

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

CONSENT DECREE

Independent Monitor - Twenty-Third Semiannual Report

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Independent Monitor
January 16, 2024

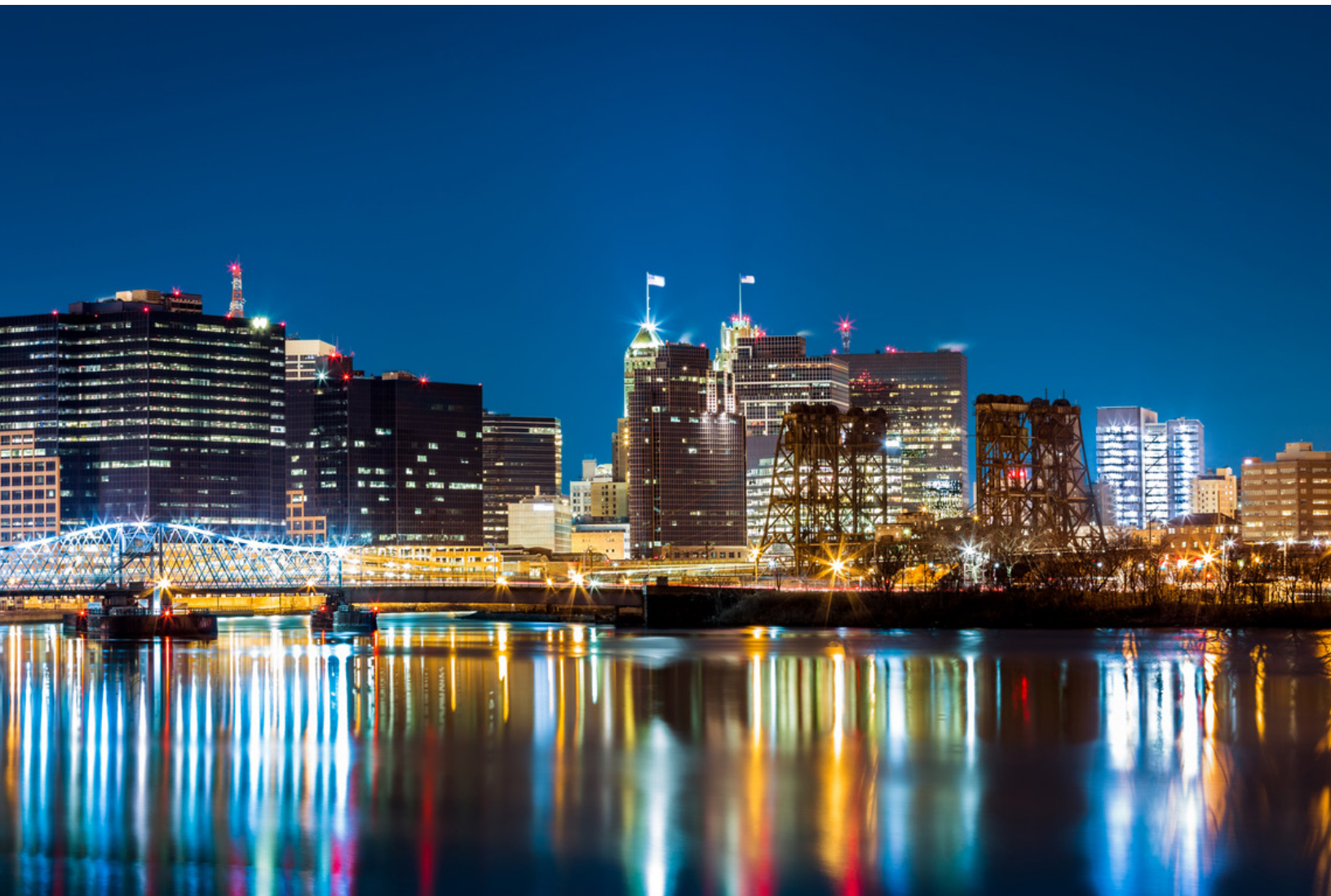


TABLE OF CONTENTS

	<u>Page</u>
I. EXECUTIVE SUMMARY (JANUARY 1, 2023 – JUNE 30, 2023)	1
II. DETAILED STATUS UPDATES.....	1
A. <i>First</i> Property and Evidence Management Audit	1
B. <i>Second</i> Stops Audit.....	6
C. Upcoming Audits	8
1. Second Property and Evidence Management Audit	8
2. First Supervision Audit.....	9
D. Outcome Assessments	10
III. APPENDICES	10
A. Compliance Chart	10
B. <i>First</i> Property Audit.....	10
C. <i>Second</i> Stops Audit.....	10

TWENTY-THIRD REPORT AND THIRD SEMI-ANNUAL REPORT
(January 1, 2023 to June 30, 2023)

I. EXECUTIVE SUMMARY (JANUARY 1, 2023 – JUNE 30, 2023)¹

This is the Twenty-Third Report and Third 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 January 1, 2023 to June 30, 2023.

In this Semi-Annual Report, the Monitoring Team discusses outcome assessments, the status of ongoing and upcoming compliance Audits and the results of the following Audits: (1) *First* Property and Evidence Management Audit; and (2) *Second* Stops Audit.

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 Period”). The Audit was conducted by:

- Linda Tartaglia, Associate Director of the Rutgers University Center on Policing,
- Sergeant Roger Nunez of the Los Angeles Police Department,
- Lieutenant 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

¹ Unless otherwise stated, the City’s and NPD’s progress with respect to Consent Decree tasks, as described in this Report, reflects developments as of June 30, 2023.

- Jonathan Norrell, Rutgers University Center on Policing.

The Monitoring Team's *First* Property and Evidence Management Audit 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's *First* Audit of NPD's compliance with Consent Decree requirements relating to Property and Evidence Management practices analyzed whether: (1) NPD's policies that govern the collection and handling of property and evidence contained the Consent Decree required provisions (as specifically stated in subparagraphs 110(a)-(h)) and (2) NPD personnel demonstrated routine adherence to NPD's own Property and Evidence management policies in their day-to-day operations, described here as "Overall Compliance."

On the first component of this Audit—NPD's Property and Evidence policies and procedures—the Monitoring Team previously approved NPD's General Order 18-23, *Property & Evidence Management, Section IV.A* and General Order 18-24, *Property & Evidence Division, Section V*. The Monitoring Team determined that these NPD General Orders contained each Property and Evidence policy requirement specified in the Consent Decree, including the requirements listed in subparagraphs 110(a)-(h).

For the second component of this Audit—whether NPD had demonstrated routine adherence to its Property & Evidence policies, thereby achieving “Overall Compliance” with the mandates of the Consent Decree—the Monitoring Team considered whether NPD officers followed both (1) the correct System-to-Shelf procedure as required by NPD policy,² and (2) the required accountability/property intake procedures in all instances where property or evidence was seized, described in this Audit as *Substantive Compliance*. The Monitoring Team also considered whether NPD officers complied with the reporting and documentation requirements contained in NPD’s policy, described in this Audit as *Documentation Compliance*.

If any officer’s actions with respect to an item was deficient, either substantively or with respect to documentation, that item was deemed “Non-Compliant.” If an officer’s actions with respect to an item was deemed non-compliant both substantively and for documentation reasons, the item was only assessed as substantively non-compliant. NPD achieves Overall Compliance only when it satisfies both Substantive and Documentation Compliance for 95% of the items in the sample reviewed by the Monitoring Team.

The Monitoring Team determined that only 8.72% of items reviewed were compliant *both* substantively and with respect to documentation. In other words, 13 out of 149 items reviewed by the Monitoring Team achieved Overall Compliance. The Monitoring Team determined that, in most cases, NPD correctly ensured that property and evidence was properly booked and stored in the Property Division. NPD nonetheless received a compliance score of 8.72% because, in most cases, NPD failed to comply with reporting and documentation requirements surrounding property and evidence.

² “System-to-Shelf” refers to the process of booking and subsequently storing property and evidence in the Property Division.

The Audit was further separated by *Substantive* and *Documentation* Compliance.

In terms of *Substantive* Compliance, the Audit revealed that NPD reached an almost perfect compliance score of 99.33% (148 of 149 items assessed were compliant) for NPD's System-to-Shelf procedure; meaning that, for almost every item reviewed by the Monitoring Team, NPD properly booked and stored the property and evidence in the Property Division. For the Accountability/Property Intake component of the Substantive Compliance score, NPD reached a score of 42.95% (64 of 149 items assessed were compliant). This component of the Audit involved assessing whether the NPD officer responsible for seizing property had followed NPD property intake procedures. The Monitoring Team concluded that NPD officers had done so only in 64 of 149 assessed cases, largely because responsible officers had submitted incomplete Property and Evidence Receipt Reports.

NPD's *Documentation* Compliance score was 65.77% (98 of 149 items assessed were compliant).

This table presents an overview of NPD’s compliance in the Monitoring Team’s *First* Audit of NPD’s Property & Evidence management practices.

Overview of First Property & Evidence Audit Results		
Audit Subject	Consent Decree Paragraph(s)	Compliance?
Property & Evidence Policies	Paragraphs 110(a)-(h)	Yes.
Overall Compliance <i>Whether NPD demonstrated overall compliance in its Property & Evidence Management practices (Substantive and Documentation)</i>	Paragraphs 105, 110, 111	No (8.72%).
Substantive Compliance <i>Whether the responsible NPD officer adhered to NPD policy specific to NPD’s System-to-Shelf procedures and Accountability/Property Intake procedures</i>	Paragraph 110	System to Shelf procedure: Yes (99.33%). Accountability/Property Intake procedure: No (42.95%).
Documentation Compliance <i>Whether NPD adhered to all necessary documentation and reporting requirements as required by policy, including periodic audits and correction of deficiencies</i>	Paragraph 105, 111	No (65.77%).

As NPD moves on from this *First* Audit, the Monitoring Team strongly recommends that NPD develop and implement strategies to educate its officers on best practices in documentation of all Property and Evidence Receipts. These measures include: (i) Roll Call refresher training, (ii) other methods of reinforcing procedures relevant to chain of custody for Property and Evidence, and (iii) issuing a Memorandum to remind all sworn employees how to properly complete and receive Supervisor approval for documentation.

B. *Second Stops Audit*

On August 29, 2022, pursuant to Consent Decree Paragraphs 173 and 180, the Monitoring Team provided NPD with notice that the Monitoring Team would conduct its *Second Audit* of NPD's practices regarding investigatory stops and detentions. The Audit was conducted by Linda Tartaglia, Rosalyn Parks, and Jonathan Norrell of the Rutgers University Center on Policing, and Subject Matter Experts Dan Gomez, Roger Nunez, and Staff Inspector Sekou Kinebrew (ret.) of the Philadelphia Police Department.

The Monitoring Team reviewed NPD's police activities and records for a two-month time period, from April 1, 2022 to May 31, 2022 (the "Audit Period").

For the purposes of this Audit, the Monitoring Team assessed whether NPD's personnel demonstrated routine adherence to NPD's own Stop policies in their day-to-day operations, described here as "Overall Compliance."

To assess NPD's Overall Compliance, the Monitoring Team considered two components: whether NPD officers conducting a Stop (a) had legal justification for the Stop, and whether the officer's attendant actions were within legal and policy-related parameters, described in this Audit as *Substantive Compliance*; and (b) complied with the reporting and documentation requirements contained in NPD's policy, described in this Audit as *Documentation Compliance*. If any Stop was deficient, either substantively or with respect to documentation, that Stop was deemed "Non-Compliant." The Monitoring Team utilized a 95% compliance standard for this Audit. NPD achieved "Operational Compliance" when it satisfied both Substantive and Documentation Compliance for 95% of the Stops in the sample reviewed by the Monitoring Team.

When separated by Substantive and Documentation Compliance, the Audit revealed that NPD attained a score of 100% for Substantive Compliance (all Stops assessed for

Substantive Compliance were determined to be compliant). NPD’s Documentation Compliance score was 95.36% (185 out of 194 Stops assessed for Documentation Compliance were determined to be compliant). Thus, when assessing for Operational Compliance (*i.e.*, satisfaction of both substantive and documentation requirements), the Monitoring Team found 95.36% of the Stops reviewed to be both substantively and documentation compliant. In other words, 185 out of 194 Stops reviewed by the Monitoring Team achieved Operational Compliance.

This table presents an overview of NPD’s compliance in the Monitoring Team’s Second Audit of Investigatory Stops and Detentions.

Overview of Second Stop Audit Results		
Audit Subject	Consent Decree Paragraph(s)	Compliance
Investigative Stops and Detention Policy and Related Policies	Paragraphs 25-28, 43, 51-62	Yes.
Substantive Compliance <i>Whether the responsible NPD officer(s) adhered to NPD policy by demonstrating that legal justification for the stop existed and that the stop was within legal and policy-related parameters.</i>	Paragraphs 25-28; 55-62	Yes. Of the 194 events reviewed in this sample, NPD was deemed substantively compliant in all 194 events. 100% compliance was achieved for events reviewed in this sample. The intended effect of this requirement has been achieved.
Documentation Compliance <i>Whether the responsible NPD officer(s) 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>	Paragraphs 25-28; 55-62	Yes. Of the 194 events reviewed in this sample, NPD was deemed compliant with respect to documentation in 185 events. 95.36% compliance was achieved for events reviewed in this sample. The intended effect of this requirement has been achieved.
Operational Compliance	Paragraphs 25-28;	Yes. Of the 194 events

Overview of Second Stop Audit Results		
Audit Subject	Consent Decree Paragraph(s)	Compliance
<i>Whether NPD demonstrated operational compliance in its Investigatory Stops and Detention practices (Substantive and Documentation).</i>	55-62	reviewed in this sample, NPD was deemed compliant both substantively and with respect to documentation in 185 events. 95.36% Operational Compliance was achieved for events reviewed in this sample.

NPD’s performance in this Audit was commendable. Nevertheless, the Monitoring Team made some observations to assist NPD in improving its operations in the future. For example, NPD officers would on occasion document the presence, number and/or physical characteristics (apparent age, race, and gender) of motor vehicle passengers. It should be noted that in each instance, Body-Worn Camera video confirmed that the passengers were not subject to investigation. However, as prescribed by NPD policy, that information must be entered in the corresponding fields of the Stop Report. Similarly, NPD officers would at times fail to record required information regarding stops, including failing to clearly identify the officer conducting the stop. The Monitoring Team has full confidence that NPD can correct these issues going forward.

C. Upcoming Audits

1. *Second Property and Evidence Management Audit*

On April 11, 2023, the Monitoring Team provided notice, pursuant to Consent Decree Paragraphs 173 and 180, that it would conduct its *Second Property and Evidence Management Audit*. This Audit is required by Paragraph X of the Consent Decree, which obligates NPD to “take comprehensive efforts to prevent theft of property by officers” and

requires NPD to “conduct and document periodic audits and inspections of the property room and immediately correct any deficiencies.”

The Audit was conducted by Linda Tartaglia, Rosalyn Parks, Kathryn Duffy, and Jonathan Norrell of the Rutgers University Center on Policing, and Subject Matter Experts Roger Nunez and Dan Gomez. It covered the period from May 1, 2022 to June 30, 2022. During the Audit, 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 will report the results of this Audit in its next Semi-Annual Report.

2. *First Supervision Audit*

The Monitoring Team provided notice on June 2, 2023 that it would conduct its *First Supervision of Members Audit*. The Audit is being conducted by Linda Tartaglia, Wayne Fisher, Rosalyn Parks, Kathryn Duffy, and Jonathan Norrell of the Rutgers University Center on Policing and Subject Matter Experts Daniel Gomez, Roger Nunez, Sekou Kinebrew, Asst. Chief Sandy Jo MacArthur (ret.) of the Los Angeles Police Department, Brandon del Pozo, Ph.D. of Brown University, and Emily Schwartz of the New Jersey Institute for Social Justice. The Audit

focuses on all paragraphs of the Consent Decree that pertain to supervisory responsibilities and have not previously been audited, specifically paragraphs 27(a), 32, 38, 39, 40, 41, 44, 45, 48, 49, 50, 83, 85, and 119.

This Audit is ongoing and will be addressed in a future report.

D. Outcome Assessments

Pursuant to Consent Decree Paragraph 174, which requires the Monitor to “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 is continuing to conduct outcome assessments. During the period covered by this report, the Monitoring Team began outcome assessments related to three areas: (i) stops, (ii) searches, and (iii) arrests. The assessments are ongoing, and the results will be addressed in a future Semi-Annual Report.

III. APPENDICES

A. Compliance Chart

B. *First Property Audit*

C. *Second Stops Audit*

**Consent Decree Compliance and Implementation
(March 30, 2016 to June 30, 2023)**

Table of Contents

	Page
I. Definitions	1
II. General Officer Training	1
III. Community Engagement and Civilian Oversight (including Community Policing)	2
IV. Stops, Searches, and Arrests.....	5
V. Bias-Free Policing	8
VI. Use of Force	9
VII. In-Car and Body-Worn Cameras	15
VIII. Theft (including Property and Evidence Management).....	16
IX. Internal Affairs: Complaint Intake and Investigation.....	19
X. Compliance Reviews and Integrity Audits	26
XI. Discipline.....	27
XII. Data Systems Improvement	28
XIII. Transparency and Oversight	30
XIV. Consent Decree Implementation and Enforcement.....	31

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 ¹	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) ²	Compliant	See Sixteenth Quarterly Report, Appendix C.

¹ 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.

² 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)

Achievement	Consent Decree Paragraph	Consent Decree Deadline for Achievement	Status	Discussion
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.
Civilian Oversight (¶ 13)				
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).
Community Engagement Measures and Training (¶¶ 14-21)				
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

Achievement	Consent Decree Paragraph	Consent Decree Deadline for Achievement	Status	Discussion
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

Achievement	Consent Decree Paragraph	Consent Decree Deadline for Achievement	Status	Discussion
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

Achievement	Consent Decree Paragraph	Consent Decree Deadline for Achievement	Status	Discussion
Investigatory Stops and Detentions (¶¶ 25-28)				
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 Twenty-Third Semi-Annual Report, Appendix C.
Searches (¶¶ 29-34)				
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 Twenty-Second Semi-Annual Report, Appendix B.
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 Twenty-Second Semi-Annual Report, Appendix B.

Stops, Searches, and Arrests Continued

Achievement	Consent Decree Paragraph	Consent Decree Deadline for Achievement	Status	Discussion
Arrests (¶¶ 35-42)				
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.
Stop, Search, and Arrest Training (¶¶ 43-50)				
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 Semi-Annual Report, Appendix B, D.
Stop, Search, and Arrest Data Collection and Review (¶¶ 51-54)				
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

Achievement	Consent Decree Paragraph	Consent Decree Deadline for Achievement	Status	Discussion
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	Administrative Compliance	See Twenty-Third Semi-Annual Report, Appendix C.
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)	Administrative Compliance	See Twenty-Second Semi-Annual Report, Appendix B.
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.
First Amendment Right to Observe, Object to, and Record Officer Conduct (¶¶ 55-62)				
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.

V. Bias-Free Policing

Achievement	Consent Decree Paragraph	Consent Decree Deadline for Achievement	Status	Discussion
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

Achievement	Consent Decree Paragraph	Consent Decree Deadline for Achievement	Status	Discussion
Use of Force Policy (¶¶ 66-70)				
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 Twenty-Second Semi-Annual 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.
Use of Firearms (¶¶71-74)				
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 Twenty-Second Semi-Annual 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

Achievement	Consent Decree Paragraph	Consent Decree Deadline for Achievement	Status	Discussion
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 Twenty-Second Semi-Annual 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 Twenty-Second Semi-Annual 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 Twenty-Second Semi-Annual 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 Twenty-Second Semi-Annual Report, Appendix C.
Use of Force Reporting and Investigation (¶¶ 75-85)				
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 Twenty-Second Semi-Annual Report, Appendix C.
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 Twenty-Second Semi-Annual Report, Appendix C.

Use of Force Continued

Achievement	Consent Decree Paragraph	Consent Decree Deadline for Achievement	Status	Discussion
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 Twenty-Second Semi-Annual 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 Twenty-Second Semi-Annual 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 Twenty-Second Semi-Annual 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 Twenty-Second Semi-Annual Report, Appendix C.
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 Twenty-Second Semi-Annual 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 Twenty-Second Semi-Annual Report, Appendix C.

Use of Force Continued

Achievement	Consent Decree Paragraph	Consent Decree Deadline for Achievement	Status	Discussion
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 Twenty-Second Semi-Annual 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 Twenty-Second Semi-Annual 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 Twenty-Second Semi-Annual Report, Appendix C.
Use of Force Review (¶¶ 86-89)				
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 Twenty-Second Semi-Annual Report, Appendix C.

Use of Force Continued

Achievement	Consent Decree Paragraph	Consent Decree Deadline for Achievement	Status	Discussion
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 Twenty-Second Semi-Annual 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 Twenty-Second Semi-Annual Report, Appendix C.
Reporting and Investigation of Serious Force Incidents (¶¶ 90-94)				
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 Twenty-Second Semi-Annual Report, Appendix C.
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 Twenty-Second Semi-Annual Report, Appendix C.

Use of Force Continued

Achievement	Consent Decree Paragraph	Consent Decree Deadline for Achievement	Status	Discussion
Use of Force Review Board (¶¶ 95-102)				
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 ³	See Twenty-Second Semi-Annual 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 Twenty-Second Semi-Annual Report, Appendix C.
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 Twenty-Second Semi-Annual 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.

³ 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.

