. If one officer in a use of force incident does not comply with the requirements of General Order 18-21, the Monitoring Team will find the incident non-compliant, except for situations where NPD's own internal review process identified and remediated the reporting deficiency.

**Outcome Assessments Pursuant to Paragraphs 174(b)(i)-(ix)**

Paragraph 174(b)(i)-(ix) of the Consent Decree requires NPD and the City to provide the Monitor with nine (9) categories of Use of Force data to allow the Monitoring Team to undertake use of force-related outcome assessments. NPD and the City will be compliant when they provide each of the nine (9) categories of data to the Monitoring Team.

\* \* \*

Prior to the commencement of the audit, and within the 45-day period following the issuance of this letter, the Parties will contact the Monitoring Team to schedule a pre-audit meeting to review and discuss the methodology that will be used for the Second Use of Force Audit.

Sincerely,

/s/ Peter C. Harvey

Peter C. Harvey

Enclosures

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# APPENDIX B



# NEWARK POLICE DIVISION GENERAL ORDER



**SUBJECT:  
USE OF FORCE**

**GENERAL ORDER NO.  
18-20**

**SUPERSEDES:  
G.O. 63-2**

**DATED:  
November 8, 2018**

**This Order consists of the following numbered sections:**

- I. PURPOSE**
- II. POLICY**
- III. DEFINITION OF TERMS**
- IV. USE OF FORCE STANDARDS**
- V. USE OF FORCE**
- VI. USE OF DEADLY FORCE**
- VII. USE OF FORCE LEVELS OF CONTROL**
- VIII. DE-ESCALATION TECHNIQUES**
- IX. EMOTIONALLY DISTURBED PERSON**
- X. DUTY TO PROVIDE MEDICAL AID**
- XI. USE OF FORCE REPORTING AND REVIEW**
- XII. TRAINING**
- XIII. EFFECTS OF THIS ORDER**



# NEWARK POLICE DIVISION GENERAL ORDER



## I. PURPOSE

The purpose of this order is to establish Newark Police Division policy and procedures that are designed to guide Police Division members in the use of force, and to further ensure that Police Division members treat all persons with dignity and respect as they execute the duties they have been entrusted to perform. The provisions of this order shall apply to regular Police Division members, Newark Special Police Officers, Newark Auxiliary Police Officers, and Police Division members assigned to special details outside of the Police Division.

## II. POLICY

The Police Division places the highest value on the sanctity of all human life. It is the policy of the Police Division that its members will in all instances attempt to exercise their responsibilities without the use of force. It is further the policy of the Police Division to de-escalate situations without using force when possible in order to decrease the likelihood that force will have to be employed. Police Division members shall de-escalate the use of force at the earliest opportunity, and will make efforts to exhaust all other reasonable means available before resorting to the use of force, as long as the member's safety or that of other persons is not compromised.

The Police Division limits the use of force by its members to those situations when it is objectively reasonable to effect an arrest or protect the safety of the Police Division member or another person. The use of force shall never be considered routine. In determining to use force the member shall be guided by the principle that the amount of force employed in any situation should be the minimum amount necessary. Any force used shall not create substantial risk of injury to bystanders. Therefore, it is imperative that members make every effort to ensure that each instance of use of force is not only legally warranted, but also rational and humane.

Police Division policy and training require that members not only follow the legal standard of using force, which was established in *Graham v. Connor*, 490 U.S. 386 (1989), but also strive to utilize the minimum amount of force necessary in order to bring about their lawful objectives. Members are reminded that a degree of force, which may have been justified earlier in an encounter, does not remain justified indefinitely. Force shall be decreased as the subject's resistance or threat decreases.

Police Division members are duty bound to prevent and or intervene when the use of force by other members or members from another law enforcement agency appears to be unreasonable and or illegal in type or amount. This policy sends a clear message that Police Division members share an obligation beyond the requirements of the law to intervene and prevent the application of unreasonable or unlawful use of force.

This policy is not intended to limit the lawful authority of Police Division members to use objectively reasonable force or otherwise fulfill their law enforcement obligations. However, members must remain mindful that they derive their authority from the U.S. Constitution, Federal



# NEWARK POLICE DIVISION GENERAL ORDER



Laws, the Laws of the State of New Jersey and the community. The use of unreasonable and or illegal force undermines the legitimacy of that authority and shall not be tolerated. Members are subject to discipline, possible criminal prosecution, and or possible civil liability for violations of the law or provision of this policy.

### III. DEFINITIONS

#### A. Active Resistance

1. Active resistance occurs when a subject is uncooperative and takes some level of physical action to resist and prevent a Police Division member from taking control of the subject and or placing the subject in custody.
2. Examples include levels of resistance from non-assaultive actions such as pulling or running away all the way up to a lethal attack on the member.

#### B. Bodily Harm

1. Bodily harm means physical pain, temporary disfigurement, or impairment of physical condition.
2. An example is a subject who fell to the ground or was taken to the ground while resisting arrest and as a result he or she sustains minor scrapes and/or bruises to his knees and/or arms.

#### C. Constructive Authority

1. Constructive authority, as defined in the State of New Jersey Attorney General Guidelines, means using the Police Division members' authority to exert control over a subject that does not involve actual physical contact.
2. Examples include verbal commands, gestures, warnings, and un-holstering, exhibiting, or pointing a firearm. Pointing a firearm at a subject is an element of constructive authority to be used only in appropriate situations.

#### D. De-Escalation

1. De-escalation means steps taken during a potential use of force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation without use of force or with a reduction in the force necessary.



# NEWARK POLICE DIVISION GENERAL ORDER



2. An example would be using verbal persuasion to calm down a person in crisis who is threatening to do harm to the member, but who has not actually taken any affirmative steps to harm the member.

**E. Deadly Force (Synonymous w/Lethal Force)**

Deadly force is any use of force which a Police Division member uses that is likely to cause death or serious bodily harm, including, but not limited to using a firearm, neck hold, strike with a hard object to the head, neck or throat.

**F. Enhanced Mechanical Force**

1. Enhanced Mechanical Force is an intermediate force option between mechanical force and deadly force, requiring a greater level of justification than that pertaining to physical or mechanical force, but a lower level of justification than required for the use of deadly force.
2. An example would be using a Conducted Energy Device (CED) against a person who the member reasonably believes poses an imminent danger of death or serious bodily injury to him/herself.

**G. Feasible**

Feasible means capable of being done or carried out, reasonable.

**H. Imminent Danger (Synonymous with Imminent Threat)**

1. Imminent danger describes threatened actions or outcomes that may occur during an encounter without action by the Police Division member.
2. The period of time involved is dependent upon the circumstances and facts evident in each situation and is not the same in all situations. The threatened harm does not need to be instantaneous.

**I. Less-Lethal Force**

Less-lethal force is force employed that is less likely and not intended to cause death or serious bodily harm.

**J. Mechanical Force**

1. Mechanical force involves the use of some device or substance, other than a firearm, to overcome a subject's active resistance.



# NEWARK POLICE DIVISION GENERAL ORDER



2. Examples include the use of a baton or other object, or chemical or natural agent spray.

## **K. Member**

A sworn employee of the Newark Police Division.

## **L. Neck Hold**

A neck hold is considered **deadly force** and includes:

1. A bar-arm control hold, which inhibits breathing by compression of the airway in the neck (choke hold);
2. A carotid restraint hold, which inhibits blood flow by compression of the blood vessels in the neck;
3. A lateral vascular neck constraint; or
4. A hold with a knee or other object to the back of a prone subject's neck.

## **M. Passive Resistance**

1. Passive Resistance occurs when a subject is uncooperative and is not complying with a Police Division member's lawful commands, but is not using physical force or minimal physical force to prevent a member from placing the subject in custody and taking control.
2. Examples include but are not limited to verbal non-compliance – such as stating, "No", refusing to move, going limp, locking arms, or holding onto a fixed object.

## **N. Physical Contact**

1. Physical contact means routine or procedural contact with a subject necessary to effectively accomplish a legitimate law enforcement objective or an arrest.
2. Examples include guiding a subject into a police vehicle, holding the subject's arm while transporting him or her, handcuffing a subject, and maneuvering or securing a subject for a frisk.

## **O. Physical Force**



# NEWARK POLICE DIVISION GENERAL ORDER



1. Physical force means contact with a subject beyond physical contact that is used to effect an arrest or other law enforcement objective. Physical force is employed when necessary to overcome a subject's active resistance to the Police Division member's authority or to protect persons or property.
2. Examples include wrestling a subject to the ground, using wrist locks or arm locks, striking with hands or feet, or other similar methods of hand-to-hand confrontation.

## **P. Serious Bodily Harm**

Serious bodily harm means bodily harm that creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ or which results from aggravated sexual assault or sexual assault.

## **Q. Substantial Risk**

1. A substantial risk exists when an officer disregards a foreseeable likelihood that bystanders will be endangered by the use of force.
2. For example, firing a weapon into a confined space (room, vehicle, etc.) occupied by bystanders exposes those persons to a substantial risk of harm.

## **IV. USE OF FORCE STANDARDS**

### **A. General Requirements**

1. Policing at times requires that a member exercise control of a violent or resisting subject to make an arrest or to protect the member, other members, or members of the community from risk of imminent harm. Clearly, not every potential violent confrontation can be de-escalated. However, members do have the ability to impact the direction and the outcome of many situations they handle, based on their decision-making and the tactics they choose to employ. The member shall consider and use de-escalation techniques where appropriate.
2. Members should continually assess every situation with the goal of bringing the situation to a safe, peaceful conclusion. This conclusion may be accomplished by using time, distance, information, isolation, teamwork, force option, coordination, and other techniques to maximize a member's advantage.

### **B. Objectively Reasonable Force**



# NEWARK POLICE DIVISION GENERAL ORDER



1. The United States Supreme Court decided in *Tennessee v. Garner*, 471 U.S. 1 (1985), that apprehension by the use of deadly force by police officers is a seizure subject to the reasonable standard under the Fourth Amendment of the United States Constitution.
2. The test and analysis that courts will use to examine whether a use of force is constitutional was set forth in *Graham v. Connor*, 490 U.S. 386 (1989) and the test has been expanded by subsequent court cases.
3. The Court concluded in *Graham* that use of force by police officers during an arrest, investigatory stop, or other seizure of a person shall be analyzed under an objective reasonableness standard.
4. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than from 20/20 hindsight. The standard of reasonableness must take into account the fact that officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving.
5. The standard of reasonableness in reviewing use of force is an objective one: were the officer's actions objectively reasonable given the facts and circumstances confronting him or her? The facts available to the officer at the time, along with other objective factors that may impact the reasonableness of an officer's actions, must be considered. The courts analyze the reasonableness of an officer's use of force actions by utilizing the "test of reasonableness," which consists of the following "*Graham Factors*":
  - a. "the severity of the crime at issue";
  - b. "whether the suspect poses an imminent threat to the safety of the officers or others"; and
  - c. "whether he/she is actively resisting arrest or attempting to evade arrest by flight".

## **C. Duty to Intervene**

1. Police Division members present at the scene of a use of force incident shall ensure that the force used complies with the law and with Division policies, rules and regulations.
2. Any member who witnesses force being used unreasonably or unlawfully shall, when reasonable to do so:



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- a. verbally and or physically intervene as necessary to prevent or stop the use of unreasonable or unlawful force;
- b. safeguard the person upon whom the force was used;
- c. render aid (Ref. to section X – Duty to Provide Medical Aid);
- d. notify a non-involved supervisor to respond to the scene; and
- e. report and document the incident on Police Division authorized forms (BlueTeam, etc.).

## V. USE OF FORCE

### A. General Requirements

Force may be used by a Police Division member in the following situations, recognizing that when force is used the member will use the minimal force needed to accomplish the law enforcement objective:

1. When the member reasonably believes that force is immediately necessary to make a lawful arrest and:
  - a. The member has advised the person of the reason for their arrest or reasonably believes that it is already known to the subject; or
  - b. The reason for the arrest cannot reasonably be made known to the person.
2. When a person is actively resisting arrest.
3. To prevent an escape under New Jersey statute, if it can be employed to effect an arrest for which the person is in custody:
  - a. The degree of force used shall be determined by the gravity of the offense committed, and
  - b. The force employed shall not be excessive in either type or amount.
4. If immediately necessary to prevent escape of a person who has been charged with or convicted of a crime, committed to a jail, prison or other detention facility.



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5. To prevent the commission of a crime involving the threatening of bodily harm, property damage, or suicide.

## **B. Restrictions**

The Division strictly prohibits using force that is not objectively reasonable and proportional to the threat or resistance of the subject under the circumstances. For example:

1. Members shall not use force to effect compliance with a command that is knowingly unlawful. The use of force is unreasonable when the initial arrest or detention was knowingly unlawful to the member based on information known to the member at the time of the arrest or detention.
2. The Division strictly prohibits the use of force against persons in handcuffs, except as objectively reasonable to prevent imminent bodily harm to a member or another person/s, or as objectively reasonable, where physical removal is necessary to overcome passive resistance.
3. Members shall not use force to overcome passive resistance, except that objectively reasonable force is permitted when necessary for the purposes of handcuffing and physically removing a passively resisting person.
4. Members shall not use force to retaliate against a person, including, but not limited to:
  - a. force used after a threat has diminished or is otherwise not reasonably necessary;
  - b. force used to punish individuals for fleeing or otherwise resisting arrest; and
  - c. force used in response to disrespectful language or actions.

## **VI. USE OF DEADLY FORCE**

### **A. General Requirements**

1. Police Division members are empowered to carry and use firearms in the exercise of their service to the citizens of the City of Newark. This power is based on trust, and therefore, must be balanced by a system of accountability.
2. Purposely firing a firearm in the direction of another person or at a vehicle, building or structure in which another person is believed to be positioned



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constitutes deadly force unless the firearm is loaded with less-lethal ammunition and fired by a law enforcement officer in the performance of the officer's official duties (NJS 2C:3-11b). Further, this policy recognizes that the use of an impact weapon may constitute deadly force.

3. For that reason, firearms, and similar less-lethal means of deadly force, and impact weapons shall be used only under the limited circumstances described in this section.
4. Deadly force may be used when the Police Division member reasonably believes that such action is immediately necessary to protect the member or another person from imminent danger of death or serious bodily harm.
5. Deadly force may be used to prevent the escape of a fleeing suspect, if:
  - a. The member has probable cause to believe the suspect has committed an offense that caused or attempted to cause death or serious bodily harm; and
  - b. The suspect will pose an imminent danger of death or serious bodily harm should escape succeed; and
  - c. When the use of deadly force presents no substantial risk of injury to bystanders.
6. When feasible, a Police Division member must identify himself/herself as an officer and state his/her intention to shoot before using the firearm.
7. Police Division members may use their firearms to protect themselves or the public from animals that pose an imminent threat to the safety of the member or the public.
8. Police Division members may also use their firearm to destroy a sick or injured animal after obtaining authorization from a supervisor.
9. Police Division members shall be familiar with, and strictly adhere to: State of New Jersey Attorney General Guidelines, Division Memoranda and Orders, and the tenets of Chapter 8, of the Newark Police Division's Rules and Regulations, entitled: **FIREARMS**, including, but not limited to using, carrying, handling, caring, storing, requalifying on all Division approved firearms, ammunition, and using special weapons.

## **B. Restrictions**



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1. Police Division members shall not use deadly force to subdue persons whose actions are only destructive to property.
2. Police Division members shall not use deadly force against persons whose conduct is injurious only to themselves.
3. Police Division members shall not discharge a firearm as a signal for help or as a warning shot.
4. Neck holds are prohibited, except under circumstances in which deadly force would be authorized.

## **C. Un-holstering, Exhibiting, or Pointing a Firearm**

1. Police Division members shall not un-holster, exhibit, or point a firearm except under the following circumstances:
  - a. Routine maintenance of a firearm,
  - b. To secure the firearm,
  - c. During firearms training exercises, qualifications, or re-qualifications, or
  - d. When the circumstances create an objectively reasonable belief that the un-holstering and exhibiting of a firearm or pointing of a firearm will help establish control over a subject during an encounter that has the potential to escalate to create a risk of death or serious bodily harm to the member or another person.
    - i. These tactics are intended to give members a tactical advantage and opportunity to protect themselves or others from death or serious bodily harm prior to the threat becoming immediate, which may be too late.
    - ii. The use of these tactics shall be reported and tracked (BlueTeam).

## **D. Motor Vehicle and Use of Deadly Force**

1. While any discharge of a firearm entails risk, discharging a firearm at or from a moving vehicle entails even greater risk of death or serious bodily injury to bystanders. Public safety is jeopardized when a fleeing suspect is disabled and loses control of his or her vehicle. There is also a substantial risk of harm to occupants



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of the suspect vehicle who may not be involved, or involved to a lesser extent, in the actions which necessitated the use of deadly force.

2. Due to this greater risk, and considering that firearms are not generally effective in bringing moving vehicles to a rapid halt, Police Division members shall not fire from a moving vehicle or at the driver or occupant of a moving vehicle unless the member reasonably believes:
  - a. there exists an imminent danger of death or serious bodily harm to the member or another person; and
  - b. no other means are available at that time to avert or eliminate the danger.
3. Police Division members shall not fire a weapon solely to disable a moving vehicle.
4. When confronting an oncoming vehicle, Police Division members shall make every effort to move out of its path, rather than discharge their firearms at the oncoming vehicle.
5. Police Division members shall not intentionally place themselves in the path of an oncoming vehicle and attempt to disable the vehicle by discharging their firearm.

## VII. USE OF FORCE LEVELS OF CONTROL

### A. Levels of Control Categories

1. Police Division members shall consider a subject's level of resistance when using force. When feasible, members shall use the minimum force necessary to perform their duty and not expose themselves to unreasonable risk of injury. The level of control used shall be proportional to the threat or resistance the member encounters, whether passive or active.
2. Police Division members are not limited to using equal force, but may use a higher level of force than the subject's resistance as long as it is necessary and objectively reasonable to accomplish a lawful purpose. Similarly, force shall be appropriately de-escalated as resistance decreases. When feasible, members shall allow individuals the opportunity to submit to arrest before using force.
3. The Police Division classifies use of force into three categories based on the seriousness of any injuries that are likely to or actually result from the force



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employed. These categories determine the Police Division's supervisory and investigative response to a use of force incident. The three categories are:

- a. **“Low Level Force” or “Low Level Use of Force”** – any use of force that is not likely to and does not result in bodily harm or complaint of bodily harm. For example, the use of wrist or arm locks.
- b. **“Intermediate Force” or “Intermediate Use of Force”** – any use of force that is likely to or actually does result in bodily harm or complaint of bodily harm. For example, the use of OC spray.
- c. **“Serious Force” or “Serious Use of Force”** – any use of force that results or is likely to result in loss of consciousness; any canine bite; any strike, blow, or kick against a handcuffed or restrained subject; or any strike with a hard object to the head, neck, or throat; or neck hold resulting in serious bodily harm or death that is not investigated by the Essex County Prosecutor's Office pursuant to New Jersey Attorney General Directive 2005-06.

These three categories broadly encompass the more specific use of force **control tactics** defined in the State of New Jersey Attorney General Guidelines, which include: the *member's presence, physical contact, constructive authority, physical force, mechanical force, enhanced mechanical force, and deadly force (Cross Ref. G.O. #18-22 Firearms and Other Weapons)*. In all instances, members should exhaust all other reasonable means before resorting to using force tactics, recognizing that members will use only force which is objectively reasonable and necessary.

### VIII. DE-ESCALATION TECHNIQUES

#### A. Tactics and Techniques

1. De-escalation tactics and techniques are verbal and non-verbal actions used by members, when safe and without compromising law enforcement objectives, to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance.
2. Division members shall look for opportunities to de-escalate situations. When reasonable and based on the totality of the circumstances and where it may be accomplished without increasing the risk of harm to the member or others, members shall:
  - a. gather information about the incident;



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- b. assess the risks to the subject(s), officer(s) and general public;
      - c. assemble resources (e.g., EMS, ESU, SWAT);
      - d. communicate and coordinate a response; and
      - e. attempt to slow the momentum of the incident.
    3. When feasible, members will rely on area containment; employ surveillance; wait out the subjects; summon reinforcements; or call in specialized tactical units in order to reduce the need for force and increase member and civilian safety.
  - B. Special Considerations**
    1. Members shall use all available resources and training in determining what, if any, force is appropriate based on the following factors:
      - a. Medical Condition;
      - b. Mental Impairment;
      - c. Developmental Disability;
      - d. Physical Limitation;
      - e. Language Barrier;
      - f. Under the Influence of Drugs/Alcohol;
      - g. Behavioral Crisis;
      - h. Hearing, Speech, or Vision Impairment; or
      - i. Any other factor that may impair the person's ability to understand or comply with the member's instructions.

Members shall consider these factors and make efforts to avoid or minimize the use of force and attempt to obtain appropriate assistance for the person.

2. Members are expected to recognize that their approach, such as tone and body language, to a civilian interaction may influence whether a situation escalates to the need of using force.



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3. Supervisors will become involved as soon as practical in managing an overall response to potentially violent encounters by coordinating resources and members' tactical actions. Supervisors should possess a good knowledge of tactics and ensure that members under their supervision perform to Division standards.
4. The number of Police Division members on scene may increase the available force options and may increase the ability to reduce the overall force used.

## **IX. EMOTIONALLY DISTURBED PERSON**

Police Division members responding to or encountering a subject suffering from mental illness (E.D.P.- Emotionally Disturbed Person) and in need of assistance shall be guided by Newark Police Division G.O. #08-05.

## **X. DUTY TO PROVIDE MEDICAL AID**

Police Division members are duty bound to ensure that injured persons or those alleging injury, including complaints of pain, as a result of the use of force, receive immediate medical aid.

Whenever a Division member observes or is made aware of the presence of an injury, including, complaints of pain, the member shall ensure that Emergency Medical Services (E.M.S.) is requested to respond. This also applies to incidents in which a member uses any weapon against a person such as, but not limited to, less-lethal ammunition, OC spray, or a conducted energy device and contact is made with the subject with any of these weapons. Additionally, members shall render aid to the level in which they are trained until relieved by emergency medical responders.

If a person subjected to use of force exhibits signs of injury or complains of pain and refuses medical aid, the Division member shall still notify E.M.S. The member shall also document the refusal on the corresponding Police Division form (Use of Force Report/Incident Report/Arrest Report/etc.).

## **XI. USE OF FORCE REPORTING AND REVIEW**

Police Division members shall report whenever a firearm is un-holstered or exhibited or pointed at a subject as an element of constructive authority.

Members shall also report every time they use physical force, mechanical force, enhanced mechanical force, or deadly force.

Members who **witness** the use of physical, mechanical, enhanced mechanical, or deadly force shall document their observations in a Continuation Report (DP1:795).



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Members are also required to immediately notify an on-duty supervisor who did not use, direct, or was otherwise involved in the use of force incident. The supervisor must then respond to the scene. If the immediate supervisor is not available any other on-duty supervisor must respond.

All reporting of use of force shall be documented on Police Division authorized forms (BlueTeam, etc.).

Use of force incidents will be referred to A-FIT Team for review and investigation pursuant to the Use of Force Reporting, Investigation, and Review General Order #18-21.

Members who fail to abide by the use of force reporting requirements shall be subject to disciplinary action.

All requirements associated with reporting, investigating, and reviewing of use of force incidents can be found in Use of Force Reporting, Investigation, and Review General Order #18-21.

## **XII. TRAINING**

Police Division members are required to receive and maintain Police Division in-service training and weapons certification requirements in the proper use of firearms, as per the State of New Jersey Attorney General Guidelines; as well as all relevant Division policies, rules, and regulations.

In addition, Police Division members are required to attend in-service emergency first aid training to enable them to render first aid until professional medical care providers are on the scene.

Members must complete and pass a Division-approved certification course of instruction for all mechanical, enhanced mechanical or deadly force options.

Members are required to receive annual and/or biannual recertification training, or as directed, in order to maintain their certification to utilize any of the Division-authorized use of force options.

Any member who does not complete required certifications, and/or re-certifications will be prohibited from carrying/using any Division-authorized use of force option. Similarly, if a member fails any certification/re-certification course, the member shall be prohibited from utilizing the affected force option.

Members who do not pass their **required** annual or bi-annual re-certification requirements risk suspension and or termination.

For training and certification requirements and for all training in use of force options, please refer to the Newark Police Training Division and the State of New Jersey Attorney General Guidelines.



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## XIII. EFFECTS OF THIS ORDER

All previous Memorandums and Orders that are in conflict with this Order are repealed.

BY ORDER OF

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**ANTHONY F. AMBROSE**  
**PUBLIC SAFETY DIRECTOR**

AFA/BO:ma

**C: Darnell Henry, Chief of the Police Division**

**Related General Orders**

- G.O. #67-04 Secondary Firearms
- G.O. #84-01 Firearms Range
- G.O. #05-03 Police Officers Carrying Firearms
- G.O. #08-05 Emotionally Disturbed Persons
- G.O. #94-03 Vehicle Pursuit Policy
- G.O. #16-02 Officer Involved Critical Incident Management
- G.O. #18-21 Use of Force Reporting, Investigation and Review
- G.O. #18-22 Firearms and Other Weapons

**Related Rules and Regulations**

Chapters 8, 12, 15, and 18

**Department of Public Safety Police Division Memoranda**

- DPS #16-737 Critical Incident Response Team
- DPS #16-856 Ammunition Change

**Attorney General Guidelines & Directives**

# APPENDIX C



# NEWARK POLICE DIVISION GENERAL ORDER



<b>SUBJECT:</b> <b>USE OF FORCE REPORTING, INVESTIGATION AND REVIEW</b>	<b>GENERAL ORDER NO.</b> <b>18-21</b>
<b>SUPERSEDES:</b> <b>NEW</b>	<b>DATED:</b> <b>November 8, 2018</b>

**This Order consists of the following numbered sections:**

- I. PURPOSE**
- II. POLICY**
- III. DEFINITIONS**
- IV. ALL FORCE INVESTIGATIONS AND TRACKING TEAM (A-FIT)  
STRUCTURE AND RESPONSIBILITIES**
- V. GENERAL REQUIREMENTS FOR USE OF FORCE REPORTING AND  
INVESTIGATION**
- VI. NOTIFICATIONS**
- VII. USE OF FORCE REPORTING AND INVESTIGATIVE  
RESPONSIBILITIES**
- VIII. USE OF FORCE REVIEW**
- IX. TRAINING**
- X. EFFECTS OF THIS ORDER**



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## I. PURPOSE

The purpose of this Policy is to set out the reporting, analytical, and investigatory responsibilities for use of force incidents involving Newark Police Division members, and to create one central team known as the *All-Force Investigations & Tracking Team (A-FIT)*.

This policy is intended to supplement the Newark Police Division's (NPD) Use of Force General Order by expanding on the provisions regarding use of force reporting and supervisor use of force investigations.

All definitions in the Use of Force General Order shall apply to this order.

## II. POLICY

Newark Police Division members will report anytime they use force.

The Newark Police Division will investigate and review all uses of force.

The *All-Force Investigations & Tracking Team* will be responsible for the review of all uses of force, and will conduct the administrative investigations of more serious uses of force. *A-FIT Team's* response to a use of force incident does not assume criminal or administrative violations have occurred.

Use of force incidents will be categorized into three levels based on seriousness, and will be investigated accordingly.

Violations of established Newark Police Division Rules & Regulations, General Orders, policies, federal & state law, the U.S. Constitution, or Attorney General Guidelines will result in disciplinary sanctions, which can include counseling (verbal warnings), written warning, fines, civil liability, criminal charges, suspension, /or up to termination.



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### III. DEFINITIONS

For the purpose of providing supervisors with a standard for the reporting and investigating of use of force incidents by Division members, the following terms and definitions apply.

#### A. Low-Level Use of Force

“Low-Level Force” or “Low-Level Use of Force” – any use of force that is not likely to and does ***not result in bodily harm*** or complaint of bodily harm.

Includes the use of:

1. ***physical force*** to overcome resistance (e.g., hand controls or escort techniques such as elbow grip, wrist grip, or shoulder grip applied as pressure point compliance technique). (Ref. Use of Force G.O. #18-20 def.).

#### B. Intermediate-Level Use of Force

“Intermediate-Level Force” or “Intermediate-Level Use of Force” – any use of force that is likely to or actually does ***result in bodily harm*** or complaint of bodily harm.

Includes the use of:

1. ***physical force*** to overcome resistance (as described above) or wrestling a person to the ground, elbow strikes, fist strikes not likely to cause death or serious injury, kicks, leg sweeps, or other hand-to-hand physical maneuvers, etc.;
2. ***mechanical force***, baton strikes to non-lethal areas, use of some device or substance, other than a firearm, to overcome a subject’s active resistance (Ref. Use of Force G.O. #18-20)

#### C. Serious-Level Use of Force

“Serious-Level Force” or “Serious-Level Use of Force” – ***any use of force*** that ***results*** or is ***likely to result in serious bodily harm*** or ***death***.

Including but not limited to:

1. use of less-lethal weapons (e.g., firing of bean bag rounds);



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2. use of enhanced mechanical force (e.g., conducted energy devices such as stun guns and Tasers);
3. firearm discharges (not pointing);
4. **any use of force** that results in **loss of consciousness**;
5. any canine bite;
6. any strike, blow, or kick against a handcuffed or restrained subject;
7. any strike with a hard object to the head, neck, or throat; or
8. neck holds (Ref. Use of Force G.O. #18-20);

**D. All-Force Investigations and Tracking Team (A-FIT Team)**

The All-Force Investigations and Tracking Team is a subcomponent of the Office of Professional Standards (OPS). The *A-FIT Team* is responsible for reviewing, tracking, and analyzing all Police Division members' use of force incidents. The *A-FIT Team* is also responsible for investigating "serious use of force" incidents not investigated by the Essex County Prosecutor's Office, and any other use of force incident as directed by the *A-FIT Team Commander*.

**E. Risk Analysis Review Board (RARB)**

The Risk Analysis Review Board is a panel of Police Division command and executive-level members responsible for reviewing and analyzing a variety of Division matters (ref. G.O. #17-02), which include all use of force investigations, to ensure compliance with the United States Constitution, the State of New Jersey Constitution, law, rules, regulations, policies, and procedures; to identify deficiencies in procedures, policies, or supervision; and to recommend training/retraining or discipline to correct deficiencies and address improper patterns of behavior.



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#### IV. ALL-FORCE INVESTIGATIONS AND TRACKING TEAM (*A-FIT TEAM*) STRUCTURE AND GENERAL RESPONSIBILITIES

##### A. Structure

The *A-FIT Team* will be a subcomponent of the Office of Professional Standards (OPS) and shall be placed accordingly on the Newark Police Division Organizational Plan.

The *A-FIT Team* shall be staffed by highly trained, experienced investigators from various areas of the Police Division.

The *A-FIT Team* will include a commander, supervisory, and investigative personnel.

##### B. General Responsibilities

1. The *A-FIT Team* is responsible for investigating serious use of force incidents, except for use of force incidents investigated by the Essex County Prosecutor's Office or other Law Enforcement Agencies (Ref. Attorney General Directive 2006-5).
2. The *A-FIT Team* shall respond to and where appropriate will investigate the following types of use of force incidents:
  - a. "Serious use of force" incidents;
  - b. Any use of force incident, where the incident potentially involves criminal conduct or misconduct on the part of the member; or
  - c. Any other use of force incident as directed by the *A-FIT Team Commander*.
3. The *A-FIT Team* will assist and guide field supervisors with the handling of use of force incidents.
4. When the *A-FIT Team* is contacted by a field supervisor for assistance concerning a use of force incident he or she is investigating, the *A-FIT Team* member shall be responsible for providing guidance to that supervisor, and shall be responsible for ensuring that the supervisor follows the instructions given.
5. The *A-FIT Team* shall review and analyze all use of force incidents.



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6. The *A-FIT Team* shall be responsible for developing and maintaining a system to track all use of force incidents, including those incidents investigated by the Essex County Prosecutor's Office or other Law Enforcement Agencies.
7. The *A-FIT Team* shall be responsible for the administrative investigation of use of force incidents after the completion of investigations by the Essex County Prosecutor's Office or other Law Enforcement Agencies.
8. If the *A-FIT Team* determines that administrative charges are being recommended for violations of N.J. Attorney General Guidelines, Newark Police Division General Orders, or Rules and Regulations, *A-FIT Team* will contact OPS to generate a Complaint Against Personnel (C.A.P.) number. OPS is the central repository for all C.A.P. numbers.
9. *A-FIT Team* shall forward findings for use of force investigations to the RARB.

### C. *A-FIT Team Members*

#### 1. **Commander**

- a. The **Commander** of the *A-FIT Team* will oversee the day-to-day operations of the Team in accordance with established Police Division policies, procedures, rules, and regulations. The Commander shall also be responsible for tracking, analyzing, and reviewing all use of force investigations.
- b. The **Commander** shall ensure that the data captured in members' use of force reports and supervisors' investigative reports is analyzed as necessary to identify significant trends, to correct deficient policies and practices, and to document the findings in an **annual report** that will be made **publicly available**. The analysis will include evaluations and assessments of use of force by type, unit or assignment, demographics of the subjects, the shift or time of day, location, the nature of offense, the resistance encountered, and comparisons among officers or units.



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### 2. Supervisor

**Supervisors** will be guided by established Police Division policies, procedures, rules and regulations concerning supervisory and investigative responsibilities. They shall lead the investigations of use of force incidents assigned to the *A-FIT Team*.

### 3. Investigative Personnel

**Investigative Personnel** will conduct use of force investigations assigned to *A-FIT Team*, and report to the *A-FIT Team* supervisor.

## V. GENERAL REQUIREMENTS FOR REPORTING AND INVESTIGATING USE OF FORCE INCIDENTS

### A. Reporting and Investigating the use of Constructive Authority

1. Un-holstering, exhibiting, or pointing a firearm at a person as an act of constructive authority shall be reported (BlueTeam).
2. Incidents involving use of the member's presence, physical contact, verbal persuasion, commands, or threats to use force—shall not be considered reportable incidents and will not require a use of force report or investigation.
3. However, although some incidents do not require a use of force report or investigation, Police Division members will accurately and thoroughly document their encounter on the appropriate Division form (e.g., Incident Report, Arrest Report).

### B. Reporting & Investigating the use of Physical, Mechanical, Enhanced Mechanical, or Deadly Force

1. Any use of physical, mechanical, enhanced mechanical, or deadly force by Division members shall be reported and investigated.
2. When an incident involves multiple levels of force applied, the incident shall be investigated and documented based on the highest level of force used.



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3. Whenever a supervisor uses, directs, or is otherwise personally involved in any type of force, another supervisor who was not involved in the use of force will conduct the investigation.
4. At the discretion of the Public Safety Director, Chief of Police, or OPS Commander, a use of force investigation may be assigned or reassigned to the *A-FIT Team* or another supervisor for further investigation or analysis.

### VI. NOTIFICATIONS

Division members involved in a use of force incident shall notify the Communications Division/911 Call Center as soon as feasible.

The Communications Division/911 Call Center shall notify an uninvolved supervisor to respond to the scene.

Supervisors notified of a use of force incident shall respond to the scene and assess the incident. Once the supervisor makes a preliminary determination as to what level of force was used, he or she shall make immediate notification to the appropriate use of force investigative component (*A-FIT Team*, O.P.S., and/or E.C.P.O.) and be guided by that component.

In accordance with N.J. Attorney General Directive 2006-5, certain types of incidents require immediate notification to the Essex County Prosecutor's Office. Division members may not participate in those investigations, except that nothing shall preclude any Division member from helping to secure the scene, providing medical assistance to injured person, or from participating in the search for or pursuit of any person suspected of a crime related to the use of force incident. This provision applies to:

1. **any use of force** by a member involving death or serious bodily injury to a person;
2. where deadly force is employed by a member with no injury; or
3. where any injury to a person results from the use of a firearm by the member;
4. **Additionally**, the Essex County Prosecutor's Office will be notified on every firearm discharge by Police Division members, acting in the performance of their law enforcement authority, either on-duty or off-duty,



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including “no hit” incidents, animal shootings, and accidental discharges (Ref. DPSM #16-737).

All notifications have to be made through the Communications Division/911 Call Center. The Communications Division/911 Call Center Supervisor shall be responsible for making all requested and required notifications in accordance with established Division procedures and the N.J. Attorney General Directive 2006-5.

The Communications Division/911 Call Center supervisor shall also make immediate notification to the Public Safety Director and the Chief of Police on **all** incidents of “serious use of force” by Division members.

### VII. USE OF FORCE REPORTING AND INVESTIGATIVE RESPONSIBILITIES

#### A. Low-Level Use of Force Investigation

##### 1. Member

- Shall, complete a use of force entry in BlueTeam or Use of Force Report.
- If equipped with B.W.C. & IN CAR CAMERA(S), shall upload, classify, and save the video footage in accordance with Division policy (Ref. Body-Worn Cameras G.O. #18-05).
- Notify the field supervisor.
- When feasible, remain on the scene of the use of force incident and wait for the field supervisor to respond. If it is not reasonable or safe to remain on the scene, notify the field supervisor accordingly.

##### 2. Witnessing Member

- Witnessing member, if any, will document their observations on a Continuation Report (DPI:795), and forward same to the uninvolved supervisor conducting the use of force review/investigation.
- If equipped with B.W.C. & IN CAR CAMERA(S), shall upload, classify, and save the video footage in accordance with Division policy (Ref. Body-Worn Cameras G.O. #18-05).
- Ensure that a supervisor is notified to respond.



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### 3. Field Supervisor

- Respond to the scene or, if he/she is not available, another on-duty supervisor shall respond.
- Evaluate and assess the use of force incident, and make a preliminary determination as to the level of force used (Low, Intermediate, or Serious).
- Visually check for signs of injury.
- Review member's Body Worn Camera video and or In-Car Camera video, and ensure that the footage is uploaded, properly classified, and saved (Ref. Body-Worn Cameras G.O. #18-05).
- Ensure that members report and document the incident.
- Review the use of force reports for thoroughness, clarity, and completeness.
- Document steps taken and findings in BlueTeam or Use of Force Report.
- If, after review of completed reports, the field supervisor finds cause to upgrade a low-level use of force investigation to intermediate or serious, he or she shall do so.

### 4. *A-FIT Team*

- All completed members' reports and field supervisor reports with findings will be forwarded to the *A-FIT Team* for review, analysis, and tracking. The *A-FIT Team* is not required to respond to the scene for low-level uses of force.

## B. Intermediate-Level Use of Force Investigation

### 1. Member

- Shall complete a use of force entry in BlueTeam or Use of Force Report.
- If equipped with B.W.C. & IN CAR CAMERA(S), shall upload, classify, and save the video footage in accordance with Division policy (Ref. Body-Worn Cameras G.O. #18-05).
- Notify the field supervisor.



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- When feasible, remain on the scene of a use of force incident and wait for the field supervisor to respond. If it is not reasonable or safe to remain on the scene, notify the field supervisor accordingly.
- If there is a crime scene, secure the scene.
- Render aid consistent with training and qualifications, and request E.M.S. to respond to the scene where injuries are observed or alleged (**including complaints of pain**).
- Identify potential witnesses to the use of force and request they remain on the scene until the supervisor responds.

### 2. Witnessing Member

- Witnessing member, if any, will document their observations on a Continuation Report (DPI:795), and forward same to the uninvolved supervisor conducting the use of force review/investigation.
- If there is a crime scene, assist with securing the scene.
- If equipped with B.W.C. & IN CAR CAMERA(S), shall upload, classify, and save the video footage in accordance with Division policy (Ref. Body-Worn Cameras G.O. #18-05)
- Ensure a supervisor is notified to respond.

### 3. Field Supervisor

- Respond to the scene, if he/she is not available another on duty supervisor shall respond.
- Evaluate and assess the use of force incident, and make a preliminary determination as to the level of force used (Low, Intermediate, or Serious).
- Visually check for signs of injury.
- Ensure medical aid is provided to any injured parties, and that E.M.S. is notified.
- If there is a crime scene and or injuries are being reported, ensure the scene is secured and arrange for Crime Scene Unit to respond to photograph and process the scene. ***This includes photographing any injuries.***
- Review member's Body Worn Camera video and or In-Car Camera video, and ensure that the footage is uploaded, properly classified, and saved (Ref. Body-Worn Cameras G.O. #18-05).



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- Canvass area for privately owned video that may have captured the incident, and attempt to obtain copies voluntarily. If the owner refuses, document the location and/or owner of the video. If no privately-owned video is discovered, document that none was found.
- As soon as practicable, interview member and any witnessing members for investigative purposes and to gather information to provide to the *A-FIT Team*.
- If the incident is determined to be an intermediate use of force, notify the *A-FIT Team*.
- Ensure that members report and document the incident.
- Review the use of force reports for thoroughness, clarity, and completeness.
- Document steps taken and findings in BlueTeam and complete a Supervisor Use of Force Investigation Report (DPI:1005F).

#### 4. *A-FIT Team*

Upon being notified by the field supervisor, or through the Communications Division/911 Call Center, and being provided with the circumstances surrounding an intermediate use of force incident, the *A-FIT Team* supervisor shall apprise their commander of the incident to determine if a response is necessary. If instructed to respond, the *A-FIT Team* shall do so with sufficient personnel to conduct the investigation.

The *A-FIT Team* supervisor shall do the following:

- Assume control of the investigation.
- Interview the field supervisor on the scene to obtain any and all information gathered concerning the incident.
- Interview Police Division members on the scene involved in the use of force and those who witnessed the use of force.
- Review all BlueTeam entries relevant to the incident, which include the Use of Force Report (i.e., BlueTeam entry).
- Review member's Body Worn Camera video and or In-Car Camera video (Ref. Body-Worn Cameras G.O. #18-05).



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- Document thoroughly, clearly, and in detail all the information collected on the Supervisor Use of Force Investigation Report (DPI:1005F).
- Forward all relevant reports to the *A-FIT Team* commander for review.

If at any point during the investigative process the *A-FIT Team* supervisor learns of possible criminal conduct involving Police Division members' use of force he/she will immediately notify OPS and will be guided by their instructions.

### C. Serious-Level Use of Force Investigation

#### 1. Member

- Shall complete a use of force entry in BlueTeam or Use of Force Report.
- If equipped with B.W.C. & IN CAR CAMERA(S), shall upload, classify, and save the video footage in accordance with Division policy (Ref. Body-Worn Cameras G.O. #18-05).
- Notify the field supervisor.
- When feasible, remain on the scene of a use of force incident and wait for the field supervisor to respond. If it is not reasonable or safe to remain on the scene, notify the field supervisor accordingly.
- If there is a crime scene, secure the scene.
- Render aid consistent with training and qualifications, and request E.M.S. to respond to the scene where injuries are observed or alleged (**including complaints of pain**).
- Identify potential witnesses to the use of force and request they remain on the scene until the supervisor responds.
- Remain at the scene until instructed otherwise by the investigating component supervisor taking the lead in the serious use of force investigation.
- Be available to provide written or audio statements to *A-FIT Team* or the E.C.P.O. investigators concerning the serious use of force incident.



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### 2. Witnessing Member

- Witnessing member, if any, will document their observations on a Continuation Report (DPI:795), and forward same to the uninvolved supervisor conducting the use of force review/investigation.
- If there is a crime scene, assist with securing the scene.
- If equipped with B.W.C. & IN CAR CAMERA(S), shall upload, classify, and save the video footage in accordance with Division policy (Ref. Body-Worn Cameras G.O. #18-05).
- Ensure a supervisor is notified to respond.

### 3. Field Supervisor

- Respond to the scene and, if he/she is not available, another on-duty supervisor shall respond.
- Evaluate and assess the use of force incident, and make a preliminary determination as to the level of force used (Low, Intermediate, or Serious).
- Visually check for signs of injury.
- Ensure medical aid is provided to any injured parties, and that E.M.S. is notified.
- Manage the scene by ensuring that it is properly secured.
- As soon as practical, secure any weapons used by Division members during the use of force incident.
- Quickly and efficiently gather pertinent information, and then notify ***A-FIT Team***.
- Ensure that members involved in the use of serious force or who witnessed the use of serious force remain on the scene, unless medical aid is immediately necessary. (Refer to Officer Involved-Critical Incident Management G.O.# 16-02.)
- If the member involved in the use of serious force needs to go to the hospital, the supervisor will assign a unit/member to escort/standby at the hospital with the member.
- Upon response by either E.C.P.O. or the ***A-FIT Team*** to the scene, the supervisor will provide investigators with any and all information gathered concerning the incident.
- The field supervisor shall cooperate fully with and follow instructions given by the ***A-FIT Team*** investigators or E.C.P.O. investigators.
- Ensure that members report and document the incident.



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- Review the use of force reports for thoroughness, clarity, and completeness.
- The field supervisor shall complete entries in BlueTeam. No Supervisor Use of Force Investigation Report (DPI:1005F) is needed because it will be completed by ***A-FIT Team*** investigators.