VII. In-Car and Body-Worn Cameras

Achievement	Consent Decree Paragraph	Consent Decree Deadline for Achievement	Status	Discussion
<p>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.</p>	<p>Section IX, ¶¶ 103-104</p>	<p>Within two years of the Effective Date (March 30, 2018)</p>	<p>Administrative Compliance</p>	<p>See Twenty-Second Semi-Annual Report, Appendix E.</p>
<p>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.</p>	<p>¶ 11</p>	<p>Within 60 days after approval of policy</p>	<p>Administrative Compliance</p>	<p>See Sixteenth Quarterly Report, Appendix C.</p>
<p>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.</p>	<p>¶ 103</p>	<p>Within two years of the Effective Date (March 30, 2018)</p>	<p>Administrative Compliance</p>	<p>See Twenty-Second Semi-Annual Report, Appendix E.</p>

VIII. Theft (including Property and Evidence Management)

Achievement	Consent Decree Paragraph	Consent Decree Deadline for Achievement	Status	Discussion
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)	Non-Compliance	See Twenty-Third Semi-Annual Report, Appendix B.
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

Achievement	Consent Decree Paragraph	Consent Decree Deadline for Achievement	Status	Discussion
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)	Administrative Compliance	See Twenty-Third Semi-Annual Report, Appendix B.
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

Achievement	Consent Decree Paragraph	Consent Decree Deadline for Achievement	Status	Discussion
NPD will conduct and document periodic audits and inspections of the property room and immediately correct any deficiencies.	¶ 111	Ongoing	Non-Compliance	See Twenty-Third Semi-Annual Report, Appendix B.

IX. Internal Affairs: Complaint Intake and Investigation

Achievement	Consent Decree Paragraph	Consent Decree Deadline for Achievement	Status	Discussion
Complaint Process (¶¶ 112-120)				
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

Achievement	Consent Decree Paragraph	Consent Decree Deadline for Achievement	Status	Discussion
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

Achievement	Consent Decree Paragraph	Consent Decree Deadline for Achievement	Status	Discussion
<p>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.</p>	¶ 119	Within two years of the Effective Date (March 30, 2018)	Preliminary Compliance	See Ninth Quarterly Report, Appendix D.
<p>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.</p>	¶ 120	Ongoing	Not Assessed	The Monitor will assess this requirement during compliance audits.
<p>Complaint Classification and Assignment of Investigative Responsibility (¶¶ 121-125)</p>				
<p>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.</p>	¶ 121	Within two years of the Effective Date (March 30, 2018)	Preliminary Compliance	See Fifth Quarterly Report, Section III(A)(5).
<p>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.</p>	¶ 11	Within 60 days after approval of protocol	Non-Compliance	
<p>NPD’s OPS will investigate all allegations of Serious Misconduct as defined in the Consent Decree.</p>	¶ 122	Ongoing	Not Assessed	The Monitor will assess this requirement during compliance audits.

Internal Affairs: Complaint Intake and Investigation Continued

Achievement	Consent Decree Paragraph	Consent Decree Deadline for Achievement	Status	Discussion
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).
Misconduct Complaint Investigation (¶¶ 126-136)				
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

Achievement	Consent Decree Paragraph	Consent Decree Deadline for Achievement	Status	Discussion
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	
Parallel Administrative and Criminal Investigations of Officer Misconduct (¶¶ 137-140)				
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

Achievement	Consent Decree Paragraph	Consent Decree Deadline for Achievement	Status	Discussion
Review and Analysis of Investigations (¶¶ 141-143)				
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	
Staffing and Training Requirements (¶¶ 144-149)				
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

Achievement	Consent Decree Paragraph	Consent Decree Deadline for Achievement	Status	Discussion
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

Achievement	Consent Decree Paragraph	Consent Decree Deadline for Achievement	Status	Discussion
<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>	<p>¶¶ 150, 151</p>	<p>Within two years of the Effective Date (March 30, 2018)</p>	<p>Preliminary Compliance</p>	<p>NPD has begun to conduct some integrity audits (e.g., body-worn cameras, and stops). See Seventh Quarterly Report, Section II(D)(2).</p>

XI. Discipline

Achievement	Consent Decree Paragraph	Consent Decree Deadline for Achievement	Status	Discussion
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

Achievement	Consent Decree Paragraph	Consent Decree Deadline for Achievement	Status	Discussion
Early Warning System (¶¶ 156-161)				
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.
Records Management System (“RMS”) (¶¶ 162-163)				
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

Achievement	Consent Decree Paragraph	Consent Decree Deadline for Achievement	Status	Discussion
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

Achievement	Consent Decree Paragraph	Consent Decree Deadline for Achievement	Status	Discussion
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

Achievement	Consent Decree Paragraph	Consent Decree Deadline for Achievement	Status	Discussion
Consent Decree Implementation Unit				
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	

**Report of the Independent Monitor's First Audit of the City of Newark and Newark
Police Division's Property and Evidence Management Practices**

TABLE OF CONTENTS

	Page
I. Reviewers	1
II. Introduction	1
III. Review Period	2
IV. Executive Summary	2
V. Analysis	4
A. NPD’s Property & Evidence Policies.....	4
B. Overall Compliance: Substantive and Documentation	4
1. Overall Compliance.....	6
2. Substantive Compliance	7
a. System-to-Shelf Procedure.....	7
b. Accountability/Property Intake	7
3. Documentation Compliance	8
VI. Observations and Recommendations	8

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 Property and Evidence Management Practices.

I. Reviewers

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

Linda Tartaglia, Director, Rutgers University Center on Policing
Dan Gomez, Lieutenant, Los Angeles Police Department (ret.)
Roger Nunez, Sergeant, Los Angeles Police Department
Roselyn 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 9, 2021, that the Monitoring Team would begin its first audit of NPD’s compliance with certain provisions of the Consent Decree relating to property and evidence management practices, and specifically, Section X (Paragraphs 105, 110 and 111).¹ See **Appendix A** (July 9, 2021 notice letter).

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

- Ensure that NPD officers (i) complete the required Incident Report in all instances where property or evidence is seized, (ii) document a complete and accurate inventory of the property or evidence seized, and (iii) submit the required report before the end of her or his shift (Paragraph 105).
- Maintain policies and procedures for the intake, storage, and release of property according to the requirements in Consent Decree subparagraphs 110(a)-(b) (Paragraph 110).
- Conduct periodic audits and inspections of the property room and immediately correct any deficiencies (Paragraph 111).

¹ The Monitoring Team will not assess Consent Decree Paragraphs 106-109 during this audit. Those Consent Decree Paragraphs will be included in a separate compliance review of NPD’s Integrity Audits and/or Internal Affairs Audits.

III. Review Period

In this audit, the Monitoring Team reviewed NPD’s property and evidence management practices for a two-month period, specifically from May 1, 2021 up to and including June 30, 2021 (the “Audit Period”).

On July 9, 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 Property and Evidence Management practices 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.*

IV. Executive Summary

The Monitoring Team’s *first* audit of NPD’s compliance with Consent Decree requirements relating to Property and Evidence Management practices analyzed whether: (1) NPD’s policies that govern the collection and handling of property and evidence contained the Consent Decree required provisions (as specifically stated in subparagraphs 110(a)-(h)) and (2) NPD personnel demonstrated routine adherence to NPD’s own Property and Evidence management policies in their day-to-day operations, described here as “Overall Compliance.”

On the first component of this audit—NPD’s Property and Evidence policies and procedures—the Monitoring Team previously approved NPD’s General Order 18-23, *Property & Evidence Management, Section IV.A* (see **Appendix B**) and General Order 18-24, *Property & Evidence Division, Section V* (see **Appendix C**). The Monitoring Team determined that these NPD General Orders contained each Property and Evidence policy requirement specified in the Consent Decree, including the requirements listed in subparagraphs 110(a)-(h).

For the second component of this audit—whether NPD had demonstrated routine adherence to its Property & Evidence policies, thereby achieving “Overall Compliance” with the mandates of the Consent Decree—the Monitoring Team considered whether NPD officers followed both (1) the correct system to shelf procedure as required by NPD policy,² and (2) the required accountability/property intake procedures in all instances where property or evidence was seized, described in this audit as *Substantive Compliance*. The Monitoring Team also considered whether NPD officers complied with the reporting and documentation requirements contained in NPD’s policy, described in this audit as *Documentation Compliance*.

If any officer’s actions with respect to an item was deficient, either substantively or with respect to documentation, that item was deemed “Non-Compliant.” If an item was deemed non-compliant for both substantive and documentation reasons, the item was only marked non-compliant substantively. NPD achieves Overall Compliance only when it

² “System-to-Shelf” refers to the process of booking and subsequently storing property and evidence in the Property Division.

satisfies both substantive and documentation compliance for 95% of the items in the sample reviewed by the Monitoring Team.³

The Monitoring Team found 8.72% of items reviewed were compliant *both* substantively and with respect to documentation. In other words, 13 out of 149 items reviewed by the Monitoring Team achieved Overall Compliance.

When further separated by *substantive* and *documentation* compliance, in terms of *substantive* compliance, the audit revealed that NPD reached an almost perfect compliance score of 99.33% (148 of 149 items assessed were compliant) for NPD’s System-to-Shelf procedure. For the Accountability/Property Intake component of the substantive compliance score, NPD reached a score of 42.95% (64 of 149 items assessed were compliant).

NPD’s *documentation* compliance score was 65.77% (98 of 149 items assessed were compliant).

As NPD moves on from this first audit, the Monitoring Team strongly recommends that NPD develop and implement strategies to educate its officers on best practices in documentation of all Property and Evidence Receipts. These measures include: (i) Roll Call refresher training, (ii) other methods of reinforcing procedures relevant to chain of custody for Property and Evidence, and (iii) issuing a Memorandum to remind all sworn employees how to properly complete and receive supervisor approval for documentation.

This table presents an overview of NPD’s compliance in the Monitoring Team’s *First* Audit of NPD’s Property & Evidence management practices.

Overview of First Property & Evidence Audit Results		
Audit Subject	Consent Decree Paragraph(s)	Compliance?
Property & Evidence Policies	Paragraphs 110(a)-(h)	Yes.
Overall Compliance <i>Whether NPD demonstrated overall compliance in its Property & Evidence Management practices (Substantive and Documentation)</i>	Paragraphs 105, 110, 111	No (8.72%).
Substantive Compliance <i>Whether the responsible NPD officer adhered to NPD policy specific to NPD’s System-to-Shelf procedures and Accountability/Property Intake procedures</i>	Paragraph 110	System to Shelf procedure: Yes (99.33%). Accountability/Property Intake procedure: No (42.95%).
Documentation Compliance	Paragraph 105, 111	No (65.77%).

³ By separately assessing NPD’s *substantive* compliance and *documentation* compliance, the Monitoring Team intends to afford NPD the ability to more easily identify areas in which it may focus its resources to address deficiencies, if any, in its property and evidence management practices.

Overview of First Property & Evidence Audit Results		
Audit Subject	Consent Decree Paragraph(s)	Compliance?
<i>Whether NPD adhered to all necessary documentation and reporting requirements as required by policy, including periodic audits and correction of deficiencies</i>		

V. Analysis

A. NPD's Property & Evidence Policies

The Consent Decree requires NPD to implement policies directing officers to adhere to certain property and evidence management practices. Prior to this audit, the Monitoring Team reviewed and approved NPD's Property & Evidence management policies, specifically General Order 18-23, *Property & Evidence Management* (see **Appendix B**) and General Order 18-24, *Property & Evidence Division* (see **Appendix C**), which were originally put into effect on April 23, 2019.

Before approving these policies, the Monitoring Team conducted a formal review to determine whether the policies contained each Property requirement specified in the Consent Decree, including the requirements listed in subparagraphs 110(a)-(h). The Monitoring Team determined that the Consent Decree's policy requirements in this area were reflected in NPD's General Orders. The full list of these requirements can be found in **Appendix D**.

B. Overall Compliance: Substantive and Documentation

The Monitoring Team generated a random sample of 150 items from the Audit Period (May 1 through June 30, 2021) to analyze for this audit. This random sample of 150 items was drawn from a total population of 1,297 incident numbers entered into NPD's inventory management system for the Audit Period.⁴ The 1,297 incident numbers were associated with 2,292 Property and Evidence Receipts within the BEAST system during the Audit Period. One (1) item in the random sample was removed from the final audit sample. The final audit sample contained 149 items (see **Appendix E** for the complete list of items included in the audit sample).

The final audit sample yielded a total of 277 Property and Evidence Receipts that were associated with 398 total pieces of reported evidence. All 398 pieces of reported evidence were traced in NPD's records management system to determine whether they were booked into the Property & Evidence Division and accurately documented in CEMS/BEAST.

⁴ NPD's current inventory management system, *i.e.* the Computerized Evidence Management System (CEMS) and the Barcode Evidence Analysis Statistic Tracking (BEAST), were implemented by NPD in 2007 and are completely controlled by the Property & Evidence Division. The CEMS/BEAST System is a commercially licensed customized computer software program used to electronically track and monitor the status and location of property and evidence within the police department. The computer program provides complete chain-of-custody, release, and history records.

The Monitoring Team reviewed relevant property and evidence documentation for every item in the sample, including but not limited to Chain of Custody forms, BEAST Inventory and Property Receipts as well as other associated documents and materials. The Monitoring Team tracked the relevant property and evidence documentation and inspected the physical property to determine if it was correctly stored.⁵

An item was only compliant for purposes of determining *Overall Compliance* if the responsible officer was compliant both in terms of substance and documentation for that item. If the officer's actions were either substantively non-compliant, or non-compliant with respect to documentation, or both, then the item was non-compliant for purposes of determining *Overall Compliance*. If an item was deemed non-compliant for both substantive and documentation reasons, the item was only assessed as substantively non-compliant.

To assess *Substantive Compliance* for each item, the Monitoring Team evaluated whether the officer involved followed (1) NPD's System-to-Shelf procedures and (2) accountability/property intake procedures.

To determine whether NPD officers properly adhered to NPD's System-to-Shelf procedures, the Monitoring Team considered three objectives: (1) Chain of Custody for Property/Evidence; (2) Completeness of Records for Property/Evidence; and (3) Existence and Accuracy of Records for Property/Evidence.

For Objective 1, *Chain of Custody for Property/Evidence*, the Monitoring Team reviewed NPD property reports and its computerized systems to assess whether the evidence was properly stored in a manner that protects it from loss, contamination, or destruction.

For Objective 2, *Completeness of Records for Property/Evidence*, the Monitoring Team reviewed NPD property reports to determine whether or not the chain of custody for all items that entered the property room was correctly documented on the report. To test the completeness of those records, the Monitoring Team traced all 398 property/evidence items associated with the Item Numbers in the sample in NPD's Record Management System to ensure they were booked into the Property & Evidence Division and accurately documented in CEMS/BEAST.

For Objective 3, *Existence and Accuracy of Records for Property/Evidence*, the Monitoring Team used the CEMS/BEAST system to confirm the existence of the property/evidence items in the sample and to verify the accuracy of chain-of-custody records. The Monitoring Team used a System-to-Shelf test to trace the items from the CEMS/BEAST system to the physical shelf in the Property & Evidence Division where the item was being stored, as well as a Shelf-to-System test to verify that the items on the shelf were properly labeled and described correctly in CEMS/BEAST. The Monitoring Team was aided in this process by the relevant Chain of Custody Reports and Property/Evidence Receipts for each item in the sample.

⁵ The Monitoring Team did not insert themselves into the chain-of-custody. All property/evidence was viewed and inspected *via* sealed property/evidence container. Some items were clearly visible through clear plastic, while others were obscured by sealed containers. No forensic analysis property was opened due to potential hazard of exposure and to maintain the continuity of evidence within NPD.

To assess NPD’s adherence to its Accountability/Property Intake procedures, the Monitoring Team considered whether or not the responsible officer(s) followed the two-person rule and followed NPD procedure in recording property/evidence taken into NPD’s possession. Specifically, the Monitoring Team considered two objectives: (1) Safeguarding of Property/Evidence and (2) Internal Controls for Safeguarding Property/Evidence.

For Objective 1, *Safeguarding of Property/Evidence*, the Monitoring Team assessed whether NPD had in place internal controls restricting access to property rooms to ensure the integrity of the property room and that chain-of-custody procedures were not being jeopardized.

For Objective 2, *NPD’s Internal Controls for Safeguarding Property/Evidence*, the Monitoring Team assessed whether all property and evidence stored by the Division was maintained in a designated secure area and that access to the property and evidence location was restricted to personnel assigned to that division to ensure accountability. The Audit Team visited all operating temporary storage and property rooms to observe whether entry/access was restricted to authorized officers and their supervisors.⁶

A separate substantive compliance score was issued for each component (*i.e.*, a compliance score for system to shelf was assessed, and a compliance score for accountability/property intake procedure also was assessed). These separate compliance scores allow NPD to more easily identify areas in which it may focus its resources to address deficiencies, if any, in its property and evidence management practices.

To assess Documentation Compliance for each item, the Monitoring Team evaluated whether the officer responsible had accurately and completely fulfilled all written reporting and documentation requirements for that item and followed NPD policy in doing so.

1. Overall Compliance

NPD achieved an Overall Compliance score of 8.72%. In total, 13 of the 149 items reviewed by the Monitoring Team were compliant both substantively and in terms of documentation. Accordingly, 136 items were found to be non-compliant (91.28%).

Items Reviewed	Overall Compliance Assessed	Compliance Score
149	13	8.72%

Below is a summary of the 136 items that were found to be substantively non-compliant, documentation non-compliant, or both substantively and documentation non-compliant.

Summary of Non-Compliant Items		
Compliance	Number of Non-Compliant Items	Percentage
Non-Compliant (Substantive)	18	13.24%
Non-Compliant (Documentation)	51	37.50%
Non-Compliant (Both Substantive	67	49.26%

⁶ During the NPD’s testing of currency, jewelry, and firearms, members of the Monitoring Team were accompanied by a property officer to the lockers, cages, safes, and cabinets where items were stored.

Summary of Non-Compliant Items		
Compliance	Number of Non-Compliant Items	Percentage
and Documentation)		
Total	136	100%

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 the required System-to-Shelf procedures, and the required Accountability/Property Intake procedure. Each component was assessed a separate substantive compliance score. If the Monitoring Team determined that the responsible officer had not followed correct procedure, the item was assessed to be substantively non-compliant. A breakdown of substantive compliance scores follows.

a. System-to-Shelf Procedure

In total, 148 of the 149 items reviewed were substantively compliant in terms of System-to-Shelf Procedure.

Items Reviewed	Substantively Compliant (System to Shelf Procedure)	Percentage Compliant
149	148	99.33%

Of 149 items reviewed, one (1) item was found to be substantively non-compliant in terms of NPD’s System-to-Shelf procedure. The one (1) item found to be substantively non-compliant for this component—Item Number P21206929—was non-compliant because the item was not entered into CEMS/BEAST.⁷

b. Accountability/Property Intake

In total, 64 of the 149 items reviewed were substantively compliant in terms of Accountability/Property Intake procedures.

Items Reviewed	Substantively Compliant (Accountability/Property Intake)	Percentage Compliant
149	64	42.95%

Of 149 items reviewed, 85 items were found to be substantively non-compliant in terms of Accountability/Property Intake procedures. Each of the 85 items were determined to be non-compliant due to incomplete Property and Evidence Receipt Reports submitted by NPD officers.

⁷ The item was not entered in CEMS/BEAST, yet a Property and Evidence Receipt was created and produced by the NPD team for the audit. NPD must follow-up and determine the circumstances surrounding creation of this Property and Evidence Receipt and correct any deficiencies that it identifies in NPD’s process.

The Monitoring Team observed that these 85 reports were missing entries in a variety of information fields. For a list of the items that were determined to be non-compliant with respect to Accountability/Property Intake procedures, see **Appendix F**.

3. *Documentation Compliance*

The Monitoring Team assessed whether the responsible officer in each item reviewed in the sample had fulfilled the necessary reporting/documentation requirements according to NPD policy, General Order 18-24.

NPD achieved a Documentation Compliance score of 65.77%. In 98 of the 149 items reviewed, the responsible officer completed documentation/reporting requirements according to NPD policy.

Items Reviewed	Documentation Compliant	Compliance Score
149	98	65.77%

Of the 149 items reviewed by the Monitoring Team, 51 (34.23%) were non-compliant due to documentation/reporting related deficiencies. Each of the 51 items determined by the Monitoring Team to be non-compliant were non-compliant due to incomplete Property and Evidence Receipt Reports submitted by NPD officers. For a list of the items that were determined to be non-compliant with respect to Documentation, see **Appendix G**.

VI. Observations and Recommendations

The Monitoring Team made four (4) principal observations and four (4) recommendations regarding the Property and Evidence audit.

Observations

First, the Monitoring Team commends NPD for Substantive Compliance in System-to-Shelf Procedure, for which it achieved a score of 99.33%. This score translates to one item of evidence that was not located out of 398 pieces of evidence assessed. Additionally, it should be noted that *all* Firearms / Narcotics / Currency / and Prisoner Property were located during this audit.

Second, NPD personnel were substantively Non-Compliant and achieved a compliance score of 42.95%. Many of the non-compliant Item Numbers involved one of two circumstances: (1) officers failing to properly document approvals that confirm officers' adherence to NPD's policy requiring two people to sign off when processing property and (2) officers not entering data into the inventory management system within 24 hours.

Third, NPD did not demonstrate significant compliance in its documentation practices, scoring only 65.77%.

Fourth, during the physical audit of NPD's facilities, including its security and safeguards, the Monitoring Team observed that NPD's several requests to city officials to complete building repairs were not completed in a timely manner. This delay caused NPD employees to adjust procedures within the Property and Evidence Division storage facility.