#### 4. ***A-FIT Team***

- Assume control of the investigation.
- Ensure that EMS was notified to address any injuries being reported.
- If there is a crime scene and or injuries are being reported, ensure the scene is secured and arrange for Crime Scene Unit to respond to photograph and process the scene. ***This includes photographing any injuries.***
- Interview the field supervisor on the scene to obtain any and all information gathered concerning the incident.
- Interview Police Division members on the scene involved in the use of force, as well as those who witnessed the use of force.
- Interview the subject of the use of force.
- Canvass area for privately owned video that may have captured the incident, and attempt to obtain copies voluntarily. If the owner refuses, document in detail specific information such as the location and/or owner of the video. If no privately owned video is discovered, document that none was found.
- Review all BlueTeam entries relevant to the incident.
- Review member's Body Worn Camera video and or In-Car Camera video (Ref. Body-Worn Cameras G.O. #18-05).
- Document thoroughly, clearly, and in detail all the information collected on the Supervisor Use of Force Investigation Report (DPI:1005F).
- Forward all relevant reports to the ***A-FIT Team*** commander for review.
- The ***A-FIT Team*** will lead all serious use of force investigations not handled by the E.C.P.O.
- The ***A-FIT Team*** will tailor its response to the incident, but will normally include at a minimum a supervisor and investigative personnel.



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- The *A-FIT Team* supervisor or commander will be responsible for notifying the involved member's chain of command up to the Public Safety Director, as well as OPS as soon as reasonably possible.
- Within 30 days, or as soon as possible thereafter, the *A-FIT Team* commander will present the completed investigation to the commander of OPS, the officer's chain of command, and the Risk Analysis Review Board (RARB), when it next convenes.
- If the investigation reveals potential criminal conduct or administrative misconduct, the *A-FIT Team* commander will be responsible for notifying the command staff and confer with OPS and the Public Safety Director as appropriate, as well as referring the matter to the appropriate authority for investigation if necessary, while proceeding with the administrative investigation after conferring with the prosecuting authority. Under no circumstance will the *A-FIT Team* or OPS compel a statement from the subject member without first consulting with the prosecuting agency, Public Safety Director, and Chief of Police.

### VIII. USE OF FORCE REVIEW

#### A. *A-FIT Team Review*

1. The *A-FIT Team* supervisor shall review all completed use of force investigations that were assigned to *A-FIT Team* investigators, as well as completed investigations conducted by field supervisors. He/she shall:
  - a. Review pertinent reports from use of force incidents to ensure the investigations are complete and thorough.
  - b. Ensure that the findings are supported by the preponderance of the evidence.
  - c. Determine whether the force used was lawful, the minimal amount necessary, whether de-escalation techniques were used where appropriate, and consistent with policy.
  - d. Forward the investigation to the *A-FIT Team* Commander for further review.
2. The *A-FIT Team* commander shall also review all completed use of force investigations. He/she shall:



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- a. When it appears that findings are not supported by a preponderance of the evidence, recommend in writing changes to the findings after consultation with the investigating supervisor and previous reviewer, the evidence or analysis supporting the modification will be documented. If deficiencies are noted, the reviewer will initiate corrective action where appropriate.
  - b. If the use of force investigation is complete, supported by the evidence, and free from deficiencies he/she will forward the use of force investigation to the Risk Analysis and Review Board (RARB) for final review.
3. Serious use of force investigations conducted by and completed by the *A-FIT Team* will be forwarded to the RARB for review and findings.
  4. If after review the RARB finds the investigation to be complete, thorough, and supported by the evidence, the Board shall make the necessary and appropriate finding of whether the force was lawful and consistent with policy.

### **B. Risk Analysis Review Board (RARB)**

The Risk Analysis Review Board (RARB) shall consist of members from various commands (Ref. Risk Analysis Review Board G.O. #17-02).

The Commanding Officer of the Transparency and Risk Analysis Management Unit shall be the Chairperson for the RARB.

The RARB shall be responsible for timely, comprehensive, and reliable reviews of all use of force investigations to determine whether the findings are consistent with the law and policy and supported by a preponderance of evidence; whether the investigations are thorough and complete; and whether there are tactical, equipment, or policy considerations that need to be addressed.

All completed use of force investigations shall be forwarded to the RARB within **5 Days** so that the RARB is able to review during its next monthly meeting.

The RARB shall also include in its review investigations completed by the E.C.P.O. pursuant to New Jersey Attorney General Directive 2006-05 that were referred back to the *A-FIT Team* for administrative investigation.

The RARB shall review *A-FIT Team* investigations and ensure that they are



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complete, thorough, and supported by the preponderance of the evidence. If an investigation is found to be deficient, the RARB shall send it back to *A-FIT Team* to complete any additional investigation.

The RARB will document its findings and recommendations for *A-FIT Team* investigations. Unless the RARB Chairperson grants an extension, the review should be conducted within seven days after the *A-FIT Team* presentation of the completed investigation to the RARB.

It shall be the responsibility of the Chairperson of the RARB to provide a summary report to the Public Safety Director.

The summary report shall be due to the Public Safety Director by 1100 hours on the Tuesday after the review date and shall include the following:

- a. Summary of each Use of Force Report reviewed
- b. Summary of any procedures violated
- c. Corrective action recommendations
- d. Any incident that was directed to the Office of Professional Standards or *A-FIT Team* for further investigation.

The RARB will not make recommendations concerning discipline; however, the Chairperson of the RARB is obligated to ensure referral back to *A-FIT Team* if potential misconduct is uncovered in the review process. The *A-FIT Team* supervisor will then ensure to coordinate with the OPS Commander concerning the alleged misconduct.

Should policy, equipment, or training deficiencies be noted in the review process, the RARB Chairperson will ensure that such deficiencies are brought to the attention of the relevant commanding officer for appropriate action. The unit commander of the member involved with the use of force will have the final responsibility regarding retraining or recommending discipline to the Public Safety Director.

If the use of force incident is found to be inconsistent with Division policies or if deficiencies are identified in training, tactics, or the use of equipment, the Public Safety Director or designee will ensure that appropriate remedial action is taken.

Likewise, if the use of force incident investigation and review is found to be deficient in any way, the Public Safety Director or designee shall ensure that appropriate remedial action is taken.



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## XII. TRAINING

As a component of use of force training, all members shall be trained on the use of the BlueTeam database for use of force reporting and investigation purposes.

All new supervisors shall be trained on the tenets of this General Order during their supervisor academy training program.

New *A-FIT Team* members shall receive specialized use of force investigations training. The training will include but will not be limited to: Division Use of Force Policy, Rules and Regulations, state and federal law concerning the Use of Force, N.J. Attorney General Guidelines on Use of Force, Division Policy on Firearms and Other Weapons, De-Escalation Techniques, and Interview Techniques.

The commander of the *A-FIT Team* shall be responsible for the coordinating and tracking of all training for *A-FIT Team* members.

The RARB members assigned to review use of force investigations shall receive a minimum of eight (8) hours of training on an annual basis, to include legal updates regarding use of force and the Training Division’s current use of force curriculum.

## XIII. EFFECTS OF THIS ORDER

All previous Memorandums and Orders that are in conflict with this Order are repealed.

BY ORDER OF

ANTHONY F. AMBROSE  
PUBLIC SAFETY DIRECTOR

AFA: BO/ma

c: Darnell Henry, Chief of the Police Division

### Related General Orders

G.O. #67-04 Secondary Firearms

G.O. #05-03 Police Officers Carrying Firearms Out of State



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- G.O. #08-05 Emotionally Disturbed Person
- G.O. #94-03 Vehicle Pursuit Policy
- G.O. #16-02 Officer Involved Critical Incident Management
- G.O. #18-20 Use of Force
- G.O. #18-22 Firearms and Other Weapons
- G.O. #17-02 Risk Analysis Review

**Department of Public Safety Police Division Memoranda**

- DPS #16-737 Critical Incident Response Team
- DPS #16-856 Ammunition Change

# APPENDIX D



# NEWARK POLICE DIVISION GENERAL ORDER



**SUBJECT:**  
**FIREARMS AND OTHER WEAPONS**

**GENERAL ORDER NO.**  
**18-22**

**SUPERSEDES:**  
**NEW**

**DATED:**  
**November 8, 2018**

**This Order consists of the following numbered sections:**

- I. PURPOSE**
- II. POLICY**
- III. DEFINITIONS**
- IV. FIREARMS AND AMMUNITION**
- V. FIREARMS RANGE**
- VI. OTHER WEAPONS**
- VII. TRAINING**
- VIII. EFFECTS OF THIS ORDER**



# NEWARK POLICE DIVISION GENERAL ORDER



## I. PURPOSE

The purpose of this policy is to identify the types of firearms and other weapons sworn Newark Police Division (NPD) members are authorized to carry and use while in the performance of their lawful duties.

The policy also addresses the pre-deployment and post-deployment considerations as they pertain to using weapons as instruments of force.

All definitions in the Use of Force G.O. #18-20 and Use of Force Reporting, Investigation, and Review G.O. #18-21 apply to this Order.

## II. POLICY

It is the policy of the Newark Police Division to ensure that Division members are properly trained and equipped with the weapons they need to perform their official duties as law enforcement officers and guardians of the community.

Members are **prohibited** from carrying and using any weapon that has not been authorized by the Police Division's Public Safety Director or Chief of Police.

Members shall be mindful that the use of force is never routine, and that the same applies to the use of authorized weapons.

Members shall be guided by New Jersey State Laws, Federal Laws, Police Division Policies, Rules, and Regulations, N.J. Attorney General Guidelines, and Newark Police Training Division/Firearms Range training regarding the carrying, and use of authorized weapons.

Supervisors shall, consistent with the responsibilities of their rank and assignment, inspect members within their command for compliance with NPD Policies, Rules and Regulations concerning certifications, proper care, maintenance, and carrying of Division-authorized weapons and ammunition. Discrepancies shall be documented and addressed immediately.



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### III. DEFINITIONS

#### A. **Conducted Energy Device (CED)**

Any device that is capable of firing darts/electrodes that transmit an electrical charge or current intended to temporarily disable a person.

CEDs are categorized under N.J. Attorney General Guidelines as a form of enhanced mechanical force (Ref. def. in Use of Force G.O. #18-20).

#### B. **Firing of Conducted Energy Device**

Causing the darts/electrodes of a conducted energy device to be ejected from the main body of the device and to come into contact with a person for the purpose of transmitting an electrical charge or current against the person.

#### C. **Discharge of Conducted Energy Device**

Cause an electrical charge or current to be directed at a person in contact with the darts/electrodes of a conducted energy device.

#### D. **Distraction Devices**

Distraction Devices, also referred to as Flash Bang/Flash/Sound Diversionary Devices, are less-lethal mechanical devices, which emit a bright flash, loud report, and heat on detonation, with the purpose of creating a distraction or diversion to the intended target, allowing for a safer environment for tactical team members to operate.

#### E. **Firearm**

Any handgun, rifle, shotgun, machine gun, automatic or semi-automatic rifle, or any gun, device or instrument in the nature of a weapon from which may be fired or ejected any solid projectable ball, slug, pellet, missile or bullet, or any gas, vapor or other noxious thing, by means of a cartridge or shell or by the action of an explosive or the igniting of flammable or explosive substances. It shall also include, without limitation, any firearm, which is in the nature of an air gun, spring gun or pistol or other weapon of a similar nature in which the propelling force is a spring, elastic band, carbon dioxide, compressed or other gas or vapor, air or compressed air, or is ignited by compressed air, and ejecting a bullet or



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missile smaller than three-eighths of an inch in diameter, with sufficient force to injure a person.

### **F. Less-Lethal Ammunition**

Any ammunition approved by the Attorney General which is designed to stun, temporarily incapacitate or cause temporary discomfort to a person without penetrating the person's body. The term shall also include ammunition approved by the Attorney General, which is designed to gain access to a building or structure and is used for that purpose.

### **G. Oleoresin Capsicum (i.e., OC, pepper spray)**

Oleoresin Capsicum (OC) spray is an essence of cayenne peppers. OC is an inflammatory agent, classified as a lacrimator (producer of tears), that causes an intense burning sensation of the skin, eyes, and mucous membranes. OC canisters are color coded for immediate identification (color code: black).

The proper use of OC spray may reduce or eliminate the need for substantial physical force to make an arrest or gain custody. It may reduce the potential for injuries to members and subjects.

### **H. Chloracetophenone (i.e., CN, tear gas)**

Chloracetophenone is a chemical irritant that is deployed as a gas. Classified as a lacrimator (producer of tears), that causes irritation to the eyes, and skin. CN canisters are color coded for immediate identification (color code: red).

The proper use of CN is generally an effective and safe method to disperse unruly or riotous crowds.

### **I. Orthochlorobenzalmalononitrile (i.e., CS, tear gas)**

Orthochlorobenzalmalononitrile is a chemical irritant that is deployed as a gas. Classified as a lacrimator (producer of tears), that causes irritation to the eyes, respiratory tract, and skin. CS is stronger and safer than CN. CS canisters are color coded for immediate identification (color code: blue).

The proper use of CS is generally an effective and safe method to disperse unruly or riotous crowds.



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## **J. Special Weapons**

Special weapons include those firearms and other weapons specifically designed for use during high-risk situations (e.g., Long guns, automatic weapons, OC/CN/CS launchers).

Special weapons are intended for use by highly trained specialized units (ESU/SWAT) who have been trained in the care, and use of these weapons.

## **IV. FIREARMS AND AMMUNITION**

### **A. General Requirements**

Members shall only possess or use firearms and ammunition approved by the Police Division's Public Safety Director or Chief of Police while on duty.

Division Firearms include:

1. Handguns (see Appendix A)
2. Shotguns (see Appendix A)
3. Special Weapons (see Appendix A)
  - a. Rifles/Long Guns
  - b. Less-Lethal Weapons and Ammunition

### **B. Pre-Deployment Considerations**

Members shall be guided by the Use of Force General Order #18-20 when considering whether to use a firearm.

Police Division members shall be cognizant that the use of a firearm constitutes deadly force and may only be used when the member reasonably believes such an action is immediately necessary to protect the member or another person from imminent danger of death or serious bodily harm.



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Police Division members shall use the utmost care when handling and using firearms.

Members shall ensure that the use of Division-authorized firearms does not pose a substantial risk of injury to innocent persons.

Members shall, when feasible, issue a verbal warning to the subject and other members prior to discharging a firearm.

Members shall be guided by the Firearms Range training, and Manufacturer recommendations for the care, maintenance, storage, and carrying of Division-issued firearms.

## C. **Post-Deployment Considerations**

When a member discharges a firearm he or she **shall**:

1. Immediately after rendering the scene safe, provide aid in accordance with their training and experience to any injured person;
2. Notify E.M.S.;
3. Notify the on-duty supervisor to respond to the scene;
4. Secure the scene;
5. Identify any witnesses;
6. Follow instructions from the on-duty supervisor; and
7. Report and document the discharge by completing all relevant Division reports in accordance with the Use of Force Reporting, Investigation, and Review General Order #18-21.

In accordance with New Jersey Attorney General Directive 2006-05, discharges of a firearm by law enforcement officers are investigated by the Essex County Prosecutor's Office (E.C.P.O.). Therefore, the scene of any discharge shall be secured pending response by the E.C.P.O. Investigative Personnel.



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## Exceptions

Police Division members are not required to report, and no investigation is required, for discharges of Division-approved firearms during recreational shooting at an appropriate site (range), or during Division -required firearms training.

Police Division issued firearms **shall not** be used for sports or recreational hunting activities.

## D. Handguns

### 1. Authorization - On-duty

Division members shall carry the Division-issued and authorized handgun and ammunition while on duty.

Uniformed members shall keep their duty handgun in the Division-provided and authorized holster.

Plain clothes members shall keep their duty handgun in a holster they purchase that is approved by the Firearms Range and which conforms to Division specifications (see G.O. #67-04 Secondary Firearms).

Uniformed and plain clothes members may also carry a back-up handgun. The back-up handgun must be purchased by the member, conform to Division specifications, and must be authorized by the Division.

Members must also qualify with the back-up handgun in order to carry it while on or off duty. Furthermore, members must also re-qualify on a semi-annual basis with the back-up handgun. The member must provide his/her own Division-authorized ammunition during qualification at the Firearms Range. Members shall be guided by **G.O. #67-04 Secondary Firearms** when considering the purchase of an on-duty back-up handgun or an off-duty handgun.



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## **Authorization - Off-duty**

Division members have the option of carrying off-duty the Division-issued handgun or a Division-approved off-duty handgun owned by the member.

Members shall be responsible for the care and maintenance of their Division-issued handgun and any Division-approved off-duty handgun they own.

Members shall carry their *Division-issued handgun* in a holster purchased by the member which conforms to Division specifications, and is approved by the Firearms Range.

Members shall carry their *off-duty handgun* in a holster purchased by the member that conforms to Division specifications, and is approved by the Firearms Range.

Personnel may qualify with their off-duty handgun when they receive in-service training at the Firearms Range or on their off-duty time. Those members who opt to qualify on their off-duty time shall comply with the conditions listed in Section V.C.1 of this Order.

Members shall be responsible for re-qualifying on a semi-annual basis with their off-duty handgun. He/she must provide his/her own Division-authorized ammunition during qualification at the Firearms Range. Refer to **G.O. #67-04 Secondary Firearms** for more information on off-duty handguns.

Members who fail to re-qualify on a semi-annual basis with their off-duty handgun are prohibited from carrying the off-duty handgun at any time.

## **E. Shotguns**

### **1. Authorization to Use**

Members shall only use shotguns and ammunition issued by the Division.

Shotguns shall only be carried and used by authorized on-duty Division members.



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When members are teamed up in the same Division vehicle only one shotgun per team shall be carried.

Members shall be guided by Firearms Range training concerning the proper procedures for the carrying, storing, loading, and unloading of ammunition, and use of shotguns.

When a member authorized to carry a shotgun signs one out of their command, he or she shall inspect the shotgun for damage. If any damage that may affect the operation of the shotgun is observed, the member shall immediately return the shotgun, submit an administrative report documenting the damage, and request a replacement if available.

Shotguns signed out by members shall be mounted on the shotgun rack inside their Division vehicles. When no rack is available the shotgun shall be stored in the trunk of the Division vehicle.

### **2. Supervisor Responsibilities**

Supervisors shall ensure that all members issued a shotgun are authorized to carry the shotgun. Supervisors at any time may request that a member present his/her Firearms Qualification Card, which must be stamped with approval to carry a shotgun. Only members authorized to carry shotguns shall be allowed to sign them out of their command.

All supervisors who are responsible for issuing shotguns and ammunition shall conduct an inventory of all shotguns and ammunition at the beginning and end of their shift, and shall document the inventory in accordance with Division procedures.

When issuing shotguns, the supervisor shall inspect the weapon to ensure that it appears operational before issuing it to the member.

If a shotgun appears to be inoperable or damaged, the supervisor shall submit an Administrative Report indicating the need for repair, and notify the Firearms Range at **973-733-6019** or **7915** to arrange for the repair.



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## F. **Special Weapons**

The Commander of SOD shall ensure that members under his/her command receive appropriate training on the care, storage, and use of special weapons.

No member shall be permitted to utilize special weapons without proper training and required periodic qualification.

Rifles/Long Guns and Less-Lethal Weapons and Ammunition are considered special weapons and are kept by the Division and issued as needed to members who are trained in their use.

These weapons are reserved for high-risk incidents such as violent emotionally disturbed persons, barricaded persons, active shooters, hostage situations, and terrorist attacks.

The use of special weapons requires advanced training; therefore, special weapons shall only be carried and used by members trained and qualified in their use.

The Commander of the Special Operations Division (SOD) shall ensure that all special weapons command are tracked, and shall ensure that a monthly inventory of all special weapons is conducted.

## V. **FIREARMS RANGE**

### A. **Organizational Structure**

1. The Firearms Range is organizationally placed under the Training Division on the Newark Police Division's Organizational Plan.
2. The Firearms Range Commander shall oversee all operations of the Firearms Range, and shall as required provide updates on range operations to the Commander of the Training Division.
3. The Firearms Range shall be staffed by trained and certified firearms instructors.



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## **B. Responsibilities**

1. The Firearms Range staff shall conduct all firearms training which shall include the care, maintenance, carrying, and use of all Division-issued firearms, and approved off-duty/back-up firearms.
2. The Firearms Range operations shall be conducted in a manner consistent with Division Rules, Regulations, Policies and Procedures, N.J. Attorney General Guidelines, Police Training Commission, State and Federal Laws.
3. The Firearms Range staff shall track and maintain records for all firearms training and other assigned in-service training as designated by the Training Division Commander, Chief of Police, or Public Safety Director. Firearms Range records shall include but will not be limited to:
  - a. Dates and times of Firearms Range operation.
  - b. Type of training conducted.
  - c. Names of members attending training.
  - d. Members' scores for all firearms training for both on- and off-duty firearms.
  - e. Inventory of all firearms, ammunition, and targets.
  - f. Any other records deemed necessary for the proper operation of the Firearms Range.
4. Additional training, specifically in-service semi-annual state and Division mandated training conducted by the Firearms Range staff includes, but is not limited to, the following subject matters:
  - a. Use of Force
  - b. Domestic Violence
  - c. Sexual Harassment
  - d. Vehicle Pursuit Policy



# NEWARK POLICE DIVISION GENERAL ORDER



- e. Blood Borne Pathogens
  - f. Right to Know (OSHA)
  - g. Prisoner Watches
  - h. Hazardous Communication
5. Firearms Range staff shall provide the Office of Professional Standards (OPS) with copies of all members' firearms training records for entry into IA-Pro.
6. The Firearms Range Commander shall:
- a. Ensure that **all Division firearms** are properly maintained, repaired, tracked, and inventoried.
  - b. Issue firearms only to trained and qualified Division members.
  - c. Ensure that all Firearms Range Safety Rules (See Appendix B) are followed and enforced, and take appropriate action when they are not.
  - d. Ensure to procure and maintain a sufficient supply of ammunition for in-service training.
  - e. Prepare an annual firearms report addressed to the County Prosecutor. The report shall first be forwarded to the Office of the Public Safety Director for approval and signature. The report must be sent to the Public Safety Director's Office no later than the 10<sup>th</sup> of January in order to be sent prior to the January 15<sup>th</sup> due date as set forth in N.J. Attorney General Guidelines. The report shall detail the following:
    - i. A description of all Division-authorized firearms and ammunition.
    - ii. The Division's training/qualification schedule, including the dates and types of qualification sessions conducted during the report year.



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iii. The number of participants who satisfied qualification requirements and the number of non-qualifying participants during each qualification session for each type of course and weapon: service weapon, off-duty weapon and Division-authorized shotgun.

7. The Public Safety Director, Chief of Police or designee shall provide a written report to the Essex County Prosecutor of any member who fails to qualify on the service weapon.

## **C. Use of Firearms Range**

### **1. Off-duty Personnel**

Off-duty personnel shall be permitted to utilize the Firearms Range facility under the following guidelines:

- a. Off-duty personnel must utilize the range in conjunction with the Division In-Service Training Program.
- b. Appointments must be made in advance by contacting the Range Commander at the Firearms Range at (973)-733-6019.
- c. For reasons of scheduling, only four (4) off-duty personnel per day will be permitted to use the range.
- d. All safety rules must be strictly obeyed. (Appendix B)
- e. Off-duty personnel must supply their own ammunition.

### **2. Other Police Agencies**

The Newark Police Division will permit other police agencies to utilize its firearms range facilities under the following conditions:

- a. All requests must be in written form and addressed to the Public Safety Director for approval.
- b. Once approved, scheduling shall be arranged by the Range Commander.



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- c. These other police agencies shall provide their own instructors, ammunition, targets and shall comply with all firearms range rules, procedures and policies.
- d. These other police agencies shall assume all responsibility for their personnel and any liabilities incurred through the actions of their officers.

## VI. OTHER WEAPONS

### A. **Conducted Energy Devices (CED)**

#### 1. **Authorization to Use**

Conducted Energy Devices (CED) are issued by the Police Division. Only members who have been trained and authorized by the Essex County Prosecutor's Office in accordance with N.J. Attorney General Guidelines may carry and use CEDs. This authority may be revoked at any time by the Essex County Prosecutor's Office, Public Safety Director or Chief of Police.

Conducted Energy Devices are categorized as a form of enhanced mechanical force under N.J. Attorney General Guidelines.

Members authorized to use CEDs shall be guided by the N.J. Attorney General Guidelines, the Conducted Energy Device General Order #18-10, and the Use of Force General Order #18-20.

CEDs shall be stored at the authorized member's command, in a similar fashion as shotguns, in a secured location.

#### 2. **Pre/Post Deployment Considerations**

Refer to the CED General Order #18-10.

#### 3. **Supervisor Responsibilities**

Supervisors responsible for the issuance of CEDs shall ensure that they conduct an inventory at the beginning and end of their shift of all CEDs under their control.

Supervisors shall only issue CEDs to trained and authorized Division personnel.



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Supervisors shall be guided by the Use of Force Reporting, Investigation, and Review General Order #18-21, and the Conducted Energy Devices General Order #18-10.

## B. Oleoresin Capsicum Spray (OC)

### 1. Authorized Use

Members are **prohibited** from using any OC spray that is not authorized by the Division.

OC spray is provided by the Division to all members trained in its use, who shall also carry the Division-issued OC spray at all times when in full police uniform.

The Division issued OC spray *must be labeled EDW- Electronic Discharge Weapon Tested and Safe/Non-Flammable*.

OC is categorized as an element of mechanical force under N.J. Attorney General Guidelines and the Use of Force General Order (III, J).

### 2. Pre-Deployment Considerations

Members shall avoid the use of OC spray in hospitals, nursing homes, schools, areas where children may be affected (playgrounds), or where bystanders may be affected.

Members **shall not** use OC spray when wind, weather, or tactical conditions do not allow for the safe and proper use of the chemical agent.

Members **shall not** use OC spray near open flames.

OC spray is used as a means of control to minimize the potential for injury to members, offenders, or other persons during a use of force incident. OC is generally a safe, effective and humane method for members to protect themselves or other persons against actively resisting and/or combative persons, or vicious animals.

Members shall be guided by the Use of Force General Order #18-20 when considering whether to use OC spray.



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Members shall, if feasible and safe to do so, issue a warning prior to using OC spray.

Members shall not use OC spray in a moving vehicle or upon the person positioned on the driver side of any running vehicle.

### **3. Post-Deployment Considerations**

Members who use OC spray upon a person shall as soon as practicable

- a. Reassure the person that they will recover;
- b. Place the person in a fresh air environment;
- c. Allow the person to flush out exposed areas with clean cool water;
- d. Allow the person to remove contact lenses if worn; and
- e. Contact EMS to evaluate the person.

Members shall document on the appropriate Division forms the use of the OC spray.

A supervisor shall be notified and requested to respond to any incident where a member uses OC spray.

### **4. Supervisor Responsibilities**

Supervisors shall respond to all deployments of OC spray and shall be guided by the Use of Force General Order #18-20 and the Use of Force Reporting, Investigation, and Review General Order #18-21.

Supervisors shall, at a minimum, inspect annually members' OC spray to ensure that it is not expired, and that it is in compliance with Division Rules, Regulations, Policies and Procedures, and this G.O. Supervisors shall document the results of their inspections on the Supervisor's Field Inspection Report.



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## 5. Property & Evidence Division Responsibilities

The commander of the Property and Evidence Division shall ensure that a sufficient quantity of OC spray is procured and stored at the Property & Evidence Division to equip the entire Police Division as needed.

Members shall further refer to the Use of Chemical Agents and Non-Lethal Aerosol Incapacitating Agent General Order #68-2 for additional information concerning OC and other Chemical Agents.

## C. Other Chemical Agents

The following other chemical agents (e.g., CN/CS) are intended to be used only by the Special Weapons and Tactics Team (SWAT) or Emergency Services Unit (ESU) members.

Only members who have successfully completed a Division approved training course in the proper use of CN, and CS shall be authorized to use them.

The use of CN/CS chemical agents in any form (e.g., spray, gas) by a Division member requires that the member complete a use of force report. The member will further be guided by the relevant provisions contained in the Use of Force Reporting, Investigation, and Review General Order.

The reporting for the deployment of these other chemical agents shall also be documented in the SWAT team's After Action Report.

### 1. Chloracetophenone (CN) & Orthochlorobenzalmalononitrile (CS) – Chemical Agents Authority to Use

#### a. Authorized Use

The authority to use CN or CS rests with the ranking member of SWAT or ESU.

#### b. Pre-Deployment Considerations

In a riotous or unruly crowd, incident members must first attempt other less intrusive methods to disperse the crowd.



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An escape route for the crowd must be available.

Division members in the immediate area must be equipped with gas masks.

To ensure effective deployment, weather conditions, such as wind, should be considered.

If deployment is authorized, notify E.M.S. to respond. This will allow for immediate aid to be available for any person(s) who may have an adverse reaction to the CN or CS.

**c. Post-Deployment Considerations**

If any person is injured as a result of the use of a chemical agent, EMS shall be notified to respond. Members shall also provide aid in accordance with their training and experience.

**d. Supervisor Responsibilities**

The SWAT Commander or ESU Commander or their designee shall review the use of CN/CS after each incident or operation to ensure that the device(s) was/were properly deployed and functional. All Deployments and unusual occurrences shall be documented in the mission After Action Report.

**D. Police Batons**

**1. Authorized Use**

Members of the Division are authorized to carry and use Police Batons.

Members are responsible for purchasing their own Police Batons. All Police Batons must conform to Division specifications and must be approved by the Training Division (see Basic Uniform Regulations G.O. #63-22).



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Members are prohibited from carrying or using Police Batons that are not approved by the Training Division.

Members shall carry a Police Baton at all times when in full police uniform.

### **2. Pre-Deployment Consideration**

Members shall be guided by the Use of Force General Order when considering the use of a Police Baton.

Batons are considered a form of mechanical force in accordance with N.J. Attorney General Guidelines. They can be used to block or strike when active resistance is experienced by a member. Batons are generally not considered lethal weapons, but do have the potential to be lethal if improperly used or when the circumstances warrant the use of a baton as a lethal weapon.

Members shall be aware of what are known as red zones when using a Police Baton (e.g., head, neck, groin). Strikes to these areas constitute deadly force and are not authorized unless the use of deadly force is authorized as per the Use of Force General Order.

### **3. Post-Deployment Consideration**

When a member uses a Police Baton to strike a person during an incident warranting the use of such force, and an injury is observed or alleged, the member shall notify EMS and render aid commensurate to their training and experience as needed.

The member shall also document the use of such force in accordance with the Division Use of Force General Order #18-20 and the Use of Force Reporting, Investigation, and Review General Order #18-21.

A supervisor must be notified and must respond to all incidents where a Police Baton is used to strike a person regardless of whether the person is injured.



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### **E. Distraction Devices**

Distraction devices are designed for a variety of purposes that do not necessarily constitute a use of force. They can be used when dealing with violent or armed persons to distract (noise), create cover (smoke), and other tactical purposes. The use of distraction devices reduces the risk of injury to members and other persons.

#### **1. Authorized Use**

Except in emergent situations, the use of a distraction device requires the authorization of the SWAT Commander or SWAT Team Leader.

#### **2. General Deployment**

Generally, the use of Distraction Devices may be considered whenever their use would enhance safety and mitigate risks associated with any given mission.

These situations include, but are not limited to:

- i.** Barricaded persons
- ii.** Hostage situations
- iii.** High-risk warrant service (Intelligence indicates violent offenders, weapons present, fortified structures etc.)
- iv.** Presence of aggressive canines that exhibit behavior threatening to SWAT or ESU members.

NOTE: Every tactical situation has its own unique circumstances and obstacles, and must be resolved with its own unique solution. SWAT or ESU members must rely on their training and experience, as well as common sense and sound judgment, when utilizing this equipment.

#### **3. Pre-Deployment Considerations**

Prior to deploying a Distraction Device, personnel shall consider intelligence information and circumstances to determine if devices may be safely deployed. Unless justification can be clearly articulated, Distraction Devices shall not be deployed in the following circumstances:



# NEWARK POLICE DIVISION GENERAL ORDER



- a. Young children are present in the target area.
- b. Elderly persons are present in the target area.
- c. Flammable vapors or flammable liquids are present in the target area.

A portable fire extinguisher shall be readily accessible whenever these devices are to be deployed.

Distraction Devices may be deployed by hand or initiated by pole.

Distraction Devices may be deployed at the breach point or away from the breach point if deemed necessary.

SWAT or ESU members should, whenever possible, quickly visually inspect the area of deployment and deploy the device approximately one meter off the breach point.

#### 4. **Post-Deployment Considerations**

If any person is injured as a result of the use of a Distraction Device, EMS shall be immediately notified to respond. Members shall also provide aid in accordance with their training and experience.

#### 5. **Supervisor Responsibilities**

The SWAT Commander or ESU Commander or their designee shall review the use of Distraction Devices after each incident or operation to ensure that the device(s) was/were properly deployed and functional. All Deployments and unusual occurrences, shall be documented in the mission After Action Report.

### VII. **TRAINING & RE-QUALIFICATIONS**

#### A. **Firearms Training – Police Recruit**

The Training Division & Firearms Range shall conduct its police recruit firearms training program in compliance with the mandates and qualifying standards established by the N.J. Police Training Commission.



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### **B. Firearms In-Service Re-Qualifications**

The Firearms Range Commander shall develop and provide a practical training course for members involving the use of barricades, vehicles, and urban scenarios. The Range Commander shall review and update this course quarterly.

All Officers shall qualify at least twice annually at the Firearms Range for any firearm the officer will carry or use while on duty following the procedures and requirements established by the New Jersey State Attorney General Guidelines for Firearms Qualification.

When a member successfully passes the qualification course, the Range Commander will issue a card (Firearms Qualification Card) to that member indicating the date the member passed the course. The member shall maintain possession of the card, and produce it upon request by a supervisor. The member shall also provide a copy of the card to their Command for record-keeping purposes.

Members are responsible for ensuring they qualify at the Firearms Range twice per year.

Members must complete the required semi-annual re-qualification course to continue to carry and use authorized firearms in accordance with N.J. Attorney General Guidelines, Division Rules, Regulations, Policies and Procedures.

The Firearms Range shall notify Division Commanders of all members assigned to their Commands in need of re-qualification. This notification shall be made one month in advance from when the member is in need of re-qualification.

Members who fail to meet the training requirements will receive remedial instruction and will be rescheduled in order to comply with the training requirements.

If after remedial training and subsequent attempts to qualify the member still does not fire a passing score, the supervising firearms instructor shall report this information to the Chief of Police and Public Safety Director. The Chief of Police and the Public Safety Director will then determine what action is appropriate and maintain whatever records are appropriate.



# NEWARK POLICE DIVISION GENERAL ORDER



Members who fail to meet the training requirements for the use of authorized firearms shall relinquish their Division issued firearm.

Members who fail to qualify after remedial training within a reasonable time will be subject to disciplinary action, up to and including termination of employment.

The Executive Officer of each Command shall be responsible for scheduling members within their Command for the bi-annual firearm range re-qualification.

The Executive Officer shall provide a list of members they have scheduled for re-qualification to the Firearms Range one (1) week in advance of the scheduled training.

Each Command shall maintain records of attendance at the Firearms Range for personnel assigned to their Command.

## **C. Other Weapons Training**

The Essex County Prosecutors Office is responsible for all initial Conducted Energy Device (CED) user training in accordance with N.J. Attorney General Guidelines. The Firearms Range shall be responsible for all CED training re-certifications.

The Firearms Range shall be responsible for the routine inventory of Division-wide CEDs.

The tracking of training for the use of special weapons, other than firearms, shall be the responsibility of the Special Operations Commander.

The SOD Commander shall ensure members receive proper training and retraining in accordance with N.J. Attorney General Guidelines and Manufacturer recommendations.

Members shall be guided by the Firearms Range and the Training Division regarding any and all training or re-qualification concerning all other weapons not covered above.



# NEWARK POLICE DIVISION GENERAL ORDER



## VIII. EFFECTS OF THIS ORDER

All previous Memorandums and Orders that are in conflict with this Order are repealed.

BY ORDER OF

A handwritten signature in blue ink, appearing to be "A. Ambrose", is written over a horizontal line.

**ANTHONY F. AMBROSE**  
**PUBLIC SAFETY DIRECTOR**

AFA/BO/ma

c: Darnell Henry, Chief of the Police Division

### **Related General Orders**

G.O. #63-22 Basic Uniform Regulations

G.O. #67-04 Secondary Firearms

G.O. #68-02 Use of Chemical Agents and Non-Lethal Aerosol Incapacitating Agent

G.O. #05-03 Police Officers Carrying Firearms

G.O. #08-05 Emotionally Disturbed Person

G.O. #16-02 Officer Involved Critical Incident Management

G.O. #18-20 Use of Force

G.O. #18-21 Use of Force Reporting, Investigation, and Review

### **Attorney General Guidelines & Directives**



# NEWARK POLICE DIVISION GENERAL ORDER



## APPENDIX A

### AUTHORIZED DIVISION FIREARMS AND OTHER WEAPONS

A. Hand guns:

- Sig Sauer P229 9mm Semi-Automatic (*Division Handgun*)
- Sig Sauer P229 40mm Semi-Automatic
- Glock Model 22 .40 cal. Semi-Automatic

B. Shot guns:

- Remington Model 870 and 870P 12-gauge Shotguns
- Benelli M1 12-gauge Shotgun

C. Long guns:

- Colt Model AR-15 .223 cal. Semi-Automatic
- Colt M4 Model Commando .223 cal. Rifle Semi/Automatic
- Colt M4 Model A2 .223 cal. Rifle Semi/Automatic
- Benelli M16 Assault Rifle
- Remington Model 700TWS Bolt Action Centerfire Rifle 26" Barrel .308 Winchester (Ammunition: Remington 308 Windmag)
- FN Herstal M-249 .223 cal. Automatic Assault Weapon

D. Chemical Agents:

- Oleoresin Capsicum (OC)
- Chloracetophenone (CN)
- Orthochlorobenzalmalononitrile (CS)

E. Conducted Energy Device (CED):

- Taser Class III – X2 w/Cam.

F. Police Batons:

- Monadnock PR24
- Monadnock 22: Expandable Baton w/Power Tip



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- Foam Batons

## G. Ammunition:

- .223 Ammunition
- 9mm hollow-point Ammunition
- 9mm ball Ammunition
- .40 ball Ammunition
- .40 hollow-point Ammunition
- Segmented Slugs Ammunition (for Shotguns)
- 00 Buck Ammunition (for Shotguns)
- Less-than-lethal Ammunition:
  - Foam Round Bean Bags
  - Chemical Agent Rounds (OC/CN/CS)
- Hatton Rounds

## H. Launchers:

- 37mm Single-Shot Launcher
- 37mm Multi-Shot Launcher
- 40mm Multi-Shot Launcher



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### APPENDIX B

#### Firearms Range Safety Rules

- A. Any violation of the following Rules may result in disciplinary action:
- B. **NO** horseplay is allowed at the Firearms Range.
- C. Weapons will remain holstered at all times unless otherwise instructed by the Range Commander or the firearms instructor.
- D. When on the firing line, drawn weapons will be pointed down range and level to the ground.
- E. Any weapon malfunctions, or misfires, will be immediately reported to an instructor.
- F. Only shooters and instructors are permitted on the firing line.
- G. All personnel on the firing line must wear ear and eye protection.
- H. Unsupervised firing of weapons is prohibited. Firearms Range Personnel must be present when weapons are discharged at the Firearms Range.
- I. No armor piercing and or tracer ammunition is allowed at the Firearms Range. *Exception:* Specialized Units, such as the Emergency Response Team (ERT), are allowed to fire such rounds.
- J. The use of cross-draw (in the pants) holsters and shoulder holsters shall be prohibited at the range. Only those holsters approved by the Department shall be utilized.
- K. The following safety rules shall apply when responding to the Firearms Range:
  - 1. Any officer having any physical disability, limitation, illness or other condition that would affect their ability to participate safely in any aspect of the firearms program shall immediately notify the supervising firearms instructor.
  - 2. Any officer under the influence of any prescription/non-prescription drug or alcohol shall immediately notify the supervising firearms instructor.
  - 3. Never draw or re-holster a weapon with your finger in the trigger guard or on the trigger guard.
  - 4. Never go forward on the firing line unless instructed to do so by a firearms instructor.



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5. While on the firing line, never bend over to retrieve dropped articles until instructed to do so by a firearms instructor.
6. No talking on the firing line, except by or with a firearms instructor.
7. No eating, chewing tobacco or smoking on the firing line.
8. All officers must pay strict attention to the Firearms Range Instructors.
9. Never anticipate a command.
10. Never permit the muzzle of a firearm to touch the ground.
11. Range staff/armorers shall conduct a safety check of all weapons before and after a training session.
12. The Supervisor in charge of qualification training on a particular day as well as the officer/participant shall make sure that the ammunition they are using is a "Service Load" (ammunition authorized by the agency and issued for duty use) or "Equivalent Load" (ammunition which is equivalent to the Service Load designed for training use) and is of the same caliber for the firearm in which it is used, and it is not damaged in any way.
13. Before firing any firearm that is unfamiliar to you, make sure that you understand exactly how it functions. A lack of familiarity with the firearm can result in serious accidents.
14. Always wash hands after leaving the range to reduce the possibility of lead contamination.
15. The Firearms Range's Commanding Officer shall ensure that personnel equipped to provide first aid are present on the firearms range during all qualification activities. (This person can be a certified member of a local volunteer first aid squad, an agency member certified as a first responder or emergency medical technician, or a member of the agency who is otherwise adequately trained.
16. The Firearm Range's Commanding Officer shall ensure that adequate first aid supplies are on-site at all times.

# APPENDIX E

#	Consent Decree Paragraph	NPD Policy
1	67(a)	General Order 18-20, <i>Use of Force</i> : Sections II, III.D.2 and VII.A.2
2	67(b)	General Order 18-20, <i>Use of Force</i> : Section II
3	67(c)	General Order 18-20, <i>Use of Force</i> : Sections IV.A.2, VIII A.2 and VIII.A.3
4	67(d)	General Order 18-20, <i>Use of Force</i> : Section II
5	67(e)	General Order 18-20, <i>Use of Force</i> : Sections III.E, III.L and VI.A.4
6	67(f)	General Order 18-20, <i>Use of Force</i> : Section III.E
7	67(g)	General Order 18-20, <i>Use of Force</i> : Section V.B.2
8	67(h)	General Order 18-20, <i>Use of Force</i> : Section V.B.3
9	67(i)	General Order 18-20, <i>Use of Force</i> : Section III.B.4
10	67(j)	General Order 18-20, <i>Use of Force</i> : Section VI.C.1.d.ii
11	67(k)	General Order 18-20, <i>Use of Force</i> : Section V.B.1
12	67(l)	General Order 18-20, <i>Use of Force</i> : Section X
13	68	General Order 18-20, <i>Use of Force</i> : Section XII
14	69	General Order 18-20, <i>Use of Force</i> : Section XII
15	70	General Order 18-20, <i>Use of Force</i> : Section XII
16	71	General Order 18-22, <i>Firearms and Other Weapons</i> : Section IV.A
17	72	General Order 18-20, <i>Use of Force</i> : Section VI.D
18	73	General Order 18-20, <i>Use of Force</i> : Section VI.C.1.d
19	74	General Order 18-20, <i>Use of Force</i> : Section XII; General Order 18-22, <i>Firearms and Other Weapons</i> : Section VII.B
20	75	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections II and VII
21	76	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VI
22	77	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections III.A, III.B and III.C; General Order 18-20, <i>Use of Force</i> : Section VII.A.3
23	78	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections IV and VII

#	Consent Decree Paragraph	NPD Policy
24	78(a)	General Order 18-20, <i>Use of Force</i> : Section XI; General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII
25	78(b)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VIII
26	78(c)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VIII
27	78(d)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VIII
28	79(a)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section V; General Order 18-20, <i>Use of Force</i> : Section XI
29	79(b)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VII.A.3, VII.B.3 and VII.C.3
30	79(c)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section V.B.2
31	79(d)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections IV.B.5 and IV.B.6
32	79(e)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VI
33	80	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VII.A.3, VII.B.3 and VII.C.3
34	81	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VII.B.1, VII.B.3, VII.C.1 and VII.C.3
35	82(a)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII
36	82(b)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII
37	82(c)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VII.B.3 and VII.C.3
38	82(d)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VII.A.3, VII.B.3 and VII.C.3
39	82(e)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VII.A.3, VII.B.3 and VII.C.3
40	82(f)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VII.B.3 and VII.C.3
41	82(g)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VII.B.3 and VII.C.3
42	82(h)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VII.B.3 and VII.C.3

#	Consent Decree Paragraph	NPD Policy
43	83	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VII.B.3 & VII.C.4
44	84	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section V.B.4 (Memo: 2018-88)
45	84(a)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VII B.3 and VII.C.4
46	84(b)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VII B.3 and VII.C.4
47	84(c)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VII.B.3 and VII.C.4
48	85	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section IV.C.1.b
49	86	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section V.B
50	87	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VIII.A.1 and VIII.A.2
51	88	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section V.B
52	89	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section V.B.4
53	90	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section IV
54	91(a)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section IV.B.2.a
55	91(b)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section IV.B.2.b
56	91(c)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section IV.B.2.c
57	92	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII.C.4
58	93	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII.C.3
59	94(a)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII.C.4
60	94(b)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII.C.4
61	94(c)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII.C.4
62	94(d)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII.C.4
63	94(e)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII.C.4
64	94(f)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII.C.4

#	Consent Decree Paragraph	NPD Policy
65	94(g)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII.C.4
66	94(h)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII.C.4
67	94(i)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII.C.4
68	94(j)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII.C.4
69	94(k)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII.C.4
70	95	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VIII.B
71	96	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VIII.B
72	97	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section IX
73	98	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VIII.B
74	99	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VIII.B
75	100	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VIII.B
76	102	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VIII.B

# APPENDIX F

**Appendix XX: List of Use of Force Incidents**

Low Level Use of Force Incidents	
1	21-221
2	21-222
3	21-224
4	21-226
5	21-227
6	21-229
7	21-230
8	21-231
9	21-232
10	21-233
11	21-234
12	21-235
13	21-236
14	21-237
15	21-238
16	21-239
17	21-240
18	21-241
19	21-242
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26	21-251
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34	21-260

35	21-261
36	21-262
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79	21-309
80	21-310
81	21-311
82	21-312
83	21-313
84	21-314
85	21-316
86	21-317
87	21-318
88	21-319
89	21-320
90	21-321
91	21-322
92	21-323
93	21-324
94	21-325

Intermediate Level Use of Force Incidents	
1	21-225
2	21-228
3	21-245
4	21-257
5	21-272
6	21-296
7	21-305
8	21-315

Serious Level Use of Force Incidents	
1	21-280
2	21-340



# **APPENDIX D**

**Report of the Independent Monitor's First Audit of the City of Newark and Newark  
Police Division's Arrests With or Without an Arrest Warrant**

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This report presents the findings of the Independent Monitor, Peter C. Harvey, regarding the Independent Monitoring Team’s *First* Audit of the City of Newark’s (the “City’s”) and Newark Police Division’s (“NPD’s”) compliance with Consent Decree requirements relating to arrest practices<sup>1</sup> with or without an arrest warrant.

## I. REVIEWERS

The following members of the Independent Monitoring Team participated in this audit:

- Sekou Kinebrew – Staff Inspector, Philadelphia Police Department (ret.)
- Daniel Gomez – Lieutenant, Los Angeles Police Department (ret.)
- Roger Nunez – Sergeant, Los Angeles Police Department
- Linda Tartaglia – Associate Director, Rutgers University Center on Policing
- Rosalyn Parks, Ph.D. – Rutgers University Center on Policing
- Jonathan Norrell – Rutgers University Center on Policing
- Kathryn Duffy, Ph.D. – Rutgers University Center on Policing

## II. INTRODUCTION

Paragraph 173 of the Consent Decree instructs the Independent Monitoring Team, led by Independent Monitor Peter C. Harvey, to audit the City’s and NPD’s compliance with Consent Decree reforms. Pursuant to Paragraph 180 of the Consent Decree, the Independent Monitor issued notice to the City, NPD, and the United States Department of Justice (“DOJ”) (collectively, the “Parties”), by letter on May 27, 2022, that the Monitoring Team would begin its first audit of NPD’s compliance with certain provisions of the Consent Decree relating to arrests with or without an arrest warrant and specifically, Section VI (Paragraphs 35-37, 42, 51, and 53-62); and Section XVI (specifically, Paragraph 174 (a)).<sup>2</sup> (See **Appendix A**).

The above-referenced paragraphs of the Consent Decree require NPD to:

- Prohibit officers from arresting an individual unless the officer has probable cause to do so, and from relying on information they know to be materially false or incorrect when effecting an arrest (Paragraph 35).
- Prohibit officers from considering a subject’s demographic category to justify an arrest, except that officers may rely on a demographic

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<sup>1</sup> The Consent Decree defines an “Arrest” as “a seizure of greater scope or duration than an investigatory stop or detention.”

<sup>2</sup> Paragraph 174 (a) of the Consent Decree requires NPD to provide the Monitor with data to allow the Monitoring Team to undertake outcome assessments. The Monitoring Team will report on NPD’s Outcome Assessment data separately.

category in a specific suspect description, where the description is from a trustworthy source that is relevant to the locality and time (Paragraph 36).

- Require that an officer notify a supervisor immediately after: effecting an arrest where the officer used force; an incident in which an officer unholstered or pointed a firearm; an arrest for obstructing or resisting an officer; any disorderly conduct type arrest; or a custodial arrest for a vehicle infraction (Paragraph 37).
- Require that officers complete all arrest reports, properly documenting the probable cause for arrests, by the end of their shifts (Paragraph 42).
- Modify its procedures to collect and preserve stop, search, and arrest data sufficient to determine the nature and scope of demographic disparities in stop and search practices, as well as which stop, search, and arrest practices are most effective and efficient (Paragraph 51).
- Develop a protocol for comprehensive analysis of stop, search, and arrest data. The protocol will establish steps for determining the nature and scope of demographic disparities in stop and search practices, and whether any such disparities can be decreased or eliminated, as well as steps for determining which stop, search, and arrest practices are most effective and efficient in increasing public safety and police legitimacy within the Newark community. The analysis will include an assessment of the efficacy and any demographic disparities in the use of pretext stops and consent searches. This protocol will be subject to the review and approval of the Monitor and DOJ (Paragraph 53). Ensure that all databases comply fully with federal and state privacy standards governing personally identifying information. NPD will restrict database access to authorized, identified users who will be permitted to access the information only for specific, legitimate purposes (Paragraph 54).
- Require that officers respect the legal rights of onlookers or bystanders to witness, observe, record, and comment on or complain about officer conduct, including stops, detentions, searches, arrests, or uses of force. NPD will train officers that the exercise of these rights, secured and protected by the constitution and laws of the United States, serves important public purposes (Paragraph 55). Prohibit officers from detaining, arresting, or threatening to detain or arrest, individuals based on activity protected by the First Amendment, including verbal criticism, questioning police actions, or gestures. NPD will also prohibit officers from using or threatening force in response to mere verbal criticism or gestures that do not give rise to reasonable fear of harm to the officers or others (Paragraph 56).
- Require that officers take no law enforcement action against a bystander unless the bystander: (a) violates the law; (b) incites others to

violate the law; or (c) refuses to comply with an officer's order to observe or record from an alternate location and the bystander's

presence would jeopardize crime scene integrity or the safety of the officer, the suspect, or others (Paragraph 57).

- Permit individuals observing stops, detentions, arrests, and other incidents to remain in the proximity of the incident unless one of the conditions in paragraph 57 is met (Paragraph 58).
- Permit individuals to record police officer enforcement activities by camera, video recorder, cell phone recorder, or other means, unless one of the conditions in paragraph 57 is met (Paragraph 59). Prohibit officers from threatening, intimidating, or otherwise discouraging an individual from remaining in the proximity of or recording law enforcement activities and from intentionally blocking or obstructing cameras and recording devices (Paragraph 60).
- Prohibit officers from detaining, prolonging the detention of, or arresting an individual for remaining in the proximity of, recording or verbally commenting on officer conduct directed at the individual or a third party, unless one of the conditions in Paragraph 57 is met (Paragraph 61).
- Prohibit officers from destroying, seizing, or otherwise coercing a bystander to surrender recorded sounds or images made of officers in the course of their duties, without first obtaining a warrant. Nor may officers order a bystander to destroy any such recording. Where an officer has a reasonable belief that a bystander or witness has captured a recording of critical evidence related to a felony crime, the officer may secure such evidence only as long as necessary to obtain a subpoena, search warrant, or other valid legal process or court order (Paragraph 62).

### III. REVIEW PERIOD

In this Audit, the Monitoring Team reviewed NPD's arrests for a two-month time period, specifically from October 1, 2021 up to and including November 30, 2021 (the "Audit Period").

On May 27, 2022, the Monitoring Team provided NPD with notice of its intent to conduct this audit. The Monitoring Team also informed NPD that this first audit of its arrests with or without an arrest warrant would require in-person activities by members of the Monitoring Team, and that the Monitoring Team's Subject Matter Experts (SMEs) would observe Centers for Disease Control and Prevention ("CDC") guidelines while conducting this audit (*see Appendix A*). The SMEs conducted their activities on-site at NPD's Municipal Arrest Processing Section ("MAPS") headquarters on the following dates:

- June 25, 2022 through July 1, 2022
- July 18, 2022 through July 26, 2022

- August 11, 2022 through August 12, 2022

The Monitoring Team acknowledges a delay in the issuance of this report, which is attributable to two unforeseen events encountered by the Monitoring Team immediately preceding the first scheduled audit session, and during the course of all three sessions. First, during the weekend preceding the first scheduled audit session, one SME experienced a sudden illness, which (per CDC guidelines) precluded the SME's ability to travel, as well as to be within social distance of others for a protracted period of time. Second, due to the prevalence of arrest events wherein more than one individual was physically arrested, a greater than expected quantity of reports and body-worn/in-car camera footage required SME review. These circumstances necessitated the return of the SMEs to NPD for the second and third audit sessions.

#### IV. EXECUTIVE SUMMARY

This report contains the results of the Monitoring Team's audit of NPD's arrest practices. The First Arrest audit analyzed whether (1) NPD's policies that govern these practices contained the Consent Decree required provisions (as listed above), and (2) NPD's personnel demonstrated routine adherence to NPD's own Arrest policies in their day-to-day operations, described here as "Overall Compliance."

On the first component of this audit—NPD's policies and procedures regarding arrests with or without an arrest warrant—the Monitoring Team determined that NPD's applicable General Orders, directives, and In-Service Training Bulletins contained each Arrest-related policy requirement specified in the Consent Decree. The Monitoring Team also considered whether data elements required by the Consent Decree and NPD's General Order 18-16, *Arrests With or Without an Arrest Warrant*, have been recorded within the incident and/or arrest reports reviewed (*see Appendix A*). The Monitoring Team also determined that NPD's protocol for analyzing stop, search and arrest data contained the requirements specified in the Consent Decree.

For the second component of this audit—whether NPD had demonstrated routine adherence to its Arrests with or without a Warrant policy, thereby achieving "Overall Compliance" with the mandates of the Consent Decree—the Monitoring Team considered whether NPD officers conducting an arrest (a) had legal justification for the arrest and whether or not the mechanics of the arrest were within legal and policy-related parameters, described in this audit as substantive compliance,<sup>3</sup> and (b) completed required reports and accurately documented the arrest in the narrative section of the report, described in this audit as documentation compliance. If any Arrest event was deficient, either substantively or with respect to documentation, that Arrest event was deemed "Non-Compliant."

The Monitoring Team utilized a 95% Arrest event compliance standard for this audit. NPD achieved "Overall Compliance" when it satisfied both substantive and

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<sup>3</sup> In assessing substantive compliance, the Monitoring Team evaluated the actions of the initiating officers, the officers responsible for effectuating the arrests, and all officers appearing on body-worn or in-car camera video.

documentation compliance for 95% of the events in the sample reviewed by the Monitoring Team.<sup>4</sup>

When separated by substantive and documentation compliance, the audit revealed that NPD attained a score of 99.00% for substantive compliance (200 out of 201 events assessed for substantive compliance were determined to be compliant). NPD’s documentation compliance score was 95.52% (192 out of 201 events assessed for documentation compliance were determined to be compliant). Thus, when assessing for Overall Compliance (*i.e.*, satisfaction of **both** substantive and documentation requirements), the Monitoring Team found that 95.02% of events reviewed were compliant both substantively and with respect to documentation requirements. In other words, 191 out of 201 events reviewed by the Monitoring Team achieved Overall Compliance.

The Monitoring Team finds that NPD’s performance, particularly on the substantive portion of the audit, demonstrates that NPD has achieved substantive, documentation, and overall compliance.

The following table presents an overview of NPD’s compliance in the Monitoring Team’s First Audit of Arrests with or without an Arrest Warrant:

<b>Overview of First Arrests Audit Results</b>		
<b>Audit Area/Subject</b>	<b>Consent Decree Paragraph</b>	<b>Compliance?</b>
<b>Arrests With or Without an Arrest Warrant Policy and Related Policies</b>	Section VI (Opening Statement) and Paragraphs 35-37, 42, 51, 53, 55-62	Yes. <i>See Appendix F.</i>
<b>Stop, Search and Arrest Analysis Protocol</b>	Paragraph 53	Yes. The Monitoring Team previously approved NPD’s methodology, and NPD has submitted a preliminary analysis. Some aspects of that analysis, however, were incomplete when assessed by NPD’s own methodology. In the future, the Monitoring Team expects NPD will be able to adhere strictly to its proposed methodology.

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<sup>4</sup> By separately assessing NPD’s substantive compliance and documentation compliance, the Monitoring Team affords NPD the ability to more easily identify areas in which it may focus its resources to address deficiencies, if any, in its Arrests with or without an Arrest Warrant practices.

<p><b>Substantive Compliance</b></p> <p><i>Whether the responsible NPD officer adhered to NPD policy by demonstrating that legal justification for the arrest existed and that the arrest was within legal and policy-related parameters.</i></p>	<p>Section VI (Opening Statement), and Paragraphs 35-38, and 55-62 (First Amendment)</p>	<p>Yes. NPD was deemed substantively compliant in 99.00% of Arrest events reviewed.</p>
<p><b>Overview of First Arrests Audit Results</b></p>		
<p><b>Audit Area/Subject</b></p>	<p><b>Consent Decree Paragraph</b></p>	<p><b>Compliance?</b></p>
<p><b>Documentation Compliance</b></p> <p><i>Whether the responsible NPD officer adhered to NPD policy by demonstrating that all reporting and related narrative requirements were met as determined by NPD policy and the Consent Decree.</i></p>	<p>Section VI (Opening Statement), and Paragraphs 39,42, and 55-62 (First Amendment)</p>	<p>Yes. NPD was deemed compliant with respect to documentation in 95.52% of Arrest events reviewed.</p>
<p><b>Overall Compliance</b></p> <p><i>Whether NPD demonstrated overall compliance in its Arrests with or without an Arrest Warrant practices (Substantive and Documentation)</i></p>	<p>Section VI (Opening Statement), and Paragraphs 35-42, 55-62 (First Amendment)</p>	<p>Yes. Overall, 95.02% of Arrest events reviewed were compliant both substantively and with respect to documentation.</p>

**V. METHODOLOGY**

To assess compliance, the Monitoring Team evaluated whether NPD satisfied the relevant provisions of the Consent Decree. The Monitoring Team also evaluated whether NPD followed its own policy, protocols, procedural guidelines, notifications, and reporting requirements. A comprehensive methodology is included in the 45-day notice for this audit (see **Appendix A**).

**VI. ANALYSIS**

**A. NPD’s Arrests Policy and Related Policies**

The Consent Decree requires NPD to implement policies directing officers to adhere to certain procedures in their arrest practices. Prior to this audit, the Monitoring Team reviewed and approved NPD’s Arrest policies, as specified in General Order 18-16, *Arrests with or without an Arrest Warrant*, dated December 31, 2018 (see **Appendix B**), General Order 18-12 *First Amendment Right to Observe, Object to, and Record Police Activity*, dated

June 12, 2019 (*see Appendix C*), NPD Memorandum 19-18 *Implementation of General Order 18-14, 18-15, 18-16 RE: Stop, Search, and Arrest Policies*, dated January 11, 2019 (specifically focusing on the paragraphs addressing Arrests) (*see Appendix D*), General Order 21-04 *Protocol for Analyzing Stop, Search, and Arrest Data*, dated May 27, 2021 (*see Appendix E*), as well as related written directives, and related In-Service Training Bulletins.

Before approving these policies, the Monitoring Team conducted a formal review to determine whether the policies contained each requirement relevant to Arrests with or without an Arrest Warrant as specified in the Consent Decree. The Monitoring Team determined that the Consent Decree's policy requirements in this area were reflected in NPD's General Orders. (*See Appendix F*).

**B. NPD's Stop, Search and Arrest Analysis Protocol (Consent Decree Paragraph 53)**

Paragraph 53 of the Consent Decree requires NPD to develop a protocol for comprehensive analysis of stop, search, and arrest data. The protocol must establish steps for determining the nature and scope of demographic disparities in stop, search, and arrest practices, and whether any such disparities can be decreased or eliminated, as well as steps for determining which stop, search, and arrest practices are most effective and efficient in increasing public safety and police legitimacy within the Newark community. The analysis includes an assessment of the efficacy and any demographic disparities in the use of pretext stops and consent searches. This protocol is subject to the review and approval of the Monitor and DOJ. (*See Consent Decree Paragraph 53*).

Prior to this audit, the Monitoring Team and DOJ reviewed and approved NPD's Stop, Search and Arrest Protocol, General Order 21-04, dated May 27, 2021 (*see Appendix E*). NPD has submitted to the Monitoring Team a preliminary analysis based on its protocol. Some aspects of NPD's analysis, however, were incomplete when assessed by NPD's own methodology. In the future, the Monitoring Team expects NPD will be able to adhere strictly to its proposed methodology.

**C. Overall Compliance: Substantive and Documentation**

The Monitoring Team generated a random sample of 200 events from the Audit Period (October 1, 2021 up to and including November 30, 2021) to analyze for this Audit. This random sample of 200 events was drawn from a total population of 833 events for the Audit Period. The final Audit sample was 201 events after SME review (*see Appendix G*).

An event was deemed "Overall Compliant" only when responding and reporting officers were compliant with regard to *both* substantive and documentation requirements for the event assessed. Accordingly, if an officer's actions relevant to that event were substantively non-compliant, or non-compliant with respect to documentation, or both, that event was deemed "Overall Non-Compliant."

To assess Substantive Compliance for each arrest event, the Monitoring Team evaluated whether the officer involved had legal justification for the arrest (*i.e.*, "Probable Cause"), and whether the mechanics of the arrest were within legal and policy-related parameters. The Monitoring Team evaluated the actions of the initiating officers, the officers responsible for effectuating the arrests, and all officers appearing on body-worn or in-car camera video.

To assess documentary compliance for each arrest event, the SMEs inspected relevant materials to determine if (1) probable cause was properly articulated on written documents; and (2) BWC/ICC<sup>5</sup> video footage was submitted, and corroborated information recorded on corresponding police division forms. If probable cause was not clearly articulated on relevant forms, or if BWC/ICC footage refuted (or failed to corroborate) information recorded on associated forms, the arrest event was assessed “documentation non-compliant.”

**1. Substantive Compliance**

In assessing substantive compliance, for each arrest event, the SMEs inspected relevant materials to determine the constitutionality and legal sufficiency of the arrest (i.e., whether the arresting officer established probable cause prior to the effectuation of the arrest.) Arrest events meeting legal and constitutional sufficiency thresholds (as assessed by the SMEs) were deemed “substantively compliant.” Arrest events lacking legal or constitutional sufficiency (again, as assessed by the SMEs) were deemed “substantively non-compliant.”

A breakdown of substantive compliance scores follows.

Total Number of Events Reviewed	Number of Events Deemed Substantively Compliant	Compliance Score
201	199	99.00%

For a list of events that were determined to be non-compliant with respect to the substantive requirement, *see Appendix I.*

**2. Documentation Compliance**

To determine whether NPD achieved documentation compliance, the Monitoring Team assessed whether or not the NPD responsible officer for each event had adhered to all relevant reporting and documentation requirements for this audit as defined by NPD policy and Consent Decree requirements. NPD achieved a Documentation Compliance score of 95.52%. In 192 of the 201 events reviewed, the responsible officers completed documentation reporting requirements according to NPD policy.

Total Number of Events Reviewed	Number of Events Deemed Documentation Compliant	Compliance Score
201	192	95.52%

Of the 201 events reviewed by the Monitoring Team, 9 (4.48%) were non-compliant due to documentation/reporting related deficiencies. For a list of events that were determined to be non-compliant with respect to documentation, *see Appendix J.*

**3. Overall Compliance**

NPD achieved an overall compliance score of 95.02%. In total, 191 of the 201

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<sup>5</sup> “BWC” refers to Body-Worn Cameras and “ICC” refers to In-Car Cameras.

events reviewed by the Monitoring Team were compliant both substantively and in terms of documentation. Accordingly, 11 events were found to be overall non-compliant (5.47%). For a table showing the distribution of the 11 events that were found to be substantively noncompliant, documentation non-compliant, or both substantively and documentation noncompliant, see **Appendix H**.

Total Number of Events Reviewed	Number of Events Deemed Overall Compliant	Compliance Score
201	191	95.02%

**VII. OBSERVATIONS AND RECOMMENDATIONS**

For the *First Arrest Audit*, the Monitoring Team made four principal observations and corresponding recommendations, as summarized below.

**1. Legality, Constitutionality, and Propriety of Arrests**

*Observation:* The majority of the arrests reviewed by the Subject Matter Experts (SMEs) were lawful, constitutional, and were conducted pursuant to circumstances under which a reasonable police officer would undertake the same course of action. In addition, NPD officers routinely demonstrated a strong understanding of policies and legal principles relating to First Amendment rights and protections for bystanders who observe and record police activity. Finally, video footage captured on body-worn and in-car cameras confirmed that, in the majority of interactions with members of the community, Newark Police Division officers comported themselves in a professional manner, maintained a courteous and respectful demeanor, and exercised restraint during tense situations.

*Recommendation:* The Monitoring Team recommends that NPD continue training officers in strategies related to positive community engagement and implement (or augment) a formalized “rewards and recognition” protocol for officers and supervisors who demonstrate superior de-escalation and conflict resolution proclivities.

**2. Arresting Officer Not Clearly Identified On Written Reports**

*Observation:* The Monitoring Team SMEs reviewed Arrest Events where the officer who effectuated the physical arrest was not specifically identified within the contents of attendant written documentation. Equally deficient, the officer who prepared the Arrest and Stop Reports (for consistency, designated the “primary officer” by the Monitoring Team), was not the officer who effectuated the arrest. These occurrences could expose NPD to skepticism by the public and the courts regarding the accuracy and reliability of NPD’s written documentation.

*Recommendation:* The Monitoring Team recommends that NPD update its policy relating to arrests to include a requirement that **either** the officer who effectuates the arrest (or initiates the interaction that leads to the arrest) prepare the Arrest and Stop Reports, **or**, at minimum, that the arresting officer be clearly identified within the contents of the Arrest and Stop Reports.

**3. Inconsistencies Between Written Documentation and Events Captured on Corresponding Video**

*Observation:* The Monitoring Team SMEs reviewed Arrest Events where information recorded on written documents did not match events captured on corresponding BWC or ICC Video. In most instances, the inconsistencies did not materially detract from the establishment of objective probable cause. However, inconsistencies of any type could expose NPD to challenges to the veracity of its written documentation and thereby, serve to diminish agency trust and legitimacy, as perceived by community members and other stakeholders.

*Recommendation:* The Monitoring Team recommends that supervisory and management personnel adopt a more regular practice of inspecting reports and corresponding video footage. The Monitoring Team further recommends that organizationally, NPD place greater emphasis on the critical importance of ensuring that all forms of documentation are prepared with completeness accuracy and are inspected for comprehensiveness and consistency by the officer's precinct supervisor prior to final submission. Success in this area may require the institution of intense training and progressive discipline for officers and supervisors.

**4. Unavailability of Body-Worn Camera Footage**

*Observation:* Body-worn camera footage was not always available for each arrest event, which impeded the SME's ability to fully assess the circumstances for those arrests, as well as the officers' interactions with bystanders. In addition, BWC videos require officers to *manually* enter the event number for the associated arrest. SMEs noted that this manual process often generates errors and creates delays in finding the correct BWC videos. Though this is inconvenient for the purposes of the audit, it creates a greater concern for supervisors and investigators, who, by policy, are required to review footage for accuracy, adherence to policy, disclosure and staff development.

*Recommendation:* The Monitoring Team recommends that NPD undertake deliberate measures to ensure that, at the conclusion of each tour of duty, supervisors verify that all required BWC recordings are properly uploaded and correctly identified with the appropriate event number. This oversight duty and responsibility may require the institution of specialized training, review of the current BWC/ICC systems and progressive disciplinary protocols.

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The Consent Decree requires that both the City and NPD post this Audit Report on their websites. *See* Consent Decree Paragraph 20 ("All NPD studies, analyses, and assessments required by this agreement will be made publicly available, including on NPD and City websites... to the fullest extent permitted under law."). Paragraph 166 ("all NPD audits, reports, and outcomes analyses... will be made available, including on City and NPD websites... to the fullest extent permissible under law").

The Monitor expects the City and NPD to do so expeditiously.

DATE: November 3, 2022

Peter C. Harvey

Independent Monitor

# APPENDIX A

## Patterson Belknap Webb & Tyler LLP

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May 27, 2022

**VIA EMAIL**

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**Re: First Audit: Arrests With or Without a Search Warrant 45-Day  
Notice**

Dear City of Newark and Newark Department of Public Safety's Newark Police Division ("NPD"):

Pursuant to Consent Decree Paragraphs 173 and 180, I write to provide notice that, starting no sooner than 45 days from the date of this letter, the Independent Monitoring Team will conduct its *first* Audit of NPD's Arrests With or Without an Arrest Warrant (also referred to as "Arrests"<sup>6</sup>). This Audit will cover the period from October 1, 2021 up to and including November 30, 2021 (the "Audit Period"), in a manner to be described in this correspondence. The purpose of this Audit is to assess whether NPD has complied with enumerated sections of

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<sup>6</sup> The Consent Decree defines an "Arrest" as: a seizure of greater scope or duration than an investigatory stop or detention.

May 27, 2022

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the Consent Decree, including Section VI (specifically, ¶¶ 35-37, 42, 51, & 53-62); and Section XVI (specifically, ¶ 174 (a)).<sup>7</sup>

This initial Audit of Arrests With or Without an Arrest Warrant will be carried out by the following Monitoring Team Subject Matter Experts: **Staff Inspector Sekou Kinebrew (Ret.)** of the Philadelphia Police Department, **Lieutenant Daniel Gomez (Ret.)** of the Los Angeles Police Department, and **Sergeant Roger Nunez** of the Los Angeles Police Department. The Data Team comprised of **Linda Tartaglia**, Associate Director, Rutgers University Center on Policing, **Wayne Fisher, Ph. D.**, Rutgers University Center on Policing, **Rosalyn Bocker Parks, Ph. D.**, Rutgers University Center on Policing, **Kathryn Duffy, Ph.D.**, Rutgers University Center on Policing, and **Jonathan Norrell**, Rutgers University Center on Policing, will work with the SMEs on this audit.

## I. SCOPE

As agreed upon by the City of Newark (the “City”), the Newark Police Division (“NPD”) and the United States Department of Justice (“DOJ”) (collectively, the “Parties”) and the Independent Monitor, this Audit will focus on the relevant Consent Decree paragraphs as they pertain to Arrests. The topical areas of Stops and Searches will *not* be the subject of this Audit, but will be the subject of separate audits.

Paragraph 173 of the Consent Decree requires the Monitor to “conduct reviews and audits as necessary to determine whether the City and NPD have implemented and continue to comply with the requirements” of the Consent Decree. The Monitoring Team must assess whether the City and NPD have “implemented the [Arrest] requirements into practice.” (See Consent Decree ¶ 173).

Additionally, the Monitoring Team will *not* audit supervisory reviews of Arrests during this first Audit of Arrests. The Monitoring Team intends to complete an audit of supervisory reviews of Arrests in a separate audit. However, for this Audit, the Monitoring Team will inspect Arrests for compliance with Consent Decree Paragraph 37, pertaining to supervisor notification for specified arrests.

## II. METHODOLOGY<sup>8</sup>

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<sup>7</sup> The data collected in this audit will be the baseline for outcome assessments (Paragraph 174(a)) for Arrests, and will be reported out separately.

<sup>8</sup> A comprehensive methodology has been attached to this document for the Parties' review.

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To assess compliance, the Monitoring Team will evaluate whether NPD has satisfied the relevant provisions of the Consent Decree. The Monitoring Team also will evaluate whether NPD is following its own policy, protocols, procedural guidelines, notifications, and reporting requirements as outlined in the following:

- NPD's Memorandum 19-18, *Implementation of General Order 18-14, 18-15, 18-16 – RE: Stop, Search, and Arrest Policies*, dated January 11, 2019 (specifically focusing on the paragraphs addressing Arrests);
- General Order 18-16, *Arrests with or without an Arrest Warrant*, dated December 31, 2018;
- General Order 21-04 *Protocol for Analyzing Stop, Search, and Arrest Data*, dated May 27, 2021;
- General Order 18-12, *First Amendment Right to Observe, Object to, and Record Police Activity*, dated June 12, 2019;
- Related written directives; and
- Related In-Service Training Bulletins.

The Monitoring Team also will consider whether data elements required by the Consent Decree and NPD's General Order 18-16, *Arrests with or without an Arrest Warrant*, have been recorded within the incident and/or arrest reports reviewed.

It should be noted that each of the following sections of the General Orders listed above directly correlate to the Consent Decree Paragraph listed below.

1. **Section VI (Opening Statement)**: NPD will conduct all investigatory stops, searches, and arrests in accordance with the rights secured or protected by the Constitution and federal and state law. NPD will conduct investigatory stops, searches, and arrests fairly and respectfully as part of an effective overall crime prevention strategy that is consistent with community priorities for enforcement.

**General Order / Policy Assessment (General Order 18-16; Section II - Policy)**: It is the policy of the Newark Police Division to conduct all arrests in accordance with both the U.S. Constitution, and Article 1, Paragraph 7 of the New Jersey Constitution, as well as federal, and state law. Arrests are lawful to the extent they meet the requirements of the Fourth Amendment to the Constitution, which safeguards "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Separate from the United States Constitution, arrests musts comply with the New Jersey State Constitution that provides in Article 1, Paragraph 7: "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue except upon probable cause, supported by oath or

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affirmation, and particularly describing the place to be searched and the papers and things to be seized.” Arrests must be supported by probable cause to believe that the person has committed, is about to commit, or is in the process of committing a crime.

**Compliance Assessment Method:** To assess compliance with the above Consent Decree Section VI, Opening Statement, for each arrest event, the Monitoring Team will review relevant reports, along with corresponding body-worn and in-car camera footage that provide objective evidence of officers’ actions in connection with arrests conducted during the Audit Period. Accordingly, the SME Team shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from Body-Worn and In-Car Cameras. The Monitoring Team will determine whether NPD officers: (i) sufficiently established and articulated probable cause to effectuate the arrest; (ii) adhered to the arrest procedures outlined in General Order 18-16; and, (iii) refrained from using pro forma or conclusory language without supporting detail.

2. **Consent Decree Paragraph 35:** NPD will prohibit officers from arresting an individual unless the officer has probable cause to do so, and from relying on information they know to be materially false or incorrect when effecting an arrest.

**General Order / Policy Assessment (General Order 18-16; Section V (A & D)– Prohibited Actions):** Arresting an individual unless the officer has probable cause to do so; Relying on information to be materially false or incorrect to justify an arrest or seek an arrest warrant.

**Compliance Assessment Method:** To assess compliance with Consent Decree Paragraph 35, for each arrest event, the Monitoring Team will review relevant reports, along with corresponding body-worn and in-car camera footage that provide objective evidence of officers’ actions in connection with arrests conducted during the Audit Period. Accordingly, the SME Team shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from Body-Worn and In-Car Cameras. The Monitoring Team will consider whether NPD officers: (i) sufficiently established and articulated probable cause to effectuate the arrest; (ii) adhered to the arrest procedures outlined in General Order 18-16; and, (iii) refrained from using pro forma or conclusory language without supporting detail.

3. **Consent Decree Paragraph 36:** NPD will prohibit officers from considering a subject’s demographic category to justify an arrest, except that officers may rely on a demographic category in a specific suspect description, where the description is from a trustworthy source that is relevant to the locality and time.

**General Order / Policy Assessment (General Order 18-16; Section I – Purpose & Section V (B) – Prohibited Actions):** The Newark Police Division is invested in its communities and, therefore, the Newark Police Division will not tolerate arrests prefaced upon discrimination against any demographic category. The Newark Police Division will hold all officers accountable for when they are found to be operating outside of the confines of the law in order to ensure community members’ rights are not violated.

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Considering a subject's demographic category to justify an arrest or seek an arrest warrant, except that officers may rely on a demographic category in a specific suspect description where the description is from a trustworthy source that is relevant to the locality and time, (e.g. from a victim or a witness) and then only in combination with other detailed descriptors.

**Compliance Assessment Method:** To assess compliance with Consent Decree Paragraph 36, for each arrest event, the Monitoring Team will review relevant reports, along with corresponding body-worn and in-car camera footage that provide objective evidence of officers' actions in connection with arrests conducted during the Audit Period. Accordingly, the SME Team shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from Body-Worn and In-Car Cameras. The Monitoring Team will determine whether NPD officers: (i) sufficiently established and articulated probable cause to effectuate the arrest; (ii) adhered to the arrest procedures outlined in General Order 18-16; and, (iii) refrained from using pro forma or conclusory language without supporting detail.

4. **Consent Decree Paragraph 37:** NPD will require that an officer notify a supervisor immediately after: effecting an arrest where the officer used force; an incident in which an officer unholstered or pointed a firearm; an arrest for obstructing or resisting an officer; any disorderly conduct type arrest; or, a custodial arrest for a vehicle infraction.

**General Order /Policy Assessment (General Order 18-16; Section XI (G) – Arrest Procedures):** An officer will notify a Supervisor and request their presence immediately after effecting an arrest:

- where the officer used force;
- for obstructing the administration of law;
- for resisting arrest;
- for disorderly conduct;
- for a violation where there is a breach of the peace; or
- for a motor vehicle infraction. (Although N.J.S.A. 39:5-25 authorizes arrests for motor vehicle violations, custodial arrests for motor vehicle violations are limited to only serious infractions (State v. Pierce, 136 N.J. 184 (1994))

**Compliance Assessment Method:** To assess compliance with Consent Decree Paragraph 37, for each arrest event, the Monitoring Team will review relevant reports, along with corresponding body-worn and in-car camera footage that provide objective evidence of officers' actions in connection with arrests conducted during the Audit Period. Accordingly, the SME Team shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from Body-Worn and In-Car Cameras. The Monitoring Team will determine whether NPD officers: (i) sufficiently established and articulated probable cause to effectuate the arrest; (ii) adhered to the arrest procedures outlined in General Order 18-16; (iii) and refrained from using pro forma or conclusory language without supporting detail.

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Moreover, for arrests involving these circumstances or conditions, in addition to reviewing for compliance as described above, the Monitoring Team will specifically inspect for evidence of supervisory notification.

5. **Consent Decree Paragraph 42:** NPD will require that officers complete all arrest reports, properly documenting the probable cause for arrests, by the end of their shifts.

**General Order /Policy Assessment (General Order 18-06; Section XI (K) – Arrest Procedures & XIII (G) – Supervisor Responsibilities):** All reports relating to lawful arrests will be executed and submitted to the appropriate supervisor for review. An additional entry into Blue Team, or other authorized database, is required if force is used during an arrest. **G.O. #18-16 – XIII. Supervisor Responsibilities:**

**A. Desk Supervisor Receiving Arrestee (MAPS Supervisor/Desk Supervisor/ Watch Commander) – continued**

- reviewing all officer reports to ensure that officers are not using pro forma or conclusory statements;
- reviewing all officer reports for information that is not current, authentic or correct;

**Compliance Assessment Method:** To assess compliance with Consent Decree Paragraph 42, for each arrest event, the Monitoring Team will review relevant reports, along with corresponding body-worn and in-car camera footage that provide objective evidence of officers' actions in connection with arrests conducted during the Audit Period. Accordingly, the SME Team shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from Body-Worn and In-Car Cameras.

6. **Consent Decree Paragraph 51:** NPD will modify its procedures as set out below to collect and preserve stop, search, and arrest data sufficient to determine the nature and scope of demographic disparities in stop and search practices, as well as which stop, search, and arrest practices are most effective and efficient.

Regarding compliance with Consent Decree Paragraph 51, the IMT recognizes that this provision was largely satisfied with the augmentation of the Stop Report, which was acknowledged in the First Stop Audit Report.

7. **Consent Decree Paragraph 53:** NPD will develop a protocol for comprehensive analysis of stop, search, and arrest data. The protocol will establish stops for determining the nature and scope of demographic disparities in stop and search practices, and whether any such disparities can be decreased or eliminated, as well as steps for determining which stop, search, and arrest practices are most effective and efficient in increasing public safety and police legitimacy within the Newark community. The analysis will include an assessment of the efficacy and any demographic disparities in the use of pretext stops and consent searches. This protocol will be subject to the review and approval of the Monitor and DOJ.

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Regarding Consent Decree Paragraph 53, the Monitoring Team will assess compliance by reviewing NPD General Order 21-04: *Protocol for Analyzing Stop, Search, and Arrest Data*, dated May 27, 2021.

8. **Consent Decree Paragraph 54:** NPD will ensure that all databases comply fully with federal and state privacy standards governing personally identifying information. NPD will restrict database access to authorized, identified users who will be permitted to access the information only for specific, legitimate purposes.

Consent Decree Paragraph 54 will not be a part of the Monitoring Team review for the purpose of the first Arrest Audit. The Monitoring Team will audit this paragraph when it reviews all the required provisions under the “data and data collection” sections of the Consent Decree.

9. **Consent Decree Paragraph 55:** NPD will require that officers respect the legal rights of onlookers or bystanders to witness, observe, record, and comment on or complain about officer conduct, including stops, detentions, searches, arrests, or uses of force. NPD will train officers that the exercise of these rights, secured and protected by the Constitution and laws of the United States, serves important public purposes.

**General Order /Policy Assessment (General Order 18-16; Section V (G & H) – Prohibited Actions):** Detaining, arresting, using force against, or threatening to detain, arrest or use force against individuals in response to activity protected by the First Amendment, including verbal criticism, questioning police actions, or gestures that do not give rise to reasonable fear of harm to officers or others.

Detaining, prolonging the detention of, arresting, using force against or threatening to detain, prolong the detention of, arrest, or use of force against an individual for remaining in the proximity of, recording or verbally commenting on officer conduct unless it violates the law, incites others to violate the law or refuses to comply with an officer’s lawful order to observe or record from an alternate location because the bystander’s presence would jeopardize a crime scene or the safety of an officer, the suspect or others.

Note: Similar instruction appears in NPD **General Order 18-12 “First Amendment Right to Observe, Object to, and Record Police Activity”** Section V – Procedures.

**Compliance Assessment Method:** To assess compliance with Consent Decree Paragraph 55, for each arrest event, the Monitoring Team will review relevant reports, along with corresponding body-worn and in-car camera footage that provide objective evidence of officers’ actions in connection with arrests conducted during the Audit Period. Accordingly, the SME Team shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from Body-Worn and In-Car Cameras. In so doing, the SME Team will inspect for any indication that an individual was subject to adverse law enforcement action solely for observing, objecting to, or recording police activity.

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10. **Consent Decree Paragraph 56:** NPD will prohibit officers from detaining, arresting, or threatening to detain or arrest, individuals based on activity protected by the First Amendment, including verbal criticism, questioning police actions, or gestures. NPD will also prohibit officers from using or threatening force in response to mere verbal criticism or gestures that do not give rise to reasonable fear of harm to the officers or others.

**General Order /Policy Assessment (General Order 18-12; Section V (A & B)– Procedures):**

A bystander has the right under the First Amendment and Article I, Paragraph 6 to witness, observe, record, photograph, audio record and comment on or complain about Newark Police Division officers in the public discharge of their duties. A. A Bystander’s right to record an Officer’s conduct.

1. A bystander has the same right to make recordings as a member of the press, as long as the bystander has a legal right to be present where he or she is, such as on a public street or in public settings.

2. Public settings include parks, sidewalks, streets, locations of public protests, common areas of public and private facilities and buildings, and any other public or private facility at which the bystander has a legal right to be present, including a bystander’s home or business.

3. The fact that a bystander has a camera or other recording device does not entitle the bystander to cross a police line, to enter an area that is closed to the public, or to enter any area designated as a crime scene.

4. As long as the recording takes place in a setting in which the bystander has a legal right to be present and does not interfere with an officer’s safety or lawful duties, the officer shall not:

a. Tell or instruct a bystander that the recording of police officers, police activity, or persons who are the subject of a police action; is not allowed; that recording police activity requires a permit; or that recording requires the officer’s consent.

b. Subject a bystander to a Terry stop (Terry v. Ohio, 392 U.S. 1 (1968) or arrest solely on the basis that the bystander is recording police conduct;

c. Order the bystander to cease such activity;

d. Demand that bystander’s identification;

e. Demand that the bystander state a reason why he or she is taking photographs or recording;

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f. Detain, arrest, or threaten to arrest bystanders based on activity protected by the First Amendment, including the bystander's verbal criticism, questioning police actions, or gestures;

g. Intentionally block or obstruct cameras or recording devices; or

h. In any way threaten, intimidate, or otherwise discourage a bystander from remaining in the proximity of, recording or verbally commenting on officer conduct directed at the officer's enforcement activities

*B.* If a bystander is recording police activity from a position that materially impedes or interferes with the safety of officers or their ability to perform their duties, or that threatens the safety of members of the public, an officer may direct the bystander to move to a position that will not interfere. However, an officer shall not order the bystander to stop recording.

**Compliance Assessment Method:** To assess compliance with Consent Decree Paragraph 56, for each arrest event, the Monitoring Team will review relevant reports, along with corresponding body-worn and in-car camera footage that provide objective evidence of officers' actions in connection with arrests conducted during the Audit Period. Accordingly, the SME Team shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from Body-Worn and In-Car Cameras. In so doing, the SME Team will inspect for any indication that an individual was subject to adverse law enforcement action solely for observing, objecting to, or recording police activity.

11. **Consent Decree Paragraph 57:** NPD will require that officers take no law enforcement action against a bystander unless the bystander: (a) violates the law; (b) incites others to violate the law; or, (c) refuses to comply with an officer's order to observe or record from an alternate location and the bystander's presence would jeopardize crime scene integrity or the safety of the officer, the suspect, or others.

**General Order /Policy Assessment (General Order 18-12; Section V (A &B) – Procedures):** A bystander has the right under the First Amendment and Article I, Paragraph 6 to witness, observe, record, photograph, audio record and comment on or complain about Newark Police Division officers in the public discharge of their duties. *A.* A Bystander's right to record an Officer's conduct.

1. A bystander has the same right to make recordings as a member of the press, as long as the bystander has a legal right to be present where he or she is, such as on a public street or in public settings.

2. Public settings include parks, sidewalks, streets, locations of public protests, common areas of public and private facilities and buildings, and any other public or private facility at which the bystander has a legal right to be present, including a bystander's home or business.

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3. The fact that a bystander has a camera or other recording device does not entitle the bystander to cross a police line, to enter an area that is closed to the public, or to enter any area designated as a crime scene.

4. As long as the recording takes place in a setting in which the bystander has a legal right to be present and does not interfere with an officer's safety or lawful duties, the officer shall not:

- a. Tell or instruct a bystander that the recording of police officers, police activity, or persons who are the subject of a police action; is not allowed; that recording police activity requires a permit; or that recording requires the officer's consent.
- b. Subject a bystander to a Terry stop (Terry v. Ohio, 392 U.S. 1 (1968) or arrest solely on the basis that the bystander is recording police conduct;
- c. Order the bystander to cease such activity;
- d. Demand that bystander's identification;
- e. Demand that the bystander state a reason why he or she is taking photographs or recording;
- f. Detain, arrest, or threaten to arrest bystanders based on activity protected by the First Amendment, including the bystander's verbal criticism, questioning police actions, or gestures;
- g. Intentionally block or obstruct cameras or recording devices; or
- h. In any way threaten, intimidate, or otherwise discourage a bystander from remaining in the proximity of, recording or verbally commenting on officer conduct directed at the officer's enforcement activities

*B.* If a bystander is recording police activity from a position that materially impedes or interferes with the safety of officers or their ability to perform their duties, or that threatens the safety of members of the public, an officer may direct the bystander to move to a position that will not interfere. However, an officer shall not order the bystander to stop recording.

**Compliance Assessment Method:** To assess compliance with Consent Decree Paragraph 57, for each arrest event, the Monitoring Team will review relevant reports, along with corresponding body-worn and in-car camera footage that provide objective evidence of officers' actions in connection with arrests conducted during the Audit Period. Accordingly, the SME Team shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from Body-Worn and In-Car Cameras. In so doing, the SME Team will inspect for any indication that an individual was subject to adverse law enforcement action solely for observing, objecting to, or recording police activity.