Recommendations

As NPD moves on from this first audit, the Monitoring Team strongly recommends that NPD develop and implement strategies to educate its officers on best practices in documentation of all Property and Evidence Receipts. NPD should take the following actions:

1. Issue a Memorandum to all sworn employees that reminds them how to properly complete an Evidence and Property Receipt Report and all associated documentation. This should include an instruction for supervisors' approval of all reports before submission into the CEMS system.
2. Create a brief Roll Call training reinforcing the procedures relevant to properly maintaining the chain of custody for Property and Evidence and adhering to policies and procedures.
3. NPD should study and consider modifying the policy and practice as well as identifying staffing needs to make the Property and Evidence Division the primary entity responsible for verifying property being stored/released and being the custodian of the CEMS/BEAST system. The responsibility for entering property into NPD's evidence management system has been delegated to Desk/Section Supervisors. In practice, it appears that line-level officers have also been trained to perform this function. This decentralization of the process introduces a higher level of risk into the process as staff members from NPD's Property and Evidence Division become caretakers of the property rather than managers.
4. With respect to the physical audit of the Facility and Safeguards, the Monitoring Team recommends NPD create an escalation protocol to escalate repairs to the appropriate City Managers/Department for a more timely resolution of repairs.

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: December 30, 2021

Peter C. Harvey

Independent Monitor

Appendix A

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July 9, 2021

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Re: **First Property Audit: 45-day Notice**

Dear City of Newark and the Newark Police Division:

Pursuant to Consent Decree Paragraphs 173 and 180, this letter provides 45-days' notice that the Monitoring Team will conduct its first audit to determine whether the Newark Police Division ("NPD") has complied with Section X (Paragraphs 105, 110, and 111) of the Consent Decree, which concerns NPD's property and evidence management practices. Section X of the Consent Decree provides, among other things, that NPD "shall take comprehensive efforts to prevent theft of property by officers" and "will conduct and document periodic audits and inspections of the property room and immediately correct any deficiencies."¹

In this audit, the Monitoring Team will review NPD records and information for a two-month period, specifically, from May 1, 2021 up to and including June 30, 2021 (the "Audit Period"). This audit of NPD's Property Division will be conducted by the following

¹ The Monitoring Team will not assess Consent Decree Paragraphs 106-109 during this audit. Those Consent Decree Paragraphs will be included in a separate compliance review of NPD's Integrity Audits and/or Internal Affairs Audits.

July 9, 2021

Page 2

Monitoring Team Subject Matter Experts: Linda Tartaglia, 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, and Jonathan Norrell, Rutgers University Center on Policing.

This audit will require **in-person** activities by members of the Monitoring Team. Members of the Monitoring Team conducting on-site activities will observe CDC guidelines while conducting this audit.

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

Consent Decree Paragraph 105

Consent Decree Paragraph 105 requires that “[i]n all instances where property or evidence is seized, the responsible [NPD] 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.”

To assess compliance with Consent Decree Paragraph 105, the Monitoring Team will review a sample of instances during the audit period wherein NPD seized property or evidence to determine if the responsible officer has completed and submitted documentation consistent with NPD’s applicable General Orders. Specifically, the Monitoring Team will assess NPD’s adherence to General Order 18-23, *Property & Evidence Management*, Section IV.A, considering the following objectives:

1. Evaluation of Chain of Custody for Property/Evidence
 - 1(a). Evaluation of Completeness of Records for Property/Evidence
 - 1(b). Evaluation of the Existence and Accuracy of Records for Property/Evidence.

NPD will achieve compliance if officers are found to have performed their duties according to NPD policy at least 95% of the time among the sample reviewed by the Monitoring Team.

Consent Decree Paragraph 110

Consent Decree Paragraph 110 requires NPD to maintain policies and procedures for the intake, storage, and release of property. Those policies must incorporate the requirements in subparagraphs 110(a)-(h).

To assess compliance with Consent Decree Paragraph 110, the Monitoring

July 9, 2021

Page 3

Team will determine if NPD's Property policies, namely General Order 18-23, *Property & Evidence Management* and General Order 18-24, *Property & Evidence Division*, contain each Property requirement specified in the Consent Decree, including the requirements listed in subparagraphs 110(a)-(h).

NPD will achieve compliance if all the requirements listed in Paragraph 110 are incorporated into General Order 18-23, *Property & Evidence Management* or General Order 18-24, *Property & Evidence Division*.

Consent Decree Paragraph 111

Consent Decree Paragraph 111 requires NPD to "conduct and document periodic audits and inspections of the property room and immediately correct any deficiencies."

To assess compliance with Paragraph 111, the Monitoring Team will review documentation to determine if NPD Property Room leadership is conducting and sufficiently documenting periodic audits and inspections of the property room consistent with the requirements of General Order 18-24, *Property & Evidence Division*, and immediately correcting any deficiencies that it finds. Specifically, the Monitoring Team will review NPD's adherence to Section V of General Order 18-24 and NPD's Property & Evidence Manual. The Monitoring Team will consider the following objectives:

2. Evaluation of Audits and Inspections of The Property Rooms

2(a). Evaluation of Whether Command Officer is conducting and submitting a Property & Evidence Monthly Report (Administrative Submission Report – DP1: 10001 06/2016)

2(b). Evaluation of Whether the Property & Evidence Monthly Report is accurate and correcting deficiencies. Compliance achieved upon physical inspection of facilities by Monitoring Team

NPD will achieve compliance if the Monitoring Team determines that NPD is conducting and sufficiently documenting its periodic audits and inspections of the property room consistent with the relevant objectives.

Required Data

Within 14-days of receipt of this letter, NPD shall produce from its Computer Aided Dispatch ("CAD") and Bar-Coded Evidence Analysis Statistical Tracking ("BEAST") systems a current list of all property items received, found, or otherwise taken in by NPD during the Audit Period, as well as information sufficient to show the total number of those items. Two weeks after receiving this information, the Monitoring Team will provide NPD with the event numbers related to the sample of property items that it seeks to review. On the

July 9, 2021

Page 4

day(s) in which the Monitoring Team conducts the audit, NPD will provide the Monitoring Team with all property management documentation associated with the selected event numbers. The Monitoring Team also will assess whether NPD is adhering to its Property and Evidence Management and Property and Evidence Division policies (General Orders 18-23 and 18-24).

Also, within 45-days of receipt of this letter, NPD shall provide the following information, documents, and access to the Monitoring Team:

1. A current list of all personnel assigned to or with access to the Property and Evidence Division facilities during the Audit Period.
2. All training records for NPD's BEAST system.
3. Access to all security camera footage in the Property Division and Municipal Arrest Processing Section ("MAPS") for this Audit Period.
4. If requested by the Monitoring Team, all property items held by NPD during the Audit Period. If the Monitoring Team requests any property items, NPD shall make the item(s) available to the Monitoring Team for viewing at the Property and Evidence Division office. The Monitoring Team's review of any items will be conducted under NPD supervision and all items reviewed will be appropriately documented by NPD in a chain of custody log. If an item is unavailable at the time of the request, NPD shall provide documentation identifying the current location and/or date of destruction of the item.
5. Access to NPD's BEAST system and all areas of Property and Evidence Division.

Further, the Monitoring Team requests that NPD retain all Body-Worn Camera, In-Car Camera and security video footage from the Property Division and Municipal Arrest Processing Section recorded during the Audit Period until the Monitoring Team has published the report of its findings from this audit. Put another way, no BWC, ICC or security footage from the Audit Period should be deleted or erased until the Monitoring Team has informed NPD that the audit has concluded.

Sincerely,

/s/ Peter C. Harvey

Peter C. Harvey

July 9, 2021

Page 5

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Appendix B



NEWARK POLICE DIVISION GENERAL ORDER



SUBJECT:
PROPERTY & EVIDENCE MANAGEMENT

GENERAL ORDER NO.
18-23

SUPERSEDES:
G.O. 64-2, 97-03 & 00-02

DATED:
April 12, 2019

RELATED POLICIES:
Property & Evidence Division (G.O. 18-24)
Municipal Arrest Processing Section (G.O. 16-03)
Crime Scene Evidence (G.O. 99-05)

This Order consists of the following numbered sections:

- I. PURPOSE**
- II. POLICY**
- III. DEFINITION OF TERMS**
- IV. EVIDENCE & FOUND PROPERTY**
- V. PRISONER PERSONAL PROPERTY**
- VI. CRIME SCENE EVIDENCE**
- VII. PROPERTY & EVIDENCE DIVISION RESPONSIBILITIES**
- VIII. EFFECT OF THIS ORDER**



NEWARK POLICE DIVISION GENERAL ORDER



I. PURPOSE

The purpose of this policy is to establish a uniform property and evidence management system, which standardizes procedural guidelines and responsibilities to ensure safety, accountability, and uncompromised evidentiary integrity.

II. POLICY

It shall be the responsibility of every member of the Newark Police Division to promptly secure, document, and safeguard all evidence and property coming into their possession, ensuring that the chain of custody is always meticulously maintained and documented, in accordance with this General Order and all additional referenced material.

III. DEFINITION OF TERMS

- A. **Barcode Evidence Analysis Statistics Tracking (BEAST)** - the current commercial product that the Police Division uses for Computerized Evidence Management System (CEMS).
- B. **Chain of Custody** – The chronological, geographical, and personnel tracking of any property or evidence item impounded or seized by the Division, from its seizure to final disposition.
- C. **Computerized Evidence Management System (CEMS)** – A computer-based program used to aid in-taking, tracking, storing and disposing property and evidence. Any command equipped with such a system need not use the Property Journal unless the computer system goes down.

NOTE: A temporary evidence/property ledger shall be maintained at the Property & Evidence Division to document evidence and property intake when the CEMS is out of service.
- D. **Crime Scene Unit** – The unit within the Police Division charged with collecting and preserving evidence at a crime scene. (*G.O. 99-5*)
- E. **Evidence** – Any material object that tends to logically prove or disprove a fact at issue in a judicial case or controversy; any material object that is admissible as testimony in a court of law; any material object that might have the slightest bearing on the guilt or innocence of a criminal defendant.
- F. **Impound** – The process of seizing or taking legal custody of an item because of an infringement of a law or regulation.
- G. **Municipal Arrest Processing Section (MAPS)** – the central arrest processing section, located at 480 Clinton Avenue. (*G.O. 16-03*)
- H. **Prisoner's Personal Property Receipt (DP1:1755)** – The Division form used to document inventoried personal property of arrestees.
- I. **Property** – Tangible items seized by the Newark Police Division, which includes but is not limited to:



NEWARK POLICE DIVISION GENERAL ORDER



1. Items of value that have been recovered by Division personnel or turned into the Police Division;
2. Items of value whose ownership is unknown or in dispute; or
3. Personal belongings of prisoners or victims.

J. Property Bag - A sealable, tamper-resistant, clear plastic bag of varying sizes with a pre-assigned control number, serving as the primary receptacle in which all evidence or property will be stored.

K. Property Evidence Receipt (DP1:152) – Police Division form used to document property and/or evidence coming into police custody.

L. Property Journal – A property book maintained by all Commands that are not equipped with CEMS, used for recording all evidence and property not placed in CEMS. The property book shall contain the time, date, central complaint number, property bag control number or property description, location stored, supervisor's identification number and initials, date of release, and the identification number and initials of the Property & Evidence Detective removing the evidence from the Command.

M. Property & Evidence Division – The Division responsible for the maintenance of evidentiary integrity, from acquisition to final disposition. (*G.O. 18-24*)

N. Temporary Property/Evidence Storage Container – An authorized secured receptacle, locker or room, in a command or unit, dedicated to the temporary storage of recovered property/evidence. The temporary storage container should be in the view of a functioning video surveillance recording system. For this definition, “**secured**,” means lockable with limited access.

O. Two-Officer Rule – A two-officer submission and verification process for handling, documenting, and monitoring of property and evidence. A second officer, who can also be a supervisor, observes and verifies the items that are being submitted by the primary officer.

IV. EVIDENCE & FOUND PROPERTY

A. OFFICER/DETECTIVE RESPONSIBILITIES:

1. The responsible officer/detective shall secure the item in the field from theft, tampering, contamination or damage, and transport the item directly to their command.
2. The officer shall maintain control and safeguard all evidence/property until properly inventoried, documented, and stored within an authorized temporary storage location by the end of the officer's shift.
3. All property and evidence shall be handled and packaged in accordance with the New Jersey State Police, Office of Forensic Science's Evidence Field Manual – Appendix 1 of this Order.
4. The responsible officer/detective shall provide an explanation of the circumstances of the property/evidence coming into police custody via an Incident Report (DP1:802).



NEWARK POLICE DIVISION GENERAL ORDER



5. The officer/detective shall inventory the evidence/property using the two-officer rule and document the evidence/property on a Property Evidence Report (DP1:152). **ALL APPLICABLE** boxes on the report shall be completed in detail.
6. The Property Bag shall not be sealed until the Supervisor inspects and verifies the property/evidence is accurately documented on the report(s) at which time the bag shall be sealed and the report(s) approved in RMS.
7. In instances where **FOUND PROPERTY is being submitted, all attempts shall be made to identify and return the property to the rightful owner**. If these attempts are unsuccessful, recovery efforts should be documented in the Incident and Property reports.

B. SUPERVISOR RESPONSIBILITIES:

1. The Desk/Section Supervisor shall ensure that all pertinent information is contained on the Property Evidence Receipt (DP1:152) and on the Incident Report (DP1:802).
2. After inventory and verification, the bag shall be sealed and signed by the supervisor in the area denoting "Sealed By", adjacent to the officer's signature, followed by the supervisor's identification number.
3. The Desk/Section Supervisor shall record the following information in the Property Journal, unless the command has a CEMS/BEAST terminal as noted below:
 - a. The date and time;
 - b. Central complaint number;
 - c. Property bag control number;
 - d. Description of property;
 - e. Storage location; and
 - f. Supervisor's name and identification number.
4. If the command/unit is equipped with a functioning CEMS/BEAST, entry into the Property Journal will not be necessary, unless the system is not operational.
5. The property/evidence shall then be secured in the temporary property/evidence storage container of the command/unit prior to the end of the officer's shift.

C. MAPS PROPERTY OFFICER RESPONSIBILITIES:

1. The MAPS Property Officer shall obtain the key from the Municipal Holding Supervisor to the authorized evidence/property container, located in the Evidence Room (#121), and remove and transport the items to the MAPS Holding Property Room.
2. The property/evidence shall be entered into the CEMS/BEAST, and then secured in the Municipal Holding Property Room until the Property & Evidence Division Property Officer retrieves it.



NEWARK POLICE DIVISION GENERAL ORDER



3. The authorized evidence/property container located in the Evidence Room (#121) shall be checked at least twice a tour for property and evidence.

D. COMMANDING OFFICER RESPONSIBILITIES:

1. Ensure that their respective Commands are equipped with an authorized secure storage container that is within view of a recording video surveillance system.
2. Immediately notify the Office of Professional Standards of any unresolved property or evidence discrepancies that are found.
3. Ensure that a Property Journal is maintained, if their command is not equipped with CEMS/BEAST.
4. Ensure that the precinct detective squad supervisor conducts regular reviews of property reports submitted for all cases that require further investigation (e.g., stolen property, found property) and follow-ups, such as NCIC/SCIC checks, cross references with incident reports and that notifications are made to owners when property is identified.
5. Ensure that Supervisors are complying with this policy.

V. PRISONER PERSONAL PROPERTY

A. AT PRECINCTS AND/OR SPECIALIZED UNITS:

1. Arresting Officer Responsibilities:

- a. When a prisoner's personal property is inventoried, the two-officer rule shall be adhered to and the Prisoner Personal Property Receipt (DP1:1755) **shall be completed in its entirety.** **Only the items listed on the DP1:1755 shall be submitted in the property bag that will follow the prisoner.**
- b. The arresting officer shall ensure that the following occurs:
 - i. Accurate accounting of all listed items;
 - ii. List corresponding CC# and CA# numbers on the receipt;
 - iii. Have the prisoner sign Prisoner Personal Property Form. **The prisoner shall NEVER sign a blank or incomplete form;**
 - iv. Notify on-duty supervisor if the prisoner refuses to sign the form (refusal shall be documented on the Prisoner Personal Property Form);
 - v. Issue a copy of the Prisoner Personal Property Form to the prisoner; and
 - vi. Place the property inside the property bag and seal by affixing the self-adhesive tape portion to the bag.
- c. Personal property of a prisoner that **does not fit** in the standard property bag or **contains prohibited items** shall be handled as such:



NEWARK POLICE DIVISION GENERAL ORDER



- i. A separate, appropriately sized, property bag shall be used for the property and a Property Evidence Receipt (DP1:152) shall be completed;
 - ii. Accurately inventory and document the property to be submitted at the command;
 - iii. Inform the arrestee how to retrieve their property upon release from custody.
- d. A prisoner's personal identification, cellular phone, money, etc. and all other items that are allowed to follow the prisoner must be listed on the DP1:1755 and sealed in the bag that follows the prisoner. DO NOT include those items in the prisoner's property bag.
- e. The Arrest Report (DP1:800) for the prisoner shall include:
 - i. The corresponding control number from the Property Bag in the "PROPERTY BAG" box, just above box #45;
 - ii. The appropriate reports checked off in box #47 for reports that were executed related to the arrestee, (i.e., DP1:802, DP1:152);
 - iii. State if the prisoner had property and the manner in which it was submitted (in the lower right corner of box #45).
 - iv. How much currency was submitted in the prisoner's personal property (in box #68).
- f. It shall be the **Desk Officer's responsibility** to search each prisoner prior to placing him or her in a temporary holding cell, and prior to transport to MAPS.

2. Desk/Section Supervisor Responsibilities:

- a. Review the Arrest Report (DP1:800) submitted by the arresting Officer to ensure:
 - i. Prisoner's personal property is inventoried, serving as the second person in the two-officer rule;
 - ii. The Prisoner's Personal Property Receipt shall be completed in its entirety. Only the items listed on the DP1:1755 shall be submitted in the property bag;
 - iii. Accurate accounting of all listed items;
 - iv. The signing of the Prisoner Personal Property Form by the prisoner. **The prisoner shall NEVER sign a blank or incomplete form;**
 - v. Notification of the On Duty Supervisor if the prisoner refuses to sign the form – a refusal shall be documented on the Prisoner Personal Property Form;
 - vi. The property is placed inside the property bag and sealed by affixing the self-adhesive tape portion to the bag.
- b. Inspect the Property Bag to ensure that it has been properly sealed and untampered with, information entered and the accompanying Prisoner's Personal Property Receipt (DP1:1755) has been completed and signed.
- c. When it has been determined that all reports are complete, the property shall be secured in the designated temporary storage container used to store prisoner personal property prior to the end of the officer's shift.
- d. The Desk/Section Supervisor shall record in the Property Journal (or CEMS if available) the following information:



NEWARK POLICE DIVISION GENERAL ORDER



- i. The receipt/deposit of all evidence.
- ii. The transfer of property to MAPS with the prisoner.

B. AT MUNICIPAL ARREST PROCESSING SECTION (G.O. 16-03):

1. Arresting Officer Responsibilities:

- a. When a prisoner is transported to MAPS for processing, the prisoner's personal property shall be inventoried using the two-officer rule, and the Prisoner Personal Property Receipt (DP1:1755) shall be completed in its entirety. **Only the items listed on the DP1:1755 shall be submitted in the Property Bag.** The arresting officer shall ensure the following:
 - i. Accurate accounting of all listed items;
 - ii. Corresponding CC# and CA# numbers are listed on the receipt;
 - iii. Have the prisoner sign Prisoner Personal Property Form. **The prisoner shall NEVER sign a blank or incomplete form;**
 - iv. Notify on-duty supervisor if the prisoner refuses to sign the form (refusal shall be documented on the Prisoner Personal Property Form);
 - v. Issue a copy of the Prisoner Personal Property Form to the prisoner; and
 - vi. Place the property inside the property bag and seal by affixing the self-adhesive tape portion to the bag.
- b. Personal property of a prisoner that **does not fit** in the standard property bag or **contains prohibited items** shall be handled as such:
 - i. A separate, appropriately sized, Property Bag shall be used for the property and a Property Evidence Receipt (DP1:152) shall be completed;
 - ii. Accurately inventory and document the property to be submitted at the command;
 - iii. Inform the arrestee how to retrieve their property upon release from custody.
- c. A prisoner's personal identification, cellular phone, money, etc. and all other items that are allowed to follow the prisoner must be listed on the DP1:1755 and sealed in the bag going with the prisoner. DO NOT include those items in the prisoner's oversized property bag.
- d. The Arrest Report (DP1:800) for the prisoner shall include:
 - i. The corresponding control number from the property bag in the "PROPERTY BAG" box, just above box #45;
 - ii. The appropriate reports checked off in box #47 for reports that were executed related to the arrestee, (i.e. DP1:802, DP1:152);
 - iii. State if the prisoner had property and the manner in which it was submitted (in the lower right corner of box #45);
 - iv. How much currency was submitted in the prisoner's personal property (in box #68).
- e. It shall be the **MAPS Housing Officer's** responsibility to ensure each prisoner is searched before he or she is placed in a holding cell.