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12. **Consent Decree Paragraph 58:** NPD will permit individuals observing stops, detentions, arrests, and other incidents to remain in the proximity of the incident unless one of the conditions in Paragraph 57 is met.

**General Order /Policy Assessment (General Order 18-12; Section V (A &B) – Procedures):**

A bystander has the right under the First Amendment and Article I, Paragraph 6 to witness, observe, record, photograph, audio record and comment on or complain about Newark Police Division officers in the public discharge of their duties. A. A Bystander’s right to record an Officer’s conduct.

1. A bystander has the same right to make recordings as a member of the press, as long as the bystander has a legal right to be present where he or she is, such as on a public street or in public settings.

2. Public settings include parks, sidewalks, streets, locations of public protests, common areas of public and private facilities and buildings, and any other public or private facility at which the bystander has a legal right to be present, including a bystander’s home or business.

3. The fact that a bystander has a camera or other recording device does not entitle the bystander to cross a police line, to enter an area that is closed to the public, or to enter any area designated as a crime scene.

4. As long as the recording takes place in a setting in which the bystander has a legal right to be present and does not interfere with an officer’s safety or lawful duties, the officer shall not:

a. Tell or instruct a bystander that the recording of police officers, police activity, or persons who are the subject of a police action; is not allowed; that recording police activity requires a permit; or that recording requires the officer’s consent.

b. Subject a bystander to a Terry stop (Terry v. Ohio, 392 U.S. 1 (1968) or arrest solely on the basis that the bystander is recording police conduct;

c. Order the bystander to cease such activity;

d. Demand that bystander’s identification;

e. Demand that the bystander state a reason why he or she is taking photographs or recording;

f. Detain, arrest, or threaten to arrest bystanders based on activity protected by the First Amendment, including the bystander’s verbal criticism, questioning police actions, or gestures;

g. Intentionally block or obstruct cameras or recording devices; or

h. In any way threaten, intimidate, or otherwise discourage a bystander from

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remaining in the proximity of, recording or verbally commenting on officer conduct directed at the officer's enforcement activities

*B.* If a bystander is recording police activity from a position that materially impedes or interferes with the safety of officers or their ability to perform their duties, or that threatens the safety of members of the public, an officer may direct the bystander to move to a position that will not interfere. However, an officer shall not order the bystander to stop recording.

**Compliance Assessment Method:** To assess compliance with Consent Decree Paragraph 58, for each arrest event, the Monitoring Team will review relevant reports, along with corresponding body-worn and in-car camera footage that provide objective evidence of officers' actions in connection with arrests conducted during the Audit Period. Accordingly, the SME Team shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from Body-Worn and In-Car Cameras. In so doing, the SME Team will inspect for any indication that an individual was subject to adverse law enforcement action solely for observing, objecting to, or recording police activity.

13. **Consent Decree Paragraph 59:** NPD will permit individuals to record police officer enforcement activities by camera, video recorder, cell phone recorder, or other means, unless one of the conditions in Paragraph 57 is met.

**General Order / Policy Assessment (General Order 18-12; Section V (A &B) – Procedures):**

A bystander has the right under the First Amendment and Article I, Paragraph 6 to witness, observe, record, photograph, audio record and comment on or complain about Newark Police Division officers in the public discharge of their duties. *A.* A Bystander's right to record an Officer's conduct.

1. A bystander has the same right to make recordings as a member of the press, as long as the bystander has a legal right to be present where he or she is, such as on a public street or in public settings.

2. Public settings include parks, sidewalks, streets, locations of public protests, common areas of public and private facilities and buildings, and any other public or private facility at which the bystander has a legal right to be present, including a bystander's home or business.

3. The fact that a bystander has a camera or other recording device does not entitle the bystander to cross a police line, to enter an area that is closed to the public, or to enter any area designated as a crime scene.

4. As long as the recording takes place in a setting in which the bystander has a legal right to be present and does not interfere with an officer's safety or lawful duties, the officer shall not:

a. Tell or instruct a bystander that the recording of police officers, police activity,

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or persons who are the subject of a police action; is not allowed; that recording police activity requires a permit; or that recording requires the officer's consent.

- b. Subject a bystander to a Terry stop (Terry v. Ohio, 392 U.S. 1 (1968)) or arrest solely on the basis that the bystander is recording police conduct;
- c. Order the bystander to cease such activity;
- d. Demand that bystander's identification;
- e. Demand that the bystander state a reason why he or she is taking photographs or recording;
- f. Detain, arrest, or threaten to arrest bystanders based on activity protected by the First Amendment, including the bystander's verbal criticism, questioning police actions, or gestures;
- g. Intentionally block or obstruct cameras or recording devices; or
- h. In any way threaten, intimidate, or otherwise discourage a bystander from remaining in the proximity of, recording or verbally commenting on officer conduct directed at the officer's enforcement activities

*B.* If a bystander is recording police activity from a position that materially impedes or interferes with the safety of officers or their ability to perform their duties, or that threatens the safety of members of the public, an officer may direct the bystander to move to a position that will not interfere. However, an officer shall not order the bystander to stop recording.

**Compliance Assessment Method:** To assess compliance with Consent Decree Paragraph 59, for each arrest event, the Monitoring Team will review relevant reports, along with corresponding body-worn and in-car camera footage that provide objective evidence of officers' actions in connection with arrests conducted during the Audit Period. Accordingly, the SME Team shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from Body-Worn and In-Car Cameras. In so doing, the SME Team will inspect for any indication that an individual was subject to adverse law enforcement action solely for observing, objecting to, or recording police activity.

14. **Consent Decree Paragraph 60:** NPD will prohibit officers from threatening, intimidating, or otherwise discouraging an individual from remaining in the proximity of or recording law enforcement activities and from intentionally blocking or obstructing cameras and recording devices.

**General Order / Policy Assessment (General Order 18-12; Section V (A &B) – Procedures):** A bystander has the right under the First Amendment and Article I, Paragraph 6 to witness,

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observe, record, photograph, audio record and comment on or complain about Newark Police Division officers in the public discharge of their duties. *A. A Bystander's right to record an Officer's conduct.*

1. A bystander has the same right to make recordings as a member of the press, as long as the bystander has a legal right to be present where he or she is, such as on a public street or in public settings.

2. Public settings include parks, sidewalks, streets, locations of public protests, common areas of public and private facilities and buildings, and any other public or private facility at which the bystander has a legal right to be present, including a bystander's home or business.

3. The fact that a bystander has a camera or other recording device does not entitle the bystander to cross a police line, to enter an area that is closed to the public, or to enter any area designated as a crime scene.

4. As long as the recording takes place in a setting in which the bystander has a legal right to be present and does not interfere with an officer's safety or lawful duties, the officer shall not:

- a. Tell or instruct a bystander that the recording of police officers, police activity, or persons who are the subject of a police action; is not allowed; that recording police activity requires a permit; or that recording requires the officer's consent.
- b. Subject a bystander to a Terry stop (*Terry v. Ohio*, 392 U.S. 1 (1968)) or arrest solely on the basis that the bystander is recording police conduct;
- c. Order the bystander to cease such activity;
- d. Demand that bystander's identification;
- e. Demand that the bystander state a reason why he or she is taking photographs or recording;
- f. Detain, arrest, or threaten to arrest bystanders based on activity protected by the First Amendment, including the bystander's verbal criticism, questioning police actions, or gestures;
- g. Intentionally block or obstruct cameras or recording devices; or
- h. In any way threaten, intimidate, or otherwise discourage a bystander from remaining in the proximity of, recording or verbally commenting on officer conduct directed at the officer's enforcement activities

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*B.* If a bystander is recording police activity from a position that materially impedes or interferes with the safety of officers or their ability to perform their duties, or that threatens the safety of members of the public, an officer may direct the bystander to move to a position that will not interfere. However, an officer shall not order the bystander to stop recording.

**Compliance Assessment Method:** To assess compliance with Consent Decree Paragraph 60, for each arrest event, the Monitoring Team will review relevant reports, along with corresponding body-worn and in-car camera footage that provide objective evidence of officers' actions in connection with arrests conducted during the Audit Period. Accordingly, the SME Team shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from Body-Worn and In-Car Cameras. In so doing, the SME Team will inspect for any indication that an individual was subject to adverse law enforcement action solely for observing, objecting to, or recording police activity.

15. **Consent Decree Paragraph 61:** NPD will prohibit officers from detaining, prolonging the detention of, or arresting an individual for remaining in the proximity of, recording or verbally commenting on officer conduct directed at the individual or a third party, unless one of the conditions in paragraph 57 is met.

**General Order / Policy Assessment (General Order 18-12; Section V (A &B) – Procedures):**

A bystander has the right under the First Amendment and Article I, Paragraph 6 to witness, observe, record, photograph, audio record and comment on or complain about Newark Police Division officers in the public discharge of their duties. *A.* A Bystander's right to record an Officer's conduct.

1. A bystander has the same right to make recordings as a member of the press, as long as the bystander has a legal right to be present where he or she is, such as on a public street or in public settings.

2. Public settings include parks, sidewalks, streets, locations of public protests, common areas of public and private facilities and buildings, and any other public or private facility at which the bystander has a legal right to be present, including a bystander's home or business.

3. The fact that a bystander has a camera or other recording device does not entitle the bystander to cross a police line, to enter an area that is closed to the public, or to enter any area designated as a crime scene.

4. As long as the recording takes place in a setting in which the bystander has a legal right to be present and does not interfere with an officer's safety or lawful duties, the officer shall not:

- a. Tell or instruct a bystander that the recording of police officers, police activity, or persons who are the subject of a police action; is not allowed; that recording police activity requires a permit; or that recording requires the officer's consent.

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- b. Subject a bystander to a Terry stop (Terry v. Ohio, 392 U.S. 1 (1968)) or arrest solely on the basis that the bystander is recording police conduct;
- c. Order the bystander to cease such activity;
- d. Demand that bystander's identification;
- e. Demand that the bystander state a reason why he or she is taking photographs or recording;
- f. Detain, arrest, or threaten to arrest bystanders based on activity protected by the First Amendment, including the bystander's verbal criticism, questioning police actions, or gestures;
- g. Intentionally block or obstruct cameras or recording devices; or
- h. In any way threaten, intimidate, or otherwise discourage a bystander from remaining in the proximity of, recording or verbally commenting on officer conduct directed at the officer's enforcement activities

*B.* If a bystander is recording police activity from a position that materially impedes or interferes with the safety of officers or their ability to perform their duties, or that threatens the safety of members of the public, an officer may direct the bystander to move to a position that will not interfere. However, an officer shall not order the bystander to stop recording.

**Compliance Assessment Method:** To assess compliance with Consent Decree Paragraph 61, for each arrest event, the Monitoring Team will review relevant reports, along with corresponding body-worn and in-car camera footage that provide objective evidence of officers' actions in connection with arrests conducted during the Audit Period. Accordingly, the SME Team shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from Body-Worn and In-Car Cameras. In so doing, the SME Team will inspect for any indication that an individual was subject to adverse law enforcement action solely for observing, objecting to, or recording police activity.

16. **Consent Decree Paragraph 62:** NPD will prohibit officers from destroying, seizing, or otherwise coercing a bystander to surrender recorded sounds or images made of officers in the course of their duties, without first obtaining a warrant. Nor may officers order a bystander to destroy any such recording. Where an officer has a reasonable belief that a bystander or witness has captured a recording of critical evidence related to a felony crime, the officer may secure such evidence only as long as necessary to obtain a subpoena, search warrant, or other valid legal process or court order.

**General Order / Policy Assessment (General Order 18-12; Section V (D) – Procedures):**

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*D. Seizure of a Bystander's Recording Device or Medium*

1. An officer's seizure of a recording device, without a warrant, is not permitted and is presumed to be illegal under the Fourth Amendment, except in the narrowly defined exceptions outlined below.

2. An officer may seize a bystander's recording device incident to the lawful arrest of the bystander. However, the seizure of a recording device incident to a lawful arrest does not allow an officer to search or view the contents of the recording device without a warrant (e.g. Communications Data Warrant).

3. If an officer has probable cause to believe that a recording device contains images or sounds that are evidence of a crime (i.e., First, Second, and Third degree), the officer shall immediately notify a Field Supervisor and request that the recording bystander, where possible and practical, and in the presence of the officer, voluntarily consent to transmitting the recording via electronic mail to the officer's official city electronic mail account. If the bystander cannot or will not transmit the recording via electronic mail, the officer should request that the recording party voluntarily consent to providing the device or recording medium (e.g., the memory chip) to the officer.

**Compliance Assessment Method:** To assess compliance with Consent Decree Paragraph 62, for each arrest event, the Monitoring Team will review relevant reports, along with corresponding body-worn and in-car camera footage that provide objective evidence of officers' actions in connection with arrests conducted during the Audit Period. Accordingly, the SME Team shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from Body-Worn and In-Car Cameras. In so doing, the SME Team will inspect for any indication that an individual was subject to adverse law enforcement action solely for observing, objecting to, or recording police activity.

17. **Consent Decree Paragraph 174(a):** In addition to compliance reviews and audits to determine whether the specific requirements of this Agreement have been met, the Monitor will assess whether implementation of this Agreement is resulting in the desired outcomes (i.e., policing that is consistent with the Constitution and that engenders effective cooperation and trust between NPD and the community it serves). These outcome assessments will include collecting and analyzing the following data to establish a baseline and assess change over time:

A. Stop, Search, and Arrest:

- i. Stop rates by subject(s) race or ethnicity, gender, and age per sector, precinct, shift, and unit;
- ii. post-stop activity rates, such as frisks, searches, requests for consent to search; in-car detentions, citations issued, by subject(s) race or ethnicity, gender and age per sector, precinct, shift, and unit; and

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- iii. analyses of the frequency and effectiveness of stop and post-stop activities, including rates at which contraband is discovered pursuant to a search, by type of search, race or ethnicity, gender, and age per sector, precinct, shift, and unit.

Regarding compliance with Consent Decree Paragraph 174(a), an outcome assessment report will be provided to the Parties in the semi-annual progress reports and will not be included in the first Arrest audit report. It should, however, be noted, that prior to this audit, NPD did craft and implement General Order 21-04 (“Protocol for Analyzing Stop, Search & Arrest Data” – Effective 05/27/2021). Drafts of this General Order were reviewed by the Monitoring Team prior to implementation.

\* \* \*

To these ends, the Monitoring Team will draw a randomized sample from among all arrests conducted by NPD officers during the Audit Period. In so doing, the Monitoring Team will provide NPD with the event numbers for review in a timely manner, in order to inspect for certain indicia of compliance.

Additionally, to assess compliance with Consent Decree Paragraph 37 (requiring supervisory notification for arrests involving the charge of “Disorderly Conduct”), and because of the limited annual rate of occurrence, the IMT will separately request all seventeen (17) arrests made in 2021 for Disorderly Conduct.

For further information regarding the Monitoring Team’s methodology with respect to the audit of NPD’s Arrests With or Without an Arrest Warrant (*see Appendix A*).

**1. III. REQUIRED DATA**

In preparation for the audit, at least one month prior to the start of the Audit, and no later than June 17, 2022, the Monitoring Team requires that NPD provide it with the following data and records for the audit period:

- A. Copies of any and all written directives or training bulletins issued subsequent to the issuance of General Order 18-16, *Arrests with or without an Arrest Warrant* related to the topic of Arrests.
- B. A spreadsheet identifying all events within the specified Audit Period wherein an arrest was made by NPD officers. The spreadsheet should contain the event number (in chronological order); nature/classification of the event; the date and time of the arrest; officer’s badge number, officer’s assignment / precinct / unit / section; and subject’s apparent gender, race, ethnicity or national origin and age.
- C. A separate spreadsheet identifying all seventeen (17) arrests made in 2021 for Disorderly Conduct.

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- The spreadsheet should contain the event number (in chronological order); nature/classification of the incident; the date and time of the arrest; officer's badge number, officer's assignment / precinct / unit / section; and subject's apparent gender, race, ethnicity or national origin and age.
- D. The methodology NPD uses to determine (i) the nature and scope of demographic disparities in stop and search practices, (ii) which stop, search, and arrest practices are most effective and efficient, and (iii) a copy of the most recently generated report that used this methodology (§ 51).
  - E. A record of any arrests made during the Audit Period, where it was determined that an arrest was voided in accordance with General Order 18-16, Section XII, *Voiding Arrests*.
  - F. The protocol, approved by the Monitor and DOJ, that has been used for comprehensive analysis of stop, search, and arrest data, which includes the steps for determining the nature and scope of demographic disparities in stop and search practices, and whether any disparities can be decreased or eliminated, as well as steps for determining which stop, search, and arrest practices are most effective and efficient in increasing public safety and police legitimacy within the Newark community (§ 53).
  - G. A copy of the most current NPD annual report that summarizes and analyzes the (i) stop, (ii) search, (iii) arrest, and (iv) use of force data collected, the analysis of that data, and the steps taken to correct problems and build on successes (§ 168).

NPD should also provide the Monitoring Team with data sufficient to enable Monitoring Team to conduct outcome assessments pursuant to § 174(a). The Monitoring Team understands that the rates referenced in § 174(a) will be compiled and computed by NPD from IA Pro which is utilized by the Office of Professional Standards.

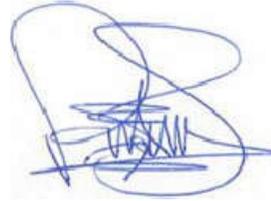
After receiving the requested information, the Monitoring Team will provide the City and NPD with the event numbers of those cases related to arrests it seeks to review in a timely manner. The Monitoring Team requests that NPD (a) mark all body-worn and in-car camera videos for arrests made during the audit period for indefinite retention so that all videos of events involving an arrest will be available for review by the Monitoring Team; (b) identify all associated videos with the provided event numbers; and (c) organize that content within the Panasonic digital evidence program prior to any onsite auditing activities conducted by the Monitoring Team. In the event that onsite review is not feasible, NPD shall download the identified videos in a non-proprietary format (converted from Panasonic) onto a Monitoring Team-provided secure encrypted drive.

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**NOTE: For instances wherein relevant body-worn and/or in-car camera footage are not present and viewable on the dates of the on-site or remote audit, the Monitoring Team will presume that the footage does not exist, and will score compliance accordingly.**

Additionally, upon the Monitoring Team's request, NPD will provide the Monitoring Team with secure remote access to the requested materials.

Best regards,



Peter C. Harvey

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APPENDIX A:

## **METHODOLOGY FOR FIRST ARREST AUDIT (Nomenclature & Guidelines)**

The Independent Monitoring Team's (IMT) First Arrest Audit is projected to be conducted during Spring and Summer 2022. It is expected that the entire audit will be conducted on-site at Newark Police Division (NPD) Headquarters. For the purpose of the audit, an "arrest" shall be defined as follows<sup>9</sup>:

An **arrest** occurs when:

- Upon establishing probable cause, a police officer takes (or attempts to take) custodial control of an individual for the purpose of instituting criminal charges, or;
- An officer, on behalf of an issuing authority, executes a lawfully obtained arrest warrant. In such cases, probable cause would have been established to a satisfactory degree by the issuing authority prior to the police-citizen contact; or
- When an individual is already in lawful police custody (e.g., municipal police holding facility, county jail, state or federal prison, etc.), and is charged with additional statutory violations related or unrelated to the event which led to the initial custodial detention.

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<sup>9</sup> The Consent Decree defines an "Arrest" as: a seizure of greater scope or duration than an investigatory stop or detention.

Additionally, **probable cause**<sup>10</sup> shall be defined as a set of facts and circumstances which would lead a reasonable person to believe that criminal activity is afoot, and that the subject of the detainment is responsible for, or participated in, the criminal activity.

- It should be noted that, while there are no technical elements of probable cause, the establishment probable cause requires a higher standard of proof than that of reasonable suspicion.

For this audit, in reviewing each arrest event, Subject Matter Experts (SME) will evaluate whether:

- Objective probable cause existed prior to the effectuation of arrest.
- Probable cause is properly and sufficiently articulated within the contents of the appropriate police department documents.
- Required forms were completed in accordance with department policy (e.g., NPD G.O. #18-16), **with specific regard to fields and narrative sections related to the arrest.**
- Body-worn and/or in-car camera footage corroborate information memorialized on police division documents.
- The involved officers adhered to relevant case law, criminal procedure provisions, and tenets of the Consent Decree. Examples include, but are not limited to, the following:
  - Warrant requirement for arrests for misdemeanor offenses not committed in the presence of police

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<sup>10</sup> The Consent Decree defines "Probable cause" as: reasonably trustworthy facts and circumstances that, within the totality of the circumstances, lead an officer to reasonably believe that there is a fair probability that an individual has committed or is committing a crime.

(exceptions to this requirement include arrests for theft, DUI, and domestic violence related offenses).

- Supervisory notification for arrests for DUI, Disorderly Conduct, Motor Vehicle Violations where the arrestee is taken into physical custody; and arrests which involve the application of force.

In assessing the legal sufficiency for an arrest, the SME will not consider dispositions reached (and determinations made) after the arresting officer established probable cause, and the officer's clear intent was to effectuate an arrest. For example, consider the following scenario:

- An officer establishes probable cause and takes (or clearly intends to take) custodial control of a person. A field or desk supervisor later determines that the defendant should be issued a summons and released. The subsequent supervisory decision will not be considered in evaluating whether the arrest was legally and constitutionally sound.

For each arrest event, in determining overall compliance, the SME will evaluate both "**substantive**" and "**documentary**" compliance.

In assessing substantive compliance, for each arrest event, the SME will inspect relevant materials (described within this document) to determine:

- The constitutionality and legal sufficiency of the arrest.
  - i.e., whether the arresting officer **established probable cause prior to the effectuation of the arrest.**
  - Arrest events meeting legal and constitutional sufficiency thresholds (as assessed by the SME) will be deemed "substantively compliant."

- Arrest events lacking legal or constitutional sufficiency (as assessed by the SME) will be deemed “substantively non-compliant.”

In assessing documentary compliance, for each arrest event, the SME will inspect relevant materials to determine if:

- Probable cause is properly articulated on written documents; and
- BWC/ICC video footage has been submitted, and corroborates information recorded on corresponding police division forms.
  - If Probable cause is not clearly articulated on relevant forms, or if BWC/ICC footage refutes (or fails to corroborate) information recorded on associated forms, the arrest event will be assessed “documentarily noncompliant.”

An arrest event will be assessed “overall compliant” only when both “substantive” **and** “documentary” compliance thresholds have been met.

\*\*\*

As detailed within the contents of the 45-Day Letter, to assess compliance with Consent Decree Section VI (Opening Statement), as well as Paragraphs 35-37, 42, 51, & 53-62, for each arrest event, the Monitoring Team will review relevant reports, along with corresponding body-worn and in-car camera footage that provide objective evidence of officers’ actions in connection with arrests conducted during the Audit Period.

Accordingly, the SME Team shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from Body-Worn and In-Car Cameras. The Monitoring Team will determine whether NPD officers (i) sufficiently established and articulated probable cause to effectuate the arrest, (ii) adhered to

the arrest procedures outlined in Section XI of General Order 1816, and (iii) refrained from using pro forma or conclusory language without supporting detail.

For instances wherein relevant body-worn and in-car camera footage is not present and viewable on the dates of the on-site audit, the Monitoring Team will presume that the footage does not exist, and will score compliance accordingly.

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The IMT recognizes that the large majority of arrests will require the preparation of "Stop Reports" and "Arrest Reports." The IMT also acknowledges that multiple "Stop" and "Arrest" Reports may correspond to a given "arrest event." Accordingly, the "unit of measure" for the audit will be "unique event numbers" (as opposed to individual Stop or Arrest Reports).

In order to conduct a comprehensive audit, **for each arrest event identified in the sample**, the IMT will require that NPD provide all relevant documents and materials, including but not limited to:

- Stop Report
- Arrest Report
- Incident Report (NPD Form 802)
- Body-Worn Camera Footage
- In-Car Camera Footage

With specific regard to the production and submission of **BWC footage**, the following tenets of **NPD GO #18-05** should be particularly observed:

- *Members shall activate the BWC to record police-related interactions with citizens in the performance of their duties. Activation is required immediately upon receiving a dispatched assignment or the initiation of a police action.*

*When activation is required upon entering any residence, members shall notify the subject(s) that the camera is recording at the earliest opportunity that is safe and feasible.*

- *The following circumstances require the BWC to be activated:*
  - *Motor vehicle stop, from the time the violation is observed until the stop is concluded, to include:*
    - *Car/truck inspection*
    - *Motor vehicle pursuit*
    - *Motor Vehicle Safety Checkpoint*
  - *During a search (consensual or otherwise, including a protective frisk for weapons). The member must record the notification to the subject of the right to allow or refuse a consent to search.*
  - *Pedestrian stop, which includes a stop that falls short of a Terry stop because the pedestrian is free to walk away, such as a "mere inquiry" (e.g. asking where someone is going).*
  - *When the member is involved in any police action/encounter where departmental policy requires a report and/or notation on a log sheet is required.*

Additionally, NPD shall mark (i.e., preserve) all body-worn and in-car camera videos for arrests made during the audit period for indefinite retention, so that all videos of events involving an arrest will be available for review by the SME.

Finally, for each event, the body-worn and in-car camera footage shall be submitted to the IMT alongside the corresponding Stop / Arrest Report (and any other relevant documentation associated with that specific event); and **must be available for SME review at the time of the on-site audit session(s).**

# APPENDIX B



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# NEWARK POLICE DIVISION

## GENERAL ORDER



<b>SUBJECT:</b> Arrests With or Without an Arrest Warrant		<b>GENERAL ORDER NO.</b> 18-16
<b>SUPERCEDES:</b> New	<b>DATED:</b> 12/31/2018	<b>SECTION CODE:</b>

**Related policies:**

General Order 17-06 “Bias-Free Policing”

General Order 14-16 “Stationhouse Adjustments”

New Jersey Attorney General Law Enforcement Directive No. 2008-2 “Attorney General Guidelines for Stationhouse Adjustment of Juvenile Delinquency Offenses”

General Order 87-03 “Administrative Reporting Unusual Events”

This Order contains the following numbered Sections:

- I. PURPOSE**
- II. POLICY**
- III. RESPONSIBILITY FOR COMPLIANCE**
- IV. DEFINITIONS**
- V. PROHIBITED ACTIONS**
- VI. PROBABLE CAUSE**
- VII. INVESTIGATIVE STOP/DETENTION CONVERTED INTO ARREST / DEFACTO ARREST**
- VIII. ARRESTS WITH AN ARREST WARRANT**
- IX. ARRESTS WITHOUT AN ARREST WARRANT**
- X. ENTRY INTO A STRUCURE TO EFFECT AN ARREST**
- XI. ARREST PROCEDURES**
- XII. VOIDING ARRESTS**



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# NEWARK POLICE DIVISION

## GENERAL ORDER



### **XIII. SUPERVISOR RESPONSIBILITIES**

### **XIV. ADMINISTRATIVE REVIEW**

### **XV. TRAINING**

### **XVI. EFFECT OF THIS ORDER**

#### **I. PURPOSE**

The purpose of this General Order is to ensure that officers of the Newark Police Division engage in lawful practices when conducting arrests during their official duties. Officers are guided by this order when making an arrest, with or without an arrest warrant. Officers who effect an improper arrest are subject to discipline, including termination, civil liability, and/or criminal prosecution.

The Newark Police Division are invested in their communities and therefore the Newark Police Division will not tolerate arrests prefaced upon discrimination against any demographic category. The Newark Police Division will hold all officers accountable for when they are found to be operating outside of the confines of the law in order to ensure community members' rights are not violated.

#### **II. POLICY**

It is the policy of the Newark Police Division to conduct all arrests in accordance with both the U.S. Constitution, and Article 1, Paragraph 7 of the New Jersey Constitution, as well as federal, and state law. Arrests are lawful to the extent they meet the requirements of the Fourth Amendment to the Constitution, which safeguards "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Separate from the United States Constitution, arrests must comply with the New Jersey State Constitution that provides in Article 1, Paragraph 7: "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized."

Arrests must be supported by probable cause to believe that the person has committed, is about to commit, or is in the process of committing a crime.



# NEWARK POLICE DIVISION GENERAL ORDER

Officers shall not consider age, race, ethnicity, national origin, gender, gender identity, language ability, disability, political belief, sexual orientation, immigration status, economic status, or housing status in effecting an arrest, except as part of a credible description of a specific suspect or suspects in any investigation into a violation of the law, and then only in combination with other detailed descriptors. Such conduct constitutes biased-based policing. Aside from being unlawful, biased-based policing violates Newark Police General Order 17-06.

Officers should realize that arresting a person is an interference with a person's liberty that can be humiliating, embarrassing or demeaning and that officers shall therefore make all reasonable efforts, that do not compromise officer safety, to conduct the arrest of a person with respect, dignity, courtesy and in a professional manner.

Arrests of minors can have lifelong effects on the arrestee. Officers will examine the possibility of using "Stationhouse Adjustments" as an alternative to effecting the arrest of a minor. Officers are guided by General Order # 14-16 "Stationhouse Adjustments" and the New Jersey Attorney General Law Enforcement Directive No. 2008-2 "Attorney General Guidelines for Stationhouse Adjustment of Juvenile Delinquency Offenses" in utilizing Stationhouse Adjustments when applicable.

### III. RESPONSIBILITY FOR COMPLAINE

All Division members shall be responsible for complying with this policy. Command and Supervisory Officers will review, understand and comply with this policy and shall also ensure that all subordinate personnel read and acknowledge understanding of this directive.

### IV. DEFINITIONS

- A. Arrest** - the exercise of control or custody over a person by restricting that person's liberty of movement for a significant period of time. Arrests can be made "actually" or "constructively." Actual arrests take place when an officer has physically restrained a person's ability to leave. Constructive arrests occur when an officer's words or actions prevent a person from leaving. All arrests must be based upon probable cause.
- B. Bias-Based Policing** - The differential treatment of any person by members motivated by the specific characteristics, perceived or actual, of that person. This conduct is specifically prohibited. (See Newark Police General Order 17-06 Bias-Free Policing for more information).
- C. Blue Team** - A computer application extension of IA-Pro. The application allows users to enter collected data from incidents, such as police pursuits, citizen contacts or stops, events where force is used, complaints on police, police-involved accidents, and administration of discipline to facilitate a complete capture of activities and allow for tracking.
- D. Conclusory** – A statement (oral or written) that contains a conclusion without providing the specific facts that explain or justify how the conclusion was reached.



# NEWARK POLICE DIVISION GENERAL ORDER

- E. Demographic Category** - A shared common characteristic of a population, including but not limited to, age, race, ethnicity, national origin, gender, gender identity, language ability, disability, political belief, sexual orientation, immigration status, economic status, or housing status.
- F. Exigent Circumstances** – A compelling urgency or true emergency that a member can specifically describe not using vague terms or boilerplate language. Circumstances that cause a reasonable person to believe that prompt action is necessary can be an immediate threat to public safety, an active attempt by a suspect to destroy evidence of a crime or escape, or in instances of community caretaking.
- G. Investigatory Stop / Detention** - A seizure of a person for investigative purposes. This seizure occurs when a police officer stops a citizen from moving about freely, by means of physical force or show of authority, in order to investigate a matter. The seizure may also occur if an officer uses words, actions or demeanor that would make a reasonable person believe that he or she is not free to leave. Stops of this manner need to be based on reasonable and articulable suspicion that a violation of law has just occurred, is occurring or is about to occur. An investigatory stop can come in different forms (i.e. pedestrian, motor vehicle, bicycle, etc.). Also known as a “Terry Stop.”
- H. Pro Forma** – A standard use of wording, document or form used to justify an action that does not tie to the underlying events.
- I. Probable Cause** – Specific, and articulable facts to permit a reasonable person to believe that a subject committed a violation of the law or that evidence of a crime would be found in a search. Probable cause is a higher standard of evidence than having reasonable suspicion, but is less than the beyond a reasonable doubt standard needed for conviction. Probable cause is a practical, nontechnical probability.
- J. Reasonable Suspicion** – Specific, and articulable facts that, within the totality of the circumstances, would lead an officer to reasonably believe that a person has, is in the process of, or is about to engage in criminal activity. A person’s mere presence in an identified high crime neighborhood or area taken alone, does not rise to the level of reasonable suspicion. Reasonable suspicion is a lower standard than probable cause.

## V. PROHIBITED ACTIONS

Newark Police Officers are prohibited from:

- A.** Arresting an individual unless the officer has probable cause to do so;
- B.** Considering a subject’s demographic category to justify an arrest or seek an arrest warrant, except that officers may rely on a demographic category in a specific suspect description where the description is from a trustworthy source that is relevant to the locality and time, (e.g. from a victim or a witness) and then only in combination with other detailed descriptors;



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- C. Using pro forma or conclusory language, such as wording that makes claims without supporting evidence, or has little true meaning or importance. All supporting details, which combined add up to probable cause, shall be clearly documented for all arrests. Examples of pro forma or conclusory language are “the suspect was frisked for officer safety” or “the suspect was detained based upon reasonable suspicion”;
- D. Relying on information known to be materially false or incorrect to justify an arrest or seek an arrest warrant;
- E. Basing an arrest solely on information or evidence discovered after the arrest was executed;
- F. Basing an arrest solely on an individual’s presence with or near other people suspected of criminal activity;
- G. Detaining, arresting, using force against, or threatening to detain, arrest or use force against individuals in response to activity protected by the First Amendment, including verbal criticism, questioning police actions, or gestures that do not give rise to reasonable fear of harm to officers or others; and
- H. Detaining, prolonging the detention of, arresting, using force against or threatening to detain, prolong the detention of, arrest, or use of force against an individual for remaining in the proximity of, recording or verbally commenting on officer conduct unless it violates the law, incites others to violate the law or refuses to comply with an officer’s lawful order to observe or record from an alternate location because the bystander’s presence would jeopardize a crime scene or the safety of an officer, the suspect or others.

### VI. PROBABLE CAUSE

- A. All arrests will be made in accordance with the Fourth Amendment of the United States Constitution, which provides:

“The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the places to be searched, and the persons or things to be seized.”
- B. Although the word “arrest” does not appear in the Fourth Amendment to the United States Constitution, courts have consistently equated "arrest" with "seizure." The United States Supreme Court has stated: "it is the command of the Fourth Amendment that no warrants either for searches or arrests shall issue except upon probable cause."



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- C. All arrests also must be made in accordance with Article 1, Paragraph 7 of the New Jersey State Constitution which states: “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized.”
- D. Probable cause may be obtained by collecting facts of sufficient quantity and quality to determine that there is a well-grounded suspicion that an individual has committed a crime, is about to commit a crime, or is in the process of committing a crime.
1. Vague hunches or suspicions are not enough.
  2. A well-grounded suspicion must be supported by articulable facts.
  3. An officer's training and experience can be **one factor** that can support probable cause.
- E. Before making the arrest, the officer must be able to articulate the facts forming the basis for probable cause.
- F. The actions of an arrestee, words expressed by an arrestee, or evidence obtained after the arrest cannot form the original basis for probable cause, although these actions or words may be used to support the arrest in later reports.
- G. Officers have established probable cause when they can point to a sufficient number of facts that could convince a neutral and detached magistrate that it is reasonable to believe, that there is a fair probability, the person under arrest has committed or is committing an offense.
- H. There is no limit to the types of information that can be used to support probable cause, but the information must be credible, not be vague, and must be able to be documented. Officers can rely upon:
1. observed facts **surrounding a specific incident**, such as but not limited to the behavior, appearance and location of the suspect, or the suspect's height and weight.
  2. familiarity with the suspect, such as but not limited to, knowledge of the suspect's prior record, or prior observation and contacts with the suspect.
  3. reports from others, such as but not limited to, accounts given by witnesses or reliable informants.
- I. Multiple sources of information can lead to a determination of probable cause, but some may require corroboration by other facts if they are to be given due consideration; the information will be judged on the totality of the circumstances.



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J. Each additional piece of incriminating evidence that an officer can point to increases the officer's ability to obtain reasonable suspicion and probable cause. When basing reasonable suspicion and probable cause on the totality of the circumstances, the whole is greater than the sum of its parts.

### VII. INVESTIGATIVE STOP/DETENTION CONVERTED INTO ARREST (*DE FACTO* ARREST)

There is no "bright line" test to determine when an investigative stop becomes a *de facto* arrest, however a *de facto* arrest occurs when the officer's conduct is more intrusive than necessary for an investigative stop. (*State v. Dickey*, 152 N.J. 468, 478, 706, A.2d 180, 185 (1998)). **Courts may consider, several factors** to determine whether an investigative stop / detention has elevated into an arrest, defined by the Fourth Amendment and Article 1, Paragraph 7 of the New Jersey State Constitution, **including, but not limited to:**

- A. Whether contact with the police was consensual or non-consensual;
- B. The basis for an investigative stop and whether the officer had reasonable **and** articulable suspicion to believe a criminal offense had occurred, including the grounds for that belief;
- C. The duration of the encounter;
- D. The investigative methods employed to confirm or dispel suspicions;
- E. Whether the officer informed the person that he or she is the subject of an investigation;
- F. Whether the officer informed the person that he or she is not free to leave;
- G. Whether the officer blocked the person's path or impeded their progress;
- H. Whether police weapons were displayed or officers used force in any other way to threaten a person;
- I. The number of police personnel on the scene and their demeanor;
- J. The location of the encounter; whether it occurred in a public or private space;
- K. The level to which the officer controlled the individual, physically or constructively;
- L. Whether the person was moved to another location without their consent, how far the person was moved, and/or the reason for moving them;
- M. Whether the person was free to choose between continuing or ending the encounter with the police; and
- N. Whether the person was handcuffed or confined in a police vehicle.



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### VIII. ARREST WITH AN ARREST WARRANT

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**A.** An arrest warrant is a court order directing officers to bring a certain person in front of the court to answer to charges. Officers have an obligation, not an option, to effect arrest warrants (*NJ Court Rule 3:2-3*).

It is preferable to obtain a warrant before arresting any individual when the circumstances allow it. Courts favor that officers seek arrest warrants when possible because, as the United States Supreme Court explained (in *Steagald v. United States, 451 U.S. 204, 212 (1981)*), they prefer to have “a neutral judicial officer assess whether the police have probable cause.”

**B.** Arrest warrants require that an officer is able to articulate probable cause to believe that a person has committed or intends to commit a crime and that an impartial magistrate or judge who hears the facts relied on by the officer agrees and affirms that probable cause exists. The arrest warrant serves to protect individuals from unreasonable seizures.

**C.** Whenever an officer possesses an arrest warrant for an individual, the officer has the right to serve the warrant anywhere in this state. The officer who established the probable cause necessary to obtain an arrest warrant need not be the actual arresting officer. Any officer who discovers a person has a valid arrest warrant is compelled to bring that person to court to answer to the charges.

**D.** Arrest warrants are issued for offenses for which probable cause is established and are unique to an individual. Thus, before arresting someone based on an arrest warrant officers must:

1. Make sure the warrant is valid on its face. They may not ignore information that reasonably indicates the warrant was invalid because it has been executed or recalled, or because probable cause no longer existed to support the charges contained in the arrest warrant;

AND

2. Attempt to ensure the person in front of them is the person the arrest warrant was issued for.

## IX. ARRESTS WITHOUT AN ARREST WARRANT

**A.** The United States Constitution permits an officer to arrest a person in any public place without a warrant if there is probable cause to believe that the person has committed or is committing a criminal offense.

1. The Fourth Amendment permits such warrantless criminal arrests even if the officer had sufficient time to obtain an arrest warrant. (*United States v. Watson (1976) 423 U.S. 411, 423 (1976)*)



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2. New Jersey strictly follows the common law of arrest that allows a police officer to effect a warrantless arrest upon probable cause that a crime has been or is being committed by the person being arrested.
3. New Jersey law grants municipal police officers the authority to effect an arrest anywhere in the state for a crime that is committed in his or her presence. N.J.S.A. 40A:14-152.1 provides: "Notwithstanding the provisions of N.J.S.A. 40A:14-152 or any other law to the contrary, any full-time, permanently appointed municipal police officer shall have full power of arrest for any crime committed in said officer's presence and committed anywhere in the territorial limits of the State of New Jersey."

**B.** When dealing with disorderly persons and petty disorderly persons offenses, state statute (N.J.S.A. 2A:169-3) provides: "[w]henever an offense is committed in his presence, any constable or police officer shall, and any other person may, apprehend without warrant or process any disorderly person and take him before any magistrate of the county where apprehended."

1. This statute clearly dictates that in order for a police officer to effect a warrantless arrest of a **disorderly person**, the offense must be committed in the officer's presence.
  - a. In *State of New Jersey v. Morse* 54 N.J. 32(1969), 252 A.2d.723, the New Jersey Supreme Court held that a defendant's admission to a police officer of the facts that establish the alleged offense satisfied the requirement that the officer knew of the event by use of his senses.
  2. State statutes also permit a police officer to effect the warrantless arrest of a person who the officer has probable cause to believe has committed certain specific disorderly or petty disorderly persons offenses, even though the offense did not take place in the officer's presence. The offenses are:
    - a. Shoplifting -- N.J.S.A. 2C:20-11e
    - b. Theft of Library Materials -- N.J.S.A. 2C:20-14b
    - c. Domestic Violence -- N.J.S.A. 2C:25-21
    - d. Driving While Intoxicated -- N.J.S.A. 39:5-25

**C.** With respect to **municipal ordinance violations**, N.J.S. 40A:14-152 states: "The officers of a police department and force, within the territorial limits of the municipality, shall have all the powers of peace officers and upon view may apprehend and arrest any disorderly person or any person committing a breach of the peace."

This statute imposes two requirements before an officer may arrest: Page



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1. The offense must have occurred "upon view" of the officer

**AND**

2. There must be a "breach of the peace."

### **X. ENTRY OF STRUCTURE TO EFFECT AN ARREST**

- A.** There are several types of court orders that authorize police to enter an arrestee's primary residence to effect an arrest:

1. Parole or Probation Warrant;
2. Grand Jury indictment Warrant;
3. Bench Warrant for failure to appear;
4. Arrest Warrant; or
5. Search Warrant;

- B.** Officers can enter a structure with the purpose of executing an arrest warrant if:

1. The police have reason to believe that the place they wish to enter is one of the arrestee's primary residences (it cannot merely be a place where the arrestee occasionally stays) and the police reasonably believe the subject of the arrest warrant is inside. (*Payton v. New York*, 445 U.S. 573, 603 (1980)) **or**
2. Consent is obtained by officers from a person with authority over the third-party residence.

- C.** Officers can enter any structure to effect the arrest of someone who has committed an indictable offense without an arrest or search warrant if exigent circumstances exist. Examples of exigent circumstances include:

1. **Hot pursuit** - This means that an officer has probable cause to arrest a suspect and the pursuit of the fleeing felon (for an indictable offense) was set in motion in a public place.
2. **Threat to Public Safety** – This is a situation where officers have probable cause to arrest a Suspect because (a) the suspect is reasonably believed to be armed or dangerous, (b) the suspect is inside a structure, (c) the suspect has injured or threatened to injure themselves or others; and (d) the suspect has refused to surrender to authorities or is in the process of causing bodily harm to someone. (*Ryburn v. Huff*, 132 S.Ct. 987 (2012))

3. **Destruction of Evidence** – Officers are authorized to enter a structure to effect an arrest, absent any type of warrant, if there is a serious threat that incriminating evidence on the premises being



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entered would be destroyed if officers take the time to obtain a search warrant and/or arrest warrant.

- To justify this type of entry to arrest, officers must have probable cause to believe that if the police took the time to obtain a search and/or arrest warrant: (i) there is evidence that can be destroyed on the premises, (ii) the offense being investigated must carry a potential jail sentence, and (iii) officers must have reason to believe that the suspect or someone else on the premises would attempt to destroy evidence, or undermine its value in court.

- D. Third-party residences require consent or a search warrant to enter in order to effect an arrest. Consent can only be given if it is given freely knowingly and intelligently from a person who is authorized to give it. Giving consent freely means that it was given absent pressure, promises, threats, or other form of coercion by the police. Giving consent knowingly and intelligently means that while requesting consent, officers must make known their true intentions.

## XI. ARREST PROCEDURES

- A. To effect any arrest, officers must identify themselves as police officers and clearly advise the subject to be arrested that he or she is under arrest.
  1. Officers dressed in uniform effecting an arrest do not need to verbally identify themselves if it is plainly evident to a reasonable person that they are members of the police department.
  2. Non-uniformed officers **must** verbally identify themselves as police officers and exhibit their department-issued identification and badge as evidence of their authority.
- B. During arrests, officers should keep in mind and utilize de-escalation techniques during all situations where appropriate.
- C. As soon as practicable, officers shall inform the arrestee of the reason for the arrest. If a situation arises where the safety of officers or the public is an issue, the person to be arrested does not need to be advised of the reason for arrest until the safety of all is no longer in jeopardy.
- D. Officers shall advise subjects of their Miranda Rights at the time of arrest or before any custodial interrogation.
- E. After effecting an arrest, officers shall immediately notify central communications of the arrest. In most situations it is preferable that this notification be made over police radio.
- F. If the arrestee has a visible injury or complains of pain, the officer will immediately request, over the police radio or otherwise, medical assistance from an appropriate Emergency Medical Service



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(“EMS”) for evaluation. Upon evaluation by a medical professional, if warranted, the arrestee will be transported to a proper medical facility to receive further treatment or appropriate evaluation.

- G.** An officer will notify a Supervisor and request their presence immediately after effecting an arrest:
- where the officer used force;
  - for obstructing the administration of law;
  - for resisting arrest;
  - for disorderly conduct;
  - for a violation where there is a breach of the peace; or
  - for a motor vehicle infraction.
    - Although N.J.S.A. 39:5-25 authorizes arrests for motor vehicle violations, custodial arrests for motor vehicle violations are limited to only serious infractions (*State v. Pierce*, 136 N.J. 184 (1994)).
- H.** An arrestee shall be secured with handcuffs behind their back, unless a physical or medical condition precludes it, at the earliest practical opportunity. When faced with an unusual situation that makes it unfeasible or impossible to employ accepted handcuffing practices, officers should rely on common sense and good judgment to determine the most practical means for securing the individual.
- I.** The arrestee will be transported to the processing facility dictated by Newark Police Division orders without unnecessary delay so the arrestee may be processed.
- J.** A Preliminary Arrest Report, (DP1:2036), will be executed prior to escorting an arrestee into a police building for processing, unless exigent circumstances prevent the officer from doing so.
- K.** All reports relating to lawful arrests will be executed and submitted to the appropriate supervisor for review. An additional entry into Blue Team, or other authorized database, is required if force is used during an arrest.
- L.** Officers are required to make all reasonable efforts to safely secure all arrestees in NPD transport vehicles.

**XII. VOIDING ARRESTS**

If an arrest is made by an officer and, while still in the field, it is determined by further investigation that the person arrested did not commit the offense in question or the probable cause standard cannot be met, the officer’s Supervisor shall be notified of the circumstances. The officer will advise their Supervisor of the circumstance that led to the arrest and the circumstances that dictate voiding the arrest. The Supervisor will evaluate the totality of the circumstances and if warranted, authorize the immediate release of the arrestee.

If an officer’s immediate Field Supervisor is not available, officers will exhaust all other measures to contact another Supervisor from their command to make the determination. If a Supervisor from the



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officer's command is not able to be reached, the officer continue to pursue all other logical means to obtain input of an on-duty Newark Police Division Supervisor for final determination.

As a final and last resort, if no Newark Police Division Supervisor is available to make the determination and the officer has reason to believe that the probable cause which initially existed to make the arrest no longer exists, the officer will immediately release the arrestee.

If the person has already been lodged in the precinct and good cause for voiding an arrest is discovered, the Desk Supervisor shall be notified of all the circumstances leading to the arrest, and the circumstances that dictate voiding the arrest and, if warranted, authorize the immediate release of the arrestee. The Desk Supervisor shall then enter all pertinent information into the desk blotter and notify the Communications Division, *refer to General Order 87-03 Administrative Reporting Unusual Events*.

**If it is determined that the arrest shall be voided, the arrestee shall be released immediately.**

If a Central Arrest number has been issued, the Desk Supervisor shall notify the Communications Division and the command responsible for distributing Central Arrest number that the Central Arrest Number has been voided. The Communications Division and the command responsible for distributing Central Arrest numbers shall indicate in their blotter that the Central Arrest has been voided and the Division member who authorized voiding the arrest.

**In all instances the arresting officer shall document the entire incident on an Incident Report (DP1:802), indicating everything learned in a clearly explained chronological order of events. The report will include the probable cause that was initially believed to authorize the arrest, and the circumstances of the investigation that led to the probable cause being debunked.**

In all cases where another officer or a Supervisor makes the arresting officer aware that probable cause does not exist, or no longer exists, the Desk Supervisor shall immediately explain to the arresting officer why the arrest was not valid. This shall be documented by the arresting officer(s) *via* an Administrative Report (DP1:1001) and will require that the officer(s) receive formal training in the near future. The training provided will be relevant to the subject matter in which the officer was found to be deficient.

### XIII. SUPERVISOR RESPONSIBILITES

#### A. Field Supervisors

1. Field Supervisors will respond to the incident scene, absent exceptional circumstances, to approve arrests made by officers:
  - where the officer used force;
  - for obstructing the administration of law;



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- for resisting arrest;
  - for disorderly conduct;
  - for a violation where there is a breach of the peace;
  - for a custodial arrest for a motor vehicle infraction
2. If the officer's immediate Supervisor is unable to respond to the scene to approve the arrest, the officer will notify the Central Communications Unit. The Central Communications Unit will attempt to locate another available supervisor from the field to respond to the incident scene for arrest approval.
  3. If a Field Supervisor is unable to respond to the incident scene, the Supervisor who is unable to respond will document the circumstances preventing his or her presence in the case file. This documentation can be done by executing an Administrative Report (D.P.I. 1001) under the specific event number and/or central complaint number in the Records Management System for the incident.
  4. The Field Supervisor will approve or disapprove the officer's arrest recommendation, based on existence of justifiable probable cause and NPD policy.
  5. The Field Supervisor will take appropriate actions to address a violation or deficiencies in the officer's arrest recommendation, including:
    - immediately releasing the subject;
    - recommending non-disciplinary corrective action for the involved officer and/or;
    - referring the incident for administrative or criminal investigation.

### **B. Desk Supervisor Receiving Arrestee (MAPS Supervisor/Desk Supervisor/Watch Commander)**

Upon the arrestee entering the police-processing facility, the Desk Supervisor will be responsible for:

- visually inspecting each arrested person for injury;
- ask the arrestee if he or she has complaints of pain;
- ensuring that the arrestee receives medical attention from an appropriate medical provider, if necessary;
- documenting the results of the visual inspection in the desk blotter;
- reviewing all officer reports for completeness and the proper documentation of the necessary probable cause for arrests;
- reviewing all officer reports to ensure that officers are not using *pro forma* or conclusory statements;
- reviewing all officer reports for information that is not current, authentic or correct;



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- reviewing the available video and written documentation of consent prior to approving an arrest based on evidence obtained via a consent search;
- For every search or arrest involving the recovery of contraband evidence, the arresting officer's Desk Lieutenant or Unit Commander will review the circumstances of the encounter, including video from body-worn cameras alongside the corresponding Incident Report (DP1:802), to assess the appropriateness of the seizure. The Supervisor will memorialize that review in writing and will include an assessment of the circumstances under which the search was conducted, the evidence was recovered and/or the probable cause for the arrest was ascertained.
- On an on-going basis, Supervisors will also review a random selection of video recordings of stops and detentions, searches and arrests amounting to a minimum of 10 percent of all stops and detentions, searches, and arrests.
- Upon reviewing videos of investigatory stops and detentions, searches, and arrests, Supervisors shall submit an administrative report (DP1:1001) filed under the event number for the corresponding video reviewed by the end of their tour of duty, listing:
  - The event number;
  - The name(s) of the officer(s) who recorded the video(s) and type of video they recorded (e.g. body worn camera video, in-car video, or both);
  - The reason for reviewing the video (e.g. random review, recovery of contraband, stop, search, detention, arrest, suspected non-compliance with NPD policy or law);
- approving or disapproving the officer's arrest recommendation, based on existence of justifiable probable cause and NPD policy; and
- taking appropriate actions to address violation or deficiencies in the officer's arrest recommendation, including:
  - releasing the subject; ○ recommending non-disciplinary corrective action for the involved officer; or ○ referring the incident for administrative or criminal investigation.

## C. Unit Commander

1. The Unit Commander, or their Supervisor Designee, will review each arrest report by officers under their command and will memorialize the review in writing within 24 hours of the arrest absent exceptional circumstances. The deadline for review will be extended for an objectively reasonable amount of time dictated by the initial reason(s) for delay.
2. The Unit Commander will review reports and forms for deficiencies including:
  - *pro forma* or conclusory language;
  - inconsistent information;
  - insufficient articulation of the factual and/or legal basis for the police action;



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- any indications that the information in the reports or forms is not correct or complete;
  - arrests following stops based solely on information or evidence discovered after the stop was initiated (e.g., open warrants);
  - arrests made without plausible justification for the initial stop or search; and
  - arrests that are unsupported by probable cause, or are otherwise in violation of federal or state law, or NPD policy.
3. The Unit Commander will document for review by their chain of command:
- investigatory stops and detentions that appear unsupported by reasonable and articulable suspicion, or that are otherwise in violation of NPD policy;
  - searches that appear to be without legal justification or are in violation of NPD policy; and
  - stops or searches that, while comporting with law and policy, indicate a need for corrective action or review of agency policy, strategy, tactics or training to support effective and legitimate policing principles.
4. For every search or arrest involving the recovery of contraband evidence, the Desk Lieutenant or Unit Commander will review the circumstances of the encounter, including video from body-worn cameras, to assess the appropriateness of the seizure. The Supervisor will memorialize that review in writing and will include an assessment of the circumstances under which the search was conducted, the evidence was recovered and/or the probable cause for the arrest was ascertained.

### **D. Command-Level Supervisors**

Within seven days, a Command-Rank Officer will confirm in writing that he or she has reviewed any stop or detention, search, and arrest that another Supervisor determined:

- was not supported by probable cause;
- was in violation of Newark Police Division policy;
- a possible need for corrective action; and
- a possible need for review of agency policy, strategy, tactics or training.

The Commander will evaluate the Supervisor's assessment and recommendations and take all appropriate corrective actions, including referring the incident to the Office of Professional



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Standards for investigation, if warranted.

The Commander also will take appropriate corrective or disciplinary action against Supervisors who fail to conduct complete, thorough and accurate reviews of officers' investigatory detentions, searches and arrests.

### E. All Police Supervisors

All police Supervisors will take appropriate actions to address all apparent violations or deficiencies in investigatory stops or detentions, searches and arrests. Appropriate actions may include recommending non-disciplinary corrective action for the involved officers, or referring the incident for administrative or criminal investigation.

Supervisors will document each violation or deficiency and any corrective action taken in the officer's performance evaluations and in Blue Team, which will provide data for the Newark Police Division's Early Warning System to identify officers needing repeated corrective action.

## XIV. ADMINISTRATIVE REVIEW

The Commander of the Professional Standards Unit, or his/her designee, will conduct **cumulative** and **quarterly** demographic analyses of the enforcement activities of Newark Police Division members to ensure that the tenants of this General Order are implemented and adequately monitored.

The Commander of Professional Standards Unit, or his/her designee, will identify and evaluate trends, outliers, or other relevant indicators. This data will be analyzed and weighed based on the type of enforcement activities, member unit or assignment, demographics of subjects, shift or time of day, force used and resistance encountered, and peer comparisons.

This data shall be based on accurate, complete and reliable information, including but not limited to:

- a) Misconduct complaints;
- b) Stop, detention and arrest data;
- c) Use of force analysis; and
- d) Enforcement practices based on community input.

Members, including Supervisors, found to have violated this Order will be subject to disciplinary action (including counseling, mediation and training) up to and including termination.



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### XV. TRAINING

Newark Police Division shall provide training on this topic to all new recruits and current members of the Newark Police Division.

Newark Police Division will ensure that all members receive, at a minimum, an initial sixteen (16) hours of comprehensive and interdisciplinary instruction on stops, searches and arrests, which includes voluntary police-citizen contacts and investigatory stops.

Thereafter, a minimum of four (4) hours of training shall be given **annually**. Training will include:

- A. the requirements of Fourth Amendment, the New Jersey Constitution, and related law and NPD policies regarding investigatory stops and detentions, searches and seizures;
- B. the differences among the scope and degree of intrusion of various police contacts; between probable cause, reasonable suspicion and mere speculation; and between voluntary consent and mere deference to police authority; and
- C. the effect that differing approaches to stops, searches, and arrests can have on community perceptions of police legitimacy and public safety.

### XVI. EFFECT OF THIS ORDER

This Order is effective immediately upon promulgation. Any previous Orders, Memoranda, Directives, or portions thereof that conflict with this Order are hereby rescinded.

BY ORDER OF

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ANTHONY F. AMBROSE  
PUBLIC SAFETY DIRECTOR

AFA/BO/jg

Attachment A – Preliminary Arrest Report (DP1:2036)

# APPENDIX C



# NEWARK POLICE DIVISION GENERAL ORDER



SUBJECT: <b>FIRST AMENDMENT RIGHT TO OBSERVE, OBJECT TO, AND RECORD POLICE ACTIVITY</b>	GENERAL ORDER NO. <b>18-12</b>
SUPERSEDES: <b>NEW</b>	DATED: <b>JUNE 12, 2019</b>

**Related Policies:**

1. General Order 18-15 – Searches With or Without a Search Warrant
2. General Order 63-26 – Consent to Search Form
3. General Order 65-14 – Department Press Relations and Issuance of Press Cards
4. General Order 18-25 – Complaint Intake and Investigation Process
5. General Order 18-24 – Property and Evidence Division
6. General Order 18-23 – Property and Evidence Management

**This order contains the following numbered Sections:**

- I. PURPOSE**
- II. POLICY**
- III. RESPONSIBILITY FOR COMPLIANCE**
- IV. DEFINITIONS**
- V. PROCEDURES**
- VI. RESPONSIBILITIES OF THE FIELD SUPERVISOR**
- VII. RESPONSIBILITIES OF THE INVESTIGATIVE SUPERVISOR**



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## VIII. EFFECT OF THIS ORDER

### 2. I. *PURPOSE*

This policy provides officers with guidance for dealing with situations in which members of the public (i) comment on or object to an officer's conduct and (ii) situations in which members of the public or press are observing and/or recording officer conduct, which includes photographing, videotaping, audiotaping, or any combination thereof.

### 3. II. *POLICY*

The First Amendment enshrines five of the most essential liberties guaranteed by both the United States Constitution and the Constitution of the State of New Jersey; freedom of religion, freedom of speech, freedom of the press, freedom of assembly and the right to petition government. Both the First Amendment to the U.S. Constitution and Article I, Paragraph 6 of the New Jersey Constitution are the core of all free speech and free association rights. As such, the Newark Police Division recognizes that members of the public have a constitutionally protected right to witness, observe, video-record, photograph, audio-record and comment on or complain about Newark Police Officers while they are conducting official business or while acting in an official capacity in any public setting. Division personnel are prohibited from interfering with a person's exercise of her/his First Amendment and Article I, Paragraph 6 rights, except in the limited circumstances outlined in Section V of this Order. Additionally, Division members violate Fourth and Fourteenth Amendment rights when they seize, search, and/or destroy recordings without a warrant or due process. Division personnel should assume and comport themselves as if they are being recorded at all times when on duty.

In its decision, *Fields v. City of Philadelphia*, 862 F.3d 353 (2017), the United States Court of Appeals for the Third Circuit decided that First Amendment's protections extended to two people who used their smartphones to record police interactions with



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another person. The Court ruled: “Simply put, the First Amendment protects the act of photographing, filming or otherwise recording police officers conducting their official duties in public.”

#### 4. *III. RESPONSIBILITY FOR COMPLIANCE*

All Division personnel are responsible for complying with this Order. Supervisory and Command Officers shall ensure that subordinates are aware of, understand, and comply with this Order. All sworn officers will be subject to discipline for a violation of the contents of this Order.

#### 5. *IV. DEFINITIONS*

- A. **BYSTANDER:** a member of the public who is present but not taking part in a situation or event.
- B. **EXIGENT CIRCUMSTANCES:** A compelling urgency or true emergency that a member can specifically describe not using vague terms or boilerplate language. Circumstances that cause a reasonable person to believe that prompt action is necessary which can be an immediate threat to public safety, an active attempt by a suspect to destroy evidence of a crime or escape, or in instances of community caretaking.
- C. **FIELD SUPERVISOR:** A Lieutenant or Sergeant assigned to the field to supervise field personnel.
- D. **INVESTIGATIVE SUPERVISOR:** A Lieutenant or Sergeant assigned to an investigative unit to supervise investigative personnel.
- E. **MEDIUM:** The storage source for visual and/or audio recordings, whether by film, analog, or digital means.



# NEWARK POLICE DIVISION GENERAL ORDER



- F. **PROBABLE CAUSE:** Specific, and articulable facts to permit a reasonable person to believe that a subject committed a violation of the law or that evidence of a crime would be found in a search. Probable cause is a higher standard of evidence than having reasonable suspicion, but is less than the beyond a reasonable doubt standard needed for conviction. Probable cause is a practical, non-technical probability.
- G. **PUBLIC SETTING:** An indoor or outdoor area, whether privately or publicly owned, to which the public has access by right or by invitation, expressed or implied, whether by payment of money or not.
- H. **RECORDING:** Capturing of images, audio and/or video by means of a camera, cell phone, audio recorder, or other device.

6. **V. PROCEDURES**

A bystander has the right under the First Amendment and Article I, Paragraph 6 to witness, observe, record, photograph, audio record and comment on or complain about Newark Police Division officers in the public discharge of their duties.

- A. A Bystander's right to record an Officer's conduct.
  - 1. A bystander has the same right to make recordings as a member of the press, as long as the bystander has a legal right to be present where he or she is, such as on a public street or in public settings.
  - 2. Public settings include parks, sidewalks, streets, locations of public protests, common areas of public and private facilities and buildings, and any other public or private facility at which the bystander has a legal right to be present, including a bystander's home or business.
  - 3. The fact that a bystander has a camera or other recording device does not entitle the bystander to cross a police line, to enter an area that is closed to the public, or to enter any area designated as a crime scene.
  - 4. As long as the recording takes place in a setting in which the bystander has a legal right to be present and does not interfere with an officer's safety or lawful duties, the officer shall **not**:



# NEWARK POLICE DIVISION GENERAL ORDER



- a. Tell or instruct a bystander that the recording of police officers, police activity, or persons who are the subject of a police action; is not allowed; that recording police activity requires a permit; or that recording requires the officer's consent.
  - b. Subject a bystander to a *Terry* stop (*Terry v. Ohio, 392 U.S. 1 (1968)*) or arrest solely on the basis that the bystander is recording police conduct;
  - c. Order the bystander to cease such activity;
  - d. Demand that bystander's identification;
  - e. Demand that the bystander state a reason why he or she is taking photographs or recording;
  - f. Detain, arrest, or threaten to arrest bystanders based on activity protected by the First Amendment, including the bystander's verbal criticism, questioning police actions, or gestures;
  - g. Intentionally block or obstruct cameras or recording devices; or
  - h. In any way threaten, intimidate, or otherwise discourage a bystander from remaining in the proximity of, recording or verbally commenting on officer conduct directed at the officer's enforcement activities.
- B. Limitations on a Bystander's Right to Record an Officer's Conduct
1. Nothing in this General Order prohibits officers from questioning or detaining for a reasonable period of time any individual they reasonably suspect has committed, is committing, or is about to commit a crime or incite others to violate the law.
  2. Officers are reminded that a person commits an offense under N.J.S.A. 2C:29-1 if the person purposely (a) obstructs, impairs or perverts the administration of law or other governmental function, or (b) prevents or attempts to prevent a public servant from lawfully performing an official function by means of flight, intimidation, force, violence, or physical interference or obstacle, or by means of any independently unlawful act.



# NEWARK POLICE DIVISION GENERAL ORDER



3. If a bystander is recording police activity from a position that materially impedes or interferes with the safety of officers or their ability to perform their duties, or that threatens the safety of members of the public, an officer may direct the bystander to move to a position that will not interfere. However, an officer shall **not** order the bystander to stop recording.
4. Credentialed media personnel may be granted closer access to incident scenes or be allowed to cross police lines with the approval of the public information officer and the highest investigative supervisor on the scene, refer to **General Order 65-14 - Department Press Relations and Issuance of Press Cards**. This right does **not** extend to a bystander.

C. A Bystander's Right to Complain about or Criticize an Officer's Conduct

Newark Police Officers shall not use or threaten to use force or their arrest authority in response to mere criticism or gestures so long as that expression neither gives rise to an objectively reasonable fear of harm to the officer(s) or others, violates the law or incites others to violate the law.

D. Seizure of a Bystander's Recording Device or Medium

1. An officer's seizure of a recording device, without a warrant, is not permitted and is presumed to be illegal under the Fourth Amendment, except in the narrowly defined exceptions outlined below.
2. An officer may seize a bystander's recording device incident to the lawful arrest of the bystander. However, the seizure of a recording device incident to a lawful arrest does not allow an officer to search or view the contents of the recording device without a warrant (e.g. Communications Data Warrant).
3. If an officer has probable cause to believe that a recording device contains images or sounds that are evidence of a crime (i.e., First, Second, and Third degree), the officer shall immediately notify a Field Supervisor and request that the recording bystander, where possible and practical, and in the presence of the officer, voluntarily consent to transmitting the recording via electronic mail to the officer's official city electronic mail account. If the bystander cannot or will not transmit the recording via



# NEWARK POLICE DIVISION GENERAL ORDER



electronic mail, the officer should request that the recording party voluntarily consent to providing the device or recording medium (e.g., the memory chip) to the officer.

4. Consent to take possession of a recording device or medium must be given voluntarily. A Field Supervisor must be present and a Consent to Search form must be completed. For additional information on Consent to Search forms, refer to **General Order 18-15 - Searches with or without a Search Warrant** (Section VI).
5. If the person voluntarily consents to providing the recording device to the officer, the officer shall:
  - a. Contact the On-Call Detective responsible for the highest charge (i.e., most serious crime) and the Field Supervisor and notify them of the evidence; and
  - b. Submit the recording device into evidence, consistent with **General Order 18-24 – Property and Evidence Division** and **General Order 18-23 – Property and Evidence Management**.
  - c. Absent the exigent circumstances outlined below in VI.E.3, officers **shall not** attempt to download, or otherwise access any material contained within the device without a warrant.
6. If the bystander refuses to consent to providing the recording device, the officer may seize the recording device without a warrant under certain “exigent circumstances.” Specifically, it is appropriate for an officer to seek the warrantless seizure of a bystander’s recording device when the officer has:
  - a. probable cause to believe that a serious crime involving violence that may result in serious bodily injury or death has been committed;
  - b. a good-faith belief that there is evidence of that crime on the recording device or medium; **and**
  - c. a good-faith belief that evidence will be lost or destroyed absent seizure.



# NEWARK POLICE DIVISION GENERAL ORDER



7. When an officer reasonably believes that these exigent circumstances exist, the officer may request the recording bystander remain on the scene **voluntarily** with the recording device, for a reasonable amount of time, until a Field Supervisor arrives on the scene. If the bystander refuses to wait to speak with the Supervisor then they must be allowed to leave the scene unless the officer reasonably believes the bystander has committed, is committing, or is about to commit any crime or has incited others to violate the law. If an officer seeks to seize a recording device without a warrant and requests the recording bystander to remain on the scene, the officer must request the assistance of a Field Supervisor. Once on the scene, the Field Supervisor will determine if a warrantless seizure of the recording device is necessary.

All Division members are reminded, however, that the detention of a bystander without proper supporting justification is a violation of the 4<sup>th</sup> Amendment to the United States Constitution, Article 1, Paragraph 7 of the New Jersey Constitution and **General Order 18-14 - Consensual Citizen Contacts and Investigatory Stops**.

8. If a recording device or medium is seized, due care must be exercised in its safekeeping. It should be properly identified by serial number or other identifier on a Property and Evidence Receipt (D.P.1: 152), with a copy given to the owner when feasible. (See **General Order 18-24 – Property and Evidence Division** and **General Order 18-23 – Property and Evidence Management**). Information shall be provided to the owner concerning where, when, and how to recover the property.

E. Searching a Bystander’s Recording Device or Medium

1. An officer’s search of a recording device or medium is not permitted and presumed to be illegal under the warrant requirement of the Fourth Amendment to the U.S. Constitution and Article I, Paragraph 7 of the New Jersey Constitution, except in the narrowly defined exceptions outlined below.
2. If an officer has probable cause to believe that a recording device contains images or sounds that are evidence of a Crime (First, Second, and Third



# NEWARK POLICE DIVISION GENERAL ORDER



degree), the officer shall immediately notify a Field Supervisor and request that the recording bystander, where possible and practical, and in the presence of the officer, voluntarily consent to transmitting the recording via electronic mail to the officer's official city electronic mail account. If the bystander cannot or will not transmit the recording via electronic mail, the officer should request that the recording party voluntarily consent to providing the device or recording medium (e.g., the memory chip) to the officer.

3. Recordings obtained by consent shall be viewed by the Detective responsible for investigating the crime believed to be captured on the device. Otherwise, an officer shall obtain a search warrant before viewing photographs or listening to recordings on a camera or memory chip that has been seized as evidence.
4. However, if it is objectively reasonable for an officer to believe information contained in a recording device or medium could **prevent imminent death or serious bodily harm**, an officer **shall** contact the highest ranking Investigative Supervisor available to receive authorization to immediately review recordings that have been seized without a warrant. If the Investigative Supervisor grants authorization, the officer may immediately search the recording device or medium for photographs and recordings that are related to the exigent purpose.
5. Recordings that have been seized as evidence and are not directly related to the exigent purpose shall not be reviewed until a warrant has been secured.
6. Recordings that have been seized as evidence that are not directly related to the exigent purpose shall be reviewed by the Detective responsible for investigating the crime believed to be on the device after a warrant has been secured.
7. Any recording devices or recording medium taken into custody shall be returned as soon as practicable.

- F. Safekeeping and Preservation of Recording Device or Recording Medium contained therein



# NEWARK POLICE DIVISION GENERAL ORDER



1. Officers shall not under any circumstances intentionally damage or destroy, or instruct any other person to damage or destroy any recording device or medium being used to record police activity.
2. Officers shall not, under any circumstances, intentionally erase or delete, or instruct any other person to erase or delete, any recorded images or sounds from any camera or other recording.

G. Recordings that may contain evidence of Police misconduct.

1. It is the policy of the Newark Police Division to accept and investigate all complaints of alleged Police misconduct from any individual or organization including complaints that have accompanying recorded evidence. Refer to **General Order 18-25 Complaint Intake and Investigation Process** (Section IX-F), for more information on the handling of recordings that may contain evidence of police misconduct.
2. If a complainant expresses fear or concerns about turning over recordings that may contain evidence of Police misconduct when making a complaint about a member of the Newark Police Division directly to the Newark Police Division, he or she should be referred to the Essex County Prosecutor's Office, Professional Standards Bureau. Refer to **General Order 18-25 Complaint Intake and Investigation Process** (Section IX-O), for more information on complaint referrals.

7. **VI. RESPONSIBILITIES OF THE FIELD SUPERVISOR**

- A. A Field Supervisor shall respond to the scene where any bystander recording of police officers engaged in the public discharge of their duties:
1. has become confrontational, provoking, or otherwise adversarial with the officers;
  2. may possess evidentiary material;



# NEWARK POLICE DIVISION GENERAL ORDER



3. has her/his recording or recording device or medium seized by officers based upon probable cause; or
  4. has jeopardized the safety of the officer, the suspect or others in the immediate vicinity, violated the law, incited others to violate the law, or actually obstructed an officers official duties.
- B. Once on scene, the Field Supervisor shall:
1. Consult with the on-scene officers and gather all available facts.
  2. Attempt to de-escalate or otherwise intercede to prevent the incident from escalating.
  3. If it was necessary to detain the recording party before the Field Supervisor's arrival, review the facts and circumstances to determine if the detention was appropriate in that the officers reasonably believed the recording party has committed, is committing, or is about to commit any crime or incite others to violate the law.
  4. If responding to the scene because an officer believes exigent circumstances require that the recording device or medium be seized without a warrant, the Field Supervisor shall:
    - a. In consultation with the highest-ranking Investigative Supervisor available at that time, determine whether exigent circumstances permit the seizure of the device without a warrant. A warrantless seizure is permissible only when there is:
      - i. probable cause to believe that a serious crime involving violence that may result in serious bodily harm or death has been committed;
      - ii. a good faith belief that there is evidence of that crime on the recording device or medium; **and**
      - iii. a good faith belief that evidence will be lost or destroyed absent seizure.



# NEWARK POLICE DIVISION GENERAL ORDER



- b. If there is no immediate law enforcement need to view the recording device and/or media, ensure that the recording device and/or media is not viewed by officers until a search warrant has been obtained.
  - c. If the immediate seizure was not based upon the narrowly defined exigent circumstances outlined above in VI.B.4., immediately return the recording device and/or media to the owner. The Field Supervisor shall contact the Detective responsible for the highest charge (most serious crime) and his or her Supervisor (i.e., Investigative Supervisor) with all pertinent information for the assigned detective to begin an application for a search warrant.
5. If responding to a scene where any media or recording device or medium was voluntarily provided to the police, the Field Supervisor shall review the circumstances of any consent provided confirming that the consent to search was made voluntarily and that the proper documentation of such consent was completed by the officer in accordance with **General Order 18-15 Searches with or without a Search Warrant**.
  6. Ensure officers do not copy and/or disseminate any information or images from seized or provided devices or media that are not evidence of a crime or otherwise required for any official purpose.

## **8. VII. RESPONSIBILITIES OF THE INVESTIGATIVE SUPERVISOR**

- A. Upon being notified that possible evidence of a crime was captured on a recording device and/or medium, which was voluntarily provided to police, the Investigative Supervisor shall assign a Detective to take the necessary actions to copy/preserve the evidence and return the recording device and/or media to the owner as soon as possible. While the evidence was voluntarily provided, it shall be at the discretion of the Investigative Supervisor, based on the facts and circumstances, whether a search warrant (e.g. Communications Data Warrant) will also be obtained.
- B. Upon being notified by a Field Supervisor that probable cause exists that evidence of a crime was captured on a recording device and/or media and the evidence was properly seized by Police, the Investigative Supervisor, shall nonetheless, assign a Detective to apply for a search warrant (e.g. Communications Data Warrant).



# NEWARK POLICE DIVISION GENERAL ORDER



- C. Ensure Detectives do not copy and/or disseminate any information or images from such devices or media seized or provided, that is not evidence of a crime or otherwise required for any official purpose.

**9. VIII. EFFECT OF THIS ORDER**

This order shall become effective immediately. All previous Division orders and memoranda governing the First Amendment right to observe, object to, and record police activity, which are inconsistent or in conflict with this order are hereby rescinded.

BY ORDER OF

A handwritten signature in blue ink, appearing to be "A. Ambrose", written over a horizontal line.

ANTHONY F. AMBROSE  
PUBLIC SAFETY DIRECTOR

AFA:BO/lc

# APPENDIX D



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# NEWARK POLICE DIVISION

## GENERAL ORDER



<b>SUBJECT:</b> <b>Protocol for Analyzing Stop, Search, and Arrest Data</b>	<b>GENERAL ORDER NO.</b> <b>21-04</b>
<b>SUPERCEDES:</b> <b>New</b>	<b>DATED:</b> <b>05/27/2021</b>
<p><b>Related Policies:</b></p> <p>General Order 17-06 “Bias-Free Policing”            General Order 18-14 “Consensual Citizen Contacts and Investigatory Stops”            General Order 18-15 “Searches With or Without a Search Warrant”            General Order 18-16 “Arrests With or Without an Arrest Warrant”</p> <p>This Order contains the following numbered Sections:</p> <ul style="list-style-type: none"> <li><b>I. PURPOSE</b></li> <li><b>II. POLICY</b></li> <li><b>III. RESPONSIBILITY FOR COMPLIANCE</b></li> <li><b>IV. PROSPECTIVE DATA POINTS TO BE EXAMINED</b></li> <li><b>V. ANALYSES TO BE CONDUCTED</b></li> <li><b>VI. ADMINISTRATIVE REVIEW OF ANALYSES OUTCOMES</b></li> <li><b>VII. STOP, SEARCH, AND ARREST OUTCOME COMMITTEE</b></li> <li><b>VIII. POLICY AND TRAINING RECOMMENDATIONS</b></li> <li><b>IX. EFFECT OF THIS ORDER</b></li> </ul>	



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# NEWARK POLICE DIVISION

## GENERAL ORDER



### I. PURPOSE

The Newark Police Division will periodically analyze the information collected in police reports to determine (1) if disparities exist in the Division's stop, search, and arrest practices, and (2) whether any such disparities can be decreased or eliminated.

In addition, the analysis will attempt to determine which stop, search, and arrest practices are most effective and efficient, as well as which ones are the least effective and efficient, in order to increase public safety and promote police legitimacy within the Newark community. The Newark Police Division will use this information to eliminate or reduce practices that contribute to disparities to the greatest extent legally possible.

### II. POLICY

NPD will conduct all investigatory stops, searches, and arrests in accordance with the United States Constitution, the Constitution of the State of New Jersey, and federal and state law. NPD will conduct investigatory stops, searches, and arrests fairly and respectfully as part of an effective overall crime prevention strategy that is consistent with community priorities for enforcement.

The Newark Police Division will analyze stop, search, and arrest data **biannually** to determine if demographic disparities exist in its stop, search, and arrest practices, including the use of pretext stops and consent searches. The Newark Police Division will use this information to determine if any identified disparities can be decreased or eliminated through policy changes, training methods, field deployments, police practices, and/or modification of supervision.

The Newark Police Division will ensure that its stop, search, and arrest practices are effective and efficient, with the intent of increasing public safety and promoting police legitimacy.

### III. RESPONSIBILITY FOR COMPLIANCE

All Division personnel are responsible for complying with this Order. Supervisory and Command Officers shall ensure that subordinates are aware of, understand, and comply with this Order. Executive and Command Rank Officers shall be responsible for implementing, supervising, and monitoring modifications made to police strategies with the intent of reducing or eliminating identified disparities. All sworn officers will be subject to discipline for violating the contents of this Order.



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# NEWARK POLICE DIVISION

## GENERAL ORDER



#### IV. PROSPECTIVE DATA POINTS TO BE EXAMINED

##### A. Event

1. Date
2. Time
3. Sector
4. Duration of encounter

##### B. Subject

1. Apparent race/ethnicity/national origin
2. Apparent gender
3. Apparent age
4. Whether the subject was required to exit the vehicle (if a motor vehicle stop)

##### C. Individual(s) in the company of the subject

1. Total number of individuals with the subject
2. Apparent race/ethnicity/national origin of each individual in the company of the subject
3. Apparent gender of each individual in the company of the subject
4. Apparent age of each individual in the company of the subject
5. If a motor vehicle stop, whether an individual in the company of the subject was required to exit the vehicle

##### D. Reason for the interaction

1. Facts creating **reasonable suspicion** or **probable cause**
2. Whether the activity was prompted by a dispatched call or was an officer initiated police action.
3. Whether the interaction was a pretext stop

##### E. Searches

1. Was consent to search requested?
2. Was consent to search granted?
  - Was contraband recovered as a result of the consent search?
  - What type of contraband was recovered as a result of the consent search?
3. Was a protective pat down conducted?
  - Was contraband recovered as a result of the protective pat down?
  - What type of contraband was recovered as a result of the protective pat down?



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# NEWARK POLICE DIVISION

## GENERAL ORDER



4. Was a probable cause search conducted?
  - Was contraband recovered as a result of the probable cause search?
  - What type of contraband was recovered as a result of the probable cause search?

F. Disposition

1. Was summons issued?
2. Was arrest made?
3. Was warning issued?

Dispositions will be further analyzed in relation to offense, charge, and violation data to help discover, detect and determine any stop, search and arrest disparities, best practices, and opportunities to enhance training. Particular focus will be given to events where an individual is charged with obstruction of the administration of law, resisting arrest, disorderly conduct, and aggravated assault on a police officer.

V. ANALYSES TO BE CONDUCTED

The Supervisor assigned to the Technology Unit shall be responsible for ensuring the data necessary to conduct the analysis required by this General Order is collected, preserved, and provided to the Commander of the Consent Decree and Planning Division in electronic format.

The Commander of the Consent Decree and Planning Division, or their designee, shall ensure that the **biannual** analysis required by this General Order is conducted for the following data collection periods:

- May 1<sup>st</sup> through September 30<sup>th</sup> – Report to be published **no later** than October 31<sup>st</sup>
- October 1<sup>st</sup> through April 30<sup>th</sup> – Report to be published **no later** than May 31<sup>st</sup>

The analysis report will highlight any significant disparities. It shall also contain graphs and/or charts with numerical values depicting the following comparisons for the current period, as well as a comparison to the cumulative data collected during the previous twelve months:

A. Stops Analysis

1. Aggregate data of stops analysis
  - Pedestrian
    - Compute the number of pedestrian stops categorized by gender, age, and race.
    - Compare by command assigned, precinct and sector of occurrence, common police work shifts, and stop disposition.



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# NEWARK POLICE DIVISION

## GENERAL ORDER



- Motor Vehicle
  - Compute the number of motor vehicle stops categorized by gender, age, and race.
  - Compare by command assigned, precinct and sector of occurrence, common police work shifts, and stop disposition.
  
- 2. Aggregate data of protective pat down analysis
  - Compute the number of protective pat downs categorized by gender, age, and race.
  - Compare by command assigned, precinct and sector of occurrence, common police work shifts, and discovery of contraband.
  
- 3. Reasonable suspicion to stop audit
  - Conducted under the guidance of U.S. Government Accountability Office, Generally Accepted Government Auditing Standards (2018 Revision) with a sample size obtained using the one-tail test with a 95 percent confidence level and error rate of five percent
  
- 4. Reasonable suspicion to conduct protective pat down audit
  - Conducted under the guidance of U.S. Government Accountability Office, Generally Accepted Government Auditing Standards (2018 Revision) with a sample size obtained using the one-tail test with a 95 percent confidence level and error rate of five percent
  
- B. Searches Analysis
  - 1. Aggregate data of searches analysis
    - Compute the number of searches categorized by gender, age, and race.
    - Compare by command assigned, precinct and sector of occurrence, common police work shifts, and discovery of contraband.
  
  - 2. Probable cause to search audit
    - Conducted under the guidance of U.S. Government Accountability Office, Generally Accepted Government Auditing Standards (2018 Revision) with a sample size obtained using the one-tail test with a 95 percent confidence level and error rate of five percent



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# NEWARK POLICE DIVISION

## GENERAL ORDER



C. Arrests Analysis

1. Aggregate data of arrests analysis

- Compute the number of arrests categorized by gender, age, and race.
- Compare by command assigned, precinct and sector of occurrence, and common police work shifts.

2. Probable cause to arrest audit

- Conducted under the guidance of U.S. Government Accountability Office, Generally Accepted Government Auditing Standards (2018 Revision) with a sample size obtained using the one-tail test with a 95 percent confidence level and error rate of five percent

D. Consent to Search aggregate data analysis

- Compute the number of consents to search categorized by gender, age, and race.
- Compare by command assigned, precinct and sector of occurrence, common police work shifts, and discovery of contraband.

E. Pretext Stops aggregate data analysis

- Compute the number of pretext categorized stops by gender, age, and race.
- Compare by command assigned, precinct and sector of occurrence, and common police work shifts.

## VI. ADMINISTRATIVE REVIEW OF ANALYSIS OUTCOMES

Upon completing the analyses contained in this General Order, the Commander of the Consent Decree and Planning Division shall provide the Public Safety Director and the Chief of Police with the report for review and approval.

Upon approval, the report shall be forwarded to the Comstat/UCR Unit, and all other Newark Police Division Command Rank Supervisors will be provided the finalized Analysis of Stop, Search, and Arrest Data Report.

A 30-calendar day review period will commence immediately following the issuance of the report. All Command Rank Supervisors shall scrupulously examine all relevant analyses, shall be prepared to discuss the contents during the subsequent Comstat meeting, and shall provide recommendations and strategies to eliminate or reduce any identified disparities within their commands, as well as throughout the Newark Police Division.



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# NEWARK POLICE DIVISION GENERAL ORDER



Command Rank Supervisors shall attempt to determine which stop, search, and arrest practices are **most** effective and efficient. They shall also attempt to determine which stop, search and arrest practices are the **least** effective and efficient, in order to increase public safety and promote police legitimacy within the Newark community.

Command Rank Supervisors will use the analysis outcomes to **explore, modify, employ, or require police practices that focus on reducing or eliminating unwarranted disparities**, as well as **reduce, deemphasize, or abandon the use of police practices that may be creating unwarranted disparities** to the greatest extent legally possible.

Command Rank Supervisors shall explore the possibility that the existence of a disparity may be beyond the control of law enforcement (e.g., based on crime trends and community priorities for enforcement to which the Police Division may have been reacting during the time period analyzed.)

## VII. STOP, SEARCH, AND ARREST ANALYSIS OUTCOME COMMITTEE

The Public Safety Director, or his/her designee, shall incorporate the Analysis of Stop, Search, and Arrest Data Report in the Comstat meeting following the report review period. During this Comstat meeting, **all attendees** shall discuss the contents of the report and provide recommendations and strategies designed to reduce any identified disparities throughout the Newark Police Division.

The Public Safety Director, or his/her designee, shall delegate tasks, such as, but not limited to:

- Potential policy changes
- Additional or changes in training methods
- Modification of field deployment
- Changes in police practices
- Modification of supervision techniques

These measures will serve to further our efforts in reducing disparities, optimizing stop, searches, and arrests practices, and ultimately increasing public safety and police legitimacy.

Any outcomes stemming from this portion of the Comstat meeting shall be recapped during the following Comstat session, wherein the next Analysis of Stop, Search, and Arrest Data Report will be discussed. All modifications will be examined by Command Rank Supervisors to determine if the changes resulted in a decrease or elimination of any unintended demographic disparity.



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# NEWARK POLICE DIVISION

## GENERAL ORDER



### VIII. POLICY AND TRAINING RECOMMENDATIONS

Modifications to General Orders, Memoranda, proscribed police practices, or the creation of pilot programs shall be made at the discretion of the Public Safety Director. The Commander of the Consent Decree and Planning Division shall modify existing General Orders, Memoranda, or proscribed police practices as ordered by the Public Safety Director.

Modifications to training schedules, required classes, class content, and examination of student feedback shall be the responsibility of the Commander of the Training Division, at the direction and approval of the Public Safety Director.

### IX. EFFECT OF THIS ORDER

All previous Orders and Memorandums which are inconsistent or in conflict with this Order are hereby repealed.

By Order of:



\_\_\_\_\_  
BRIAN A. O'HARA  
PUBLIC SAFETY DIRECTOR

BAO/CM/MA;jg

# APPENDIX E



DEPARTMENT OF PUBLIC SAFETY  
MEMORANDUM



TO: POLICE DIVISION DATE: JANUARY 10, 2019  
FROM: ANTHONY AMBROSE NUMBER: 19 - 18  
PUBLIC SAFETY DIRECTOR TICKLER: None  
SUBJECT: IMPLEMENTATION OF G.O. 18-14, 18-15, 18-16 FILE REF: PUB 4  
RE: STOP, SEARCH AND ARREST POLICIES

The purpose of this memorandum is to announce the issuance of the Newark Police Division's new *General Order 18-14 Consensual Citizen Contacts and Investigatory Stops*, *General Order 18-15 Searches With or Without a Search Warrant*, and *General Order 18-16 Arrests With or Without An Arrest Warrant*.

**ALL THREE GENERAL ORDERS WILL BECOME EFFECTIVE IMMEDIATELY.**

The new Consensual Citizen Contacts and Investigatory Stops General Order #18-14 supersedes **Procedures for the Execution, Distribution and Storage of Field Inquiry Reports General Order #97-8** which is hereby rescinded immediately.

The new Searches With or Without a Search Warrant General Order #18-15 supersedes **Search & Seizure General Order #14-12 and Consent to Search Form General Order # 63-26** which are hereby rescinded immediately.

The three General Orders were developed based on the requirements of the Consent Decree, police best practices, Attorney General Guidelines, and the law. Review and feedback from the community, U.S. Department of Justice, Newark Police Division Independent Monitor, NPD members, CCRB, and Police Unions was also received, considered, and included.

The new *Consensual Citizen Contacts and Investigatory Stops General Order #18-14* encompasses most of the provisions contained in the old Procedures for the Execution, Distribution and Storage of Field Inquiry Reports General Order #97-8, however, there are data collection limitations caused by the current version of the Stop Report (DP1:1388), formerly known as the Field Inquiry Report.

Officers will continue to collect only the data allowed by the fields contained within the current version of the Stop Report (DP1:1388). An updated version of the Stop Report (DP1:1388) has been developed and is awaiting Department of Justice and Independent Monitoring Team approval based on the reporting requirements dictated by the Consent Decree, which were incorporated into the new policy. Once the Stop Report (DP1:1388) has been updated, it will be made available in the Newark Police Division Records Management System (RMS), and officers will begin to collect all the data fields available to them which are required by the new policy.