NEWARK POLICE DIVISION GENERAL ORDER



2. MAPS Supervisor Responsibilities:

- a. Upon the arrival of a prisoner at the Municipal Arrest Processing Section, **having already been processed at another Command/Section**, the Floor Supervisor shall:
 - i. Verify that the control number on the Arrest Report corresponds with the Property Bag and Prisoner's Personal Property Receipt (DP1:1755);
 - ii. Inspect the property bag to verify that it is sealed;
 - iii. When entering into the desk blotter the arrival of a prisoner, note the Property Bag control number in the desk blotter.
- b. In the event a discrepancy is found in the control number, items on the Arrest Report (DP1: 800), or items on the Prisoner's Personal Property Receipt (DP1:1755), the Floor Supervisor shall:
 - i. Attempt to rectify the discrepancy with the arresting officers or by contacting the Command/Unit from which the prisoner originated;
 - ii. Initiate an Investigation of Personnel (IOP), if the discrepancy is not resolved;
 - iii. Document actions taken in the desk blotter.

3. MAPS Property Officer Responsibilities:

- a. The Property Officer will receive the Property Bag and Prisoner's Personal Property Receipt (DP1:1755) after the supervisor has reviewed it and shall:
 - i. Verify the Property Bag is sealed and untampered with. If it is not, the Property Officer shall notify the on-duty supervisor immediately;
 - ii. Verify that the Prisoner Personal Property Receipt (DP1:1755) is complete and has the Property Bag control number in the upper right hand corner;
 - iii. Log the following information in the BEAST:
 - Date property received
 - Prisoner name
 - Central Arrest Number
 - Precinct where prisoner was arrested
 - Property Bag control number
 - iv. Secure the property bag in the room designated specifically to house/store prisoner property at MAPS;
 - v. Ensure that when the prisoner is transferred from MAPS, the prisoner's Property Bag is attached to corresponding reports.

C. RELEASE OF PRISONER PERSONAL PROPERTY:

1. Release of Personal Property to Prisoner:

- a. In the presence of the prisoner, open the Property Bag by cutting open the bottom and removing all the property.



NEWARK POLICE DIVISION GENERAL ORDER



- b. Have the prisoner verify the contents of the property bag and sign the bottom portion of the Prisoner Personal Property Receipt (DP1: 1755), or electronically acknowledging receipt of their property by signing on the electronic signature pad if available.
- c. After the prisoner signs the Prisoner Personal Property Receipt, acknowledging receipt of property, the officer releasing the property shall sign the bottom line of the Prisoner Personal Property Receipt, verifying the return of property.

2. Release of Personal Property to Someone Other than Prisoner:

- a. Authorization shall be obtained from the On Duty Supervisor. This authorization shall be documented by the officer by writing the supervisor's name and ID on the comment section of the DP1:1755.
- b. Consent shall be obtained from the prisoner prior to the release of the property.
- c. Contents of the property bag shall be verified utilizing the two-officer rule.
- d. The Prisoner Personal Property Receipt (DP1:1755) shall be signed by the person receiving the property, listing their name, relationship to the prisoner, address and telephone number of the person receiving the property.
- e. Due to the security nature of the Property Bag, once the seal has been broken, its integrity has been compromised. Therefore, when property is released, it shall be released in its entirety. **Partial release of property is not authorized.**
- f. Appropriate notations are to be made in the CEMS/BEAST and a copy of the signed Prisoner Personal Property Receipt shall be electronically uploaded and attached to the case file in the BEAST.

3. In the event that a property bag must be opened:

- a. Approval must be obtained from the On Duty Supervisor.
- b. Personnel opening the Property Bag must submit an ADMINISTRATIVE REPORT (DP1:1001), explaining the reason for opening the bag. This report must be submitted PRIOR to end of tour.
- c. Entry shall be made in the Desk Blotter indicating the time, circumstances and personnel involved in the opening of the bag.
- d. A new property bag shall be utilized when re-securing the prisoner property. Additionally, a Continuation Report (DP1:795) shall be completed indicating the cross referencing of the Property Bag numbers so as to be able to track in the BEAST and/or RMS.
- e. The old Property Bag control number shall be noted on the new Property Bag below "Date of Arrest".
- f. The opened Property Bag shall be attached to the Administrative Submission (DP1:1001) and forwarded to the Division Commander where they shall be reviewed and retained.



NEWARK POLICE DIVISION GENERAL ORDER



4. Unclaimed Property

- a. In the event a prisoner does not claim his/her personal property within five (5) days after release from MAPS, the property shall be transferred to the Property & Evidence Division for storage, release at a later date, or disposal. The property shall be transferred using the following procedure:
 - i. Property & Evidence Division personnel shall log out in the CEMS/BEAST (or Property Journal if not operational) any personal property that is being transferred to the Property & Evidence Division.
 - ii. The Property & Evidence Division will retain the property for six months.

VI. CRIME SCENE EVIDENCE (G.O. 99-05)

- A. When a gun is seized, Central Communications shall be notified to have a crime scene clerk respond to take possession of the gun for delivery to the Ballistics Unit.
- B. Upon arriving on a crime scene, the officer(s) shall:
 1. Render immediate aid in accordance with officer's training and notify E.M.S. if injured persons are at the scene.
 2. Notify Central Communications of the situation and request for the appropriate:
 - a. Investigative Detectives to respond to the scene, and;
 - b. Request Crime Scene Response Unit for the collection and preservation of evidence, as directed by the investigating detective or the on-scene supervisor.
 3. Provide immediate protection measures that include:
 - a. Prevent the unnecessary entry into or disturbance of the crime scene especially in areas where footwear/tire impressions are present;
 - b. Only in the event that there is a high likelihood/risk that evidence may be lost/destroyed; then the member may retrieve/move evidence for the purposes of safeguarding it. In these cases the member SHALL document the reason why there was a need to move/safeguard the evidence;
 - c. Items in the crime scene shall not be moved and the bodies of deceased persons shall not be disturbed.
 4. Relinquish the crime scene to the Detective in charge or ranking supervisor once either arrives at the scene.
- C. Procedures for cases where the officer must collect and submit evidence; whether due to exigent circumstances, or upon direction by a supervisor or investigating detective:



NEWARK POLICE DIVISION GENERAL ORDER



1. Responsibilities of Officers/Detectives:

- a. The officer shall maintain control and safeguard all evidence/property until properly inventoried, documented, secured in the appropriate storage container, and stored within a temporary storage location.
- b. The responsible officer/detective shall provide an explanation of the circumstances of the property/evidence coming into police custody via an Incident Report (DP1:802).
- c. The officer/detective shall inventory the evidence/property using the two-person rule and document the evidence/property on a Property Evidence Receipt (DP1:152). Officers should fill in **ALL APPLICABLE** boxes in detail.

2. Responsibility of Supervisor Receiving Property:

- a. All property submitted shall be accompanied by a Property Evidence Receipt and other reports pertaining to that case.
- b. Desk Supervisors will ensure that all pertinent information is contained on the Property Evidence Receipt.
- c. The property shall be inspected to ensure that it is properly packaged and labeled. All items will be verified with the entries on the corresponding Property Evidence Receipt.
- d. After inventory and verification, the property shall be secured in the designated temporary storage container.

VII. PROPERTY & EVIDENCE DIVISION RESPONSIBILITIES (G.O. 18-24)

A. Commanding Officer:

1. The Property & Evidence Division Commander is responsible for overseeing the Newark Police Division's Property & Evidence Management System in cooperation with the various commands that come in contact with and intake property/evidence, ensuring integrity through proper internal controls through the entire process.

B. Property & Evidence Division Officer/Clerk Responsibilities:

1. Respond to all Division Commands/Units that have an authorized temporary property/evidence storage container/locker on a regular basis for property and evidence collection.
2. Make sure all property/evidence is packaged properly and not tampered with.
3. Make sure there is a Property Evidence Receipt (DP1:152) for each piece of property/evidence and inspect for accuracy and completeness.
4. When property/evidence is collected at the site, scan each item out in the command's CEMS.
5. If the command/unit does not have a CEMS then enter the date, their identification number and initials, next to the corresponding item in the Command/Unit Property Journal (the supervisor will then sign and date below the last entry in the Command/Unit Property Journal).



NEWARK POLICE DIVISION GENERAL ORDER



6. In the event of a discrepancy and/or missing items, the Property and Evidence Officer/Clerk shall immediately advise the on-duty supervisor.
 - a. The On Duty Supervisor shall make every attempt to resolve the discrepancy prior to the departure of the Evidence and Property officer/clerk.
 - b. If the discrepancy cannot be resolved, the On Duty Supervisor shall immediately initiate an Investigation of Personnel (IOP) with notifications to their Commanding Officer and the Office of Professional Standards.
 - c. All discrepancies shall be documented by the Desk Supervisor in the Command's property journal. The property in question shall remain at the Command until properly accounted for.
 - d. The Property & Officer/Clerk shall notify the Property & Evidence Division Commander immediately by documenting same on an Administrative Report (DP1 1001).
 - e. Transport all collected property/evidence to the Property & Evidence Command "Intake Area", documenting its arrival, securing it prior to the end of officer/clerk's shift.
7. All property/evidence movement conducted by Property & Evidence Division Personnel will be entered into the Newark Police Division's Computerized Evidence Management System (CEMS). The only exception will be if the CEMS stops functioning, and would require manual entry of information into the Section's Property Journal, which will be entered into the CEMS once functioning resumes.

VIII. EFFECT OF THIS ORDER

All Division Orders, Memoranda, and sections of Rules and Regulations concerning the custody of evidence and property that are inconsistent with this policy are hereby rescinded and repealed.

BY ORDER OF

**ANTHONY F. AMBROSE
PUBLIC SAFETY DIRECTOR**

AFA/BO:rme

Appendix C



NEWARK POLICE DIVISION GENERAL ORDER



SUBJECT: PROPERTY AND EVIDENCE DIVISION		GENERAL ORDER NO. 18-24
SUPERCEDES: 2000-02 Property & Evidence Management	DATED: April 3, 2019	
<p>Rules and Regulations Chapter 12 NPD G.O. 64-20, <i>Records Retention Schedule</i> NPD G.O. 67-6, <i>Issuance and Return of Equipment</i> NPD G.O. 80-1, <i>Responsibilities of Command and Supervisory Personnel</i> NPD G.O. 08-08, <i>Municipal Holding</i> NPD G.O. 16-03, <i>Municipal Arrest Processing Section</i> NPD G.O. 18-23, <i>Property and Evidence Management</i> N.J.S.A. 2C:65-440A:14-157(a-b), 2C:65-4, et.al. Division of Criminal Justice "The Property and Evidence Function" NJ Attorney General Directive 2011-1 Essex County Prosecutor's Office Directive</p>		

This Order consists of the following numbered sections:

- I. POLICY**
- II. PURPOSE**
- III. RESPONSIBILITY FOR COMPLIANCE**
- IV. DEFINITION OF TERMS**
- V. COMMAND PERSONNEL FUNCTIONS AND RESPONSIBILITIES**
- VI. PROPERTY AND EVIDENCE HANDLING PROCESS**
- VII. PROPERTY AND EVIDENCE DISPOSITION PROCESS**
- VIII. INVENTORY CONTROL AND RECORDS MANAGEMENT**
- IX. INTEGRITY CONTROL**
- X. EFFECT OF THIS ORDER**



NEWARK POLICE DIVISION GENERAL ORDER



I. POLICY

The Property and Evidence Division shall be responsible for maintaining the integrity of both property and evidence through continuous accountability, from acquisition to final disposition. All personnel assigned to the Property and Evidence Division shall be familiar with, and adhere to all New Jersey State Laws, Attorney General (AG) Directives, Essex County Prosecutor Office (ECPO) policies and Police Division General Orders.

II. PURPOSE

The purpose of this policy is to ensure the integrity and maintenance of the Newark Police Division's Property & Evidence Management System from intake to disposal of privately owned property and evidence to be used in pending cases. In addition, this policy:

1. Establishes guidelines and responsibilities for Property and Evidence Division personnel;
2. Establishes a system to track property from its acquisition to disposition;
3. Ensures that video cameras are properly installed and maintained in the Property & Evidence Division as well as other locations where temporary storage lockers are used throughout the Police Division;
4. Provides for the proper and timely disposition of evidence and property in accordance with ECPO and the AG Directives;
5. Maintains overall control of the Computerized Evidence Management Systems (CEMS) management system;
6. Provides guidelines and procedures for general and random audits and inspections, ensuring integrity and proper internal controls throughout the Police Division; and
7. Prevents the loss or unauthorized release of any property in the custody of the Newark Police Division.

III. RESPONSIBILITY FOR COMPLIANCE

All Police Division members assigned to the Property & Evidence Division shall be responsible for complying with this policy. Command and Supervisory Officers will review, understand and comply with this policy and also shall ensure that all subordinate personnel read and acknowledge understanding all facets of this General Order.



NEWARK POLICE DIVISION GENERAL ORDER



IV. DEFINITION OF TERMS

- A. **Auction** – A public sale, conducted by the City of Newark and the Newark Police Division, in which eligible property is sold to the highest bidder.
- B. **Audit** – An examination of records, files, against real items to verify accuracy, and compliance with New Jersey law and / or Police Division policy.
- C. **Barcode Evidence Analysis Statistics Tracking (BEAST)** – The current commercial product that the Police Division utilizes for its Computerized Evidence Management System (“CEMS”).
- D. **Chain of Custody** – The chronological, geographical and tracking of any Property/Evidence item impounded or seized by the Police Division, to final disposition.
- E. **Computerized Evidence Management System (CEMS)** - A commercially licensed computer based program that electronically tracks and monitors the status, type and location of property & evidence within the Police Division.
- F. **Contraband** – Controlled dangerous substances, firearms which are unlawfully possessed, carried, acquired or used, illegally possessed gambling devices, untaxed cigarettes, and untaxed special fuel. No property rights shall exist.
- G. **Destruction** – The act of rendering useless property, which can serve no lawful purpose, or presents a danger to the health, safety, or welfare of the public.
- H. **Evidence** – Any material object that tends to logically prove or disprove a fact at issue in a judicial case or controversy; any material object that is admissible as testimony in a court of law; any material object that might have the slightest bearing on the guilt or innocence of a criminal defendant.
- I. **Inspection** – A periodic physical evaluation of designated aspects of the Property & Evidence Division facility as well as other locations throughout the Police Division, which contain temporary property/evidence storage containers.
- J. **Inventory** – A detailed itemized list, report, or record of property in possession of the Newark Police Division; the process of making such a list, report or record.
- K. **Prisoner’s Personal Property Receipt, (DP1:1755)** – Division form completed by arresting officers when accepting prisoner personal property. The form contains a notice to prisoners advising them that any personal property must be retrieved within six (6) months of arrest date or the property will be disposed of according to NJ State Law.



NEWARK POLICE DIVISION GENERAL ORDER



In addition, the Receipt shall state that where a prisoner is held in law enforcement custody for longer than six (6) months from arrest date, the prisoner may contact the Property & Evidence Division via telephone or U.S. Mail to hold the property until his/her release from custody, or make alternate arrangements for property retrieval. **Upon the date of release from custody, the Property & Evidence Division shall hold the personal property for a ninety (90) day period.** If the property is not retrieved within ninety (90) days of release from custody, the property shall be disposed. The Receipt **must also** state the address that the prisoner wants NPD to use to send the prisoner future notices about the prisoner's property.

- L. Property** –Tangible items seized by the Newark Police Division including but is not limited to: (1) items of value that have been found by or turned into the Police Division, (2) items of value whose ownership is unknown or in dispute, or (3) private property constituting the personal belongings of prisoners or victims.
- M. Property Bag-** A sealable, tamper-resistant clear plastic bag of varying sizes and assigned a specific control number, serving as the primary receptacle in which all evidence or property collected will be stored.
- N. Property Clerk** – A member of the Property & Evidence Division who is responsible for collecting, recording, and safe storing of property and evidence acquired or confiscated by the Police Division.
- O. Property Journal-** A journal book that is maintained by all Police Division Commands/Units, that are not equipped with a CEMS, for the recording of all evidence and property. The journal shall contain the (i) time, (ii) date, (iii) central complaint number, (iv) property bag control number and property description, (v) location stored, (vi) Supervisor's identification number and initials, (vii) date of release, and (viii) the identification number and initials of the and Property and Evidence Officer/Clerk removing the evidence from the Command.
- P. Property Release** – The auction, transfer, relinquishment, disposal, surrender, return, destruction, or other disposition of property. A release can be either temporary or permanent:

 - 1. Temporary – When an item of property is released for a specific reason (e.g., court, forensics lab, ballistics lab), but is expected to be returned.
 - 2. Permanent – When an item of property is **not** going to be returned to the Evidence and Property Section at any time (e.g. released to owner, auctioned, destroyed, charitable donations)
- Q. Repurpose** - The legitimate transfer of eligible property that has been slated for destruction or disposal and placing it into the City's inventory for official use.



NEWARK POLICE DIVISION GENERAL ORDER



- R. **Staging Area** – A secured area inside the Property and Evidence Division that functions as a receiving terminal for all incoming property/evidence, and where property/evidence is inventoried and accounted for.
- S. **Supplies**- Items purchased by the City of Newark or the Newark Police Division, for the mutual use and convenience of the Police Division and its' members.
- T. **Temporary Property/Evidence Storage Container** – An authorized secured receptacle, locker or room in a command or unit, dedicated to the temporary storage of recovered property and evidence. The temporary storage container **shall at all times** be in the view of a functioning video surveillance system. For this definition, “**secured**” means lockable with limited and restricted access.
- U. **Two-Officer Rule** – Two officer submission and verification process for handling, documenting and monitoring property and evidence. A second officer or Supervisor shall observe and verify items being submitted by the primary officer.

V. COMMAND PERSONNEL FUNCTION AND RESPONSIBILITIES

- A. **The Commanding Officer of the Property and Evidence Division shall be responsible for:**
 - 1. Overseeing the Newark Police Division’s Property and Evidence Management System in cooperation with the various commands that come in contact with and intake property/evidence to include prisoner property;
 - 2. Conducting at least one (1) on-site inspection of the entire facility for security and safety **each quarter**. The results of the inspection shall be documented on an Administrative Report (DP1:1001) and forwarded to the Bureau Commander;
 - 3. Conducting selected or random compliance audits of completed transactions. This shall be done on a **monthly basis**;
 - 4. Ensuring that monthly, quarterly, and annual reports are completed and submitted to the Bureau Commander. These reports shall contain the following information:
 - a. Staffing levels;
 - b. Sick and injured leave;
 - c. Overtime summary;
 - d. Property accepted;
 - e. Property released;



NEWARK POLICE DIVISION GENERAL ORDER



- f. Gambling and vending machines recovered, released, or destroyed
- g. Requisitions;
- h. Firearms recovered, released, or destroyed;
- i. Narcotics recovered and destroyed;
- j. Money received or deposited in the County and Municipal accounts;
- k. Any auctions conducted and money collected;
- l. Court overtime hours; and
- m. All other property destroyed.

- 5. Ensuring that all purchase requisitions for all Police Division supplies and reports are forwarded to the Business Office in a timely fashion. The appropriate follow-up mechanisms must be in place to ensure that the requisitions are filled; and
- 6. Ensuring that all the tenets of General Order 80-1, *Responsibilities of Command and Supervisory Officers* are complied with.

B. Supervisors shall be responsible for:

- 1. Maintaining evidentiary integrity through continuous accountability, from acquisition to final disposition, and shall enforce all New Jersey State Laws, Attorney General Guidelines and Directives, Essex County Prosecutor Guidelines, and Division General Orders upon all assigned personnel;
- 2. Overseeing the entire intake and release process and ensuring that all transactions are properly recorded;
- 3. Conducting selected or random compliance audits of completed transactions on at least a monthly basis in accordance with Property and Evidence Division policy;
- 4. Conducting quarterly on-site inspections of all Property & Evidence Division temporary and permanent storage containers for security, i.e., working cameras, limited access, doors that automatically close, etc. The results of the inspection shall be documented on an Administrative Report (DP1:1001) to the Commander. On-site inspections shall also include Command/Unit property ledger books for unit compliance; and
- 5. Complying with the tenets of General Order 80-1, *Responsibilities of Command and Supervisory Officers*.

C. Division Officer/Clerk shall be responsible for:

- 1. Collecting property/evidence from ALL designated commands/units;



NEWARK POLICE DIVISION GENERAL ORDER

2. Releasing property as necessary;
3. Providing assistance with auctions, destructions, deposits, and charitable donations;
4. Providing courteous service at all work-sites to Police Division members and citizens;
5. Logging, segregating, and accounting for incoming / outgoing property;
6. Storing of all property and evidence in its respective areas;
7. Processing orders and requests for property, whether temporary or permanent, from within the Police Division, and from other authorities;
8. Knowing alarm procedures for activation and deactivation;
9. Maintaining all property files and log information, including purging closed cases and indicating same with the appropriate entries into the CEMS;
10. Locating lost or misplaced items of property in a timely manner;
11. When directed by a Supervisor researching invoices to determine those that may be purged consistent with ECPO directives and the NJ AGG;
12. Responding to the Crime Scene Unit on a daily basis and in a timely manner for firearms and ballistic evidence pickup and delivery to the Ballistics Unit;
13. Receiving and storing all returning lab evidence;
14. Receiving and issuing all applicable police equipment as per *General Order No. 67-6 Issuance and Return of Equipment*; (revised) DM 14-0020;
15. Receiving and stocking of incoming supplies; and
16. Maintaining the decorum and upkeep of the facility to ensure cleanliness, safety, security and order.

VI. PROPERTY & EVIDENCE HANDLING PROCESS

- A. Command Supervisors shall oversee the recording process and ensure that all property & evidence obtained from outside Commands/Units is properly itemized and recorded.



NEWARK POLICE DIVISION GENERAL ORDER



B. Data Entry:

All property/evidence movement conducted by Property & Evidence Division Personnel will be entered into the Newark Police Division's CEMS. The only exception will be if the CEMS stops functioning. If that occurs, then movement of property and evidence shall be entered into a backup property journal and, thereafter, shall be entered into the CEMS *immediately* upon the resumption of CEMS's functioning.