The new *Searches With or Without a Search Warrant General Order #18-15* encompasses most of the provisions contained in the old Search & Seizure General Order #14-12 and Consent to Search Form General Order # 63-26, however, the new general order contains updated case law guidance and mandatory Consent Decree provisions.

For every search with or without an arrest involving the recovery of contraband evidence, the desk lieutenant or unit commander will review the circumstances of the encounter, including video from body-worn cameras, to assess the adequacy of the seizure. The supervisor will memorialize that review in writing and will include an assessment of the circumstances under which the search was conducted, the evidence was recovered, and / or the probable cause for the arrest. Detective Supervisors are responsible for the review of every search or arrest involving the recovery of contraband evidence directed by Detectives.

The Office of Professional Standards has enabled a Non-Disciplinary Corrective Action tracking mechanism within the Blue Team / IAPro system to allow for the documentation of any deficiencies in compliance with Consent Decree mandates. Supervisors shall submit all Non-Disciplinary Corrective Actions to their respective Commander via Blue Team. Commanders shall then evaluate the supervisors assessment and recommendations and take all appropriate corrective action, including referring the incident to the OPS for investigation if warranted. The commander will also take appropriate corrective or disciplinary action against supervisors who fail to conduct complete, thorough, and accurate reviews of officers' investigatory detentions, searches, and arrests. Commanders shall memorialize this review in Blue Team within seven days.

The **Commander of the Consent Decree and Planning Division** shall ensure that the Compliance Unit conducts inspections and audits for compliance with this directive.

**Commanders** shall ensure that this memorandum is the subject of roll call training for as long as needed until the policies have been fully implemented.

**All Police Division members** shall acknowledge receipt, understanding, and compliance with the tenets of this Memorandum via PowerDMS by **January 31, 2019**.

**BY ORDER OF:**

  
\_\_\_\_\_  
**ANTHONY F. AMBROSE**  
**PUBLIC SAFETY DIRECTOR**

AFA/BO:jg

Attachment:

c: Darnell Henry, Chief of Police

# APPENDIX F

#	Consent Decree Paragraph	NPD Policy
1.	Section VI Opening Statement	General Order 18-16, <i>Arrests with or without an Arrest Warrant</i> : Section II.
2.	35	General Order 18-16, <i>Arrests with or without an Arrest Warrant</i> : Section V (A & D)
3.	36	General Order 18-16, <i>Arrests with or without an Arrest Warrant</i> : Section I; Section V (B)
4.	37	General Order 18-16, <i>Arrests with or without an Arrest Warrant</i> : Section XI (G)
5.	42	General Order 18-16, <i>Arrests with or without an Arrest Warrant</i> : Section XI (K); Section XIII (G)
6.	51	The Independent Monitoring Team recognizes that NPD satisfied this Consent Decree provision by augmenting its Stop Report, which was acknowledged in the Monitoring Team’s <i>First Stop Audit</i> .
7.	53	General Order 21-04, <i>Protocol for Analyzing Stop, Search, and Arrest Data</i>
8.	55	General Order 18-16, <i>Arrests with or without an Arrest Warrant</i> : Section V (G & H); General Order 18-12, <i>First Amendment Right to Observe, Object to, and Record Police Activity</i> : Section V
9.	56	General Order 18-12, <i>First Amendment Right to Observe, Object to, and Record Police Activity</i> ; Section V (A & B)
10.	57	General Order 18-12, <i>First Amendment Right to Observe, Object to, and Record Police Activity</i> ; Section V (A & B)
11.	58	General Order 18-12, <i>First Amendment Right to Observe, Object to, and Record Police Activity</i> ; Section V (A & B)
12.	59	General Order 18-12, <i>First Amendment Right to Observe, Object to, and Record Police Activity</i> ; Section V (A & B)
13.	60	General Order 18-12, <i>First Amendment Right to Observe, Object to, and Record Police Activity</i> ; Section V (A & B)
14.	61	General Order 18-12, <i>First Amendment Right to Observe, Object to, and Record Police Activity</i> ; Section V (A & B)
15.	62	General Order 18-12, <i>First Amendment Right to Observe, Object to, and Record Police Activity</i> ; Section V (D)
16.	174 (a)	General Order 21-04, <i>Protocol for Analyzing Stop, Search, and Arrest Data</i>

# APPENDIX G

**List of Events Removed and Added to Sample**

List of Events Added to Sample		
Count	Arrest Incident	Addition Criteria
1	C21-015746	This Disorderly Conduct arrest replaced C21-052733
2	C21-045927B	More than one arrest made during the event
3	C21-045927C	More than one arrest made during the event
4	C21-045927D	More than one arrest made during the event
5	C21-046113A	More than one arrest made during the event
6	C21-046113B	More than one arrest made during the event
7	C21-046218A	More than one arrest made during the event
8	C21-046218B	More than one arrest made during the event
9	C21-046378A	More than one arrest made during the event
10	C21-046378B	More than one arrest made during the event
11	C21-046378C	More than one arrest made during the event
12	C21-046674A	More than one arrest made during the event
13	C21-046674B	More than one arrest made during the event
14	C21-046674C	More than one arrest made during the event
15	C21-047914A	More than one arrest made during the event
16	C21-047914B	More than one arrest made during the event
17	C21-047914C	More than one arrest made during the event
18	C21-048040A	More than one arrest made during the event
19	C21-048040B	More than one arrest made during the event
20	C21-048040C	More than one arrest made during the event
21	C21-048419A	More than one arrest made during the event
22	C21-048419B	More than one arrest made during the event
23	C21-048429A	More than one arrest made during the event
24	C21-048429B	More than one arrest made during the event
25	C21-048595A	More than one arrest made during the event
26	C21-048595B	More than one arrest made during the event

27	C21-048669A	More than one arrest made during the event
28	C21-048669B	More than one arrest made during the event
29	C21-048810A	More than one arrest made during the event
30	C21-048810B	More than one arrest made during the event
31	C21-049126A	More than one arrest made during the event
32	C21-049126B	More than one arrest made during the event
33	C21-049194A	More than one arrest made during the event
34	C21-049194B	More than one arrest made during the event
35	C21-049194C	More than one arrest made during the event

List of Events Added to Sample		
Count	Arrest Incident	Addition Criteria
36	C21-049613A	More than one arrest made during the event
37	C21-049613B	More than one arrest made during the event
38	C21-049737A	More than one arrest made during the event
39	C21-049737B	More than one arrest made during the event
40	C21-049737C	More than one arrest made during the event
41	C21-050300B	More than one arrest made during the event
42	C21-051786B	More than one arrest made during the event
43	C21-051786C	More than one arrest made during the event
44	C21-051786D	More than one arrest made during the event
45	C21-052528B	More than one arrest made during the event

List of Events Removed from Sample		
Count	Event Number	Removal Criteria
1	C21-022474	Arrest Warrant Only / Defendant Arrested inside Police Facility
2	C21-031051	Arrest Warrant Only / Defendant Arrested inside Police Facility
3	C21-031168	Defendant Arrested by Warrant While Already in Custody for an Unrelated Offense
4	C21-032215	Defendant Arrested by Warrant While in Custody in Hackensack NJ
5	C21-034702	Warrant arrest from Essex County Sheriff's Department
6	C21-038835	Defendant Arrested by Warrant by Fugitive Team
7	C21-040139	Task Force Arrest
8	C21-042040	Warrant Arrest (Other Jurisdiction)
9	C21-044299	Warrant Arrest (Other Jurisdiction)
10	C21-044705	Arrest number found to be a typo by NPD and ARR or RPTS are associated with this event.
11	C21-044750	Arrest Warrant Only / Defendant Arrested inside Private Residence - i.e., No Bystanders
12	C21-045069	Incident did not involve an arrest
13	C21-049246	Transposition error by NPD, confirmed by supplied on-site documentation
14	C21-050540	Warrant arrest made by detectives assigned to Fugitive Squad
15	C21-050805	Arrest warrant for outside jurisdiction
16	C21-051042	Warrant arrest from Essex County Sheriff's Department
17	C21-051786A	Task Force Arrest- removed post exit conference
18	C21-051786B	Task Force Arrest
19	C21-051786C	Task Force Arrest
20	C21-051786D	Task Force Arrest
21	C21-052167	Task Force Arrest
22	C21-052733	This Disorderly Conduct arrest was replaced with C21-015746

# APPENDIX H

<b>Summary of Non-Compliant Events</b>		
<b>Non-Compliance Type</b>	<b>Number of Non-Compliant Events</b>	<b>Percentage</b>
Non-Compliant (Substantive)	1	9.09%
Non-Compliant (Documentation)	9	81.82%
Non-Compliant (Both)	1	9.09%
Total	11	100%

# APPENDIX I

**List of Non-Compliant Events (Substantive)**

List of Non-Compliant Events (Substantive)		
Count	Arrest Incident	Non-Compliance Criteria
1	C21-051891	No probable cause established
2	C21-047647	No reasonable suspicion or Probable Cause established. BWC does not support narrative. <sup>11</sup>

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<sup>11</sup> The Monitoring Team determined that Arrest Incident C21-047647 was non-compliant both substantively and with respect to documentation.

# APPENDIX J

**List of Non-Compliant Events (Documentation)**

List of Non-Compliant Events (Documentation)		
Count	Arrest Incident	Non-Compliance Criteria
1	C21-038047	BWC does not support narrative
2	C21-042464	(3) BWC were discovered, (2) were labeled under a different C#. However, none of the (3) videos showed the arrest or the circumstances leading up to the arrest.
3	C21-044710	No BWCs found for officers at scene. (1) BWC at MAPS only.
4	C21-045329	BWC does not support narrative
5	C21-046678	No BWC or ICC found
6	C21-048385	No BWC or ICC found
7	C21-049075	No BWC or ICC found
8	C21-051897	No BWC or ICC found

# **APPENDIX E**

**Report of the Independent Monitor's Third Audit of the City of Newark's and Newark  
Police Division's Body-Worn Cameras and Second Audit of In-Car Cameras**

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This Audit Report presents the findings of the Independent Monitor, Peter C. Harvey, regarding the Independent Monitoring Team's *third* audit of the City of Newark's (the "City's") and Newark Police Division's ("NPD's") compliance with Consent Decree requirements relating to Body-Worn Cameras ("BWC"), and *second* audit of compliance with requirements related to In-Car Cameras ("ICC").

## I. REVIEWERS

The following members of the Independent Monitoring Team participated in this audit:

Maggie Goodrich, Esq., Chief Information Officer, Los Angeles Police Department (ret.)  
Daniel Gomez, Lieutenant, Los Angeles Police Department (ret.)  
Roger Nunez, Sergeant, Los Angeles Police Department  
Linda Tartaglia, Associate Director, Rutgers University Center on Policing  
Roselyn Bocker Parks, Ph.D., Rutgers University Center on Policing  
Kathryn Duffy, Ph. D., Rutgers University Center on Policing  
Jonathan Norrell, Rutgers University Center on Policing

## II. INTRODUCTION

Paragraph 173 of the Consent Decree instructs the Independent Monitoring Team, led by Independent Monitor Peter C. Harvey, to audit the City's and NPD's compliance with Consent Decree reforms.<sup>1</sup> Pursuant to Consent Decree Paragraph 180, by letter on June 24, 2022, the Independent Monitor issued notice to the City, NPD and United States Department of Justice ("DOJ") (collectively, the "Parties"), that the Monitoring Team would conduct its *third* audit of NPD's use of Body-Worn Cameras and *second* audit of NPD's use of In-Car Cameras to assess NPD's compliance with relevant provisions of the Consent Decree. Specifically, the Monitoring Team notified the Parties that it intended to assess whether NPD is in compliance with enumerated sections of the Consent Decree, including Section IX (specifically, Paragraphs 103 and 104 (e)). The Monitoring Team also held a pre-audit meeting with the parties on July 18, 2022 prior to the Audits (see Appendix A, 45-day notice letter).

As a general matter, Section IX of the Consent Decree requires NPD to, in part:

- Develop, implement, and maintain a system of video recording officers' encounters with the public with body-worn and in-car cameras. The use of video cameras will be designed to increase officer accountability, improve NPD legitimacy in the community, and augment NPD's records of law enforcement activities (Section IX, Opening Statement).

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<sup>1</sup> Paragraph 173 of the Consent Decree requires the Monitor to "conduct reviews or audits as necessary to determine whether the City and NPD have implemented and continue to comply with the requirements" of the Consent Decree.

- Equip all marked patrol cars with video cameras, and require all officers, except certain officers engaged in only administrative or management duties, to wear body cameras and microphones with which to record enforcement activity. NPD will develop and implement a policy to designate cars and officers that will not be equipped with video cameras or that will be equipped with concealed cameras, because the visibility of a camera might compromise undercover work or other appropriate and lawful clandestine police activity. NPD will develop a policy to designate the categories of officers who will not wear body cameras because they are engaged only in administrative or management duties (Paragraph 103).
- In conjunction with the Monitor and DOJ, NPD will develop and implement a policy regarding body-worn camera video and audio recording that will address issues including use retention, privacy issues, the use of recordings as evidence in force and complaint reviews, and the use of recordings for other criminal justice purposes (such as evidence in prosecutions). At a minimum, NPD's body-worn camera policy will require officers to inform subjects that they are being recorded unless going so would be unsafe, impractical, or impossible (Paragraph 104 (e)).

### III. REVIEW PERIOD

In this audit, the Monitoring Team reviewed BWC and ICC videos from June 1, 2022 up to and including June 30, 2022 (the "Audit Period"). The Monitoring Team reviewed video footage while onsite at NPD from July 25 through July 29, 2022.

### IV. EXECUTIVE SUMMARY

This report contains the results of the Monitoring Team's *third* audit of NPD's compliance with Consent Decree requirements relating to BWCs, and *second* audit relating to NPD's compliance with Consent Decree requirements related to ICCs. To that end, the Monitoring Team analyzed whether: (1) NPD's BWC and ICC policies contained the provisions required by the Consent Decree; (2) NPD demonstrated routine adherence to its own BWC and ICC policies in its day-to-day operations; and (3) NPD has equipped all patrol cars with ICC systems as required by the Consent Decree.

For the first component of this audit, namely, NPD's BWC and ICC policies, the Monitoring Team reviewed NPD's General Order 18-05, *Body-Worn Cameras*, dated October 22, 2019 (*see Appendix B*), and General Order 18-06, *In-Car Cameras*, dated June 5, 2018 (*see Appendix C*). The Monitoring Team previously approved these General Orders and determined that they incorporate each of the relevant Consent Decree policy requirements related to BWC and ICC.

The second component of this audit addressed whether NPD had demonstrated routine adherence to its own BWC and ICC policies. The Monitoring Team considered whether all video footage reviewed met the BWC Objective for this audit, described in this audit as BWC Compliance (i.e., Notification requirement), and the ICC objectives, described

in this audit as ICC Compliance (i.e., Activation, Deactivation, and Availability of video for rear-seat transports).

Regarding the audit of BWCs, as NPD achieved compliance (at least 95%) in the categories of Activation, Categorization and Deactivation for two consecutive prior audits, these particular objectives did not require assessment in this third BWC audit. As a result, the Body-Worn Camera scope for this audit was limited to Notification requirements to inform members of the public they are being recorded, unless doing so would be unsafe, impractical, or impossible (*see Appendix A: 45-day notice letter*).

Regarding Body-Worn Camera compliance, in this third audit, NPD did not meet the 95% compliance threshold, achieving a score of 85.91% for the Notification objective assessed.

Regarding ICC, the Monitoring Team reviewed whether officers activated and deactivated the ICC, and whether video for rear-seat transports was available according to Section IX of the Consent Decree and General Order 18-06 In-Car Cameras. Section IV.A (*see Appendix A: 45-day notice letter*). Regarding ICC compliance, NPD achieved compliance for Deactivation, scoring 100% for this objective. However, NPD did not achieve compliance for the remaining two objectives (Activation and Availability of video for rear-seat transports). NPD received a score of 92.19% for Activation, and 92.85% for Availability of video for rear-seat transports.

The third component of this audit involved the inspection of marked vehicles for ICC installation and functional ICC equipment. The results of the Monitoring Team’s physical inspection at three NPD precincts is described in this audit as Vehicle Inspection Compliance.

Regarding the ICC equipment component of the audit, NPD scored 83.72%, and therefore did not achieve compliance. Additionally, for this audit, an NPD employee was asked to demonstrate that the ICC equipment/system in each selected vehicle was functional. All vehicles inspected must be compliant for both Vehicle Inspection and the functionality of the ICC system in the rear transport area to be deemed compliant.

This table provides an overview of NPD’s compliance in the Monitoring Team’s *Third BWC and Second ICC Audit*.

<b>Overview of 3<sup>rd</sup> BWC / 2<sup>nd</sup> ICC Audit Results</b>		
<b>Audit Subject</b>	<b>Consent Decree Paragraph</b>	<b>Compliance</b>
<b>Policies</b>	Paragraphs 103, 104	Yes
<b>BWC Compliance</b>  <i>Did NPD meet the Notification objective for body-worn cameras?</i>	Paragraphs 103, 104	No. Notification: (85.91%) (Requirement: 95%)
<b>ICC Compliance</b>  <i>Did NPD meet the three objectives for in-car cameras?</i>	Paragraphs 103	No. (Requirement: 95%) Breakdown by Objective: Deactivation: Yes (100%) Activation: No (92.19%)

		Availability for Review when subject(s) transported: No (92.85%)
<b>Vehicle Inspection Compliance</b>  <i>Did NPD equip patrol cars with cameras- and were these functional?</i>	Paragraph 103	No (83.72%).

**V. METHODOLOGY**

To assess compliance, the Monitoring Team evaluated whether NPD satisfied the relevant provisions of the Consent Decree. The Monitoring Team also evaluated whether NPD followed its own policy, protocols, procedural guidelines, notifications, and reporting requirements. A comprehensive methodology is included in the 45-day notice (*see Appendix A*).

**VI. ANALYSIS**

**A. NPD’s BWC and ICC Policies**

The Consent Decree requires NPD to implement policies directing officers on correct procedures relevant to BWC and ICC use (*see* Consent Decree Section IX, Paragraphs 103 and 104). Prior to this audit, the Monitoring Team reviewed NPD’s BWC and ICC policies: General Order 18-05, *Body-Worn Cameras* (*see Appendix B*) and General Order 18-06, *In-Car Cameras* (*see Appendix C*). The Monitoring Team determined that NPD’s policies contain the relevant Consent Decree requirements (The full list of these requirements can be found in **Appendix A**: 45-day notice letter). As such, NPD has achieved compliance with the relevant BWC and ICC policy requirements of the Consent Decree.

**B. BWC and ICC Compliance Review**

Pursuant to the Monitoring Team’s request, NPD provided a list of all event numbers associated with all call types that would have necessitated BWC activation during the Audit Period (June 1 through June 30, 2022). The list totaled 8,146 event numbers. The Monitoring Team then selected and shared with NPD a random sample of cases from this list. Out of a total population of 8,146 event numbers, the Monitoring Team selected 200 event numbers for review (*see Appendix E* for the complete list of events). Of these 200 events, the Monitoring Team determined that 30 events were deemed by the SMEs as not applicable to this audit and were removed from the sample, bringing the total number of events in the sample to 170. Additionally, there were several events where more than one officer was involved. This led to 11 events being added to the sample. As a result, the final sample size for this audit was 181 events. The 181 event numbers resulted in a sample of 397 videos (BWC and ICC combined) to be reviewed, as some events resulted in multiple videos in instances where more than one officer and/or vehicle responded.

To determine whether NPD complied with its BWC and ICC policies, the Monitoring Team analyzed all (i) BWC videos, and (ii) ICC videos for the 181 events in the sample.

**i BWC Compliance Results**

To determine whether NPD achieved BWC Compliance, the Monitoring Team analyzed whether each video complied with the requirements of General Order 18-05. The Monitoring Team assessed BWC Compliance by determining whether each video met the following objective where applicable:

1. Notification – Was the subject notified by the officer that he/she was being recorded, pursuant to NPD policy?

NPD must achieve a compliance rate of 95% for this BWC objective to achieve compliance with the BWC portion of the audit.

Below is a summary of BWC audit findings by Objective

<b>Summary of BWC Audit Findings by Objective</b>				
<b>Objective No.</b>	<b>Objective Description</b>	<b>Number of Videos Meeting Objective</b>	<b>Number of Videos Assessed</b>	<b>Percentage of Videos Meeting Objective</b>
1.	Notification: Was the subject notified that the camera is recording at the earliest opportunity that is safe and feasible?	189	220	85.91%

The results of this third BWC audit show that of 220 BWC videos assessed, 189 videos (85.91%) met the BWC Notification objective.

Pursuant to NPD policy, there were 220 instances in which the officer was required to notify the subject that they were being recorded.<sup>2</sup> The Monitoring Team was able to confirm compliant *Notification* practices in 189 of the 220 instances where notification was required. NPD officers failed to provide notification in 31 instances where notification was required

The table that follows provides a list of non-compliant events for the BWC objective along with the related circumstances for each event.

<b>Count</b>	<b>Non-Compliant BWC Video (Notification)</b>	<b>Circumstances</b>
1	P22221631	MISSING BWC VIDEO

<sup>2</sup> The Monitoring Team notes that not every video requires a notification be given to a subject. For example, if the primary officer on scene notifies a subject who is being recorded, the secondary officers/units do not need to repeat the notification.

2	P22222636	FAILURE TO NOTIFY
3	P22225599	LATE ACTIVATION (DOES NOT CAPTURE NOTIFICATION)
4	P22228371	MISSING BWC VIDEO
5	P22228385	LATE ACTIVATION (DOES NOT CAPTURE NOTIFICATION)
6	P22230278	LATE ACTIVATION, BWC DISPLACED
7	P22234441	FAILURE TO NOTIFY
8	P22238491	FAILURE TO NOTIFY
9	P22239492	MISSING BWC VIDEO
10	P22239551	MISSING BWC VIDEO
11	P22240020	PARTNER MISSING BWC, BWC DOES NOT CAPTURE NOTIFICATION
12	P22242194	FAILURE TO NOTIFY
13	P22243238	FAILURE TO NOTIFY, BWC DISPLACED
14	P22243817	FAILURE TO NOTIFY
15	P22243921	MISSING BWC VIDEO
16	P22244110	FAILURE TO NOTIFY
17	P22244846-A	FAILURE TO NOTIFY
18	P22246622	FAILURE TO NOTIFY
19	P22248448	LATE ACTIVATION (DOES NOT CAPTURE NOTIFICATION)
20	P22251115	FAILURE TO NOTIFY, PARTNER MISSING BWC
21	P22252820	MISSING BWC (FAILURE TO RECORD INCIDENT)
22	P22252931	FAILURE TO NOTIFY
23	P22253349	LATE ACTIVATION (DOES NOT CAPTURE NOTIFICATION)
24	P22253763-B	MISSING BWC VIDEO
25	P22254115	OBSCURED BWC VIDEO, FAILURE TO NOTIFY

26	P22255274	LATE ACTIVATION (DOES NOT CAPTURE EVENT)
27	P22255902	MISSING BWC VIDEO
28	P22256473	MISSING BWC VIDEO
29	P22257148	MISSING BWC VIDEO
30	P22257921	FAILURE TO NOTIFY
31	P22260335-A	FAILURE TO NOTIFY
32	P22260335-B	FAILURE TO NOTIFY
33	P22260805	FAILURE TO NOTIFY
34	P22261853	MISSING BWC VIDEO
35	P22262993	MISSING BWC VIDEO

**ii ICC Compliance Results**

To determine whether NPD achieved ICC Compliance, the Monitoring Team analyzed whether each video complied with the requirements of General Order 18-06. The Monitoring Team assessed ICC Compliance by determining whether each video met the three (3) required objectives where applicable:

1. Activation – Was the ICC activated according to NPD policy?
2. Deactivation – Was the ICC deactivated according to NPD policy?
3. Transport Video Available for Review– Where an event resulted in the transport of a subject in the rear seat of a patrol vehicle, was video of that transport available for review?

While the Monitoring Team provides a compliance rate per objective, NPD must achieve a compliance rate of 100% for **all three ICC objectives** to achieve compliance with the ICC portion of this audit.

This table provides a summary of ICC Audit Findings by Objective.

<b>Summary of ICC Audit Findings by Objective</b>				
<b>Objective No.</b>	<b>Objective Description</b>	<b>Number of Videos Meeting Objective</b>	<b>Number of Videos Assessed</b>	<b>Percentage of Videos Meeting Objective</b>
1.	Activation: Was the ICC activated according to policy?	177	192	92.19%

2.	Deactivation: Was the ICC deactivated according to policy?	177	177	100%
3.	When subject(s) were transported, were video and audio available for review?	13	14	92.85%

The tables that follow provide a list of non-compliant events for each of the relevant ICC objectives along with the related circumstances for each non-compliant event.

There were 15 instances where NPD officers did not activate their ICC although activation was required.

Count	Non-Compliant ICC Videos (Activation)	Circumstances
1	P22228371	MISSING ICC VIDEO
2	P22233801	MISSING ICC VIDEO
3	P22233829	MISSING ICC VIDEO
4	P22233923	MISSING ICC VIDEO
5	P22239492	MISSING ICC VIDEO
6	P22243921	MISSING ICC VIDEO
7	P22243981	MISSING ICC VIDEO
8	P22251100	MISSING ICC VIDEO
9	P22253114	MISSING ICC VIDEO
10	P22253763-B	MISSING ICC VIDEO
11	P22255274	NO ICC EQUIPPED IN VEHICILE
12	P22255902	MISSING ICC VIDEO
13	P22257148	MISSING ICC VIDEO
14	P22257208	MISSING ICC VIDEO
15	P22264862	MISSING ICC VIDEO

In all 177 instances in which ICC video was assessed for Deactivation, officers deactivated according to policy. As such, NPD is 100% compliant with this objective.

The following table indicates one (1) instance where a subject was transported as a result of the event, but no video of the transport could be located.

	<b>Non-Compliant ICC Videos (Available for review)</b>	<b>Circumstances</b>
1.	P22233801	MISSING ICC VIDEO

**C. Vehicle Inspection and Functionality of System**

As part of this audit, the Monitoring Team assessed whether all patrol vehicles were equipped with ICC systems, and whether the ICC system was functional. NPD provided the Monitoring Team with a Fleet Inventory Summary Report (see **Appendix H**), that lists all patrol vehicles assigned to each Precinct. The Monitoring Team selected three (3) precincts for review: Fourth Precinct, Sixth Precinct, and Seventh Precinct. The Fleet Inventory Summary listed a total of 51 vehicles for those three precincts.

The Monitoring Team found that out of the 51 vehicles, eight (8) vehicles were identified as “Out of Service” and were not assessed by the SMEs. As a result, 43 vehicles were inspected for compliance. Of the 43 vehicles, all had ICCs installed, however, only 36 cameras were operational (83.72%), and seven (7) were non-operational. Therefore, NPD is not in compliance as it relates to Vehicle Inspection under the proposed compliance threshold of 100%.<sup>3</sup>

The following table lists the seven (7) vehicles (and their respective precinct number) that were non-operational.

<b>Non-Operational Vehicle Unit #</b>	<b>Precinct Number</b>
413	4 <sup>th</sup> Precinct
422	4 <sup>th</sup> Precinct
424	4 <sup>th</sup> Precinct
426	4 <sup>th</sup> Precinct
469	4 <sup>th</sup> Precinct
603	6 <sup>th</sup> Precinct
627	6 <sup>th</sup> Precinct

NPD Policy requires officers to test their vehicle’s ICC and notify a supervisor if the ICC is not functional. Supervisors are in turn supposed to email a Technical Unit, which is to then coordinate with the ICC vendor for repair. NPD, however, provided no documentation to the Monitoring Team showing that any of the seven (7) the vehicles were out of service or pending repair.

<sup>3</sup> Per the 2nd BWC 1st ICC Audit Report, footnote 3: “While the 95% compliance rate for Vehicle Inspection is in line with the methodology proposed for this audit, the Consent Decree does require that all patrol vehicles be equipped with ICC systems. As detailed below in the ICC compliance results, there were 18 instances in which a camera could not be activated because the vehicle did not contain an ICC system. In the Monitoring Team’s next audit of NPD’s ICC practices, NPD will only be deemed compliant with Consent Decree Paragraph 103 as it relates to Vehicle Inspection if 100% of NPD patrol vehicles inspected include functioning ICC systems.

## VII. OBSERVATIONS AND RECOMMENDATIONS

The Monitoring Team made two (2) principal observations and 4 recommendations in connection with the third BWC compliance audit.

*First*, the Monitoring Team observed an improvement with respect to its Notification practices in this third BWC audit.

*Second*, to achieve compliance, NPD was required to show that each vehicle was installed with an ICC system and that it was functional. The Monitoring Team found that seven (7) patrol vehicles at the three (3) precincts audited had not been functional, and that no documentation was provided showing that the vehicles were out of service or pending repair.

### Recommendations:

1. NPD should continue to stress the importance of notification during roll calls.
2. NPD should conduct random reviews of video for compliance with the Notification requirement, to help improve its compliance rate.
3. Each precinct should conduct monthly inspections and report the results to the precinct desk supervisor, who should contact the Technical Unit, according to policy.
4. NPD should consider implementing a policy that mandates that only vehicles with a working ICC system be deployed (absent Desk Supervisor approval, which could be given during exigent circumstances).

\*\*\*

The Consent Decree requires that both the City and NPD post this report on their websites. See Consent Decree Paragraph 20 (“All NPD studies, analyses, and assessments required by this agreement will be made publicly available, including on NPD and City websites ... to the fullest extent permitted under law”); Paragraph 166 (“all NPD audits, reports, and outcomes analyses... will be made available, including on City and NPD websites, to the fullest extent permissible under law.”). The Monitor expects the City and NPD to do so expeditiously.

Date: November 3, 2022

Peter C. Harvey

Independent Monitor

List of Appendices

Appendix A: 45-day Notice: *Second* In-Car Camera and *Third* Body-Worn Camera Audits, dated June 24, 2022

Appendix B: General Order 18-05: *Body-Worn Cameras*, dated October 22, 2019

Appendix C: General Order 18-06: *In-Car Cameras*, dated June 5, 2018

Appendix D: Policy Crosswalk

Appendix E: List of Event Numbers

Appendix F: List of Events Removed (BWC Notification Sample)

Appendix G: List of Events Removed (ICC Sample)

Appendix H: Fleet Inventory Summary

Appendix I: NPD ICC Inspection List with Precinct Assignment

**Appendix A:**  
**45-day Letter: *Second* In-Car Camera and *Third* Body-  
Worn Camera Audits, dated June 24, 2022**

## Patterson Belknap Webb & Tyler LLP

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June 24, 2022

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**Re: 45-Day Notice: *Second In-Car Camera and Third Body-Worn Camera Audits***

Dear City of Newark and Newark Department of Public Safety's Newark Police Division ("NPD"):

Pursuant to Consent Decree Paragraphs 173 and 180, I write to provide notice that, due to the current audit schedule, the Independent Monitoring Team will conduct its *Third* Audit of NPD's use of Body-Worn Cameras ("BWC") and *Second* Audit of NPD's use of In-Car Cameras ("ICC"), beginning the week of July 25, 2022. These Audits will cover the period from June 1, 2022 up to and including June 30, 2022 (the "Audit Period"), in a manner to be described in this correspondence. The purpose of these Audits is to assess whether NPD has complied with enumerated sections of the Consent Decree, including Section IX (specifically, ¶¶ 103 and 104 (e)). The Monitoring Team will schedule a pre-audit meeting with the parties prior to the Audits.

The Monitoring Team will analyze whether NPD has demonstrated routine adherence to

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Section IX of the Consent Decree, the NPD BWC policy, *General Order 18-05*, and the ICC policy, *General Order 18-06*.

These Audits of BWC and ICC practices will be carried out by the following Monitoring Team Subject Matter Experts: **Maggie Goodrich**, Esq., **Lieutenant Daniel Gomez (Ret.)** of the Los Angeles Police Department, and **Sergeant Roger Nunez** of the Los Angeles Police Department. The Data Team is comprised of **Linda Tartaglia**, Associate Director, Rutgers University Center on Policing, **Rosalyn Bocker Parks, Ph. D.**, Rutgers University Center on Policing, **Kathryn Duffy, Ph.D.**, Rutgers University Center on Policing, and **Jonathan Norrell**, Rutgers University Center on Policing. The Data Team will work with the SMEs on this audit.

These Audits will require in-person activities by members of the Monitoring Team. For example, members of the Monitoring Team will require access to marked police vehicles and a member from NPD to operate the vehicles to allow the Monitoring Team to inspect for functioning ICC equipment. In a letter dated May 13, 2021, the Public Safety Director informed the Monitor that on-site visits and audits can safely be resumed, and that NPD will observe all Centers for Disease Control (“CDC”) guidelines. Members of the Monitoring Team conducting on-site activities will also observe CDC guidelines.

## I. SCOPE

As agreed upon by the City of Newark (the “City”), the Newark Police Division (“NPD”) and the United States Department of Justice (“DOJ”) (collectively, the “Parties”) and the Independent Monitor, these Audits will focus on the relevant Consent Decree paragraphs as they pertain to the use of BWC and ICC.

Paragraph 173 of the Consent Decree requires the Monitor to “conduct reviews and audits as necessary to determine whether the City and NPD have implemented and continue to comply with the requirements” of the Consent Decree. The Monitoring Team must assess whether the City and NPD have “implemented the [ICC & BWC] requirements into practice.” (See Consent Decree ¶ 173).

Regarding BWC, NPD has achieved substantial compliance with several Consent Decree requirements (Activation, Deactivation and Categorization) and adherence to its own policies within its own General Orders. As a result, the BWC scope for this audit will be limited to the Notification requirement to inform members of the public they are being recorded, unless doing so would be unsafe, impractical, or impossible.

Regarding ICC, the Monitoring Team will review whether officers activated and deactivated the ICC according to Section IX of the Consent Decree and General Order 18-06 *In-Car Cameras*, Section IV.A.

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## II. METHODOLOGY

To assess compliance, the Monitoring Team will evaluate whether NPD has satisfied the relevant provisions of the Consent Decree. The Monitoring Team also will evaluate whether NPD is following its own policy, protocol, procedural guidelines, notifications, and reporting requirements as outlined below:

- Section IX of the Consent Decree requires, among other things, that “NPD will develop, implement, and maintain a system of video recording officers’ encounters with the public with body-worn and in-car cameras.”
- Paragraph 103 of the Consent Decree requires NPD to “equip all marked patrol cars with video cameras, and require all officers, except certain officers engaged in only administrative or management duties, to wear body cameras and microphones with which to record enforcement activity.”
- Paragraph 173 of the Consent Decree requires the Monitor to “conduct reviews or audits as necessary to determine whether the City and NPD have implemented and continue to comply with the requirements” of the Consent Decree. The Monitoring Team must assess whether both the City and NPD have “implemented the [BWC and ICC] requirement[s] into practice.”

1. **Consent Decree Paragraph 103:** In conjunction with the Monitor and DOJ, NPD will equip all NPD marked patrol cars with video cameras, and require all officers, except certain officers engaged in only administrative or management duties, to wear body cameras and microphones with which to record enforcement activity. NPD will develop and implement a policy to designate cars and officers that will not be equipped with video cameras or that will be equipped with concealed cameras because the visibility of a camera might compromise undercover work or other appropriate and lawful clandestine police activity. NPD will develop a policy to designate the categories of officers who will not wear body cameras because they are engaged only in administrative or management duties.

**Compliance Assessment Method:** To assess compliance with Consent Decree Paragraph 103, the Monitoring Team will randomly select a minimum of two precincts and physically inspect the patrol vehicles to ensure they are equipped with a functioning ICC system.

2. **Consent Decree Paragraph 104 (e):** In conjunction with the Monitor and DOJ, NPD will develop and implement a policy regarding body-worn camera video and audio recording that will address issues including use, retention, privacy issues, the use of recordings as evidence in force and complaint reviews, and the use of recordings for other criminal justice purposes (such as evidence in prosecutions). At a minimum, NPD’s body-worn camera policy

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will:

- Require officers to inform subjects that they are being recorded unless doing so would be unsafe, impractical, or impossible (Consent Decree Paragraph 104(e))

**Compliance Assessment Method:** To assess compliance with Consent Decree Paragraph 104 (e), for each event, the Monitoring Team will review relevant reports, along with corresponding BWC and ICC footage that provide objective evidence of officers' actions in connection with the event. Accordingly, the SME Team shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from BWC and ICC. The Monitoring Team will determine whether NPD officers notified the member of the public at the earliest opportunity that they were being recorded, unless doing so would be unsafe, impractical, or impossible.

**General Order / Policy Assessment** (General Order 18-05; Section IX, A (1-3) - Notice of Activation): When activation of a BWC is required, members shall notify the subject that the camera is recording at the earliest opportunity that is safe and feasible. If it is not safe and/or feasible to notify the subject, the officer shall document the reason in their report or by narrating the reason on the BWC recording. If a civilian inquires if an officer is equipped with a BWC or inquires if the device is activated, the member shall answer truthfully unless the Public Safety Director or the Chief of Police has expressly authorized a covert recording.

**Compliance Assessment Method:** To assess compliance with General Order 18-05; Section IX, A (1-3), for each event, the Monitoring Team will review relevant reports, along with corresponding BWC and ICC footage that provide objective evidence of officers' actions in connection with event conducted during the Audit Period. Where officers failed to notify a member of the public that they are being recorded, the Monitoring Team will determine whether NPD officers documented the reason for the failure to notify either in a written report or by narrating the reason on the BWC recording.

3. **Consent Decree Section IX:** NPD will develop, implement, and maintain a system of video recording officers' encounters with the public with body-worn and in-car cameras. The use of video cameras will be designed to increase officer accountability, improve NPD legitimacy in the community, and augment NPD's records of law enforcement activities.

**General Order / Policy Assessment** (*General Order 18-06, In-Car Cameras*, dated June 5, 2018; Section IV.A – Recording of Events): “Activation is required immediately upon receiving a dispatched assignment or the initiation of a stop. When recording an event, members must record until the member(s) and all citizens have departed the scene.” In accordance with Section IX of the Consent Decree, General Order 18-06 requires several types of events to be recorded, including motor vehicle stops, calls for service, crimes in progress, pedestrian stops, and the transport of an arrestee (which also requires a rear camera activation from the time the arrestee is secured in the vehicle).

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**Compliance Assessment Method:** To assess compliance with Section IX of the Consent Decree and General Order 18-06; Section IV.A for each event, the Monitoring Team will review relevant reports, along with corresponding in-car camera footage that provide objective evidence of officers' actions in connection with event conducted during the Audit Period. Accordingly, the SME Team shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from BWC and ICC. The Monitoring Team will determine whether NPD officers activated and deactivated their ICC according to policy.

### III REQUIRED DATA

In preparation for these Audits, one week after receipt of this correspondence, and no later than June 30, 2022, the Monitoring Team requires that NPD provide it with the following data and records for the Audit Period:

- A. Copies of any and all written directives or training bulletins related to the topic of BWC or ICC issued subsequent to the issuance of General Order 18-05, *Body-Worn Cameras* and General Order 18-06, *In-Car Cameras*.
- B. A spreadsheet identifying all events within the specified Audit Period wherein a BWC and/or ICC activation should be made by NPD officers. The spreadsheet should contain the event number (in chronological order); nature/classification of the event; the date and time of the event; officer's badge number, officer's assignment / precinct / unit / section.
- C. A spreadsheet identifying all marked patrol vehicles, including the unique identification number and assigned precinct for each vehicle.
- D. Copies of any and all BWC and ICC malfunction reports created during the Audit Period.
- E. For those videos reviewed by the Monitoring Team in which activation, deactivation and/or notification was not performed pursuant to NPD policy, reports documenting the reasons for the policy deviation(s). The Monitoring Team will request this information during the Audits, as events are identified.

Within one week of receiving the spreadsheet identifying Audit Period events for which a BWC and/or ICC activation was warranted, the Monitoring Team will provide the City and NPD with the event numbers it seeks to review. The Monitoring Team requests that NPD (a) identify all associated videos with the provided event numbers; and (b) organize that content within the Panasonic digital evidence program prior to any onsite auditing activities conducted by the Monitoring Team. The Monitoring Team requests access to a *secure* room for viewing the video.

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If onsite review is not feasible, NPD shall download the identified videos in a non-proprietary format (**converted from Panasonic**) onto a Monitoring Team-provided secure encrypted drive.

**NOTE: For instances in which relevant Body-Worn and/or In-Car Camera footage are not present and viewable on the dates of the on-site or remote audit, the Monitoring Team will presume that the footage does not exist and will score compliance accordingly.**

Additionally, if requested by the Monitoring Team, the videos shall be accompanied by the Records Management, Incident and/or Administrative Reports that accompany the videos. Upon the Monitoring Team's request, NPD will provide the Monitoring Team with secure remote access to the requested materials.

The Monitoring Team requests that NPD mark all BWC and ICC videos from the Audit Period (June 1-June 30, 2022) for retention indefinitely, so that all videos will be available for review for this audit. Put another way, no BWC or ICC video from the Audit Period should be deleted or erased until the Monitoring Team has informed NPD that the audit has concluded.

Best regards,

/s/ Peter C. Harvey

Peter C. Harvey

Enclosures

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**Appendix B:**  
**General Order 18-05: *Body-Worn Cameras*,**  
**dated October 22, 2019**



# NEWARK POLICE DIVISION GENERAL ORDER



<b>SUBJECT:</b> <b>Body-Worn Cameras</b>		<b>GENERAL ORDER NO.</b> <b>18-05</b>
<b>SUPERSEDES:</b> <b>September 11, 2019</b>	<b>DATED:</b> <b>October 22, 2019</b>	<b>SECTION CODE:</b>

## I. PURPOSE

This purpose of this policy is to maintain public trust, enhance safety, and provide members with instructions on when and how to use body-worn cameras (BWCs) in order to record their interactions with the public. This technology will allow the Newark Police Division (NPD) to produce effective material for training and additional evidence of an incident. Within this policy, there are guidelines for the use, management and storage of video recordings.

## II. POLICY

The Newark Police Division will issue all sworn members a BWC regardless of rank. Uniformed members will be required to use the BWC during the performance of their duties. The Public Safety Director may authorize use of a BWC to members in plain clothes or assigned to a specialized unit.

NPD uniformed officers will record police-citizen contacts using BWCs in order to assist personnel in the performance of their duties, provide an unbiased recorded account of an incident, and hold officers along with members of the public accountable for their actions.

The NPD recognizes that recordings may not always illustrate the entire circumstance of police-citizen contact, nor do video recordings always capture the entire scenario. A BWC recording is only one piece of evidence, providing one perspective of the incident. This technology does not eliminate the requirement of officers, detectives and sergeants to provide written documentation of an incident.

Members shall activate and deactivate their BWC in accordance with Section IX, Procedure, of this policy. All images, video, metadata, and audio recordings captured or otherwise produced are the exclusive property of the NPD and subject to disclosure under the law.

## III. DEFINITIONS

1. **Activate** – Turn on the recording mode/function of a BWC.
2. **Deactivate** – Turn off the recording mode/function of a BWC.



# NEWARK POLICE DIVISION GENERAL ORDER



3. **Body-Worn Camera (BWC)** – Device worn by a law enforcement officer that makes an electronic audio and visual recording. The term does not include a mobile video recording device when mounted inside a police vehicle (i.e., dash cam). The term also does not include any other form of an electronic recording device worn by a law enforcement officer while acting in an undercover capacity, or electronic recording devices used to comply with the requirements of Rule 3:17 (electronic recording of station house custodial interrogations).
4. **Investigation of a Criminal Offense** – Any police activity pertaining to the investigation of an indictable crime, disorderly persons offense, or petty disorderly offense, including but not limited to responding to a report of a possible criminal offense; an investigative detention based on or leading to reasonable and articulable suspicion to believe that a criminal offense has been or is being committed; an arrest for a criminal offense; an interview of a potential witness to a criminal offense; or canvassing an area for potential witnesses to a criminal offense.
5. **Law Enforcement Agency, Agency or Department** – A law enforcement body operating under the authority of the laws of New Jersey.
6. **Law Enforcement Officer or Officer** – A sworn member employed by a Law Enforcement Agency.
7. **Tagging Video** - A notation or indicator placed on specific video that may raise special privacy or safety issues.

## IV. NOTIFICATION TO THE PUBLIC AND POLICY REVIEW

A written announcement regarding the implementation of the BWC program and which members will be mandated to use the BWC must be posted on the website, [www.newarkpdonline.org](http://www.newarkpdonline.org). In addition to the written announcement, the following information must be available on the website:

- BWC policy
- A picture of the BWC along with a picture showing where the BWC will be positioned on the member's uniform.
- Electronic survey regarding the BWC policy for community feedback (temporarily).

The online BWC community survey and the “comment” section of the policy will allow residents to express their opinions, concerns or recommendations with the deployment and policy governing the use of BWCs.