C. Collection:

1. Property & Evidence Division Officer/Clerk shall be responsible for:

- a. Responding on a regular basis to all Police Division Commands/Units that have temporary property/evidence storage for property and evidence collection;
- b. Making sure all property/evidence is packaged properly;
- c. Making sure there is a Property Report (DPI 152) for each piece of property and/or evidence, and inspecting the Property Report for accuracy and completeness;
- d. Scanning each item out in the command's CEMS when property/evidence is to be collected;
- e. If the Command/Unit does not have a CEMS, entering the date, their identification number and initials, next to the corresponding item in the Command/Unit Property Journal (the supervisor will then sign and date below the last entry in the Command/Unit Property Journal);
- f. If there is a discrepancy and/or missing items, immediately notifying the On-Duty or Desk Supervisor.
 - i. The On-Duty or Desk Supervisor shall make every attempt to resolve the property/evidence discrepancy prior to the departure of the Evidence and Property officer;
 - ii. If the discrepancy cannot be resolved, the notified On-Duty Supervisor shall immediately initiate an Investigation of Personnel with notifications to their Commanding Officer and the Office of Professional Standards;



NEWARK POLICE DIVISION GENERAL ORDER



- iii. All discrepancies shall be documented by the Supervisor in the Command's Property Journal. The property in question shall remain at the Command until properly corrected, or accounted for;
- iv. The Property & Evidence Officer/Clerk shall notify the Property & Evidence Division Commander immediately and document the discrepancy and/or missing items on an Administrative Report (DP1:1001);
- v. The Property & Evidence Officer/Clerk shall then transport all collected property/evidence to the Property & Evidence Command "Intake Area."

D. Intake:

ALL items taken into the Property & Evidence Division will be entered into the CEMS with an assigned Central Control number and secured before the end of the workday, without exception.

- 1. For items that have not already been entered into the CEMS at their originating command, the following information will be recorded as it enters the Property & Evidence Division;
 - a. Date item was originally collected;
 - b. Central Complaint Number;
 - c. Property Bag Control Number;
 - d. Description of Property, to include;
 - i. Make;
 - ii. Model;
 - iii. Serial Number; and
 - iv. Markings.
 - e. Name and identification number of Officer that originally collected the item;
 - f. Location where the property was originally collected;



NEWARK POLICE DIVISION GENERAL ORDER



- iii. Scan the item in with the “Received at Property Room” code; and
 - iv. Store all property/evidence in its designated location.
6. For **Prisoner Personal Property** use the following procedures:
- i. The Prisoner Property Bag will be inspected to ensure that it has not been tampered with;
 - ii. The prisoner’s name and Central Arrest Number (C.A. No.) on the bag will then be matched with the name and Central Arrest Number indicated on the Property Report, (DPI:152). A corresponding Prisoner Property Receipt, DP1:1755 (Cell Block Copy) must be verified and correspond with each bag; and
 - iii. The property will be stored in its designated location.

E. Release of Property:

1. **Temporary Release** - When an item of property is released for a specific reason, but is expected to be returned.

Property shall only be released to:

- a. A law enforcement officer;
 - b. A Court Officer;
 - c. The owner or the owner’s agent;
 - d. Laboratory personnel (forensics, narcotics, ballistics).
- a. **Forensics Lab** – Narcotics cases will only be transported to the forensics lab for analysis after a written request has been received from an authorized person in the forensics lab or the Assistant Prosecutor in charge of the case. All transports and returns to the lab will be conducted by two members of the Property & Evidence Division.
- i. The CEMS shall be utilized for all narcotics sent to the forensics lab, including the date, Central Complaint Number, date sent and date returned to the Property & Evidence Division.
- b. **Court Proceeding** – Requests to produce evidence for a criminal trial, from Newark Police Officers and other Law Enforcement Agencies will be granted **ONLY** upon the presentation of a Subpoena or Court Order, and valid identification card.



NEWARK POLICE DIVISION GENERAL ORDER



- i. Property & Evidence Division Officers/Clerks shall copy the Subpoena and identification card, which shall remain a permanent part of the property file;
 - ii. All temporary releases shall be entered into the CEMS documenting the chain of custody;
 - iii. Officers signing out the evidence shall be responsible for the safeguarding of such evidence until it has been received by the Court or returned to the Property & Evidence Division;
 - iv. If the Property & Evidence Division has closed before an officer can return the evidence, the officer shall immediately respond to their command and turn the evidence over to the On Duty or Desk Supervisor;
 - v. The receiving Supervisor will log the name, rank, identification number, time envelope control number and Central Complaint Number of the item into the Property Journal and then deposit the item into the temporary storage mailbox or locker.
2. **Permanent Release** – When an item no longer needs to be stored by the Newark Police Division, one of the following actions will be assigned:
- i. Returned to Owner/Finder;
 - ii. Destruction;
 - iii. Disposal;
 - iv. Auction;
 - v. Donated charitably;
 - vi. Repurposed; or
 - vii. Deposited to City or County Treasury
- a. Proper personal identification, preferably photo identification, must be presented prior to any property release. Proper identification shall consist of any of the following:
- i. A valid driver's license;



NEWARK POLICE DIVISION GENERAL ORDER



- ii. A state issued identification card;
 - iii. A U.S. Government issued identification card;
 - iv. A valid passport;
 - v. Two of the following; welfare identification card, employment identification card, or social security card; or
 - vi. If the person requesting the release of property does not possess proper identification, Property & Evidence Division staff shall make every effort to verify the person's identification.
- b. A photocopy of the person's identification shall be made and attached to the CEMS file.
- c. **All releases will be conducted utilizing the CEMS and approved by a Property & Evidence Division Supervisor.**
- d. Prisoner personal property and victim's property shall be released, in accordance with the outlined conditions set forth in this policy.
- e. Found property shall be released in accordance with the previously outlined conditions set forth in this policy.
- f. Property may be shipped to the owner or the owner's agent under circumstances where the owner or their agent cannot physically appear in person in the Property & Evidence Division. Prior to release, the owner or the owner's agent must comply with the following conditions:
- i. A Declaration of Ownership form must be completed and notarized by the property owner and must state that the owner has authorized the agent to receive the property.
 - ii. Proper authorization from the prosecuting agency is obtained;
 - iii. Temporary Shipping Account (Fed Ex/UPS, U.S. Postal Service, etc.) must be established by owner/agent allowing the Newark Police Division to ship items. A money order or bank check, payable to the Newark Police Division for the following charges, must be received prior to shipping any items via Federal Express, UPS or U.S. Postal Service: (i) shipping charge and (ii) \$500 minimum insurance per item.



NEWARK POLICE DIVISION GENERAL ORDER



- g. Weapons that are not *prima facie* evidence may be released **only** under the following circumstances:
 - i. The owner must complete a Declaration of Ownership form and have the form **notarized**;
 - ii. if the owner's agent is to receive the property, then the owner's Declaration must state that the owner has authorized the agent to receive the property on behalf of the owner;
 - iii. Authorization must be granted by the Essex County Prosecutor's Office in writing;
 - iv. The owner must present a Voluntary Form of Registration of Firearms and a Permit to Purchase or valid NJ Firearms Purchaser Identification Card. This identification will be scanned into CEMS;
- h. The following disposition shall be entered into CEMS indicating the type of release effectuated:
 - i. Returned to Owner/Finder;
 - ii. Destruction;
 - iii. Disposal;
 - iv. Auction;
 - v. Charitable Donation;
 - vi. Repurposed; and
 - vii. Deposit to City or County Treasury.

3. Currency-Disposition Process

- a. A Property and Evidence Supervisor will review the Evidence Property Receipt, identifying currency to be deposited into the County Treasury Account.
- b. The Property & Evidence Division Supervisor shall complete an Essex County Currency Disposition Form, listing the amount, Central Complaint Number, date of incident, defendant's name(s), and charge(s) lodged against the defendant.



NEWARK POLICE DIVISION GENERAL ORDER



- c. All currency will be counted ensuring accuracy, and placed in a County Currency Briefcase and stored in the vault with the corresponding Currency Disposition Forms, awaiting delivery to the bank.
- d. Property Bags will be opened when arriving at the financial institution with all currency counted and verified by bank personnel, with the amount indicated on the deposit slip. Any discrepancies shall be reported to the Property & Evidence Division Commander **immediately** and documented on an Administrative Report (DPI 1001).
- e. Currency will be deposited in the County Treasury as soon as the appropriate financial institution is open and available. The following procedures will be followed:
 - i. The Prosecutor's Office will be notified weekly by a Property & Evidence Division Supervisor that the money has been deposited;
 - ii. A Prosecutor's Deposit cover sheet with copies of bank deposit forms will be reported on a weekly basis; and
 - iii. The original cover sheet, original currency disposition form, and copy of the deposit receipt will be attached together and maintained on file at the Property & Evidence Division.

VII. PROPERTY DISPOSITION PROCESS

A. Found Property:

- 1. **Owner Unknown** and recovered, by a member of the Police Division acting in the line of duty, shall be retained for six months (40A:14-157N(a)). If, after the expiration of six months, the property remains unclaimed, the property shall be purged.
- 2. Owner Unknown and **recovered by a private party**, the following procedures will be followed:
 - a. A Property Claim Notification Letter shall be mailed to the original finder via certified mail, and contact shall be attempted via telephone. The assigned Property & Evidence Division clerk shall be responsible for this function.
 - b. If the original finder cannot be located after 31 days of its receipt, the item shall be purged.
- 3. **Prisoner personal property** that remains in the custody of the Newark Police Division in excess of six (6) months from the original date of arrest shall become the property of



NEWARK POLICE DIVISION GENERAL ORDER



the Police Division. Said property will be purged. Signed Prisoner Personal Property Receipts, (DP1:1755) shall be maintained at the Property & Evidence Division, and attached to any associated Destruction reports.

- a. Prisoner Property Bags will be released upon the presentation of a Prisoner Property Receipt (Prisoner's Copy), which will be matched with the corresponding copy that is retained on file.
 - b. Prisoners who are unable to respond directly to the Property & Evidence Division due to conditions of long term detentions or otherwise will be afforded the opportunity to have alternate arrangements for property pick up.
 - i. The Police Division shall provide written notice, (Prisoner Property Receipt; DP1:1755) to the prisoner at the time of arrest that his/her property will be deemed abandoned and shall be destroyed if not claimed within six (6) months from the date of arrest. Prisoners held in law enforcement custody for longer than six (6) months shall be afforded the opportunity to contact the Property & Evidence Division via telephone or U.S. Mail to place a hold on their property or make alternate arrangements for property retrieval. Prisoners may have adult family members assist in this process as well. Proper verifications will be necessary.

In the event where a prisoner has notified the Property and Evidence Division of a confinement that will extend past six (6) months, the Property and Evidence Division shall maintain the property for ninety (90) days from the date of the prisoner's release. If the property is not retrieved within ninety (90) days of custody release, the property will be disposed.
 - ii. Prisoners must provide a notarized letter or other satisfactory notice to the Property & Evidence Division granting authorization for property pick up to another person. Said person shall be identified in the letter.
 - iii. Said property pick up person shall provide satisfactory identification for property retrieval.
 - iv. Property & Evidence Division personnel shall only release the prisoner's property upon proper verification of all documentation.
 - v. Conduct the CEMS procedures for property release.
4. After an item of property/evidence has been assigned its proper disposition it shall then be secured in the designated room;
- i. Destruction Room
 - ii. Auction Room



NEWARK POLICE DIVISION GENERAL ORDER



B. Evidence Retention Schedule:

The following is a brief outline of the New Jersey Attorney General Guidelines for the Retention of Evidence. Personnel should consult with the Guidelines in their entirety before taking action to purge evidence.

1. Homicide Evidence

- a. When **all** defendants are charged, but deceased;
- b. Conviction with no appeals, 5 years after conviction or sentence, whichever is later;
- c. No suspect, but DNA or fingerprints, retain indefinitely.

2. Sex Crimes Evidence

- a. When **all** defendants are charged, but deceased;
- b. Conviction with no appeals, 5 years after conviction or sentence, whichever is later;
- c. Cases where defendants enter and completed PTI and upon expiration of the longest sentence for the co-defendants;
- d. No suspect, but DNA or fingerprints, retain indefinitely.

3. Narcotics Evidence

- a. When **all** defendants are charged, but deceased;
- b. Cases where defendants enter and completed PTI and upon expiration of the longest sentence for the co-defendants;
- c. Investigation closed without prosecution, 1 year and 1 day;
- d. Found property without prosecution, 1 year and 1 day.

4. Firearms Evidence

- a. When **all** defendants are charged, but deceased;
- b. Conviction with no appeals, 5 years after conviction or sentence, whichever is later;
- c. Cases where defendants enter and completed PTI and upon expiration of the longest sentence for the co-defendants;
 - i. May return to rightful owner who may lawfully possess the firearm
- d. **Prior to any destruction authorization being granted, no firearms evidence shall be considered for destruction until all necessary tracing tests and IBIS submissions have been completed.**

5. Other Evidence

- a. When **all** defendants are charged, but deceased;
- b. Conviction with no appeals, 5 years after conviction or sentence, whichever is later;
 - i. May return to rightful owner

6. Special Circumstances

- a. Cases where defendant found incompetent, must retain until competent, or defendant is deceased, or case dropped;



NEWARK POLICE DIVISION GENERAL ORDER



- b. Not guilty by reason of insanity, time frame to be determined by Prosecutor;
- c. Pursuant to N.J.S.A. 2C:65-1, stolen property may be returned to the owner after a complete photographic record of the property is made.

7. Narcotics Destruction Process

- a. All narcotics to be destroyed shall be documented on an Evidence Destruction form, listing the Central Complaint Number, description and quantity of the items to be destroyed.
- b. The Commanding Officer of the Property & Evidence Division shall ensure that copies of the form are forwarded to the Essex County Prosecutor's Office along with a written request for its' destruction, and the original copies are maintained on file at the Property & Evidence Division.
- c. The Office of Professional Standards will be present to witness the destruction of **all** narcotics.
 - i. No fewer than two witnesses shall observe the actual destruction of narcotics at the authorized site. The witnesses shall be required to sign the Uniform Destruction of Evidence Form in the appropriate place;
 - ii. The narcotics being destroyed shall be observed to the point where human accessibility is no longer possible;
 - iii. A Post-Destruction Report (DP1:1001) shall be executed by the Commander of the Property & Evidence Division, which shall contain:
 - The location of destruction;
 - The summary of the destruction; and
 - The list of attendees by name and agency; and
 - iv. The Post-Destruction Report shall become the cover sheet for those items of property that have been destroyed, and shall be retained in the Destruction File.
- d. The Commanding Officer of the Property & Evidence Division shall ensure that narcotics and firearms do not appear on the same destruction request form, and ensure that **ONLY** narcotics (no paraphernalia) appear on the Narcotics Destruction forms and **ONLY** Firearms (No ammunition or ballistic evidence) appear on the Firearm Destruction forms.
- e. The destruction shall be at a facility licensed by the State of New Jersey to burn trash (incinerator) at an acceptable temperature to ensure complete destruction. The authorized site should also be approved by the Essex County Prosecutor's Office.



NEWARK POLICE DIVISION GENERAL ORDER



8. Weapons Destruction Process

- a. Once the Commander of Property & Evidence Division receives case dispositions that would allow for the destruction of firearms, he/she shall have prepared a "Uniform Destruction of Evidence Form," indicating the Central Complaint number, manufacturer, caliber and serial number of the weapon.
- b. The Commanding Officer of the Property & Evidence Division shall ensure that copies of the form are forwarded to the Essex County Prosecutor's Office along with a written request for its destruction and the original copies are maintained on file at the Property & Evidence Division.
- c. The Office of Professional Standards will be present to witness the destruction of **all** weapons.
 - i. No fewer than two witnesses shall observe the actual destruction of weapons. at the authorized site. The witnesses shall be required to sign the Uniform Destruction of Evidence form in the appropriate place.
 - ii. The weapons being destroyed shall be observed to the point where human accessibility is no longer possible.
 - iii. A Post Destruction Report (DP1:1001) shall be executed by the Commander of the Property & Evidence Division, which shall contain:
 - The location of destruction;
 - The summary of the destruction; and
 - The list of attendees by name and agency.
 - iv. The Post Destruction Report shall become the cover sheet for those items of property that have been destroyed, and shall be retained in the Destruction File.
- d. The destruction shall be at a facility licensed by the State of New Jersey to melt metal (smelter) at an acceptable temperature to insure complete destruction of the weapons. The authorized site, should also be approved by the Essex County Prosecutor's Office.

9. Records Destruction Process

In accordance with *N.J.S.A. 47:3-15*, the Commanding Officer of the Property & Evidence Division shall maintain and destroy public records according to the Records Retention and Disposition Schedule, *refer to General Order 64-20*.



NEWARK POLICE DIVISION GENERAL ORDER



VIII. INVENTORY CONTROL AND RECORDS MANAGEMENT

A. The Commanding Officer of the Property & Evidence Division shall ensure that separate, secured and limited access space is maintained for the following:

1. Intake staging area;
2. Firearms;
3. Narcotics;
4. Bulk narcotics;
5. Ammunition;
6. Homicide evidence;
7. Sexual Assault evidence;
8. Flat Files;
9. Police Division Supplies;
10. Annual Arrest Evidence; and
11. Personal/Found Property.

IX. INTEGRITY CONTROL

A. Vault Security:

1. The vault will be secured by a digital combination lock. The lock access code shall be restricted to the Commander and Supervisors of the Property & Evidence Division.
2. The room containing the vault and its entry doors shall be monitored by camera and alarm system. Additionally, the room shall have self-closing and locking doors monitored by electronic access.
3. Property & Evidence Division Supervisors shall ensure the vault remains locked and secured at all times. When in use, Supervisors shall ensure that there is no unauthorized access to the vault or its contents.



NEWARK POLICE DIVISION GENERAL ORDER



4. Any issues with the surveillance or alarm systems shall be reported immediately to the Commanding Officer who will then notify Director of the Department of Public Safety, the Chief of Police and the Office of Information Technology who will be responsible for immediately correcting the issue.

B. Audits:

It is essential to maintain the highest integrity when it comes to inventory, audits and inspections of the property and evidence function. There should be a complete audit of all stored property as well as random in-person compliance audits of completed transactions on a routine **annual** basis. There should also be a complete audit whenever the following occurs;

1. A change of the Property & Evidence Division Commanding Officer;
2. A change of **any** of the Property & Evidence Division Supervisors;
3. An indication or suspicion of a breach of security within the Command;
4. A transfer of a staff member because of a rule violation related to their duty.

C. Audit Types:

1. **General Audit** - A complete check of ALL items stored within the Property & Evidence Division against an Inventory List.
2. **Compliance Audit** - **Monthly** checks of procedures, processes, and transactions to assure compliance with policy.

D. Audit Procedures:

1. General Audit:

- a. The audit should be conducted by members of the Police Division who are not assigned to the Property & Evidence Division under the supervision of the Office of Professional Standards and/or the Essex County Prosecutor's Office.
- b. An audit begins with a complete inventory of all items that should be stored within the command, an "Inventory List."
- c. That "Inventory List" is then compared to the actual contents stored within the command.



NEWARK POLICE DIVISION GENERAL ORDER



- d. A Positive Inventory will result in all items on the Inventory List being located and accounted for onsite in the Command. Upon this outcome no further action is needed beyond filing the audit with Bureau Command.
- e. A Negative Inventory will result when items on the Inventory List cannot be located.
 - i. When an item cannot be located all necessary steps shall be taken to locate the item within the command, taking into account that the item could have been misfiled or stored in another location.
 - ii. Once alternate steps have been exhausted and the item or items are still not accounted for, immediate notification to Bureau Command and the Office of Professional Standards shall be made, and the audit shall be suspended.
- f. At no time should an audit be conducted by simply listing items that are found within the command, without being checked against the "Inventory List."

2. Compliance Audits:

- a. The Property & Evidence Division Commander shall ensure that **monthly** compliance audits are conducted by Command Supervisors of various types of property/evidence stored within the command (guns/narcotics/homicide sex assault evidence).
- b. The Office of Professional Standards shall conduct **at least two unannounced random compliance audits** of **all** Temporary Storage Locations and Permanent Property & Evidence Storage locations. These unannounced random audits shall occur on an **annual** basis.
- c. Compliance audits should be performed on completed transactions by comparing case files to verify that required notifications and release and/or destruction authorizations have been properly followed.
- d. All documentation shall be examined to verify that:
 - i. All transactions are accurately noted;
 - ii. Required notifications and release authorizations have been properly documented;
 - iii. A legitimate basis for release is clearly demonstrated;



NEWARK POLICE DIVISION GENERAL ORDER



- iv. Each inventoried item has a corresponding Property & Evidence receipt or CEMS;
- v. All items shall contain documentation as to its final disposition;
 - Returned to Owner/Finder
 - Destroyed
 - Disposed
 - Auctioned
 - Donated to a Charitable entity
 - Repurposed
 - Deposited to City or County Treasury

E. Inspections:

1. An inspection is a periodic review of designated aspects of the Property & Evidence Division function by its Commanding and Supervisory Officers as well as outside commands such as the Office of Professional Standards. Inspections should be both announced and unannounced.
2. The Property & Evidence Commander shall ensure that **monthly random inspections** are conducted by Command Supervisors of all Temporary Property & Evidence Locations throughout the Police Division.
3. Inspections should include the following;
 - a. Security;
 - b. Access control;
 - c. Property files or entries;
 - d. Cleanliness and organization of the space;
 - e. Safety issues;
 - f. Training of assigned personnel.
4. The results of all inspections shall be reported on a DP1:1001 and included in the Division's monthly report.



NEWARK POLICE DIVISION GENERAL ORDER



X. EFFECT OF THIS ORDER

All Division Orders, Memoranda, and sections of Rules and Regulations concerning the custody of evidence and property that are inconsistent with this policy are hereby rescinded and repealed.

BY ORDER OF

A handwritten signature in blue ink, consisting of stylized, overlapping letters that appear to be "AFA".

ANTHONY F. AMBROSE
PUBLIC SAFETY DIRECTOR

AFA/BO:jjc

c: Darnell Henry, Chief of Police

Appendix D

#	Consent Decree Paragraph	Corresponding NPD Policy
1	105	General Order 18-23 Section IV.A; Section V.A.2
2	110	General Order 18-23 Section IV.A; Section V.C
3	110(a)	General Order 18-23 Section V.A.1; Section V.B
4	110(b)	General Order 18-23 Section V.A.1
5	110(c)	General Order 18-23 Section V.A.1
6	110(d)	General Order 18-24 Section VIII.A
7	110(e)	General Order 18-24 Section V.B; Section IX.A
8	110(f)	General Order 18-24 Section V.B
9	110(g)	General Order Section VI.D.3
10	110(h)	General Order 18-24 Section VI.C; Section VI.D
11	111	General Order 18-24 Section V A; Section IX D; Section IX.E.; Section IX.2.E

Appendix E

149 Sampled Incident Numbers	
Count	Incident Number
1	P20040784
2	P21063967
3	P21135000
4	P21163431
5	P21164940
6	P21186114
7	P21191996
8	P21195781
9	P21200260
10	P21206332
11	P21206929
12	P21209987
13	P21210519
14	P21210695
15	P21210862
16	P21211175
17	P21211381
18	P21211430
19	P21211578
20	P21212170
21	P21212322
22	P21212605
23	P21212875
24	P21213106
25	P21213343
26	P21213607
27	P21216306
28	P21216545
29	P21217107
30	P21217357
31	P21217435
32	P21218734
33	P21219094
34	P21220536
35	P21226133
36	P21228147
37	P21228211

149 Sampled Incident Numbers	
Count	Incident Number
38	P21228723
39	P21229236
40	P21232361
41	P21232639
42	P21233869
43	P21233899
44	P21233980
45	P21236908
46	P21237074
47	P21237601
48	P21240705
49	P21242188
50	P21242425
51	P21242445
52	P21242737
53	P21242910
54	P21243334
55	P21244081
56	P21244515
57	P21245622
58	P21247117
59	P21247236
60	P21247464
61	P21248318
62	P21249519
63	P21249808
64	P21250711
65	P21251420
66	P21252023
67	P21252165
68	P21252856
69	P21253153
70	P21254420
71	P21255724
72	P21257015
73	P21257602
74	P21257633

149 Sampled Incident Numbers	
Count	Incident Number
75	P21258151
76	P21258203
77	P21258941
78	P21260203
79	P21260913
80	P21262021
81	P21262155
82	P21262747
83	P21262779
84	P21263118
85	P21263301
86	P21263755
87	P21264209
88	P21264517
89	P21266252
90	P21268458
91	P21269242
92	P21271317
93	P21271492
94	P21272541
95	P21272615
96	P21272838
97	P21274239
98	P21274450
99	P21275407
100	P21275865
101	P21276200
102	P21276351
103	P21277248
104	P21277463
105	P21279652
106	P21279913
107	P21280317
108	P21281092
109	P21281524
110	P21282407
111	P21282552

149 Sampled Incident Numbers	
Count	Incident Number
112	P21283233
113	P21283617
114	P21285055
115	P21285624
116	P21286009
117	P21287582
118	P21287829
119	P21288700
120	P21288750
121	P21289938
122	P21290128
123	P21292383
124	P21293317
125	P21293404
126	P21293514
127	P21293537
128	P21293601
129	P21293777
130	P21294313
131	P21295189
132	P21295244
133	P21295259
134	P21295607
135	P21297195
136	P21298073
137	P21298654
138	P21299184
139	P21299858
140	P21300861
141	P21301394
142	P21301411
143	P21303395
144	P21304299
145	P21304513
146	P21305115
147	P21306940
148	P21307137

149 Sampled Incident Numbers	
Count	Incident Number
149	P21308760

Appendix F

Non-Compliant Items: Accountability/Property Intake		
Number	Item Number	Circumstance(s)
1	P21063967	Incomplete Report(s)
2	P21135000	Incomplete Report(s)
3	P21163431	Incomplete Report(s)
4	P21164940	Incomplete Report(s)
5	P21186114	Incomplete Report(s)
6	P21191996	Incomplete Report(s)
7	P21195781	Incomplete Report(s)
8	P21200260	Incomplete Report(s)
9	P21206332	Incomplete Report(s)
10	P21206929	Incomplete Report(s)
11	P21209987	Incomplete Report(s)
12	P21210519	Incomplete Report(s)
13	P21211175	Incomplete Report(s)
14	P21212322	Incomplete Report(s)
15	P21212605	Incomplete Report(s)
16	P21213607	Incomplete Report(s)
17	P21216306	Incomplete Report(s)
18	P21216545	Incomplete Report(s)
19	P21217357	Incomplete Report(s)
20	P21217435	Incomplete Report(s)
21	P21219094	Incomplete Report(s)
22	P21220536	Incomplete Report(s)
23	P21226133	Incomplete Report(s)
24	P21228147	Incomplete Report(s)
25	P21228211	Incomplete Report(s)
26	P21232361	Incomplete Report(s)
27	P21232639	Incomplete Report(s)
28	P21236908	Incomplete Report(s)
29	P21237074	Incomplete Report(s)
30	P21240705	Incomplete Report(s)
31	P21242445	Incomplete Report(s)
32	P21243334	Incomplete Report(s)
33	P21245622	Incomplete Report(s)
34	P21247117	Incomplete Report(s)
35	P21247464	Incomplete Report(s)
36	P21248318	Incomplete Report(s)

Non-Compliant Items: Accountability/Property Intake		
Number	Item Number	Circumstance(s)
37	P21249808	Incomplete Report(s)
38	P21250711	Incomplete Report(s)
39	P21251420	Incomplete Report(s)
40	P21252023	Incomplete Report(s)
41	P21252165	Incomplete Report(s)
42	P21255724	Incomplete Report(s)
43	P21257015	Incomplete Report(s)
44	P21257602	Incomplete Report(s)
45	P21258151	Incomplete Report(s)
46	P21258203	Incomplete Report(s)
47	P21258941	Incomplete Report(s)
48	P21260203	Incomplete Report(s)
49	P21262021	Incomplete Report(s)
50	P21262155	Incomplete Report(s)
51	P21262747	Incomplete Report(s)
52	P21262779	Incomplete Report(s)
53	P21263118	Incomplete Report(s)
54	P21264209	Incomplete Report(s)
55	P21266252	Incomplete Report(s)
56	P21268458	Incomplete Report(s)
57	P21271317	Incomplete Report(s)
58	P21272615	Incomplete Report(s)
59	P21272838	Incomplete Report(s)
60	P21274450	Incomplete Report(s)
61	P21275407	Incomplete Report(s)
62	P21275865	Incomplete Report(s)
63	P21276200	Incomplete Report(s)
64	P21276351	Incomplete Report(s)
65	P21277248	Incomplete Report(s)
66	P21277463	Incomplete Report(s)
67	P21280317	Incomplete Report(s)
68	P21283617	Incomplete Report(s)
69	P21285055	Incomplete Report(s)
70	P21288700	Incomplete Report(s)
71	P21288750	Incomplete Report(s)
72	P21289938	Incomplete Report(s)
73	P21293404	Incomplete Report(s)

Non-Compliant Items: Accountability/Property Intake		
Number	Item Number	Circumstance(s)
74	P21293514	Incomplete Report(s)
75	P21293537	Incomplete Report(s)
76	P21293601	Incomplete Report(s)
77	P21295259	Incomplete Report(s)
78	P21298073	Incomplete Report(s)
79	P21299184	Incomplete Report(s)
80	P21300861	Incomplete Report(s)
81	P21301394	Incomplete Report(s)
82	P21303395	Incomplete Report(s)
83	P21305115	Incomplete Report(s)
84	P21307137	Incomplete Report(s)
85	P21308760	Incomplete Report(s)

Appendix G

Non-Compliant Items: Documentation		
Number	Item Number	Circumstance(s)
1	P20040784	Incomplete Report(s)
2	P21210695	Incomplete Report(s)
3	P21210862	Incomplete Report(s)
4	P21211381	Incomplete Report(s)
5	P21211430	Incomplete Report(s)
6	P21212170	Incomplete Report(s)
7	P21212875	Incomplete Report(s)
8	P21213343	Incomplete Report(s)
9	P21218734	Incomplete Report(s)
10	P21228723	Incomplete Report(s)
11	P21229236	Incomplete Report(s)
12	P21233869	Incomplete Report(s)
13	P21233899	Incomplete Report(s)
14	P21237601	Incomplete Report(s)
15	P21242188	Incomplete Report(s)
16	P21242425	Incomplete Report(s)
17	P21242910	Incomplete Report(s)
18	P21244515	Incomplete Report(s)
19	P21247236	Incomplete Report(s)
20	P21249519	Incomplete Report(s)
21	P21252856	Incomplete Report(s)
22	P21253153	Incomplete Report(s)
23	P21254420	Incomplete Report(s)
24	P21257633	Incomplete Report(s)
25	P21260913	Incomplete Report(s)
26	P21263301	Incomplete Report(s)
27	P21263755	Incomplete Report(s)
28	P21264517	Incomplete Report(s)
29	P21269242	Incomplete Report(s)
30	P21271492	Incomplete Report(s)
31	P21274239	Incomplete Report(s)
32	P21279913	Incomplete Report(s)
33	P21281092	Incomplete Report(s)
34	P21281524	Incomplete Report(s)
35	P21282407	Incomplete Report(s)
36	P21282552	Incomplete Report(s)

Non-Compliant Items: Documentation		
Number	Item Number	Circumstance(s)
37	P21285624	Incomplete Report(s)
38	P21286009	Incomplete Report(s)
39	P21287582	Incomplete Report(s)
40	P21290128	Incomplete Report(s)
41	P21292383	Incomplete Report(s)
42	P21293317	Incomplete Report(s)
43	P21293777	Incomplete Report(s)
44	P21294313	Incomplete Report(s)
45	P21295189	Incomplete Report(s)
46	P21295244	Incomplete Report(s)
47	P21297195	Incomplete Report(s)
48	P21298654	Incomplete Report(s)
49	P21299858	Incomplete Report(s)
50	P21304299	Incomplete Report(s)
51	P21304513	Incomplete Report(s)

**Report of the Independent Monitor’s Second Audit of the City of Newark and Newark
Police Division’s Investigatory Stops and Detentions**

01.17.2023

Table of Contents

I.	Reviewers	1
II.	Introduction	1
III.	Review Period.....	7
IV.	Executive Summary	7
V.	Methodology.....	8
VI.	Analysis.....	9
	A. NPD’s Stop Policy and Related Policies	9
	B. NPD’s Stop, Search and Arrest Analysis Protocol (Consent Decree Paragraph 53).....	9
	C. Operational Compliance: Substantive and Documentation.....	9
	1. Substantive Compliance.....	10
	2. Documentation Compliance.....	11
	3. Operational Compliance.....	12
	D. Outcome Assessments	12
VII.	Observations and Recommendations	12
	A. Legality, Constitutionality, and Propriety of Stops:.....	12
	B. Failure to Document Presence, Number, and Physical Characteristics of Motor Vehicle Passengers:	13
	C. Failure to Enter Required Information Regarding Protective Pat-Downs and Searches:	13
	D. Lack of Clear Understanding of the Definition and Propriety of Pretext Stops:	13
	E. Officer Conducting Stop Not Clearly Identified Within Stop Report.....	14

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 Investigatory Stops and Detentions (“Stops”).

I. Reviewers

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

Daniel Gomez, Lieutenant, Los Angeles Police Department (Ret.)
Sekou Kinebrew, Staff Inspector, Philadelphia 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
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. By letter on August 29, 2022 and pursuant to Paragraph 180 of the Consent Decree, the Independent Monitor issued notice to the City, NPD, and United States Department of Justice (“DOJ”) (collectively, the “Parties”) that the Monitoring Team would begin its second audit of NPD’s compliance with certain provisions of the Consent Decree relating to investigatory stops and detentions, including Section VI (specifically, Paragraphs 25-28, 43, & 51-62); Section VII (specifically, Paragraph 65); Section XV (specifically, Paragraph 164 and 168); and, Section XVI (specifically, Paragraphs 174(a)¹, (d), and (e)²). See **Appendix A** (45-day notice letter, dated August 29, 2022).

The above-referenced paragraphs of the Consent Decree require NPD to:

- Prohibit officers from conducting investigatory stops or detentions, when they lack reasonable suspicion that a person has been, is, or is about to be engaged in, the commission of a crime (Paragraph 25).
- Require officers to articulate their reasonable suspicion for stops in a specific and clear manner in their reports. NPD will train officers to use specific and individualized descriptive language in reports or field inquiry forms when documenting investigatory stops or detentions, and NPD will evaluate whether officers have done so (Paragraph 26).

¹ 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.

² Consent Decree Paragraphs 174(d) and (e) are related to Outcome Assessments for training and supervision, respectively. NPD’s ability to provide data for Outcome Assessments in those areas will be covered in future audits conducted by the Monitoring Team. Although Paragraphs 65, 164, and 168 are referenced in the Monitor’s August 29, 2022 45-day notice (see Appendix A), these paragraphs will not be covered in this audit. Instead, they will be the subject of future audits or compliance reviews in other subject areas.

- Prohibit officers from:
 - Conducting “pretext” vehicle stops or detentions without prior approval of a supervisor;
 - Using *pro forma* or conclusory language without supporting detail in documents or reports documenting investigatory stops or detentions;
 - Using information known to be materially false or incorrect in effectuating an investigatory stop or detention;
 - Using any demographic category as a factor, to any extent or degree, in establishing reasonable suspicion or probable cause during routine or spontaneous enforcement activities, except that officers may rely on a demographic category in a specific suspect description from a trustworthy source that is relevant to the locality or time;
 - Using an individual’s geographic location, presence in a high crime area, or proximity to the scene of suspected or reported crimes without any other reliable indicator that an individual has or is engaged in criminal activity, as the basis for an investigatory stop or detention;
 - Basing investigatory stops or 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;
 - Basing investigatory stops or 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; and,
 - Basing investigatory stops or detention solely on an individual’s presence in the company of others suspected of criminal activity (Paragraph 27).
- Require documentation of all investigatory detentions, field inquiries and mere inquiries, however they are described internally (Paragraph 28).
- Provide all officers with at least sixteen (16) hours of training on stops, searches, arrests, and the requirements of this Agreement, within 180 days of the Operational Date, and at least an additional four (4) hours on an annual basis thereafter. Such training will be taught by a qualified legal instructor with significant experience in First and Fourth Amendment issues, and will address:
 - the requirements of Fourth Amendment and related law, NPD policies, and this Agreement regarding investigatory stops and detentions, searches and seizures, including:
 - 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 acquiescence to police authority;

- the types of facts and circumstances that may be considered in initiating, conducting, terminating, and expanding an investigatory stop or detention;
 - the level of permissible intrusion when conducting searches, such as “pat-downs” or “frisks”;
 - the permissible nature and scope of other pre-arrest searches, including those conducted pursuant to probation or parole release provisions; and,
 - the permissible nature and scope of searches incident to arrest.
 - First Amendment and related law in the context of the rights of individuals to verbally comment on, observe, and record officer conduct;
 - Procedures for executing searches, and the handling, recording, and taking custody of seized property or evidence; and
 - the effect that differing approaches to stops, searches, and arrests can have on community perceptions of police legitimacy and public safety (Paragraph 43).
- 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 (Paragraph 51).
- Within 180 days of the Operational Date, NPD will modify or 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 system will be integrated into NPD’s EWS and allow for the information in stop and search records to be searched and summarized electronically. NPD’s stop and search data collection system will be subject to the review and approval of the Monitor and DOJ, and will require officers to document the following:
 - the officer’s name and badge number;
 - the date and time of the stop;
 - the location of the stop;
 - the duration of the stop;
 - the subject’s apparent gender, race, ethnicity or national origin, and age;
 - if a vehicle stop, the presence and number of any passengers and the apparent gender, race, ethnicity, national origin, and age of each passenger; if a non-vehicle stop (*e.g.* pedestrian or bicycle), the number of individuals stopped and apparent gender, race, ethnicity, national origin, and age of each person;
 - the reason for the stop, including a description of the facts creating reasonable suspicion and whether it was a pretext stop;

- if a vehicle stop, whether the driver or any passenger was required to exit the vehicle, and the reason for doing so;
 - 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;
 - a full description of any contraband or evidence seized from any individual;
 - whether a probable cause search was performed on any individual, including a brief description of the facts creating probable cause; and
 - the disposition of the stop, including whether a citation or summons was issued to or an arrest made of any individual (Paragraph 52).
- 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:
 - violates the law;
 - incites others to violate the law; or

- 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).
- Conduct cumulative and quarterly demographic analyses of its enforcement activities to ensure officer, unit, and Division compliance with the bias-free policy through the identification of trends, outliers, or other relevant indicators. In addition to collecting and analyzing stop data set out above in Section VI.F (*Stop, Search, and Arrest Data Collection and Review*), NPD's analysis will include evaluations and assessments of enforcement activities by type, unit or assignment, demographics of the subject, the shift or time of day, location, the nature of offense, force used and resistance encountered, and comparisons of those factors among similar officers or units. These analyses will be made publicly available pursuant to Section XV (*Transparency and Oversight*) (Paragraph 65).
- To the extent permissible by law, including civil service rules and collective bargaining agreements, NPD will make its policies publicly available, and will regularly report information regarding officer use of force; misconduct complaints; and stop/search/arrest data. Where NPD seeks to withhold a policy from the public, it will confer with DOJ and the Monitor to determine whether the particular policy, or any part of it, should be withheld from publication (Paragraph 164).
- 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 (Paragraph 168).

- 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:
 - Stop, Search, and Arrest:
 - Stop rates by subject(s) race or ethnicity, gender, and age per sector, precinct, shift, and unit;
 - 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
 - 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 (Paragraph 174 (a)).
 - Training
 - Training effectiveness; and,
 - Modifications or improvements to training resulting from review and analysis of uses of force, stops, searches, arrests, citizen complaints, community input or oversight, and other sources as required by the Agreement (Paragraph 174 (d)).
 - Supervision
 - Effectiveness of first-line supervisors' and the chain of commands' identification of and response to incomplete or insufficient reporting for stops, searches, arrests, and uses of force.
 - Ability of supervisors and commanders to identify trends related to use of force; or stops, searches, or arrests in violation of NPD policy or the laws that go unaddressed by supervisors;
 - The number and rates of civilian and administrative complaints against supervisors' and commanders' direct subordinates.
 - Effectiveness at implementing NPD's community engagement and law enforcement strategies, including metrics such as arrest rates, community contacts, and crime rates in command areas; and
 - Response to officers or units identified for supervisory review or intervention by NPD's Early Warning System (Paragraph 174 (e)).

III. Review Period

In this audit, the Monitoring Team reviewed NPD’s police activities and records for a two-month period, specifically from April 1, 2022 up to and including May 31, 2022 (the “Audit Period”).

On August 29, 2022, the Monitoring Team provided NPD with notice of its intent to conduct this audit. *See Appendix A.*

IV. Executive Summary

This report sets forth the results of the Monitoring Team’s *second* audit of NPD’s investigatory stop and detention practices. To that end, the Monitoring Team analyzed whether: (1) NPD’s policies that govern these practices contained the Consent Decree-required provisions (as listed above); (2) NPD’s personnel demonstrated routine adherence to NPD’s own Stop policy in their day-to-day operations, described here as “Operational Compliance.”

On the first component of this audit—NPD’s policies and procedures regarding investigatory stops and detentions—the Monitoring Team previously approved NPD’s General Order 18-14, *Consensual Citizen Contacts and Investigatory Stops* (*see Appendix C*), and General Order 18-12, *First Amendment Right to Observe, Object to, and Record Police Activity* (*see Appendix F*). The Monitoring Team also determined that NPD’s protocol for analyzing stop, search and arrest data (General Order 21-04 *Protocol for Analyzing Stop, Search, and Arrest Data*) contained the requirements specified in the Consent Decree (*see Appendix G*).

For the second component of this audit---whether NPD had demonstrated routine adherence to its Stop policy thereby achieving “Operational Compliance”---the Monitoring Team considered two components. Specifically, the Monitor examined whether NPD officers conducting a Stop (a) had legal justification for the stop, and whether the officer’s attendant actions were within legal and policy-related parameters, described in this audit as *substantive* compliance; and (b) complied with the reporting and documentation requirements contained in NPD’s policy, described in this audit as *documentation* compliance. If any stop was deficient, either substantively or with respect to documentation, that Stop was deemed “Non-Compliant.” The Monitoring Team utilized a 95% compliance standard for this audit. That standard has been established by DOJ and applied to other Consent Degrees. NPD achieved “Operational Compliance” when it satisfied both substantive and documentation compliance for 95% of the stops in the sample reviewed by the Monitoring Team.³

When separated by substantive and documentation compliance, the audit revealed that NPD attained a score of 100% for substantive compliance (all stops assessed for substantive compliance were determined to be compliant). NPD’s documentation compliance score was 93.88% (184 out of 196 stops assessed for documentation compliance were determined to be compliant). Thus, when assessing for Operational Compliance (*i.e.*, satisfaction of both substantive and documentation requirements), the Monitoring Team found 93.88% of the

³ 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 Investigatory Sops and Detention practices.

stops reviewed to be both substantively and documentation compliant. In other words, 184 out of 196 stops reviewed by the Monitoring Team achieved Operational 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 Operational Compliance for this audit. Stated differently, this assessment revealed that the intended effect of the requirements regarding Investigatory Stops and Detentions has been achieved for this second audit.