The Consent Decree and Planning Unit shall review this policy quarterly during the pilot phase and on an annual basis after full deployment.



# NEWARK POLICE DIVISION GENERAL ORDER



## V. AUTHORIZED USE

1. Only BWCs and storage servers that are issued and approved by the Division shall be used. All BWCs, related equipment, data, images, video, and metadata captured, recorded or otherwise produced are the sole property of the Newark Police Division.
2. No member shall wear or operate a BWC without receiving training on the proper care and use of the device.
3. Members working in an administrative, investigative, or plain clothes capacity shall not wear BWCs. Members assigned to uniformed patrol duty must use the BWC. The Public Safety Director, at his/her discretion, may direct members in plain clothes or assigned to a specialized unit to use a BWC.
4. Members shall only use the police division issued BWC.
5. Members assigned to a task force, team, or unit composed of officers from more than one law enforcement agency shall be authorized to use the BWC if the chief law enforcement officer overseeing the task force authorizes the use.
6. Members who are not issued a BWC may voluntarily request one by submitting an administrative report through the chain of command.

## VI. TRAINING

1. Members shall receive training on this policy and complete the BWC training course before using the BWC. This will ensure the BWC is used in accordance with policy.
2. The commander of the Training Division is responsible for scheduling BWC training for all newly hired officers during their in-service training. In addition, a curriculum shall be established to provide initial and bi-annual "refresher" training.

## VII. INSPECTION, MAINTENANCE and USE

1. BWC equipment is the responsibility of the assigned member and shall be used with reasonable care. An inspection of the BWC must be done at the commencement of each shift to ensure both video and audio recording capabilities are working. The inspection shall include, but not be limited to:
  - a. Ensuring the BWC is turned on;
  - b. Ensuring the battery is fully charged; and
  - c. Ensuring the lens is not obstructed in any manner.
2. The BWC must be affixed to the outermost garment in the middle of the torso. The magnet, clip and/or bracket must be used to secure the BWC in an upright, forward facing position in the center of the torso without any obstruction of view.
3. Malfunctioning BWCs shall be documented in an administrative report and the camera must be returned to the desk supervisor.
4. The desk supervisor is responsible for issuing a replacement camera to the member.



# NEWARK POLICE DIVISION GENERAL ORDER



5. The administrative report must indicate the issues, the BWC number and the replacement BWC number that was issued.
6. Reports shall be forwarded through the chain of command and sent to the Technology Division.
7. When a report is generated documenting criminal activity or a police action where the BWC captured video of the event, an indication must be typed at the end of the Incident Report, Field Interview Report, Continuation Report, Towed Vehicle Report, etc. The indication must state "BWC Recording".

## VIII. REPLACEMENT CAMERAS

1. The Technology Unit is responsible for coordinating with the BWC vendor for replacement or repair.
2. Replacement cameras will be distributed to each command by the Technology Division.

## IX. PROCEDURE

### A. Notice of Activation

1. When activation of a BWC is required, members shall notify the subject that the camera is recording at the earliest opportunity that is safe and feasible.
2. If it is not safe and/or feasible to notify the subject, the officer shall document the reason in their report or by narrating the reason on the BWC recording.
3. If a civilian inquires if an officer is equipped with a BWC or inquires if the device is activated, the member shall answer truthfully unless the Public Safety Director or the Chief of Police has expressly authorized a covert recording.

### B. Activation of BWC is Required

Members shall activate the BWC to record police-related interactions with citizens in the performance of their duties. Activation is required immediately upon receiving a dispatched assignment or the initiation of a police action. When activation is required upon entering any residence, members shall notify the subject(s) that the camera is recording at the earliest opportunity that is safe and feasible. The following circumstances require the BWC to be activated:

1. Motor vehicle stop, from the time the violation is observed until the stop is concluded, to include:
  - a. Car/truck inspection
  - b. Motor vehicle pursuit
  - c. Motor Vehicle Safety Checkpoint
  - d. Vehicle pursuit
2. Call for service (activate upon receipt of the assignment).
3. Aiding a motorist or a pedestrian (community caretaking check).



# NEWARK POLICE DIVISION

## GENERAL ORDER



4. Interviewing a witness or a victim in the course of investigating a criminal offense. Ensure the witness or victim is aware the BWC is activated.
5. Conducting a custodial interrogation of a suspect, unless the interrogation is otherwise
6. being recorded in accordance with N.J. Court Rule 3:17 (electronic recordation of station house interrogation). Making an arrest.
7. During a search (consensual or otherwise, including a protective frisk for weapons). The member must record the notification to the subject of the right to allow or refuse a consent to search.
8. Civil disorder, strike, picket line, demonstration or protest in circumstances where the member is engaged with or in the presence of civilians and the member or any other officer on the scene may be required to employ constructive authority or force.
9. Investigative detention/field interview (e.g., *Terry v. Ohio* criminal suspicion stop).
10. Pedestrian stop, which includes a stop that falls short of a *Terry* stop because the pedestrian is free to walk away, such as a "mere inquiry" (e.g. asking where someone is going).
11. Use of constructive authority or force, or reasonable belief that constructive authority may be used in an encounter or situation.
12. Transporting an arrestee to a police station, county jail, other place of confinement, hospital or other medical care/mental health facility. The BWC shall remain activated until the arrestee is secured in the holding cell, processing room or until the arrestee is with hospital/medical/mental health personnel. During a prisoner watch at the hospital, the BWC shall be reactivated when there is movement of the arrestee (e.g., moving to a different room, escort to the bathroom, etc.) or if the arrestee becomes verbally or physically aggressive.
13. When the member is involved in any police action/encounter where departmental policy requires a report and/or notation on a log sheet is required.
14. When responding to an active scene where knowing or reasonably believing that police deadly force has been or is being used, or to a scene where a member has requested emergency assistance (e.g., officer in distress, shots fired, etc.) While at the scene of a police deadly-force event or the on-scene investigation of that event the member shall not deactivate the BWC unless instructed to do so by the investigator that is investigating the deadly force incident.
15. In a school, healthcare facility or house of worship **only** when:
  - a. Investigating a criminal offense;
  - b. Responding to an emergency;
  - c. Reasonably believing constructive authority or force will be required.
  - d. Or as otherwise noted in section IX, B 12 of the policy (transporting arrestees).
16. In any situation where the member deems a recording to be necessary.

### C. Continuous Operation of a BWC, Once Initiated.

1. Except as stipulated in this policy, BWCs shall remain activated for the entire duration of each event/encounter, and shall not be deactivated until either the member(s) or all citizens have departed the scene.
2. When providing assistance or backup to another officer, all members responding to the scene are required to have their BWC activated until all citizens have departed or assistance is no longer required.



# NEWARK POLICE DIVISION GENERAL ORDER



## **D. Tagging**

To identify BWC recordings that may raise special, privacy or safety issues, members shall tag recordings by pressing the “1” button on the side of the BWC. This will place an indicator on the video when viewed/stored. Recordings containing any of the following shall be tagged:

1. Image of a victim of a criminal offense;
2. Image of a child;
3. Images in a residential premises (e.g., home, apartment, college dormitory room, hotel/motel room, etc.), a school or youth facility, healthcare facility or medical office, substance abuse or mental health treatment facility, or a place of worship.);
4. Conversation with a person whose request to deactivate the BWC was denied;
5. Non-investigatory Special operations event or execution of an arrest and/or search warrant where confidential tactical information may have been recorded;
6. Image of an undercover officer or confidential informant;
7. Screen of a law enforcement computer monitor that is displaying confidential personal or law enforcement sensitive information.

## **E. Activation of BWC is Prohibited**

1. BWCs shall be used only in conjunction with official law enforcement duties. Activating a BWC is prohibited, unless a law enforcement action is required, during the following:
  - When on break (e.g. meal, using a restroom, etc.) or not actively performing law enforcement duties.
  - For a personal purpose or when engaged in police union business.
  - During any form of disciplinary proceedings (e.g. counseling, police trial, inspections, evaluations, etc.) or any similar supervisory interaction.
  - In any location where there is a reasonable expectation of privacy (e.g., restroom, locker room, break room, etc.), unless enforcement action is required.
  - Courtroom proceedings, unless associated with a call for service or incident.

## **F. Deactivation of BWC**

If a member fails to activate the BWC when required, fails to record the entire event/contact, or interrupts the recording, the member shall document the reason in the applicable investigation and/or incident report. If an incident report is not required, that fact must be documented on an administrative report referencing the time, date, location and event number, if applicable.

In any instance where a BWC was deactivated, the device shall be reactivated as soon as it is safe and practical and when the circumstances justifying deactivation no longer exist.

1. Members may deactivate a BWC when a civilian conversing with the officer requests that the device be turned off under the circumstances where it reasonably appears that the person will not provide information or otherwise cooperate with the officer unless that request is respected.



# NEWARK POLICE DIVISION GENERAL ORDER



- a. Members shall not suggest to a person that the BWC should be deactivated or ask whether they would prefer the BWC be deactivated. The request for de-activation must be self-initiated by the civilian.
  - b. In deciding whether to deactivate the BWC, the member shall consider the privacy and safety interests of the person requesting deactivation, whether the encounter is occurring in the person's residence, and the need for the information or assistance that the person will provide is important to the investigation, yet is not critical to require recording.
  - c. If a civilian asks a member if they are equipped with a BWC or asks if the device is activated, the member shall answer truthfully unless the Public Safety Director has expressly authorized to make a covert recording.
2. When a member deactivates a BWC at the request of a civilian, the following procedures shall be followed:
    - Conversation requesting the deactivation shall be recorded.
    - Member shall narrate the circumstances of deactivation on the BWC prior to deactivating (e.g., "I am now turning off my BWC as per the victim's request").
    - Member shall report the circumstances concerning deactivation to their immediate supervisor.
    - Member shall document the circumstances of the deactivation in any investigation or report concerning the incident.
  3. If a member declines a request to deactivate a BWC, the reasons for declining the request (e.g. officer believes that it may be necessary to use constructive authority during encounter) must be narrated on the recording and shall be reported to the officer's immediate supervisor as soon as it is safe and practicable to do so.
  4. When declining a deactivation request, the member must immediately inform the person making the request of that decision. Members shall not mislead the person into believing that the BWC has been turned off unless a covert recording has been authorized by the Public Safety Director.
  5. Members shall deactivate a BWC when participating in any discussion of a criminal investigation strategy or plan except in circumstances where the strategy/plan is discussed in the immediate presence of a civilian, or where that the member wearing the BWC is actively engaged in the collection of physical evidence. Before a BWC is deactivated, the member must narrate the circumstances of the deactivation.
  6. Members must deactivate a BWC when a person, other than an arrestee, is seeking emergency medical services for him or herself or another and requests deactivation.
  7. Members shall deactivate a BWC when specifically authorized to do so by an assistant prosecutor or their assistant or deputy attorney general. Prior to deactivation, the member shall narrate, on the BWC, the circumstances for deactivation indicating the name of the person who authorized the deactivation.
  8. Members shall not use a BWC when in a school, healthcare facility, house of worship, or courtroom unless:
    - a. investigating a criminal offense;
    - b. responding to a call for service;
    - c. reasonably believing constructive authority or force will be required.



# NEWARK POLICE DIVISION

## GENERAL ORDER



In the event a BWC captures the image of a patient in a healthcare treatment facility, the member's immediate supervisor shall be notified and a notification to the BWC Administrator and the Public Safety Director shall be made to ensure compliance with all applicable federal laws and regulations that require the confidentiality of health care information, or that provide for the confidentiality of information for substance abuse treatment. The recording shall be tagged and a notation documenting the date, time, person notified and details of the notification shall be documented in the BWC record-keeping system. The recording shall not be accessed without the express approval of the Public Safety Director or designee. (Destruction of the recording is inappropriate until it is determined that exculpatory information was not captured.).

9. If the BWC radio-frequency interferes with an electronic alcohol breath testing device, the BWC shall be deactivated or removed from the area while the alcohol breath test device is being used. The member must narrate the reason for deactivation (e.g., "I am deactivating the BWC because the suspect is about to take a breath test."). The BWC must be reactivated once the test is complete.
10. Members shall deactivate when an arrestee is secured in the holding cell, processing room or in the care of the hospital/medical/mental healthcare personnel.
11. Members shall deactivate upon entering a police facility when transporting a victim or witness.
12. The BWC shall be deactivated when the member and all civilians have departed the scene.

### X. RESPONSIBILITIES

#### A. Officer Responsibilities

1. Ensure the BWC issued during roll-call is the camera that was issued to you (refer to the serial number and division identification number).
2. Ensure that the BWC is operational and in good working order.
3. BWC must be positioned in the center of the torso, on the outermost garment.
4. Pair the BWC to the vehicle (refer to the BWC Training Manual).
5. Launch the Arbitrator Front-End Client and log-on. This will ensure all video recorded is associated with the officer.
6. Pair the BWC of the second officer, if applicable (refer to BWC Training Manual).  
**\*\*\*\*If an issue occurs with pairing or launching the Arbitrator Front-End Client,\*\*\*  
restart the mobile data computer. Repeat the steps.**
7. If the BWC does not pair to the emergency lights, the BWC must be activated independently from the in-car camera.
8. During vehicle inspection, activate the BWC and record all sides of the vehicle. Ensure video is categorized properly (vehicle inspection/test). This video footage does not replace reporting requirements when damage to a city vehicle is observed.
9. Activate, deactivate and tag video in accordance with this policy.
10. Ensure an event number is entered for each video (dispatched assignment or stop).
11. Categorize each video with all proper classifications from the "drop down" selection:
  - Vehicle Inspection/ Test (inspection of vehicle for damage at beginning of tour)



# NEWARK POLICE DIVISION GENERAL ORDER



- Call for service (no arrest)
  - Special Detail (protest, civil disturbance)
  - Traffic Matter (use of emergency light; non-call for service or stop)
    - e.g., activating lights to move a vehicle along.
  - Motor Vehicle Stop
  - Motor Vehicle Accident
  - Motor Vehicle Aid
  - Pedestrian Stop
  - Frisk or Search
  - Arrest
  - DB Investigation (follow-up investigation by a detective, statements, etc.)
  - Critical Incident (homicide, serious bodily injury, suspicious death, serious use of force)
  - Internal Affairs (**Office of Professional Standards use only**)
12. Ensure vehicles are parked within range of the wireless access point. This will allow in-car video to upload automatically.
13. Ensure you are logged-off from the Arbitrator Front-End Client, within the vehicle, upon completion of the tour of duty. This will not allow another user to record video with your credentials.
14. BWC must be docked in the charging station, in the “on” position, to upload video.
15. BWC must be docked, in the “on” position, and left in the charging station at the end of the tour. This will ensure:
- BWC has a fully charged battery for the commencement of the tour of duty.
  - All BWC video is uploaded to the server.
  - BWC receives the latest firmware update.
  - BWC is able to be serviced, if needed, in a timely fashion.
16. Ensure all video is of official police business.
17. If an issue occurs with the BWC, the member’s immediate supervisor must be notified to attempt to resolve the issue.
18. If the BWC requires service, notify the desk supervisor to email the Technology Division to have the camera repaired:  
The email must:
- Be addressed to [mis2@ci.newark.nj.us](mailto:mis2@ci.newark.nj.us), the member’s commanding officer, executive officer and principal clerk.
  - Indicate the member name, identification number, command and BWC serial number.
  - Indicate the problem/ malfunction.
  - Indicate the replacement BWC issued to the member, if applicable.



# NEWARK POLICE DIVISION GENERAL ORDER



19. If a BWC is in need of repair and a replacement camera is not immediately available, the member must submit an administrative report indicating they are without a BWC until the camera is serviced/repaired.
20. Refer to your immediate supervisor for any questions or concerns.

## **B. Supervisor Responsibilities**

1. Desk supervisor shall issue BWCs that are operational and in good working order to all trained on-duty personnel during roll-call.
2. Desk supervisors shall inspect personnel to ensure BWCs are positioned in the center of the torso, on the outermost garment.
3. Supervisors using a BWC shall activate, deactivate and tag video in accordance with this policy.
4. Field supervisors shall ensure members are all logged-on to the Arbitrator Front-End Client in the vehicle during field inspections and that the BWCs are positioned in the center of the torso on the outermost garment of all personnel.
5. Desk supervisors shall log-on to the Arbitrator Back-End Client, during their tour of duty from the precinct computer at the desk, to ensure officers/supervisors are properly logging-on to the Arbitrator Front-end Client and that video has:
  - An event number.
  - A proper classification from the “drop down” selection.
6. On a daily basis, the supervisors shall randomly select two videos of officers and/or the supervisor from their tour of duty, pertaining to Stops, Detentions and Searches. The supervisors shall review the Arbitrator Back-End Client “Main” page and view video to determine if the member complied with law and NPD policy. The “Main” page will provide a list of all uploaded video (body-worn and in-car video).
7. An email shall be sent to the commander, executive officer and principal clerk by the end of the tour of duty indicating:
  - The name of the member(s).
  - The date and period of time the audit of video was conducted.
  - List the videos, from the “Main” page selected (date, time, event#, etc.).
  - If the officer(s)/ supervisors are in compliance.
  - Actions taken to address any deficiency.
8. The desk supervisor shall ensure an email is sent to the Technology Division to have the camera repaired when notified of a malfunctioning BWC. The email must:
  - Be addressed to [mis2@ci.newark.nj.us](mailto:mis2@ci.newark.nj.us), the member’s commanding officer, executive officer and principal clerk.
  - Indicate the member name, identification number, command and BWC serial number.
  - Describe the problem/ malfunction.
  - Identify the replacement BWC issued to the officer, if applicable.
9. During normal business hours, the commanding officer must make a follow-up telephone call to the Technology Unit.



# NEWARK POLICE DIVISION GENERAL ORDER



10. Supervisors shall review investigatory stops and detentions, searches, and arrests for completeness and adherence to law and NPD policy. Supervisors will:
  - Review all written documentation;
  - Review all relevant video recordings for all incidents in which the supervisor suspects, for any reason, that an officer's conduct may not have complied with law or NPD policy; and
  - On an ongoing basis, review a random selection of video recordings of stops and detentions, searches, and arrests amounting to at least 10 percent of all stops and detentions, searches and arrests.
11. For every search or arrest involving the recovery of contraband evidence, the desk lieutenant will review the circumstances of the encounter, including BWC video, to assess the adequacy of the seizure.
12. Desk and field supervisors shall ensure BWCs are docked and left in the charging station at the end of the tour of duty.
13. Upon reviewing reports and video for investigatory stops and detentions, searches and arrests, supervisors shall submit an administrative report for each event reviewed, by the end of their tour of duty, listing:
  - An event number for each video viewed when prompted in RMS (e.g., P18012345)
  - Name(s) of the officer(s) for each event reviewed.
  - Type of video reviewed (body camera video, in-car video, or both).
  - Reason for reviewing video (recovery of contraband, stop, search, detention, arrest, suspected non-compliance with policy or law)

## C. Command Responsibilities

1. Commanders shall ensure all members sign for and receive a BWC and a BWC Training Manual.
  2. Commanders shall coordinate to have malfunctioning BWCs delivered to the Technology Division by the following business day.
- \*\*\*Notification of a malfunctioning BWC will be sent by the desk supervisor via email\*\*\***
3. Commanders shall ensure all personnel comply with the mandates of this policy.
  4. Commanders shall coordinate to schedule members for retraining based on the assessment of the desk supervisor.

## D. Technology Unit

1. Distribute/ coordinate distribution of operational and properly functioning BWCs and related equipment to personnel.
2. Ensure each BWC is fully charged upon issuance.
3. Maintain a database of all equipment and to whom the equipment is assigned.
4. Provide all personnel a user name and password for the Arbitrator software.
5. Install a configuration file for each BWC.



# NEWARK POLICE DIVISION GENERAL ORDER



6. Setup and maintain the BWC Active Directory to ensure user privileges are granted for each member.
7. Ensure newly hired, promoted or separated personnel are added, deleted or adjusted accordingly within the active directory.
8. Assess malfunctioning BWCs and/or related equipment prior to being sent for repair/replacement.
9. Retrain members in the use of the BWC, in-car camera and Arbitrator software. Coordinate with each command to schedule multiple personnel for training at one time.
10. Ensure a signature roster is generated and signed by each member for every training session. Signature rosters must be forwarded to the Training Division.
11. Conduct a weekly inspection of the Arbitrator Back-End Client to determine if BWC video is uploading properly and correct any deficiencies observed/ coordinate with the vendor.

## **E. BWC/ In-Car Video Training (Applicable to all personnel)**

1. All members are responsible for bringing the following to training:
  - Fully charged BWC and mount.
  - Body-Worn Camera Training Manual.

## **F. Office of Professional Standards**

1. Investigators shall review BWC and in-car camera video when an Investigation of Personnel complaint is received.
2. Investigators shall ensure videos, if available, are reclassified to "Internal Affairs" within the Arbitrator Back-End Client. This classification is within the "drop down" selection.
3. The commander of the Office of Professional Standards shall ensure Integrity Control Officers are reviewing video, as delineated within this policy.
4. Include the number of complaints that have body-worn and in-car camera video in the monthly report. In addition, include the following:
  - Number of complaints that were unfounded/exonerated because of video.
  - Number of complaints that were justified because of video.

## **G. Integrity Control Officers and Compliance Unit**

1. Review twelve BWC/ in-car videos, four per tour, on a monthly basis.
2. When reviewing video, ensure members are:
  - Activating, deactivating and tagging video in accordance with policy.
  - Logging-in to the Arbitrator Front-End Client.
  - Assigning an event number to all videos.
  - Classifying video from the "drop down" selection.
3. Include a recommendation to correct any deficiency in the audit report.



# NEWARK POLICE DIVISION GENERAL ORDER



4. Ensure the outcome of the audit/review of video is included in the monthly report.

## **H. Training Division**

1. Ensure all BWC training signature rosters are maintained at the division.

## **I. Advocate Unit**

1. Video must be provided to the collective bargaining entity, for each case, prior to the date of the hearing.

## **XI. DATA UPLOAD and FIRMWARE UPDATES**

1. Members using a BWC shall upload data by docking the device in the docking station at any command. The BWC shall be placed in the docking station, which will automatically upload data and charge the battery. All video shall be uploaded by the end of shift.
2. BWC firmware updates are distributed through the server. In order to receive the latest update, the BWC must be placed in the docking station. When the indicator on the BWC continuously flashes at the same time, an update is taking place.

## **XII. RETENTION OF BWC RECORDINGS**

The retention period for BWC recordings shall not be less than 90 days. The Technology Unit is responsible for coordinating with the BWC vendor to establish a retention and disposition schedule, in accordance with requirements set forth by the State of New Jersey. The following shall be subject to the following additional retention periods:

- When a BWC recording pertains to a criminal investigation or otherwise records information that may be subject to discovery in a prosecution, the recording shall be treated as evidence and shall be kept in accordance with the retention period for evidence in a criminal prosecution.
- When a BWC records an arrest that did not result in an ongoing prosecution, or records the use of police force, the recording shall be kept until the expiration of the statute of limitations for filing a civil complaint against the officer and/or agency. If a civil action relating to the incident depicted on the recording is filed the recording shall be maintained until the conclusion of the civil action. NPD personnel responsible for the disposal of video images shall contact the office of the Newark Corporation Counsel for guidance regarding the destruction of the video images.



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- When a BWC records an incident that is the subject of an internal affairs complaint, the recording shall be kept pending final resolution of the internal affairs investigation and any resulting administrative action.
- When a civilian who is the subject of the video makes a written request that footage be retained, the recording shall be kept until the expiration of the statute of limitations for filing a civil complaint against the officer and/or agency.

The following is list of video categories and their retention period:

- Vehicle Inspection/ Test – 90 days
- Call for service (no arrest) - 90 days
- Special Detail – 90 days
- Traffic Matter – 90 days
- Motor Vehicle Stop – 3 years
- Motor Vehicle Accident – 3 years
- Motor Vehicle Aid - 3 years
- Pedestrian Stop - 3 years
- Frisk or Search – 3 years
- Arrest - 7 years
- DB Investigation – 7 years
- Critical Incident (homicide, serious bodily injury, suspicious death, serious use of force) - Indefinite
- Internal Affairs - Indefinite

### **XIII. ACCESS TO, DISSEMINATION OF BWC RECORDINGS AND RELATED RESTRICTIONS**

Viewing of BWC events is strictly limited to authorized employees of this Division. Viewing by any other person is prohibited unless authorized by the Public Safety Director. No law enforcement officer or civilian employee of this Division shall access, view, copy, disseminate or otherwise use a BWC recording except for an official purpose. Access to and use of a BWC recording is permitted only in the following situations:

1. When relevant to and in furtherance of a criminal investigation or prosecution.
2. When relevant to and in furtherance of an internal affairs investigation which shall include an investigation of any use of force.
3. When relevant to and in furtherance of a management review process to identify circumstances indicating possible police misconduct or to determine the existence of a pattern of possible misconduct.
4. To assist the member whose BWC made a recording to prepare his or her own police report, except as delineated in number 16 of this section.



# NEWARK POLICE DIVISION GENERAL ORDER



5. When relevant to a supervisor's review of a member's actions as part of the supervisory responsibility authorized by the division.
6. To show a civilian who intends to file a complaint against a member to demonstrate what actually occurred during the encounter so that the person can make an informed decision whether to file the complaint.
7. To comply with the state's discovery obligations in criminal prosecutions pursuant to the Rules of Court;
  - a. Such request must be specific and on the proper instrument (e.g., subpoena, discovery request etc.)
  - b. Only those portions pertinent to the request shall be forwarded.
  - c. The NPD reserves the right to redact video as applicable by law (minor, victim, witness etc.)
  - d. All request for copies or review of BWC recordings are subject to fee.
8. To comply with any other legal obligation to turn over the recording to a person or entity.
9. To show or disseminate the recording to a civilian or a non-law enforcement entity, or to disseminate to the public, when approved by the Public Safety Director, to determine that the disclosure to that particular person/entity or the public is warranted because the person's/entity's/public's need or access outweighs the law enforcement interest in maintaining confidentiality.
10. For training purposes provided that the recording is redacted so that the identity of the individuals depicted in the recording cannot be determined by any person viewing the training video unless the depicted individuals have consented to the recording being used for training purposes.
11. To conduct an audit to ensure compliance with this policy.
12. To enhance officer and public safety by providing intelligence information in preparation for a raid/warrant execution, when such use is approved by the Public Safety Director.
13. Any other specified official purpose where the Public Safety Director, finds in writing that good and sufficient cause exists to authorize access to a particular BWC recording.
14. Within one business day of receiving requests for BWC video, the Legal Affairs Unit, in conjunction with the Office of the City Clerk, shall be responsible for providing notice to the Essex County Prosecutor's Office representative assigned to O.P.R.A. requests in the following manner:
  - Subpoena
  - Court Order
  - Open Public Records Act
  - Common Law Right to Know

A database record of all requests for BWC video shall be maintained by Legal Affairs.

15. The Legal Affairs Unit is responsible for video redaction.
16. When a police related use-of-force incident investigated by the County Prosecutor's Office or any other agency with equivalent or a greater authority, department members and civilians shall not have access to any BWC recording until authorized by that lead investigative agency.
17. A BWC recording of an event or encounter that involves an investigation of a criminal offense shall not be shared with or provided or shown to any person, entity, or government agency, other than a law enforcement agency, officer or authorized civilian employee of such agency, unless



# NEWARK POLICE DIVISION GENERAL ORDER



such disclosure is expressly approved by the Public Safety Director.

18. A BWC recording tagged pursuant to Section IX, Subsection D, of this policy shall not be accessed, viewed, copied, disseminated, or otherwise used without the express permission of the Public Safety Director, in accordance with the Attorney General directive.

## XIV. DATA CONTROL AND MANAGEMENT

**Members shall not erase or in any other manner alter, tamper with, destroy, or conceal BWC recordings, and shall not alter, remove, obstruct or disable any camera. Any such tampering is a violation of NJSA 2C:28-7, and is a 4<sup>th</sup> degree crime. In addition, members may also be subject to internal discipline.**

1. Data uploaded from BWCs will be stored on storage servers located at 480 Clinton Avenue, or any other secure storage location ordered by the Public Safety Director. Accessing, copying, releasing, tampering with, destroying video and transmitting files for non-law enforcement purposes is strictly prohibited.
2. Events captured on BWCs shall not be released to other law enforcement entities other than the Essex County Prosecutor's Office, the New Jersey Division of Criminal Justice or U.S. Department of Justice without the express permission of the Public Safety Director.
3. The commander of the Technology Division shall manage the integrity and storage of all BWC recordings. The commander shall prevent unauthorized access to all BWC recordings and must establish and maintain rules within the system to document the following information:
  - a. Date and time of access;
  - b. Specific BWC recordings that were accessed;
  - c. Member who accessed the stored BWC recording;
  - d. Person who approved access, where applicable;
  - e. Reason(s) for access, specifying the purpose or purposes for access and the relevant case/investigation number, where applicable;
  - f. Groups of NPD members with specific user privileges.
  - g. A BWC recording that has been "tagged" for special privacy or safety issues, Section IX, Subsection D, shall not be accessed, viewed, copied, disseminated or otherwise used without first obtaining the permission of the Public Safety Director or County Prosecutor.



# NEWARK POLICE DIVISION GENERAL ORDER



## XV. REFERENCES

1. Bureau Justice of Assistance National Body Worn Camera Tool Kit.  
U.S. Department of Justice C.O.P.S./ Police Executive Research Forum "Implementing a  
Body-Worn Camera Program, Recommendations and Lessons Learned" report.

BY ORDER OF

A handwritten signature in blue ink, consisting of stylized, overlapping letters that appear to be "AA".

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**ANTHONY F. AMBROSE**  
**PUBLIC SAFETY DIRECTOR**

AA/BO:jn

**Appendix C:**  
**General Order 18-06: *In-Car Cameras*, dated June 5, 2018**



# DEPARTMENT OF PUBLIC SAFETY MEMORANDUM



**TO: POLICE DIVISION**

**DATE: June 05, 2018**

**FROM: ANTHONY F. AMBROSE  
PUBLIC SAFETY DIRECTOR**

**NUMBER: 18-322  
TICKLER: 18-447**

**SUBJECT: IN-CAR CAMERAS  
RE: GENERAL ORDER 18-06**

**FILE REF: PUB 4  
x PTL 1**

General Order 18-06, In-Car Cameras, has been created to serve as the Newark Police Division's policy governing the use of in-car cameras. This order establishes a uniform procedure for activation, deactivation, tagging and management of video.

Prior to use, members will receive an eight-hour training course. The training course will consist of a classroom session covering policy and hands-on training for the use of the in-car camera.

All commanders shall sign a copy of this directive. The signed copy shall be forwarded to the Office of the Public Safety Director no later than June 22, 2018.

**By order of:**

**Anthony F. Ambrose  
Public Safety Director**

AFA/BO:dd

Rank	Name	ID#	Command	Date
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# NEWARK POLICE DIVISION GENERAL ORDER



<b>SUBJECT:</b> <b>In-Car Camera</b>		<b>GENERAL ORDER NO.</b> <b>18-06</b>
<b>SUPERSEDES:</b> <b>New</b>	<b>DATED:</b> <b>April 13, 2018</b>	<b>SECTION CODE:</b>

## I. PURPOSE

This policy establishes uniform procedures for the Newark Police Division’s (Division) in-car camera system and provides members with instructions on when and how to use an in-car camera. Implementation of this technology will allow the Division to maintain public trust, enhance officer safety, and provide an unbiased recorded account of an incident. Within this policy, there are guidelines for the use, management, and storage of video recordings.

## II. POLICY

It is the policy of the Newark Police Division to equip all marked patrol vehicles with an in-car video system. Members assigned a marked patrol unit with an in-car camera will make every effort to record traffic stops, pursuits, searches and police-citizen contacts.

## III. DEFINITIONS

- A. **Activate** – Turn on the record mode/function of the in-car camera.
- B. **Deactivate** – Turn off the record mode/function of the in-car camera.
- C. **In-Car Camera** - Camera mounted in either the front or rear compartments of the vehicle. The camera mounted in the front compartment will face forward capturing the view from the front of the vehicle. The camera mounted in the rear will capture the rear passenger compartment.
- D. **Wireless Access Point** – A networking hardware device that allows a wireless internet device to connect to a wired network. This device will be mounted in a specifically designated area at each precinct.

## IV. TRAINING

- A. The commander of the Training Division is responsible for scheduling in-car camera training for all newly hired officers during their in-service training. In addition, a curriculum shall be established to provide “refresher” training at least every five years or more frequently if there are material changes to the in-car camera technology.



# NEWARK POLICE DIVISION GENERAL ORDER



- B. All members must receive training on this policy and complete the in-car camera training course to ensure proper use of the in-car camera system.
- C. The vendor will host training on the in-car camera system and body-worn camera (BWC) simultaneously. In-car camera training will be scheduled upon issuance of a BWC.

## V. AUTHORIZED USE and POLICY REVIEW

- A. Only in-car cameras and storage servers issued by the Division shall be used.
- B. All in-car cameras, related equipment, data, images, video and metadata captured, recorded or otherwise produced are the sole property of the Newark Police Division.
- C. The Consent Decree and Planning Unit shall review this policy quarterly during the pilot program and on an annual basis after full deployment.

## VI. INSPECTION, MAINTENANCE, and USE of CAMERA

- A. The in-car cameras and related equipment installed in the marked patrol unit are the responsibility of the member assigned the vehicle. That member must conduct, at the beginning of his/her tour of duty and before calling in-service, an inspection of the vehicle, including in-car camera equipment. This inspection will include:
  - 1. Turning the vehicle on;
  - 2. Inspecting camera and related equipment for signs of physical damage (damage must be documented on an administrative report);
  - 3. Opening the Arbitrator Front-End Client Application on the mobile data computer;
  - 4. Logging in to the Arbitrator Front-End Client Application;
  - 5. Pairing the body-worn camera to the vehicle (if applicable);
  - 6. Activating the emergency lights;
  - 7. Ensuring the in-car cameras record (both front and rear cameras);
  - 8. Reviewing the video to ensure cameras are recording video; and
  - 9. Categorizing this procedure/video as a "Vehicle Inspection/Test" in the Arbitrator Software.
- B. If any of the functions of the in-car camera (i.e., pairing BWC to vehicle, logging in, video recording, etc.) do not work, restart the mobile data computer and repeat steps 1-5 in Section VI, subsection A. If, after doing so, the front or rear cameras still do not function correctly:
  - 1. The member must notify his/her immediate supervisor to attempt to resolve the issue.
  - 2. If the problem continues, member must notify the desk supervisor to email the Technology Unit to have the camera assessed/repaired. The desk supervisor must email the Technology Unit immediately. The email must:
    - Be addressed to [mis2@ci.newark.nj.us](mailto:mis2@ci.newark.nj.us), the member's commanding officer, executive officer and principal clerk.



# NEWARK POLICE DIVISION

## GENERAL ORDER



- Indicate the officer name, identification number, command and vehicle number.
  - Indicate the problem/malfunction.
3. During normal business hours, a follow-up telephone call must be made by the commanding officer to the Technology Unit.
  4. The desk supervisor must issue the member another vehicle with a working in-car camera, if available.

### VII. RESPONSIBILITY

#### A. Officer Responsibilities

The member shall:

1. Conduct an inspection of the in-car camera and related equipment in the marked patrol unit during the vehicle inspection.
  2. Pair the body-worn camera to the vehicle.
- \*\*\*If the in-car camera does not pair with the BWC, activation of the in-car cameras must be done independently\*\*\***
3. Launch the Arbitrator Front-End Client and log on. This launch will ensure that the video is associated with the member that is logged on.
  4. Activate and deactivate the in-car camera in accordance with this policy.
  5. Ensure that an event number is entered for each video (dispatched assignment or police action).
  6. Categorize each video with the proper classification from the “drop down” selection:
    - Vehicle Inspection/Test;
    - Call for service (no arrest);
    - Special Detail (protest, civil disturbance)
    - Traffic Matter (use of emergency lights; non-call for service or stop)
      - Activating lights to move a vehicle along
    - Motor Vehicle Stop;
    - Motor Vehicle Accident;
    - Motor Vehicle Aid;
    - Pedestrian Stop;
    - Frisk or Search;
    - Arrest;
    - DB Investigation;
    - Critical Incident (homicide, serious bodily injury, suspicious death, serious use of force); and
    - Internal Affairs (**Office of Professional Standards use only**).
  7. Ensure vehicles are parked within range of the wireless access point (refer to the wireless signal strength indicator on the mobile data computer to determine if the vehicle is within range). This parking location will allow in-car video to upload automatically.



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8. Log off from the Arbitrator Front-End Client, within the vehicle, upon completion of the tour of duty. This log off will prevent other users from recording video with other members' credentials.

### **B. Supervisor Responsibilities**

1. Desk supervisors shall log on to the Arbitrator Back-End Client, during their tour of duty, from the precinct computer at the desk to verify if officers video has:
  - An assigned event number.
  - Classifications from the "drop down" selection.
2. On a daily basis, supervisors shall randomly select two videos of officers and/or the supervisor from their tour of duty pertaining to Stops, Searches and Detentions. Supervisors shall review the Arbitrator Back-End Client "Main" page and view video to determine if the members complied with law and NPD policy. The "Main" page will provide a list of all uploaded video (body-worn and in-car video).
3. Before the end of each tour of duty, the desk supervisor shall send an email to the commander, executive officer and principal clerk indicating:
  - The name of the member(s).
  - The date and period of time the audit of video was conducted.
  - List the videos, from the "Main" page selected (date, time, event number, etc.)
  - If the member(s) were in compliance.
  - Actions taken to address deficiency/ recommendation for retraining.
4. When the desk supervisor learns that an in-car camera is not working, that desk supervisor must send an email to the Technology Unit. The email must:
  - Be addressed to [mis2@ci.newark.nj.us](mailto:mis2@ci.newark.nj.us), the member's commanding officer, executive officer and principal clerk.
  - Indicate the officer name, identification number, command, and vehicle number.
  - Indicate the problem/malfunction.
5. During normal business hours, the commanding officer must make a follow-up telephone call to the Technology Unit.
6. Supervisors will review investigatory stops and detentions, searches, and arrests for completeness and adherence to law and NPD policy. Supervisors will:
  - Review all written documentation;
  - Review all relevant video recordings for all incidents in which the supervisor suspects, for any reason, that an officer's conduct may not have complied with law or NPD policy; and
  - On an ongoing basis, review a random selection of video recordings of stops and detentions, searches, and arrests amounting to at least 10 percent of all stops and detentions, searches and arrests.



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7. For every search or arrest involving the recovery of contraband evidence, the desk supervisor will review the circumstances of the encounter, including BWC video, to assess the adequacy of the seizure.
8. Field supervisors shall ensure that members are logged on to the Arbitrator Front End-Client during the field inspections.
9. Field supervisors shall initiate an Investigation of Personnel (IOP) when damage is observed to the camera/related equipment or when a report of damage is received.
10. Upon reviewing report and video for investigatory stops and detentions, searches and arrests, supervisors shall submit an administrative report for each event reviewed, by the end of their tour of duty, listing:
  - An event number for each event viewed when prompted in RMS (e.g., P18012345)
  - Name(s) of the officer(s) for each event reviewed.
  - Type of video reviewed (body camera video, in-car video, or both).
  - Reason for reviewing video (recovery of contraband, stop, search, detention, arrest, suspected non-compliance with policy or law).

### **C. Command Responsibility**

1. Commanders shall ensure that all members comply with the mandates within this policy.
2. Commanders shall coordinate to schedule members for retraining based on the assessment of the desk supervisor.
3. Commanders shall contact the Technology Unit when an email is received regarding a malfunctioning in-car camera.

### **D. Technology Unit**

1. Provide all personnel a username and password for the Arbitrator software.
2. Setup and maintain an Active Directory list to ensure user privileges are granted to each member.
3. Ensure newly hired, promoted, or separated personnel are added, deleted, or adjusted accordingly within the Active Directory.
4. Maintain a database of vehicles equipped with an in-car camera and the history of any repair or replacement to the camera.
5. Upon receiving a notification of a malfunctioning in-car camera, an on-site assessment is required to determine the issue. In addition, an assessment shall be made of any issue with recording or uploading of video.
6. On a weekly basis, conduct an overall assessment of video upload in the Back-End Client and coordinate with the vendor to address any issue.
7. Coordinate with the vendor to have cameras repaired or replaced.
8. Retrain members in the use of the in-car camera, BWC and Arbitrator software.



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9. Ensure a signature roster is generated and signed by each member for every training session. Signature rosters must be forwarded to the Training Division.

### **E. Office of Professional Standards**

1. Investigators shall review in-car camera video when an Investigation of Personnel (IOP) is received.
2. Investigators shall ensure video, if available, is reclassified to "Internal Affairs" within the Arbitrator Back-End Client. This classification is within the "drop down" selection.
3. The commander of the Office of Professional Standards shall ensure Integrity Control Officers are reviewing video, as delineated within this policy.

### **F. Integrity Control Officers and Compliance Unit**

1. Review 12 BWC/ in-car videos, divided among all tours, on a monthly basis.
2. When reviewing video, ensure members are:
  - Activating and deactivating video in accordance with this policy.
  - Logging in to the Arbitrator Front-End Client.
  - Assigning an event number to all videos.
  - Classifying video from the "drop down" selection.
3. Include a recommendation to correct any deficiency in the audit report.
4. Ensure the outcome of the audit/review of video is included in the monthly report.

### **G. Fleet Management**

1. If a motor vehicle, equipped with an in-car camera and related equipment, is being decommissioned, the entire in-car camera system must be removed.
2. The Fleet Management supervisor is responsible for notifying the Technology Unit to coordinate with the vendor to arrange the removal of in-car camera equipment.
3. The Fleet Management supervisor shall coordinate with the Technology Unit to reinstall the in-car camera and related equipment in another marked patrol unit, and ensure that the in-car camera and related equipment are properly working.

### **H. Training Division**

1. Ensure all BWC training signature rosters are maintained at the division.



# NEWARK POLICE DIVISION GENERAL ORDER



## **I. Advocate Unit**

1. Video must be provided to the collective bargaining entity, for each case, prior to the date of the hearing.

## **VIII. HOW TO ACTIVATE AND DEACTIVATE**

A. Once the camera is activated, there is a thirty-second “pre-record” feature. The in-car video audio will be recorded on the body-worn camera. The in-car cameras can be activated by:

1. Activating the emergency lights;
2. Manually pressing the REC button on the camera will turn on the front camera; or
3. Manually pressing the REC button on the Mobile Data Computer (MDC) for the front or rear camera.

B. Deactivation is done by:

1. Pressing and holding the REC button on the back of the camera for three seconds or;
2. Pressing the STOP button on the MDC.

## **IX. RECORDING OF EVENTS**

A. When a member records an event, that member shall advise individuals involved in the event, at the earliest safe and feasible opportunity, that the event is being recorded. Activation is required immediately upon receiving a dispatched assignment or the initiation of a stop. When recording an event, members must record until the member(s) and all citizens have departed the scene.

If the members arrive at an event already in progress, they must record the entire duration of the event, recording must continue until the member(s) and all citizens have departed the scene. The following events must be recorded:

1. Motor vehicle stop-- from observed of the violation until the stop is concluded, including
  - Car/truck inspection
  - Motor vehicle pursuit
  - Motor Vehicle Safety Checkpoint
2. Any call for service or police response that involves the use of emergency warning lights and or siren;

**Important: if emergency lights are not required during the response, the front camera must be activated manually (e.g., responding to a blocked driveway, double parked vehicle, etc.)\*\***



# NEWARK POLICE DIVISION GENERAL ORDER



3. Aiding motorist or pedestrian (community caretaking check);
4. Crime in progress;
5. Pedestrian stop or investigative detention/field interview;
6. Transporting an arrestee (**ensure rear camera is activated from the time the arrestee is secured in the vehicle**);
7. Civil disturbances
8. In any situation where the member deems a recording to be necessary.

## X. VIDEO RETENTION AND CATEGORIZATION

In-car video recordings shall be retained for at least 90 days. The Technology Division is responsible for updating/maintaining a video retention and disposition schedule in accordance with requirements set forth by the Attorney General and/or the courts of the State of New Jersey. The following shall be subject to additional retention periods:

- When an in-car camera recording pertains to a criminal investigation or otherwise records information that may be subject to discovery in a criminal prosecution, the recording shall be treated as evidence and shall be kept in accordance with the retention period for evidence in criminal prosecution.
- When an in-car camera records an arrest that does not result in an ongoing prosecution, or records the use of police force, the recording shall be kept until the expiration of the statute of limitations for filing a civil complaint against the officer and/or agency. If a civil action relating to the incident depicted on the recording is filed the recording shall be maintained until the conclusion of the civil action. NPD personnel responsible for the disposal of video images shall contact the office of the Newark Corporation Counsel for guidance regarding the destruction of the video images.
- When an in-car camera records an incident that is the subject of an internal affairs complaint, the recording shall be kept pending final resolution of the internal affairs investigation and any resulting administrative action.
- When a civilian who is the subject of the video recording makes a written request indicating the footage be retained, the recording shall be kept until the expiration of the statute of limitations for filing a civil complaint against the officer and/or agency.