This table presents an overview of NPD’s compliance in the Monitoring Team’s Second Audit of Investigatory Stops and Detentions.

Overview of Second Stop Audit Results		
Audit Subject	Consent Decree Paragraph(s)	Compliance
Investigative Stops and Detention Policy and Related Policies	Paragraphs 25-28, 43, 51-62	Yes.
Substantive Compliance <i>Whether the responsible NPD officer(s) adhered to NPD policy by demonstrating that legal justification for the stop existed and that the stop was within legal and policy-related parameters.</i>	Paragraphs 25-28; 55-62 (First Amendment)	Yes. NPD was deemed substantively compliant in 100% of Stops reviewed. The intended effect of this requirement has been achieved.
Documentation Compliance <i>Whether the responsible NPD officer(s) 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>	Paragraphs 25-28; 55-62 (First Amendment)	Yes. NPD was deemed compliant with respect to documentation in 93.88% of Stops reviewed. The intended effect of this requirement has been achieved.
Operational Compliance <i>Whether NPD demonstrated operational compliance in its Investigatory Stops and Detention practices (Substantive and Documentation).</i>	Paragraphs 25-28; 55-62 (First Amendment)	Yes. 93.88% of Stops reviewed were compliant both substantively and with respect to documentation.

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 Stop Policy and Related Policies

The Consent Decree requires NPD to implement policies directing officers to adhere to certain procedures in their investigatory stop and detention practices. Prior to this audit, the Monitoring Team reviewed and approved NPD's Stop policies, as specified in General Order 18-14, *Consensual Citizen Contact and Investigatory Stops*, dated December 31, 2018 (see **Appendix C**), General Order 18-12 *First Amendment Right to Observe, Object to, and Record Police Activity*, dated June 12, 2019 (See **Appendix F**), NPD Memorandum 19-18 *Implementation of General Order 18-14, 18-15, 18-16 RE: Stop, Search, and Arrest Policies*, dated January 1, 2019 (specifically focusing on the paragraphs addressing Stops) (see **Appendix B**), General Order 21-04 *Protocol for Analyzing Stop, Search, and Arrest Data*, dated May 27, 2021 (see **Appendix I**), as well as related written directives, and related In-Service Training Bulletins.⁴

Before approving these policies, the Monitoring Team conducted a formal review to determine whether the policies contained each requirement relevant to Investigatory Stops and Detentions 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 J: Crosswalk**).

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 I**). 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. Operational Compliance: Substantive and Documentation

The Monitoring Team initially generated a random sample of 200 events of "Stops" From the Audit Period (April 1, 2022 up to and including May 31, 2022) to analyze for this audit. This random sample of 200 events was drawn from a total population of 3,996 events

⁴ NPD's General Order 18-05 *Body-Worn Camera policy* (see **Appendix G**), and General Order 18-06 *In-Car Camera policy* (see **Appendix H**), are also relevant to this audit.

for the Audit Period. The final audit sample contained 196 events (*see Appendix K* for the complete list of events).

An event was deemed to be in “Operational Compliance” only when the NPD officer was compliant with regard to both substantive and documentation requirements for the stop 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 “Operationally Non-Compliant.”

To assess Substantive Compliance for each Stop event, the Monitoring Team evaluated whether the officer involved had legal justification for the Stop (*i.e.*, reasonable articulable suspicion), and whether the mechanics of the Stop were within legal and policy-related parameters. The Monitoring Team evaluated the actions of the initiating officer(s), the officer(s) responsible for effectuating the Stops, and all officers appearing on body-worn or in-car camera video. If the substantive assessment was determined to be deficient, the Stop event was assessed to be “substantive non-compliant.”

To assess Documentation Compliance for each Stop event, the Monitoring Team inspected relevant materials to determine if (1) legal justification for the Stop was clearly articulated on written documents; and (2) BWC/ICC⁵ footage was submitted, and corroborated information recorded on corresponding police forms. If legal justification was not clearly articulated on relevant forms, or if BWC/ICC footage refuted (or failed to corroborate) information recorded on associated forms, or if the NPD officer did not activate his or her BWC and ICC as prescribed by NPD policy, the Stop event was assessed “documentation non-compliant.”

For Stops involving multiple officers, the Monitoring Team analyzed the actions of every officer involved in the Stop and/or on the scene during the Stop. A Stop was only Operationally Compliant if *every* officer involved complied both substantively and with respect to documentation. A failure by any officer involved in a Stop resulted in non-compliance for the Stop as a whole.

1. Substantive Compliance

In assessing substantive compliance, for each Stop event, the Monitoring Team inspected relevant materials to determine the constitutionality and legal sufficiency of the arrest (*i.e.*, whether the officer(s) established reasonable articulable suspicion prior to the effectuation of the stop). Stop events meeting legal and constitutional sufficiency thresholds (as assessed by the Monitoring Team) were deemed “substantive compliant.” Stop events lacking legal or constitutional sufficiency (again, as assessed by the Monitoring Team) were deemed “substantively non-compliant.”⁶

In total, 196 of the 196 (100%) events reviewed were substantively compliant.

⁵ “BWC” refers to Body-Worn Cameras and “ICC” refers to In-Car Cameras.

⁶ A Stop with a missing body-worn camera video was deemed compliant with respect to documentation if, despite missing a body-worn camera video, the Monitoring Team was able to determine through review of other videos captured from body-worn or in-car cameras, whether officers conducting the stop established requisite reasonable articulable suspicion prior to initiating the Stop, and acted within the scope of a lawful and procedurally adherent citizen investigation.

Events Reviewed	Substantively Compliant	Score
196	196	100%

2. Documentation Compliance

To determine whether NPD achieved documentation compliance, the Monitoring Team assessed whether or not the NPD officer(s) involved in 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 93.88%. In 184 of the 196 events reviewed, the responsible officer(s) completed documentation reporting requirements according to NPD policy.

Events Reviewed	Documentation Compliant	Score
196	184	93.88%

Of the 12 non-compliant Stops reviewed by the Monitoring Team, all 12 (100%) were non-compliant due to documentation-related deficiencies only.

Below is a summary of the 12 events that were determined to be non-compliant because of documentation deficiencies, and the relevant circumstances surrounding each event.

Summary of Documentation Non-Compliant Events	
Event Number	Circumstances
P21435573	On the Stop Report, the officer indicated that this event was a "Pretext Stop." However, SME review determined that this was a conventional (probable cause- or reasonable suspicion-based) stop, and, thereby, did not meet the definition of a pretext stop, as prescribed by NPD policy.
P22009975	Relevant BWC video was unavailable at the time of the in-person audit session.
P22014821	Relevant BWC video was unavailable at the time of the in-person audit session.
P22058288	On the Stop Report, the officer indicated that this event was a "Pretext Stop." However, SME review determined that this was a conventional (probable cause- or reasonable suspicion-based) stop, and, thereby, did not meet the definition of a pretext stop, as prescribed by NPD policy.
P22066585	On the Stop Report, the officer indicated that this event was a "Pretext Stop." However, SME review determined that this was a conventional (probable cause- or reasonable suspicion-based) stop, and, thereby, did not meet the definition of a pretext stop, as prescribed by NPD policy.
P22074176	On the Stop Report, the officer indicated that this event was a "Pretext Stop." However, SME review determined that this was a conventional (probable cause- or reasonable suspicion-based) stop, and, thereby, did not meet the definition of a pretext stop, as prescribed by NPD policy.

P22133736	The SMEs were unable to view relevant BWC footage due to officers' failure to activate and/or late activation.
P22135075	No Stop Report was available at the time of the in-person audit session.
P22136134	On the Stop Report, the officer failed to provide passenger information. SMEs confirmed the presence of passenger(s) via BWC video.
P22142695	The passenger was subject to investigation. However, no corresponding Stop Report was available at the time of the in-person audit session.
P22147961	Relevant BWC/ICC video was unavailable at the time of the in-person audit session.
P22157500	Some relevant BWC video was unavailable at the time of the in-person audit session. Additionally, several Stop Report fields were left blank, and information entered in other areas of the Stop Report was inconsistent with viewable BWC video.

3. Operational Compliance

NPD achieved an Operational Compliance score of 93.88%. In total, 184 of the 196 Stops reviewed by the Monitoring Team were compliant both substantively and in terms of documentation.

Events Reviewed	Overall Compliance Assessed	Score
196	184	93.88%

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

The Monitoring Team made five (5) principal observations and corresponding recommendations during this audit.

A. Legality, Constitutionality, and Propriety of Stops:

Observation: The large majority of the Stops 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 an 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.

B. Failure to Document Presence, Number, and Physical Characteristics of Motor Vehicle Passengers:

Observation: The Monitoring Team SMEs reviewed Stop events wherein the reporting officers failed to document the presence, number and/or physical characteristics (apparent age, race, and gender) of motor vehicle passengers. It should be noted that in each instance, BWC video confirmed that the passengers were not subject to investigation. However, as prescribed by NPD policy, that information must be entered in the corresponding fields.

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 line supervisors.

C. Failure to Enter Required Information Regarding Protective Pat-Downs and Searches:

Observation: The Monitoring Team SMEs reviewed Stop events wherein the reporting officers failed to document search actions including protective pat-downs and/or searches incident to arrest within the corresponding Stop Report fields (or elsewhere within the Stop Report). In each instance, BWC video evidenced that a (lawful) search action did, in fact, occur.

Recommendation: Consistent with the recommendation regarding the failure to document, as is the case with officers’ failure to document the presence of motor vehicle passengers, the Monitoring Team recommends that supervisory and management personnel adopt a more regular practice of inspecting reports and corresponding video footage. Additionally, the Monitoring Team 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 line supervisors.

D. Lack of Clear Understanding of the Definition and Propriety of Pretext Stops:

Observation: The Monitoring Team SMEs reviewed Stop events wherein the reporting officers demonstrated a lack of understanding of the definition and propriety of pretext stops. In most instances, the reporting officers classified conventional “reasonable suspicion” or “probable cause” Stops as “pretext” Stops. Moreover, in instances wherein a

pretext Stop did occur, some officers failed to follow required protocol regarding the notification and/or approval of a supervisor.

Recommendation: The Monitoring Team recommends prioritization and implementation of a training module focused specifically on the legal definition of a pretext Stop, when such an action is appropriate, and the necessity of supervisory notification and approval.

E. Officer Conducting Stop Not Clearly Identified Within Stop Report:

Observation: The Monitoring Team SMEs reviewed Stop events wherein the officer who initiated (or primarily engaged in) the Stop, was not specifically identified within the contents of the corresponding Stop Report. Equally deficient, the officer who prepared the Stop Report was not the officer who initiated the police-citizen encounter. 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 Stops to include a requirement that **either** the officer who initiates the stop prepare the Stop Report, **or**, at minimum, that the initiating officer be clearly identified within the contents of the Stop Report. Suggested language includes the following:

- When there are multiple officers on the scene and interacting with the detained person:
 - Only *one* officer will prepare and submit the Stop Report;
 - The officer who initiated the encounter (or the officer with the highest level of interaction or engagement with the citizen) will prepare the Stop Report;
 - All actions taken by each officer present will be documented within the contents of the Stop Report.

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: January 17, 2023

Peter C. Harvey, Independent Monitor

List of Appendices

Appendix A: 45-day Notice

Appendix B: Director's Public Safety Memorandum, Implementation of G.O. 18-14, 18-15, 18-16 RE: Stop, Search and Arrest Policies, dated January 10, 2019

Appendix C: General Order 18-14 Consensual Citizen Contacts and Investigatory Stops, dated December 31, 2018

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

Appendix E: General Order 18-16 Arrests With or Without An Arrest Warrant, dated December 31, 2018

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

Appendix G: General Order 18-05 Body-Worn Cameras, dated October 22, 2019

Appendix H: General Order 18-06 In-Car Cameras, dated June 5, 2018

Appendix I: General Order 21-04 Protocol for Analysis of Stop, Search and Arrest Data, dated May 27, 2021

Appendix J: Crosswalk

Appendix K: List of Events

Appendix L: List of Events Removed

Appendix A

Date August 29, 2022

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RE: Second Audit: Investigatory Stops and Detentions 45-Day Notice

Dear Mr. Stewart and Director Fragé:

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 *second* audit of NPD's Investigatory Stops and Detentions (also referred to as "Stops"). This audit will cover the period **from April 1, 2022 up to and including May 31, 2022 (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, Paragraphs 25-28, 43, & 51-62); Section VII (specifically, Paragraph 65); Section XV (specifically, Paragraphs 164 and 168); and Section XVI (specifically, Paragraphs 174 (a), (d), and (e)).

This second audit of Investigatory Stops and Detentions will be carried out by the following Monitoring Team Subject Matter Experts: Daniel Gomez, Lieutenant, Los Angeles Police Department (Ret.), Sekou Kinebrew, Staff Inspector, Philadelphia Police Department (Ret.), and, Roger Nunez, Sergeant, Los Angeles Police Department.

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 paragraphs as they pertain to Investigatory Stops and Detentions.

The topical areas of Searches and Arrests will not be the subject of this audit, but will be the subject of separate audit(s). This audit, however, will include Consent Decree Section VI D, *Stop, Search, and Arrest Training* (specifically, Paragraph 43), which encompasses all three topical areas, and has already been subject to Monitoring Team review prior to this auditing period.

Additionally, the Monitoring Team will not audit supervisory reviews of Stops during this initial stop audit. It is the Monitoring Team’s intention, however, to complete a subsequent audit of supervisory reviews of Stops in the quarter following completion of this audit. While the Monitoring Team will not be auditing supervisory reviews of stops during this initial stop audit, it is our intention to complete a follow-up audit of this area within the next quarter.

II. METHODOLOGY

To assess compliance, the Monitoring Team will evaluate whether NPD is following its own policy, protocols, procedural guidelines, notification(s), 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 Stops); G.O. #18-14 – *Consensual Citizen Contacts and Investigatory Stops*, dated December 31, 2018; G.O. #21-04 - Protocol for Analyzing Stop, Search, and Arrest Data; 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 18-14 - *Consensual Citizen Contacts and Investigatory Stops* have been recorded within the Stop Reports reviewed.

The following are the relevant Consent Decree Paragraphs, the corresponding areas of NPD written policy (where applicable), and a brief summary of the methodology the SME will employ in assessing each stop event for compliance (again, where applicable):

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 18-14; Section 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 4th 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.

Compliance Assessment Method: To assess compliance with Consent Decree Section VI, Opening Statement, for each stop 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 stops 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 reasonable suspicion to initiate the stop; (ii) adhered to the procedures outlined in General Order 18-16 (and related areas of NPD Policy); and, (iii) refrained from using pro forma or conclusory language without supporting detail.

2. **Paragraph 25:** NPD will prohibit officers from conducting investigatory stops or detentions, when they lack reasonable suspicion that a person has been, is, or is about to be engaged in the commission of a crime.

General Order / Policy Assessment (General Order 18-14; Section V.A - Policy):

Newark Police Officers are prohibited from:

B. 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.

Compliance Assessment Method: To assess compliance with Consent Decree Paragraph 25, for each stop 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 stops 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 reasonable suspicion to initiate the stop; (ii) adhered to the procedures outlined in General Order 18-16 (and related areas of NPD Policy); and, (iii) refrained from using pro forma or conclusory language without supporting detail.

3. **Paragraph 26:** NPD will require officers to articulate their reasonable suspicion for stops in a specific and clear manner in their reports. NPD will train officers to

use specific and individualized descriptive language in reports or field inquiry forms when documenting investigatory stops or detentions, and NPD will evaluate whether officers have done so.

General Order / Policy Assessment (General Order 18-14; Section II – Policy):

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.

General Order / Policy Assessment (General Order 18-14; Section VI.B.12 – Procedures):

Officers will fully document all stops as soon as possible, but no later than by the end of the officer's workday.

General Order / Policy Assessment (General Order 18-14; Section VII.A & B – 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" (DP1:1388) 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.

Compliance Assessment Method: To assess compliance with Consent Decree Paragraph 26, for each stop 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 stops 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 reasonable suspicion to initiate the stop; (ii) adhered to the procedures outlined in General Order 18-16 (and related areas of NPD Policy); and, (iii) refrained from using pro forma or conclusory language without supporting detail.

4. Paragraph 27: NPD will prohibit NPD officers from:

1. Conducting "pretext" vehicle stops or detentions without prior approval of a supervisor;
2. Using pro-forma or conclusory language without supporting detail in documents or reports documenting investigatory stops or detentions;

3. Using information known to be materially false or incorrect in effectuating an investigatory stop or detention;
4. Using any demographic category as a factor, to any extent or degree, in establishing reasonable suspicion or probable cause during routine or spontaneous enforcement activities, except that officers may rely on a demographic category in a specific suspect description from a trustworthy source that is relevant to the locality or time;
5. Using an individual's geographic location, presence in a high crime area, or proximity to the scene of suspected or reported crimes without any other reliable indicator that an individual has or is engaged in criminal activity, as the basis for an investigatory stop or detention;
6. Basing investigatory stops or 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;
7. Basing investigatory stops or 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; and
8. Basing investigatory stops or detention solely on an individual's presence in the company of others suspected of criminal activity.

General Order / Policy Assessment (General Order 18-14; Section V (B through L) – Prohibited Actions):

Newark Police Officers are prohibited from:

A. 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;

B. 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;”

C. 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;

D. 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;

E. 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;

F. 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;

G. Basing investigatory stops / detentions solely upon the fact that a person is in close proximity to someone who is suspected of criminal activity;

H. 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.

I. 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.

J. 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));

K. 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)).

Compliance Assessment Method: To assess compliance with Consent Decree Paragraph 27, for each stop 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 stops 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 reasonable suspicion to initiate the stop; (ii) adhered to the procedures outlined in General Order 18-16 (and related areas of NPD Policy); and, (iii) refrained from using pro forma or conclusory language without supporting detail.

5. **Paragraph 28:** NPD will require documentation of all investigatory detentions, field inquiries and mere inquiries, however they are described internally

General Order / Policy Assessment (General Order 18-14; Section II – Policy):

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.

General Order / Policy Assessment (General Order 18-14; Section VI.B.12 – Procedures):

Officers will fully document all stops as soon as possible, but no later than by the end of the officer's workday.

General Order / Policy Assessment (General Order 18-14; Section VII (A & B) – 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" (DP1:1388) 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.

Compliance Assessment Method: To assess compliance with Consent Decree Paragraph 28, for each stop 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 stops 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 reasonable suspicion to initiate the stop; (ii) adhered to the procedures outlined in General Order 18-16 (and related areas of NPD Policy); and, (iii) refrained from using pro forma or conclusory language without supporting detail.

6. Paragraph 43: NPD will provide all officers with at least 16 hours of training on stops, searches, arrests, and the requirements of this Agreement, within 180 days of the Operational Date, and at least an additional 4 hours on an annual basis thereafter. Such training will be taught by a qualified legal instructor with significant experience in First and Fourth Amendment issues, and will address:

A. the requirements of Fourth Amendment and related law, NPD policies, and this Agreement regarding investigatory stops and detentions, searches and seizures, including:

- 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 acquiescence to police authority;

- the types of facts and circumstances that may be considered in initiating, conducting, terminating, and expanding an investigatory stop or detention;
- the level of permissible intrusion when conducting searches, such as “patdowns” or “frisks”;
- the permissible nature and scope of other pre-arrest searches, including those conducted pursuant to probation or parole release provisions; and
- the permissible nature and scope of searches incident to arrest.

B. First Amendment and related law in the context of the rights of individuals to verbally comment on, observe, and record officer conduct;

C. procedures for executing searches, and the handling, recording, and taking custody of seized property or evidence; and

D. the effect that differing approaches to stops, searches, and arrests can have on community perceptions of police legitimacy and public safety.

With regard to **Consent Decree Paragraph 43**, the Monitoring Team is satisfied that NPD has crafted (and begun disseminating) the training described. Accordingly, the Monitoring Team will make a notation of same within the Second Stop Audit Report, and will audit the specific contents of the training when it reviews the required provisions under the “training” sections of the Consent Decree.

7. **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.

8. **Paragraph 52:** Within 180 days of the Operational Date, NPD will modify or 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 system will be integrated into NPD’s EWS and allow for the information in stop and search records to be searched and summarized electronically. NPD’s stop and search data collection system will be subject to the review and approval of the Monitor and DOJ, and will require officers to document the following:

1. the officer’s name and badge number;
2. date and time of the stop;
3. location of the stop;
4. duration of the stop;

5. subject's apparent gender, race, ethnicity or national origin, and age;
6. if a vehicle stop, the presence and number of any passengers and the apparent gender, race, ethnicity, national origin, and age of each passenger; if a nonvehicle stop (e.g. pedestrian or bicycle), the number of individuals stopped and apparent gender, race, ethnicity, national origin, and age of each person;
7. reason for the stop, including a description of the facts creating reasonable suspicion and whether it was a pretext stop;
8. if a vehicle stop, whether the driver or any passenger was required to exit the vehicle, and the reason for doing so;
9. 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;
10. a full description of any contraband or evidence seized from any individual;
11. whether a probable cause search was performed on any individual, including a brief description of the facts creating probable cause; and
12. disposition of the stop, including whether a citation or Summons was issued to, or an arrest made of, any individual.