The following is a list of video categories and their retention period:

- A. Vehicle Inspection/Test – 90 days
- B. Call for service (no arrest) – 90 days
- C. Special Detail – 90 days
- D. Traffic Matter – 90 days
- E. Motor Vehicle Stop – 3 years



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- F. Motor Vehicle Accident – 3 years
- G. Motor Vehicle Aid – 3 years
- H. Pedestrian Stop – 3 years
- I. Frisk or Search – 3 years
- J. Arrest – 7 years
- K. DB Investigation – 7 years
- L. Critical Incident - Indefinite  
(homicide, serious bodily injury, suspicious death, serious use of force)
- M. Internal Affairs - Indefinite

### **XI. UPLOADING VIDEO**

- A. In-car video uploads automatically once the vehicle is in the range of the wireless access point.
- B. An upload indicator will appear on the mobile data computer once connectivity is made with the wireless access point. The upload indicator will show the progress of video that is uploading.
- C. The vehicle must be on for the upload to begin. The battery will allow the software to remain active for approximately ten minutes after the vehicle is turned off. This will allow video to upload during this time.
- D. Video upload can occur at any command that has a wireless access point.
- E. All video will be stored at one central location, 480 Clinton Avenue.

### **XII. ACCESS TO, DISSEMINATION OF IN-CAR CAMERA RECORDINGS**

Viewing of in-car camera events is strictly limited to authorized employees of the Division, the Public Safety Director may use his/her discretion to authorize any other person to view in-car camera video. No law enforcement officer or civilian employee of this division shall access, view, copy, disseminate or otherwise use an in-car camera recording except for an official purpose. Access to and use of an in-car camera recording is permitted only in the following situations:

1. When relevant to and in furtherance of a criminal investigation or prosecution.
2. When relevant to and in furtherance of an internal affairs investigation which shall include an investigation of any use of force.
3. When relevant to and in furtherance of a management review process to identify circumstances indicating possible police misconduct or to determine the existence of a pattern of possible misconduct.
4. To assist the member whose in-car camera made a recording to prepare his or her own police report, except as delineated in number 14 of this section.



# NEWARK POLICE DIVISION GENERAL ORDER



5. When relevant to a supervisor's review of a member's actions as part of their supervisory responsibility.
6. To show a civilian who intends to file a complaint against a member to demonstrate what actually occurred during the encounter so that the person can make an informed decision whether to file the complaint.
7. To comply with the state's discovery obligations in criminal prosecutions pursuant to Rules of Court;
  - a. Such request must be specific and on the proper instrument (e.g., subpoena, discovery request, etc.).
  - b. Only those portions pertinent to the request shall be forwarded.
  - c. The NPD reserves the right to redact video as applicable by law (minor, victim, witness, etc.) and/or Attorney General Directive
  - d. All requests for copies or review of in-car camera recordings are subject to a reasonable processing fee.
8. To comply with any other legal obligation to produce the recording to a person or entity.
9. To show or disseminate the recording to a civilian or non-law enforcement entity, or to disseminate to the public to determine that the disclosure to the person/entity or the public is warranted because the need or access outweighs the Newark Police Division's need in maintaining confidentiality. The Public Safety Director must approve the dissemination/release of video.
10. Training purposes provided that the recording is redacted in order to obscure the identity of the individuals depicted, unless the individuals consented to the use of the recording for training.
11. To conduct an audit to ensure compliance with this policy.
12. To enhance officer and public safety by providing intelligence information in preparation for a raid/warrant execution. The Public Safety Director must approve the use of a recording for this circumstance.
13. Any other specified official purpose where the Public Safety Director, finds in writing that good and sufficient cause exists to authorize access to a particular in-car camera recording.
14. When a police related use-of-force incident investigated by the County Prosecutor's Office or any other agency with equivalent or greater authority, department members and civilians shall not access any recording of the incident until authorized by the lead investigative agency.
15. A in-car camera recording of an event or encounter that involves an investigation of a criminal offense shall not be shared with, provided or shown to any person, entity or government agency other than a law enforcement agency, officer or authorized civilian employee of such agency, unless such disclosure is expressly approved by the Public Safety Director.
16. The Legal Affairs Unit is responsible for coordinating with the Office of the City Clerk to provide notice to the Essex County Prosecutor's, within one business day, of receiving a request for in-car camera video in the following manner:
  - Subpoena
  - Court Order



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- Open Public Records Act
- Common Law Right to Know

A database pertaining to requests for in-car camera recordings shall be maintained by Legal Affairs.

17. The Legal Affairs Unit is responsible for redacting video.

### XIII. DATA CONTROL AND MANAGEMENT

Members shall not erase or in any other manner alter, tamper with, destroy, or conceal in-car video recordings. Members shall not alter, remove, obstruct or disable any camera or related equipment. Tampering is a violation of NJSA 2C:28-7, which is a 4<sup>th</sup> degree crime, and members may be subject to internal discipline.

- A. Data uploaded from in-car cameras will be stored on servers located at 480 Clinton Avenue, or any other secure storage location ordered by the Police Director.
- B. Events captured on in-car cameras shall not be released to other law enforcement entities other than the Essex County Prosecutor's Office, New Jersey Division of Criminal Justice or U.S. Department of Justice without the expressed permission of the of the Public Safety Director.
- C. The Technology Unit shall prevent unauthorized access to in-car video recordings and must establish and maintain rules within the system to document:
  - Identity of member who is accessing video;
  - Date and time of access;
  - Specific in-car video that was accessed;
  - Groups of NPD members with specific user privileges.

**BY ORDER OF:**

A handwritten signature in blue ink, appearing to read "A. Ambrose", is written over a horizontal line.

**ANTHONY F. AMBROSE  
PUBLIC SAFETY DIRECTOR**

AFA/BO:dd

**Appendix D:  
Policy Crosswalk**

**3rd BWC & 2nd ICC Audit**

**Appendix D: Consent Decree / Policy Crosswalk**

#	Consent Decree Paragraph	NPD Policy
1.	103	General Order 18-05, <i>Body-worn Cameras</i> ; General Order 18-06, <i>In-Car Cameras</i>
2.	104	General Order 18-05, <i>Body-worn Cameras</i>
3.	104(a)	General Order 18-05, <i>Body-worn Cameras</i> , Sections II and V
4.	104(b)	General Order 18-05, <i>Body-worn Cameras</i> , Section VII.2
5.	104(c)	General Order 18-05, <i>Body-worn Cameras</i> , Section IX
6.	104(d)	General Order 18-05, <i>Body-worn Cameras</i> , Section IX.F
7.	104(e)	General Order 18-05, <i>Body-worn Cameras</i> , Section IX.A
8.	104(f)	General Order 18-05, <i>Body-worn Cameras</i> , Section XII and XIII
9.	104(g)	General Order 18-05, <i>Body-worn Cameras</i> , Section XIII
10.	104(h)	General Order 18-05, <i>Body-worn Cameras</i> , Section X.B
11.	104(i)	General Order 18-21, <i>Use of Force Reporting, Investigation And Review</i> , Section VII A-C

**Appendix E:  
List of Events**

**Appendix E: List of Events**

<b>Count</b>	<b>Event Number</b>
1	P22220887
2	P22221305
3	P22221605
4	P22221631
5	P22221660
6	P22222449
7	P22222525
8	P22222636
9	P22222771
10	P22222778
11	P22223081
12	P22223184
13	P22224448
14	P22224745
15	P22224980
16	P22224991
17	P22225102
18	P22225599
19	P22225726
20	P22226015
21	P22226059
22	P22227331
23	P22227460
24	P22227704
25	P22227822
26	P22228371
27	P22228385
28	P22228550
29	P22228664
30	P22228737
31	P22228943
32	P22229205
33	P22229614
34	P22230184
35	P22230278
36	P22230945

37	P22231824
38	P22232092
39	P22232096
40	P22232158
41	P22232304
42	P22233048
43	P22233080
44	P22233193
45	P22233220
46	P22233254
47	P22233288
48	P22233306
49	P22233801
50	P22233829
51	P22233923
52	P22234106
53	P22234337
54	P22234441
55	P22234545
56	P22234670
57	P22234678
58	P22234736
59	P22235022
60	P22235073
61	P22235697
62	P22235790-A
63	P22235790-B
64	P22235790-C
65	P22236043
66	P22236131
67	P22236752
68	P22236864
69	P22237600
70	P22238084
71	P22238491
72	P22239038
73	P22239492
74	P22239551
75	P22239964

76	P22240020
77	P22240512
78	P22240999
79	P22241014
80	P22241053
81	P22241138
82	P22241358
83	P22241695
84	P22242106
85	P22242173-A
86	P22242173-B
87	P22242173-C
88	P22242194
89	P22242198
90	P22242286
91	P22242540
92	P22242587
93	P22243238
94	P22243381
95	P22243817
96	P22243823
97	P22243921
98	P22243969
99	P22243981
100	P22244110
101	P22244188
102	P22244271
103	P22244680
104	P22244846-A
105	P22244846-B
106	P22244846-C
107	P22244940
108	P22245149
109	P22245201
110	P22245227
111	P22245382
112	P22246058
113	P22246413
114	P22246506

115	P22246536
116	P22246622
117	P22247092
118	P22247297
119	P22247430
120	P22247657
121	P22247751
122	P22247857
123	P22248170
124	P22248448
125	P22248803-A
126	P22248803-B
127	P22249588
128	P22249596
129	P22249756
130	P22249791
131	P22250015
132	P22250276
133	P22250403-A
134	P22250403-B
135	P22250507
136	P22250717
137	P22250990
138	P22251100
139	P22251115
140	P22251489
141	P22252820
142	P22252931
143	P22252937
144	P22253114
145	P22253349
146	P22253444
147	P22253591
148	P22253763-A
149	P22253763-B
150	P22254115
151	P22254244
152	P22254468
153	P22254487

154	P22254504
155	P22254549
156	P22255024
157	P22255114
158	P22255144
159	P22255274
160	P22255415
161	P22255897
162	P22255902
163	P22256169
164	P22256310
165	P22256338-A
166	P22256338-B
167	P22256473
168	P22256571
169	P22256738
170	P22256783
171	P22256784
172	P22256873
173	P22257049
174	P22257148
175	P22257208
176	P22257251
177	P22257416
178	P22257871
179	P22257921
180	P22258430
181	P22258854
182	P22258983
183	P22259679
184	P22259709
185	P22259738
186	P22260029
187	P22260335-A
188	P22260335-B
189	P22260805
190	P22260874
191	P22260910
192	P22261792

193	P22261817
194	P22261821
195	P22261853
196	P22262157
197	P22262546
198	P22262866
199	P22262993
200	P22263360
201	P22263874
202	P22264027
203	P22264450
204	P22264577
205	P22264862

**Appendix F:**  
**List of Events Removed from BWC Sample**

**Appendix F: Events Removed from BWC Sample**

<b>Count</b>	<b>Event Number</b>	<b>Circumstances</b>
1	P22220887	No public contact, but officer advised other officer he was recording
2	P22223351	DESK OFCR CALLED VICTIM - NO BWC or ICC REMOVE FROM SAMPLE
3	P22229614	No public contact
4	P22233829	NO Public contact, only assisting Major Crimes with traffic
5	P22234736	but officer only notified EMS and did not notified actual subject of the call.
6	P22235022	NO Public Contact
7	P22235073	No public contact
8	P22235546	No Public Contact - call cancelled - REMOVE FROM SAMPLE
9	P22235790-A	No Public Contact (Back-up)
10	P22235790-C	No Public Contact (Back-up)
11	P22239964	No Public contact - recovered stolen vehicle
12	P22243787	Call cancelled prior to arrival. *BWC camera lens covered for entire response (possible seatbelt) - Remove from Sample
13	P22244846-C	No Public Contact
14	P22246058	No Public Contact - Partner did not create video
15	P22247430	No interaction with anyone at location. Several peds dispersing from location, but no public contact
16	P22248803-B	No Public Contact (Responded to assist w/area search)
17	P22250015	NO Public Contact
18	P22253763-A	No Public Contact (arrive after scene secured)
19	P22254549	No Public Contact
20	P22255024	No Public Contact (R/O not at home)
21	P22255144	No Public Contact (Recovered Vehicle)
22	P22256169	NO BWC NOTIFICATION REQUIRED DUE TO EXIGENT CONDITIONS
23	P22256738	No Public Contact
24	P22257871	NO Public Contact
25	P22258430	NO Public Contact
26	P22261336	No BWC due to report taken at Detective Counter by Detective - Remove from Sample
27	P22263164	Remove from sample City Liability only. Officer records himself video narrating possible damage.
28	P22263169	MISLABELED CODE, ATTENDING RETIREMENT FUNCTION
29	P22263360	No Public contact
30	P22264862	No Public Contact

**Appendix G:**  
**List of Events Removed from ICC Sample**

**Appendix G: Events Removed from ICC Sample**

<b>Count</b>	<b>Event Number</b>	<b>Circumstances</b>
1	P22243787	Call cancelled prior to arrival. *BWC camera lens covered for entire response (possible seatbelt) - Remove from Sample
2	P22223351	DESK OFCR CALLED VICTIM - NO BWC or ICC REMOVE FROM SAMPLE
3	P22263169	MISLABELED CODE, ATTENDING RETIREMENT FUNCTION
4	P22235546	No Public Contact - call cancelled - REMOVE FROM SAMPLE
5	P22261336	No BWC due to report taken at Detective Counter by Detective - Remove from Sample
6	P22263164	Remove from sample City Liability only. Officer records himself video narrating possible damage.

**Appendix H:  
Fleet Inventory Summary**

UNIT #	MAKE #	MODEL	YEAR	COLOR	CONFIG.	PLATE #	VIN #	ASSIGNMENT	ASSIGNED TO :
76	CHEVY	TAHOE	2012	BLACK / WHITE	MARKED	MG91363 MG PLATES	1GNSK2E04CR273215	COMMAND OPERATION CENTER	
165	CHEVY	EXPRESS	2010	BLACK / WHITE	MARKED	MG87012 MG PLATES	1GC2GUBG1A1132900	PRISONER PROCESSING DIVISION	
166	CHEVY	EXPRESS	2010	BLACK / WHITE	MARKED	MG87011 MG PLATES	1GC2GUBG0A1131558	PRISONER PROCESSING DIVISION	
167	CHEVY	EXPRESS	2010	BLACK / WHITE	MARKED	MG87009 MG PLATES	1GC2GUBG5A1132799	PRISONER PROCESSING DIVISION	
168	CHEVY	EXPRESS	2010	BLACK / WHITE	MARKED	MG87008 MG PLATES	1GC2GUBG5A1132690	PRISONER PROCESSING DIVISION	
169	FORD	CROWN VIC	2006	BLACK / WHITE	MARKED	MG70332 MG PLATES	2FAFP71W26X106774	4TH PRECINCT / COMMUNITY ENGAGEMENT	
201	FORD	UTILITY INTERCEPTO	2016	BLACK / WHITE	MARKED	21707MG MG PLATES	1FM5K8AR6GGD30511	2ND PRECINCT / SUPERVISOR	
202	FORD	UTILITY INTERCEPTO	2016	BLACK / WHITE	MARKED	21703MG MG PLATES	1FM5K8AR3GGD30515	2ND PRECINCT / SUPERVISOR	
203	FORD	UTILITY INTERCEPTO	2020	BLACK / WHITE	MARKED	36255MG MG PLATES	1FM5K8AW3LGC36876	2ND PRECINCT / SUPERVISOR	
211	FORD	UTILITY INTERCEPTO	2021	BLACK / WHITE	MARKED	36337MG MG PLATES	1FM5K8AW0MNA22831	2ND PRECINCT / PATROL	
212	FORD	UTILITY INTERCEPTO	2021	BLACK / WHITE	MARKED	36341MG MG PLATES	1FM5K8AW0MNA22862	2ND PRECINCT / PATROL	
213	FORD	UTILITY INTERCEPTO	2021	BLACK / WHITE	MARKED	36334MG MG PLATES	1FM5K8AW1MNA22823	2ND PRECINCT / PATROL	
214	FORD	UTILITY INTERCEPTO	2016	BLACK / WHITE	MARKED	18293MG MG PLATES	1FM5K8AR0GGD16765	2ND PRECINCT / PATROL	
215	FORD	UTILITY INTERCEPTO	2014	BLACK / WHITE	MARKED	MG98240 MG PLATES	1FM5K8AR9EGA09396	2ND PRECINCT / PATROL	
216	FORD	UTILITY INTERCEPTO	2015	BLACK / WHITE	MARKED	13656MG MG PLATES	1FM5K8AR2FGB62364	2ND PRECINCT / PATROL	

UNIT #	MAKE #	MODEL	YEAR	COLOR	CONFIG.	PLATE #	VIN #	ASSIGNMENT	ASSIGNED TO :
217	FORD	UTILITY INTERCEPTO	2014	BLACK / WHITE	MARKED	MG98221 MG PLATES	1FM5K8AR0EGA33683	2ND PRECINCT / PATROL	
218	FORD	UTILITY INTERCEPTO	2014	BLACK / WHITE	MARKED	MG98229 MG PLATES	1FM5K8AR2EGA33684	2ND PRECINCT / PATROL	
219	FORD	CROWN VIC	2009	BLACK / WHITE	MARKED	MG86985 MG PLATES	2FAHP71V29X124809	2ND PRECINCT / PATROL	
221	FORD	CROWN VIC	2005	BLACK / WHITE	MARKED	MG67570 MG PLATES	2FAFP71W15X162610	2ND PRECINCT / PATROL	
222	FORD	CROWN VIC	2008	BLACK / WHITE	MARKED	MG81119 MG PLATES	2FAFP71V58X159365	2ND PRECINCT / PATROL	
223	FORD	CROWN VIC	2011	BLACK / WHITE	MARKED	MG87062 MG PLATES	2FABP7BV0BX100373	2ND PRECINCT / PATROL	
247	FORD	CROWN VIC	2009	BLACK / WHITE	MARKED	MG83821 MG PLATES	2FAHP71V29X124521	2ND PRECINCT / PATROL	
269	FORD	CROWN VIC	2003	BLACK / WHITE	MARKED	MG58364 MG PLATES	2FAFP71WX3X143518	COMMUNITY ENGAGEMENT	
301	CHEVY	TAHOE	2012	BLACK / WHITE	MARKED	MG91179 MG PLATES	1GNSK2E06CR285530	3RD PRECINCT / SUPERVISOR	
302	FORD	UTILITY INTERCEPTO	2016	BLACK / WHITE	MARKED	21704MG MG PLATES	1FM5K8AR1GGD30514	3RD PRECINCT / SUPERVISOR	
304	FORD	UTILITY INTERCEPTO	2020	BLACK / WHITE	MARKED	36258MG MG PLATES	1FM5K8AW4LGC36871	3RD PRECINCT / SUPERVISOR	
310	CHEVY	EXPRESS	2010	BLACK / WHITE	MARKED	MG87015 MG PLATES	1GC2GUBG1A1132430	3RD PRECINCT / PATROL	
311	FORD	UTILITY INTERCEPTO	2021	BLACK / WHITE	MARKED	36342MG MG PLATES	1FM5K8AW2MNA22829	3RD PRECINCT / PATROL	
312	FORD	UTILITY INTERCEPTO	2021	BLACK / WHITE	MARKED	36340MG MG PLATES	1FM5K8AW2MNA22880	3RD PRECINCT / PATROL	
313	FORD	UTILITY INTERCEPTO	2016	BLACK / WHITE	MARKED	36310MG MG PLATES	1FM5K8AR8GGD16769	3RD PRECINCT / PATROL	

UNIT #	MAKE #	MODEL	YEAR	COLOR	CONFIG.	PLATE #	VIN #	ASSIGNMENT	ASSIGNED TO :
314	FORD	UTILITY INTERCEPTO	2019	BLACK / WHITE	MARKED	34855MG MG PLATES	1FM5K8AR0KGA53122	3RD PRECINCT / PATROL	
315	FORD	UTILITY INTERCEPTO	2021	BLACK / WHITE	MARKED	36343MG MG PLATES	1FM5K8AW3MNA22659	3RD PRECINCT / PATROL	
316	FORD	UTILITY INTERCEPTO	2014	BLACK / WHITE	MARKED	MG98226 MG PLATES	1FM5K8AR7EGA33681	3RD PRECINCT / PATROL	
317	FORD	UTILITY INTERCEPTO	2014	BLACK / WHITE	MARKED	MG98236 MG PLATES	1FM5K8AR1EGA09389	3RD PRECINCT / PATROL	
318	FORD	UTILITY INTERCEPTO	2014	BLACK / WHITE	MARKED	MG98234 MG PLATES	1FM5K8AR8EGA09387	3RD PRECINCT / PATROL	
319	FORD	UTILITY INTERCEPTO	2014	BLACK / WHITE	MARKED	MG98241 MG PLATES	1FM5K8AR0EGA09397	3RD PRECINCT / PATROL	
321	FORD	UTILITY INTERCEPTO	2015	BLACK / WHITE	MARKED	13658MG MG PLATES	1FM5K8AR5FGB62360	3RD PRECINCT / PATROL	
322	FORD	CROWN VIC	2008	BLACK / WHITE	MARKED	MG82991 MG PLATES	2FAFP71VX8X159359	3RD PRECINCT / PATROL	
323	FORD	CROWN VIC	2011	BLACK / WHITE	MARKED	MG87036 MG PLATES	2FABP7BV8BX100363	3RD PRECINCT / PATROL	
324	FORD	CROWN VIC	2011	BLACK / WHITE	MARKED	MG87045 MG PLATES	2FABP7BV8BX100380	3RD PRECINCT / PATROL	
325	FORD	CROWN VIC	2008	BLACK / WHITE	MARKED	MG91167 MG PLATES	2FAFP71V78X106487	3RD PRECINCT / PATROL	
326	FORD	CROWN VIC	2011	BLACK / WHITE	MARKED	MG91180 MG PLATES	2FABP7BV5BX100370	3RD PRECINCT / PATROL	
327	FORD	CROWN VIC	2006	BLACK / WHITE	MARKED	MG71679 MG PLATES	2FAFO71W96X118730	3RD PRECINCT / PATROL	
335	FORD	CROWN VIC	2011	BLACK / WHITE	MARKED	MG87051 MG PLATES	2FABP7BV9BX100369	3RD PRECINCT / PATROL	
369	FORD	CROWN VIC	2008	BLACK / WHITE	MARKED	MG76034 MG PLATES	2FAFP71V08X106489	3RD PRECINCT / PATROL	

UNIT #	MAKE #	MODEL	YEAR	COLOR	CONFIG.	PLATE #	VIN #	ASSIGNMENT	ASSIGNED TO :
380	FORD	UTILITY INTERCEPTO	2016	BLACK / WHITE	MARKED	21698MG MG PLATES	1FM5K8AR6GGD30508	METRO DIVISION / SUPERVISOR	
381	FORD	UTILITY INTERCEPTO	2014	BLACK / WHITE	MARKED	MG98233 MG PLATES	1F5K8ARXEGAM09391	METRO DIVISION / SUPERVISOR	
385	FORD	UTILITY INTERCEPTO	2014	BLACK / WHITE	MARKED	MG98224 MG PLATES	1FM5K8AR2EAGA09403	METRO DIVISION / PATROL	
388	FORD	CROWN VIC	2009	BLACK / WHITE	MARKED	MG86984 MG PLATES	2FAHP71V79X124806	METRO DIVISION / PATROL	
389	FORD	CROWN VIC	2011	BLACK / WHITE	MARKED	MG87044 MG PLATES	2FABP7BVXBX100378	METRO DIVISION / PATROL	
402	FORD	UTILITY INTERCEPTO	2016	BLACK / WHITE	MARKED	21697MG MG PLATES	1FM5K8AR7GGD30517	4TH PRECINCT / SUPERVISOR	
403	FORD	UTILITY INTERCEPTO	2020	BLACK / WHITE	MARKED	36263MG MG PLATES	1FM5K8AW5LGC38877	4TH PRECINCT / SUPERVISOR	
411	FORD	UTILITY INTERCEPTO	2021	BLACK / WHITE	MARKED	36330MG MG PLATES	1FM5K8AW3MNA22743	4TH PRECINCT / PATROL	
412	FORD	UTILITY INTERCEPTO	2021	BLACK / WHITE	MARKED	36339MG MG PLATES	1FM5K8AW5MNA22727	4TH PRECINCT / PATROL	
414	FORD	UTILITY INTERCEPTO	2020	BLACK / WHITE	MARKED	36257MG MG PLATES	1FM5K8AW5LGC36880	4TH PRECINCT / PATROL	
415	FORD	UTILITY INTERCEPTO	2014	BLACK / WHITE	MARKED	MG98230 MG PLATES	1FM5K8AR7EGA09400	4TH PRECINCT / PATROL	
416	FORD	UTILITY INTERCEPTO	2015	BLACK / WHITE	MARKED	14472MG MG PLATES	1FM5K8AR9FGB62359	4TH PRECINCT / PATROL	
417	FORD	UTILITY INTERCEPTO	2016	BLACK / WHITE	MARKED	18291MG MG PLATES	1FM5K8AR6GGD16768	4TH PRECINCT / PATROL	
418	FORD	UTILITY INTERCEPTO	2015	BLACK / WHITE	MARKED	14473MG MG PLATES	1FM5K8AR6FGB62366	4TH PRECINCT / PATROL	
419	FORD	UTILITY INTERCEPTO	2014	BLACK / WHITE	MARKED	MG98239 MG PLATES	1FM5K8AR1EGA09392	4TH PRECINCT / PATROL	

UNIT #	MAKE #	MODEL	YEAR	COLOR	CONFIG.	PLATE #	VIN #	ASSIGNMENT	ASSIGNED TO :
421	FORD	UTILITY INTERCEPTO	2016	BLACK / WHITE	MARKED	21701MG MG PLATES	1FM5K8AR9GGD30518	4TH PRECINCT / PATROL	
422	FORD	UTILITY INTERCEPTO	2015	BLACK / WHITE	MARKED	14470MG MG PLATES	1FM5K8AR9FGB62362	4TH PRECINCT / PATROL	
423	FORD	CROWN VIC	2008	BLACK / WHITE	MARKED	MG81114 MG PLATES	2FAFP71V08X159354	4TH PRECINCT / PATROL	
424	FORD	CROWN VIC	2008	BLACK / WHITE	MARKED	MG76052 MG PLATES	2FAFP71V18X106503	4TH PRECINCT / COMMUNITY POLICING SUBSTATION	
425	FORD	CROWN VIC	2009	BLACK / WHITE	MARKED	MG86980 MG PLATES	2FAHP71V69X124800	4TH PRECINCT / COMMUNITY POLICING SUBSTATION	
426	FORD	CROWN VIC	2008	BLACK / WHITE	MARKED	MG77983 MG PLATES	2FAFP71V68X106481	4TH PRECINCT / PATROL	
429	FORD	CROWN VIC	2011	BLACK / WHITE	MARKED	MG87050 MG PLATES	2FABP7BV3BX100383	4TH PRECINCT / PATROL	
439	FORD	UTILITY INTERCEPTO	2016	BLACK / WHITE	MARKED	18281MG MG PLATES	1FM5K8AR4GGD16767	4TH PRECINCT / PATROL	
448	FORD	UTILITY INTERCEPTO	2014	BLACK / WHITE	MARKED	MG98220 MG PLATES	1FM5K8AR3EGA09393	4TH PRECINCT / PATROL	
469	FORD	CROWN VIC	2006	BLACK / WHITE	MARKED	MG70347 MG PLATES	2FAFP71WX6X106781	COMMUNITY ENGAGEMENT	
502	FORD	UTILITY INTERCEPTO	2016	BLACK / WHITE	MARKED	18288MG MG PLATES	1FM5K8AR3GGD16775	5TH PRECINCT / SUPERVISOR	
503	FORD	UTILITY INTERCEPTO	2020	BLACK / WHITE	MARKED	36259MG MG PLATES	1FM5K8AW6LGC36872	5TH PRECINCT / SUPERVISOR	
511	FORD	UTILITY INTERCEPTO	2021	BLACK / WHITE	MARKED	36335MG MG PLATES	1FM5K8AW6MNA22820	5TH PRECINCT / PATROL	
513	FORD	UTILITY INTERCEPTO	2021	BLACK / WHITE	MARKED	36331MG MG PLATES	1FM5K8AW8MNA22754	5TH PRECINCT / PATROL	
514	FORD	UTILITY INTERCEPTO	2021	BLACK / WHITE	MARKED	36336MG MG PLATES	1FM5K8AW8MNA22852	5TH PRECINCT / PATROL	

UNIT #	MAKE #	MODEL	YEAR	COLOR	CONFIG.	PLATE #	VIN #	ASSIGNMENT	ASSIGNED TO :
515	FORD	UTILITY INTERCEPTO	2019	BLACK / WHITE	MARKED	34862MG MG PLATES	1FM5K8AR3KGA53115	5TH PRECINCT / PATROL	
516	FORD	UTILITY INTERCEPTO	2016	BLACK / WHITE	MARKED	18285MG MG PLATES	1FM5K8AR9GGD16764	5TH PRECINCT / PATROL	
517	FORD	UTILITY INTERCEPTO	2016	BLACK / WHITE	MARKED	21706MG MG PLATES	1FM5K8AR8GGD30512	5TH PRECINCT / PATROL	
518	FORD	UTILITY INTERCEPTO	2014	BLACK / WHITE	MARKED	MG98247 MG PLATES	1FM5K8AR7EGA09395	5TH PRECINCT / PATROL ( SMART POLICING INITIATIVE )	
519	FORD	UTILITY INTERCEPTO	2014	BLACK / WHITE	MARKED	MG98227 MG PLATES	1FM5K8AR5EGA09394	5TH PRECINCT / PATROL ( SMART POLICING INITIATIVE )	
520	CHEVY	TAHOE	2012	BLACK / WHITE	MARKED	MG91362 MG PLATES	1GNSK2E08CR276022	5TH PRECINCT / SUPERVISOR	
522	FORD	UTILITY INTERCEPTO	2014	BLACK / WHITE	MARKED	MG98242 MG PLATES	1FM5K8AR2EGA09398	5TH PRECINCT / PATROL ( SMART POLICING INITIATIVE )	
523	FORD	UTILITY INTERCEPTO	2014	BLACK / WHITE	MARKED	MG98243 MG PLATES	1FM5K8AR4EGA09399	5TH PRECINCT / PATROL	
525	FORD	CROWN VIC	2011	BLACK / WHITE	MARKED	MG87052 MG PLATES	2FABP7BV2BX100374	5TH PRECINCT / PATROL	
527	FORD	CROWN VIC	2009	BLACK / WHITE	MARKED	MG83819 MG PLATES	2FAHP71V99X124239	5TH PRECINCT / PATROL	
528	FORD	CROWN VIC	2008	BLACK / WHITE	MARKED	MG81111 MG PLATES	2FAFP71V68X159360	5TH PRECINCT / PATROL	
529	FORD	CROWN VIC	2011	BLACK / WHITE	MARKED	MG87035 MG PLATES	2FABP7BV1BX100382	5TH PRECINCT / PATROL	
533	FORD	CROWN VIC	2011	BLACK / WHITE	MARKED	MG87049 MG PLATES	2FABP7BV6BX100359	5TH PRECINCT / PATROL	
538	FORD	CROWN VIC	2009	BLACK / WHITE	MARKED	MG83826 MG PLATES	2FAHP71V09X123187	5TH PRECINCT / PATROL	
539	FORD	UTILITY INTERCEPTO	2016	BLACK / WHITE	MARKED	18282MG MG PLATES	1FM5K8AR6GGD16771	5TH PRECINCT / PATROL	

ASSIGNED TO :

ASSIGNMENT

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PLATE #

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COLOR

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MAKE #

UNIT #

UNIT #	MAKE #	MODEL	YEAR	COLOR	CONFIG.	PLATE #	VIN #	ASSIGNMENT	ASSIGNED TO :
602	FORD	UTILITY INTERCEPTO	2019	BLACK / WHITE	MARKED	31549MG MG PLATES	1FM5K8AR1KGA32196	6TH PRECINCT / SUPERVISOR	
603	FORD	UTILITY INTERCEPTO	2020	BLACK / WHITE	MARKED	36260MG MG PLATES	1FM5K8AW8LGC36873	6TH PRECINCT / SUPERVISOR	
611	FORD	UTILITY INTERCEPTO	2019	BLACK / WHITE	MARKED	34864MG MG PLATES	1FM5K8AR1KGA32201	6TH PRECINCT / PATROL	
612	FORD	UTILITY INTERCEPTO	2019	BLACK / WHITE	MARKED	34851MG MG PLATES	1FM5K8AR0KGA17107	6TH PRECINCT / PATROL	
613	FORD	UTILITY INTERCEPTO	2019	BLACK / WHITE	MARKED	34852MG MG PLATES	1FM5K8AR6KGA63413	6TH PRECINCT / PATROL	
614	FORD	UTILITY INTERCEPTO	2019	BLACK / WHITE	MARKED	34853MG MG PLATES	1FM5K8AR4KGA63412	6TH PRECINCT / PATROL	
615	FORD	UTILITY INTERCEPTO	2019	BLACK / WHITE	MARKED	31548MG MG PLATES	1FM5K8AR3KGA32197	6TH PRECINCT / PATROL	
616	FORD	UTILITY INTERCEPTO	2021	BLACK / WHITE	MARKED	36333MG MG PLATES	1FM5K8AW9MNA22794	6TH PRECINCT / PATROL	
617	FORD	UTILITY INTERCEPTO	2021	BLACK / WHITE	MARKED	36332MG MG PLATES	1FM5K8AWXMNA22755	6TH PRECINCT / PATROL	
621	FORD	CROWN VIC	2006	BLACK / WHITE	MARKED	MG70348 MG PLATES	2FAFP71W16X106782	6TH PRECINCT / PATROL	
622	FORD	CROWN VIC	2009	BLACK / WHITE	MARKED	MG83824 MG PLATES	2FAHP71V39X124494	6TH PRECINCT / PATROL	
623	FORD	CROWN VIC	2011	BLACK / WHITE	MARKED	MG87055 MG PLATES	2FABP7BY3BX100366	6TH PRECINCT / PATROL	
625	FORD	CROWN VIC	2008	BLACK / WHITE	MARKED	MG76042 MG PLATES	2FAFP71V58X106486	6TH PRECINCT / PATROL	
627	FORD	CROWN VIC	2005	BLACK / WHITE	MARKED	MG66579 MG PLATES	2FAFP71W45X162617	6TH PRECINCT / PATROL	
628	FORD	CROWN VIC	2009	BLACK / WHITE	MARKED	MG86956 MG PLATES	2FAHP71V89X124541	6TH PRECINCT / PATROL	

ASSIGNED TO :

UNIT # MAKE # MODEL YEAR COLOR CONFIG. PLATE # VIN # ASSIGNMENT

629	FORD	CROWN VIC	2008	BLACK / WHITE	MARKED	25702MG MG PLATES	2FAFP71V28X106493	6TH PRECINCT / PATROL	
639	FORD	UTILITY INTERCEPTO	2019	BLACK / WHITE	MARKED	34861MG MG PLATES	1FM5K8AR5KGA53116	6TH PRECINCT / PATROL	
702	FORD	UTILITY INTERCEPTO	2019	BLACK / WHITE	MARKED	34850MG MG PLATES	1FM5K8AR2KGA17108	7TH PRECINCT / SUPERVISOR	
703	FORD	UTILITY INTERCEPTO	2020	BLACK / WHITE	MARKED	36264MG MG PLATES	1FM5K8AW9LGC36879	7TH PRECINCT / SUPERVISOR	
711	FORD	UTILITY INTERCEPTO	2019	BLACK / WHITE	MARKED	31547MG MG PLATES	1FM5K8AR5KGA32198	7TH PRECINCT / PATROL	
712	FORD	UTILITY INTERCEPTO	2021	BLACK / WHITE	MARKED	36338MG MG PLATES	1FM5K8AWXMNA22819	7TH PRECINCT / PATROL	
713	FORD	UTILITY INTERCEPTO	2019	BLACK / WHITE	MARKED	34863MG MG PLATES	1FM5K8AR7KGA32199	7TH PRECINCT / PATROL	
715	FORD	UTILITY INTERCEPTO	2021	BLACK / WHITE	MARKED	36344MG MG PLATES	1FM5K8AWXMNA22884	7TH PRECINCT / PATROL	
716	FORD	UTILITY INTERCEPTO	2014	BLACK / WHITE	MARKED	MG98222 MG PLATES	1FM5K8AR9EGA33682	7TH PRECINCT / PATROL	
721	FORD	CROWN VIC	2008	BLACK / WHITE	MARKED	MG76031 MG PLATES	2FAFP71V88X106501	7TH PRECINCT / PATROL	
722	FORD	CROWN VIC	2008	BLACK / WHITE	MARKED	MG82992 MG PLATES	2FAFP71V18X159363	7TH PRECINCT / PATROL	
724	FORD	CROWN VIC	2009	BLACK / WHITE	MARKED	MG83825 MG PLATES	2FAHP71V49X124505	7TH PRECINCT / PATROL	
725	FORD	CROWN VIC	2008	BLACK / WHITE	MARKED	MG76053 MG PLATES	2FAFP71V78X106506	7TH PRECINCT / PATROL	
739	FORD	UTILITY INTERCEPTO	2019	BLACK / WHITE	MARKED	34859MG MG PLATES	1FM5K8AR9KGA53118	7TH PRECINCT / PATROL	
800	CHEVY	TAHOE	2019	BLACK / WHITE	MARKED	34896MG MG PLATES	1GNSKDEC1KR293037	TRAFFIC DIVISION	

ASSIGNED TO :

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PLATE #

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COLOR

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MODEL

MAKE #

UNIT #

UNIT #	MAKE #	MODEL	YEAR	COLOR	CONFIG.	PLATE #	VIN #	ASSIGNMENT	ASSIGNED TO :
802	CHEVY	TAHOE	2019	BLACK / WHITE	MARKED	34893MG MG PLATES	1GNSKDECKXR295370	TRAFFIC DIVISION	
803	CHEVY	TAHOE	2019	BLACK / WHITE	MARKED	34894MG MG PLATES	1GNSKDEC7KR297271	TRAFFIC DIVISION	
810	CHEVY	TAHOE	2019	BLACK / WHITE	MARKED	34895MG MG PLATES	1GNSKDEC0KR296219	TRAFFIC DIVISION	
812	FORD	UTILITY INTERCEPTO	2016	BLACK / WHITE	MARKED	21700MG MG PLATES	1FM5K8AR4GGD30510	TRAFFIC DIVISION	
815	FORD	UTILITY INTERCEPTO	2019	BLACK / WHITE	MARKED	34857MG MG PLATES	1FM5K8AR7KGAS3120	TRAFFIC DIVISION / MOUNTED UNIT	
817	FORD	UTILITY INTERCEPTO	2020	BLACK / WHITE	MARKED	36256MG MG PLATES	1FM5K8AWXLGC36874	TRAFFIC DIVISION	
825	DODGE	CHARGER	2012	BLACK	UNMARK	E38AUD VIP PLATES	2C3CDXAT1CH172190	TRAFFIC DIVISION	
847	FORD	UTILITY INTERCEPTO	2016	BLACK / WHITE	MARKED	21705MG MG PLATES	1FM5K8ARXGGD30513	TRAFFIC DIVISION	
848	FORD	UTILITY INTERCEPTO	2019	BLACK / WHITE	MARKED	34856MG MG PLATES	1FM5K8AR9KGAS3121	TRAFFIC DIVISION / MOTORCYCLE UNIT	
849	FORD	UTILITY INTERCEPTO	2019	BLACK / WHITE	MARKED	34858MG MG PLATES	1FM5K8AR0KGAS3119	TRAFFIC DIVISION	
861	FORD	FUSION	2017	BLACK / WHITE	MARKED	18297MG MG PLATES	3FA6P0G79HR159223	TRAFFIC DIVISION	
862	FORD	FUSION	2017	BLACK / WHITE	MARKED	22195MG MG PLATES	3FA6P0G74HR159212	TRAFFIC DIVISION	
863	FORD	FUSION	2017	BLACK / WHITE	MARKED	22193MG MG PLATES	3FA6P0G7XHR159215	TRAFFIC DIVISION	
864	FORD	FUSION	2017	BLACK / WHITE	MARKED	22192MG MG PLATES	3FA6P0G70HR159224	TRAFFIC DIVISION	
865	FORD	FUSION	2017	BLACK / WHITE	MARKED	22194MG MG PLATES	3FA6P0G77HR159205	TRAFFIC DIVISION	

UNIT # MAKE # MODEL YEAR COLOR CONFIG. PLATE # VIN # ASSIGNMENT ASSIGNED TO :

908	CHEVY	TAHOE	2012	BLACK / WHITE	MARKED	MG91177 MG PLATES	1GNSK2EOXCR274210	COMMUNITY FOCUS UNIT / SUPERVISOR	
970	FORD	UTILITY INTERCEPTO	2020	BLACK / WHITE	MARKED	36262MG MG PLATES	1FM5K8AW1LGC36875	COMMUNITY FOCUS UNIT / SUPERVISOR	
971	FORD	CROWN VIC	2008	BLACK / WHITE	MARKED	MG77990 MG PLATES	2FAFP71V88X106496	COMMUNITY FOCUS UNIT / PATROL	
972	FORD	UTILITY INTERCEPTO	2014	BLACK / WHITE	MARKED	MG98228 MG PLATES	1FM5K8AR9EGA09401	COMMUNITY FOCUS UNIT / PATROL	
973	FORD	CROWN VIC	2011	BLACK / WHITE	MARKED	MG87069 MG PLATES	2FABP7BV9BX100372	GENERAL CRIMES DIVISION ( YOUTH AID SECTION )	
974	FORD	CROWN VIC	2011	BLACK / WHITE	MARKED	MG87065 MG PLATES	2FABP7BV7BX100371	COMMUNITY FOCUS UNIT / PATROL	
975	FORD	CROWN VIC	2009	BLACK / WHITE	MARKED	MG86969 MG PLATES	2FAHP71V09X124534	GENERAL CRIMES DIVISION (AUTO SQUAD )	

**Appendix I:  
NPD ICC Inspection List**

<b>NPD ICC Inspection</b>			
<b>4th Precinct</b>			
<b>Unit #</b>	<b>Verified ICC Installed</b>	<b>ICC Status</b>	<b>Notes</b>
169	Yes	Operational	Reassigned to the 4th
402	Yes	Operational	
403	Yes	Out for Service	
411	Yes	Operational	
412	Yes	Operational	
413	Yes	Non-Operational	Not on Provided List
414	Yes	Operational	
415	Yes	Out for Service	
416	Yes	Operational	
417	Yes	Operational	
418	Yes	Operational	
419	Yes	Operational	
421	Yes	Operational	
422	Yes	Non-Operational	Multiple Attempts for the system to initiate a recording
423	Yes	Out for Service	
424	Yes	Non-Operational	Would not Record
425	Yes	Out for Service	
426	Yes	Non-Operational	Multiple Attempts for the system to initiate a recording
429	Yes	Operational	
439	Yes	Operational	
448	Yes	Operational	
469	Yes	Non-Operational	Would not Record
<b>6th Precinct</b>			
<b>Unit #</b>	<b>Verified ICC Installed</b>	<b>ICC Operational</b>	<b>Notes</b>
602	Yes	Operational	
603	Yes	Non-Operational	Multiple Attempts for the system to initiate a recording
611	Yes	Operational	
612	Yes	Operational	
613	Yes	Operational	
614	Yes	Operational	
615	Yes	Out for Service	
616	Yes	Operational	
617	Yes	Operational	
621	Yes	Loaned	Assigned Out of Patrol

622	Yes	Operational	
623	Yes	Operational	
625	Yes	Operational	
627	Yes	Non-Operational	Multiple Attempts for the system to initiate a recording
628	Yes	Operational	
629	Yes	Out for Service	
639	Yes	Operational	
<b>7th Precinct</b>			
<b>Unit #</b>	<b>Verified ICC Installed</b>	<b>ICC Operational</b>	<b>Notes</b>
702	Yes	Out for Service	
703	Yes	Operational	
711	Yes	Operational	
712	Yes	Operational	
713	Yes	Operational	
715	Yes	Operational	
716	Yes	Operational	
721	Yes	Operational	
722	Yes	Out for Service	
724	Yes	Operational	
725	Yes	Operational	
739	Yes	Operational	

**Vehicle Present** - NPD Officer would power on vehicle, initiate light bar recording (position three on the light bar controller).

**Vehicle Deployed** - Verify ICC was created and uploaded from 7/28/22 shift and view in the Arbitrator System on 7/29/22.