Regarding compliance with Consent Decree Paragraph 52, 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.

9. **Paragraph 53:** NPD will 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.

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.

10. **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 second Stop 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.

11. 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 18-14; Section V (M & N) – Prohibited Actions):

Newark Police Officers are prohibited from:

A. 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

B. 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 stop 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 stops 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.

12. 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.

- 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.
- 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.
- 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.
- 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:
 - 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.
 - 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;
 - Order the bystander to cease such activity;
 - Demand that bystander's identification;
 - Demand that the bystander state a reason why he or she is taking photographs or recording;
 - 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;
 - Intentionally block or obstruct cameras or recording devices; or
 - 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 stop 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 stops 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. Paragraph 57: NPD will require that officers take no law enforcement action against a bystander unless the bystander:

1. violates the law;
2. incites others to violate the law; or
3. 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.

- 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.
- 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.
- 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.
- 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:
 - 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.

- 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;
- Order the bystander to cease such activity;
- Demand that bystander's identification;
- Demand that the bystander state a reason why he or she is taking photographs or recording;
- 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;
- Intentionally block or obstruct cameras or recording devices; or
- 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 stop 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 stops 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. 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.
- 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.

- 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.
- 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.
- 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:
 - 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.
 - 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;
 - Order the bystander to cease such activity;
 - Demand that bystander's identification;
 - Demand that the bystander state a reason why he or she is taking photographs or recording;
 - 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;
 - Intentionally block or obstruct cameras or recording devices; or
 - 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 58, for each stop 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 stops 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. 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.
- 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.
 - 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.
 - 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.
 - 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:
 - 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.
 - 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;
 - Order the bystander to cease such activity;
 - Demand that bystander’s identification;
 - Demand that the bystander state a reason why he or she is taking photographs or recording;
 - 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;

- Intentionally block or obstruct cameras or recording devices; or
- 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 stop 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 stops 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. 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, 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.
- 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.
 - 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.
 - 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.
 - 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:

- 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.
- 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;
- Order the bystander to cease such activity;
- Demand that bystander's identification;
- Demand that the bystander state a reason why he or she is taking photographs or recording;
- 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;
- Intentionally block or obstruct cameras or recording devices; or
- 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 60, for each stop 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 stops 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. 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.

- 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.
- 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.
- 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.
- 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:
 - 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.
 - 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;
 - Order the bystander to cease such activity;
 - Demand that bystander's identification;
 - Demand that the bystander state a reason why he or she is taking photographs or recording;
 - 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;
 - Intentionally block or obstruct cameras or recording devices; or
 - 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 stop 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 stops 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.

18. 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):

- A. 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 stop 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 stops 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.

19. Paragraph 65: NPD will conduct cumulative and quarterly demographic analyses of its enforcement activities to ensure officer, unit, and Division compliance with the bias-free policy through the identification of trends, outliers, or other relevant indicators. In addition to collecting and analyzing stop data set out above in Section VI.F., NPD’s analysis will include evaluations and assessments of enforcement activities by type, unit or assignment, demographics of the subject, the shift or time of day, location, the nature of offense, force used and resistance encountered, and comparisons of those factors among similar officers or units. These analyses will be made publicly available pursuant to Section XV. below.

Consent Decree Paragraph 65 will not be a part of the Monitoring Team review for the purpose of the second Stop 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.

20. Paragraph 164: To the extent permissible by law, including civil service rules and collective bargaining agreements, NPD will make its policies publicly available, and will regularly report information regarding officer use of force; misconduct complaints; and stop/search/arrest data. Where NPD seeks to withhold a policy from the public, it will confer with DOJ and the Monitor to determine whether the particular policy, or any part of it, should be withheld from publication.

Consent Decree Paragraph 164 will not be a part of the Monitoring Team review for the purpose of the second Stop 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.

21. Paragraph 168: 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.

Consent Decree Paragraph 65 will not be a part of the Monitoring Team review for the purpose of the second Stop 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.

22. Paragraph 174 (a), (d) & (e): 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:

- stop rates by subject(s) race or ethnicity, gender, and age per sector, precinct, shift, and unit;

- 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
- 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.

B. Training

- training effectiveness; and
- modifications or improvements to training resulting from review and analysis of uses of force, stops, searches, arrests, citizen complaints, community input or oversight, and other sources as required by the Agreement.

C. Supervision

- effectiveness of first—line supervisors’ and the chain of commands’ identification of and response to incomplete or insufficient reporting for stops, searches, arrests, and uses of force;
- ability of supervisors and commanders to identify trends related to use of force; or stops, searches, or arrests in violation of NPD policy or the law that go unaddressed by supervisors;
- the number and rates of civilian and administrative complaints against supervisors’ and commanders’ direct subordinates;
- effectiveness at implementing NPD’s community engagement and law enforcement strategies, including metrics such as arrest rates, community contacts, and crime rates in command areas; and
- response to officers or units identified for supervisory review or intervention by NPD’s Early Warning System.

Consent Decree Paragraph 174 (a), (d) & (e) will not be a part of the Monitoring Team review for the purpose of the second Stop Audit. The Monitoring Team will audit this paragraph when it reviews all the required provisions under the “data and data collection,” “supervisory,” and “bias” sections of the Consent Decree.

To identify and extract those stop events to be audited, the Monitoring Team will draw a randomized sample from all stops conducted by NPD officers during the audit period. The Monitoring Team will randomly select 20% of the stop reports produced by NPD officers during the audit period (“initial sample”) to assess for completeness -- ensuring that data elements collected on stop report forms are actually being captured. From this initial sample, a subset of 20% of the stop reports will be randomly selected (“secondary sample”). The

Monitoring Team will review all forms associated with stops in the secondary sample to assess their content (e.g., whether officers have articulated reasonable suspicion or used pro forma or conclusory language without supporting detail).

Finally, the Monitoring Team will identify and review videos associated with an additional number of stops in order to confirm the content of the reports.

For further information regarding the Monitoring Team's methodology with respect to the audit of NPD's Investigatory Stops and Detentions, please see Appendix A.

III. REQUIRED DATA

In preparation for the audit, at least two (2) weeks prior to the start of the audit, and not later than September 19, 2022, the Monitoring Team requires that NPD provide it with the following data and records for the audit period.

A. A spreadsheet consisting of information related to all stops conducted by NPD officers during the audit period. This spreadsheet should include all data elements required by Consent Decree Paragraph 52 (listed below) and collected on the stop report form.

B. The methodology NPD uses 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).

C. The cumulative and quarterly demographic analyses of the enforcement activities of NPD officers, which is conducted by the Commander of the Office of Professional Standards, or his/her designee (G.O. #18-14 – IX. Administrative Review).

D. NPD should confirm that the revised electronic Stop Report was in use throughout the entire audit period and if it was not, provide a written explanation of why the electronic stop report was not in use.

E. A blank copy of the electronic Stop Report for the audit period which captures the following data elements (Paragraph 52):

1. the officer's name and badge number;
2. date and time of the stop;
3. location of the stop;
4. duration of the stop;
5. subject's apparent gender, race, ethnicity or national origin, and age;
6. if a vehicle stop, the presence and number of any passengers and the apparent gender, race, ethnicity, national origin, and age of each passenger;
7. if the stop is a non-vehicle stop (e.g., pedestrian or bicycle), the number of individuals stopped and apparent gender, race, ethnicity, national origin, and age of each person;

8. if a vehicle stop, whether the driver or any passenger was required to exit the vehicle, and the reason for doing so;
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 from any individual;
12. whether 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 an arrest made of any individual.

F. A demonstration of the integration of the aforementioned data elements into NPD's Early Warning System ("EWS"), allowing for the information in stop and search records to be searched and summarized electronically (Paragraph 52).

G. NPD's written protocol describing how it ensures that all databases comply fully with federal and state privacy standards governing personally identifying information (Paragraph 54).

H. Copies of its publicly available reports containing NPD's cumulative and quarterly demographic analyses of its enforcement activities to ensure officer, unit, and Division compliance with the bias-free policing policy through the identification of trends, outliers, or other relevant indicators (Paragraph 65).

I. Copies of its integrity audits and compliance reviews that identify and investigate all officers who have engaged in misconduct, including unlawful stops, searches, seizures (including false arrests); 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 (Paragraph 150).

J. Provide a copy of NPD annual reports that summarizes and analyzes 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 (Paragraph 168).

One week after receiving the requested information, the Monitoring Team will provide the City and NPD with the Investigatory Stops and Detention incident numbers of cases 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 the Monitoring Team.

Outcome Assessments

NPD should also provide the Monitoring Team with data sufficient to enable the Monitoring Team to conduct outcome assessments pursuant to Paragraph 174(a), (d), and (e) as it relates to Investigatory Stops and Detentions. The Monitoring Team understands that the rates referenced in Paragraph 174(a) will be compiled and computed from data provided by NPD from IA Pro, which is utilized by the Office of Professional Standards and the Auditing Unit. NPD should supply data to the Monitoring Team, but this will be reported out separately in the form of a bi-annual report.

Best regards,

Peter C. Harvey

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Appendix A

METHODOLOGY FOR SECOND STOP AUDIT (Nomenclature & Guidelines)

(August 29, 2022)

The Independent Monitoring Team's (IMT) Second Stop Audit is projected to be conducted during Autumn 2022. It is expected that the entire audit will be conducted on-site at Newark Police Division (NPD) Headquarters. The following is a description of the methodology that the IMT Subject Matter Experts (SME) will employ in assessing NPD's compliance with the relevant tenets of the Consent Decree and NPD policy.

Definitions:

For the purpose of the audit, the following definitions will be utilized by the IMT.

- **Stop:** A stop (alternately referred to as an "investigatory detention") occurs when, upon establishing reasonable, a police officer temporarily detains an individual for the specific purpose of confirming or dispelling that reasonable suspicion through investigation.
- **Reasonable Suspicion:** A set of facts and circumstances that would lead a reasonable person to believe that criminal activity is afoot, and that a particular individual (or individuals) is engaged in, or connected to, the criminal activity. Upon establishing reasonable suspicion, a police officer is permitted to temporarily detain an individual for the purpose of confirming or dispelling the reasonable suspicion through investigation. While "reasonable suspicion" contains no technical elements, it is

generally accepted that “reasonable suspicion” is a lesser standard of proof than “probable cause,” and is, therefore, legally insufficient for the effectuation of an arrest (or custodial detention).

SME Review & Assessment:

For this audit, in reviewing each arrest event, Subject Matter Experts (SME) will evaluate whether:

- Objective reasonable suspicion existed prior to the initiation of the stop.
- The involved officers adhered to relevant case law, criminal procedure provisions, as well as the tenets of the Consent Decree and NPD Policy, during their interactions with citizens.
- Reasonable Suspicion 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. #18-14), with specific regard to fields and narrative sections related to the stop.
- Body-worn and/or in-car camera footage corroborate information memorialized within the contents of police division documents.

In addition, for each stop event, in determining **overall compliance**, the SME will evaluate both “**substantive**” and “**documentary**” compliance.

In assessing **substantive compliance**, for each stop event, the SME will inspect relevant materials (described within this document) to determine:

- The constitutionality and legal sufficiency of the stop.
 - i.e., whether the arresting officer established reasonable suspicion **prior** to the initiation of the stop.
 - Stop events meeting legal and constitutional sufficiency thresholds (as assessed by the SME) will be deemed “substantively compliant.”
 - Stop 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:

- Reasonable suspicion is properly articulated within the contents of written documents; and
- BWC/ICC video footage has been submitted, and corroborates information recorded on corresponding police division forms.
 - If reasonable suspicion 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 non-compliant.”

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 the following Consent Decree areas:

- Section VI (Opening Statement) and Paragraphs 25-28, 43, & 51-62;
- Section VII (specifically, Paragraph 65);
- Section XV (specifically, Paragraphs 164 and 168);and
- Section XVI (specifically, Paragraphs 174 (a), (d), and (e)),

For each stop 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 reasonable suspicion to initiate the stop; (ii) adhered to the procedures outlined in General Order 18-14 (and related areas of NPD

Policy); 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.

Unit of Measure:

The IMT recognizes that multiple Stop Reports may correspond to a given "stop event." Accordingly, the "unit of measure" for the audit will be "unique event numbers" (as opposed to individual Stop Reports).

Required Documents & Materials:

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
- Incident Report (NPD Form 802 / where applicable)
- 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



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



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 investigatory stops of people without proper supporting justification is a violation of the 4th 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 4th 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 investigatory 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 GENERAL ORDER



- 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



VI. 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 investigatory stop, or in some cases, an arrest. Both of which would require adequate levels of suspicion and would require an officer to document the specific facts that support that suspicion in the officer’s report.



NEWARK POLICE DIVISION 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" (DP1:1388) 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.



NEWARK POLICE DIVISION 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" (DP1:1388) 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 (DP1:1493-10M) 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)).



NEWARK POLICE DIVISION GENERAL ORDER



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.



NEWARK POLICE DIVISION GENERAL ORDER



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" (DP1:1388) 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);



NEWARK POLICE DIVISION GENERAL ORDER



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.



NEWARK POLICE DIVISION GENERAL ORDER



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.



NEWARK POLICE DIVISION GENERAL ORDER



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:

A handwritten signature in black ink, consisting of several overlapping loops and lines, positioned above a horizontal line.

**Anthony F. Ambrose
Public Safety Director**

AFA/BO/jg

Attachment A – Stop Report (DP1:1388)
Attachment B – Consent to Search Form (DP1:1493-10M)

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) <input type="checkbox"/> PRESENTED VALID IDENTIFICATION		ALIAS(ES)		
ADDRESS		APT/FLR	CITY	STATE	ZIP CODE	CELL PHONE # HOME PHONE #
SS#	DL #	DL STATE	D.O.B.	OCCUPATION OR <input type="checkbox"/> UNEMPLOYED	<input type="checkbox"/> - INDIVIDUAL IS A STUDENT	
SELECT SCHOOL						
PHYSICAL DESCRIPTION (PERCEIVED OR ACTUAL)						
AGE	SEX M	RACE A	COMPLEXION LIGHT	EYES BRN	HEIGHT	WEIGHT
HAIR COLOR BROWN		HAIR LENGTH BALD	HAIR STYLE SHAVED	SCARS, DISTINGUISHING FEATURES, TATTOOS		FACIAL HAIR SHAVEN
ARREST/CRIMINAL HISTORY - <input type="checkbox"/> DENIES			GANG AFFILIATION - <input type="checkbox"/> DENIES		GANG TATTOOS, COLORS, ETC. OBSERVED - <input type="checkbox"/> NONE VISIBLE	
						<input type="checkbox"/> FLUENT IN ENGLISH <input type="checkbox"/> TRANSLATOR USED?

GENERAL

MUST BE COMPLETED

INDIVIDUAL MATCHED:	<input type="checkbox"/> GENERAL BROADCAST <input type="checkbox"/> BULLETIN / FLYER	<input type="checkbox"/> TELETYPE <input type="checkbox"/> OTHER:	DESCRIBE OTHER ALERT	REASON FOR INQUIRY
DESCRIBE REASONABLE SUSPICION FOR THE STOP:				CITIZEN CONTACT
<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.L. <input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>

INQUIRY INFORMATION

MUST BE COMPLETED

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

FRISK | SEARCH

MUST BE COMPLETED

VEHICLE MATCHED:	<input type="checkbox"/> GENERAL BROADCAST <input type="checkbox"/> BULLETIN / FLYER	<input type="checkbox"/> TELETYPE <input type="checkbox"/> OTHER:	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
VEHICLE IDENTIFICATION NUMBER		DISTINGUISHING CHARACTERISTICS	
REGISTERED OWNER	ADDRESS	CITY	STATE
		ZIP CODE	EXPIRATION

VEHICLE

MUST BE COMPLETED

OUTSIDE AGENCY OFFICER INVOLVED	RANK	ID#	AGENCY	REASON PRESENT?
---------------------------------	------	-----	--------	-----------------

REPORT SUBMITTED BY:	RANK	ID #	GENDER M	RACE A	COMMAND	DATE & TIME COMPLETED
SUPERIOR APPROVING REPORT		RANK	ID #			DATE & TIME COMPLETED

REVIEW

NEWARK POLICE DIVISION

CONSENT TO SEARCH

CASE NUMBER

I, _____ HAVING BEEN INFORMED
 (PRINT FULL NAME OF PERSON AUTHORIZING SEARCH)

OF MY CONSTITUTIONAL RIGHT NOT TO HAVE A SEARCH MADE OF:

 (DESCRIBE ITEM, VEHICLE, OR LOCATION TO BE SEARCHED)

WITHOUT A SEARCH WARRANT, AND OF MY RIGHT TO REFUSE TO CONSENT TO SUCH A SEARCH.
 I HEREBY AUTHORIZE:

 (PRINT RANK & FULL NAMES OF PERSON(S) CONDUCTING THE SEARCH)

OF THE CITY OF NEWARK, COUNTY OF ESSEX, STATE OF NEW JERSEY, TO CONDUCT A COMPLETE SEARCH
 OF THE ABOVE DESCRIBED ITEM, VEHICLE, OR LOCATION.

THESE OFFICERS ARE AUTHORIZED BY ME TO TAKE FROM THE DESCRIBED ITEM, VEHICLE, OR LOCATION,
 ANY ARTICLES THEY MAY DESIRE.

THIS WRITTEN PERMISSION IS BEING GIVEN BY ME TO THE ABOVE NAMED POLICE OFFICERS VOLUNTARILY
 AND WITHOUT THREATS OR PROMISES OF ANY KIND.

(SIGNED) _____

WITNESSES: _____

TIME SIGNED: _____

DATE SIGNED: _____

ITEMIZED LIST OF ARTICLES TAKEN

ITEM NO.	QUANITY	ARTICLE	WHERE FOUND	FOUND BY (NAME)

SIGNATURE OF OFFICER EXECUTING RECEIPT FOR ARTICLES LISTED

RANK	SIGNATURE	COMMAND	DATE OF RECEIPT
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SUPERVISOR WITNESSING CONSENT

SUPERVISOR RANK	SUPERVISOR SIGNATURE	SUPERVISOR COMMAND	DATE
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NEWARK POLICE DIVISION GENERAL ORDER



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

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”

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 4th 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 4th 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 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. 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 4th 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.



NEWARK POLICE DIVISION GENERAL ORDER



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;



NEWARK POLICE DIVISION

GENERAL ORDER



- 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



NEWARK POLICE DIVISION GENERAL ORDER



- 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 probable cause to believe the wire or electronic communication involves criminal activity; and



NEWARK POLICE DIVISION GENERAL ORDER



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" (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 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);



NEWARK POLICE DIVISION GENERAL ORDER



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 (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.



NEWARK POLICE DIVISION GENERAL ORDER



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.

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.



NEWARK POLICE DIVISION GENERAL ORDER



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 encountered, and peer comparisons.



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 4th 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.



NEWARK POLICE DIVISION GENERAL ORDER



- 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.

BY ORDER OF:

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

**Anthony F. Ambrose
Public Safety Director**

AFA/BO/jg

Attachment A – Stop Report (DP1:1388)

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

GENERAL	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) <input type="checkbox"/> PRESENTED VALID IDENTIFICATION		ALIAS(ES)			
	ADDRESS		APT/FLR	CITY	STATE	ZIP CODE	CELL PHONE #	HOME PHONE #
	SS#	DL #	DL STATE	D.O.B.	OCCUPATION OR <input type="checkbox"/> UNEMPLOYED		<input type="checkbox"/> - INDIVIDUAL IS A STUDENT	
	PHYSICAL DESCRIPTION (PERCEIVED OR ACTUAL)							SELECT SCHOOL
	AGE	SEX M	RACE A	COMPLEXION LIGHT	EYES BRN	HEIGHT	WEIGHT	FACIAL HAIR SHAVEN <input type="checkbox"/> FLUENT IN ENGLISH <input type="checkbox"/> TRANSLATOR USED?
HAIR COLOR BROWN	HAIR LENGTH BALD	HAIR STYLE SHAVED	SCARS, DISTINGUISHING FEATURES, TATTOOS			CLOTHING WORN		
ARREST/CRIMINAL HISTORY - <input type="checkbox"/> DENIES			GANG AFFILIATION - <input type="checkbox"/> DENIES		GANG TATTOOS, COLORS, ETC. OBSERVED - <input type="checkbox"/> NONE VISIBLE			

MUST BE COMPLETED

INQUIRY INFORMATION	INDIVIDUAL MATCHED:	<input type="checkbox"/> GENERAL BROADCAST <input type="checkbox"/> BULLETIN / FLYER	<input type="checkbox"/> TELETYPE <input type="checkbox"/> OTHER:	DESCRIBE OTHER ALERT	REASON FOR INQUIRY CITIZEN CONTACT	
	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	
						<input type="checkbox"/>
						<input type="checkbox"/>
						<input type="checkbox"/>
						<input type="checkbox"/>

MUST BE COMPLETED

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

MUST BE COMPLETED

VEHICLE	VEHICLE MATCHED:	<input type="checkbox"/> GENERAL BROADCAST <input type="checkbox"/> BULLETIN / FLYER	<input type="checkbox"/> TELETYPE <input type="checkbox"/> OTHER:	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	EXPIRATION
	VEHICLE IDENTIFICATION NUMBER			DISTINGUISHING CHARACTERISTICS				
	REGISTERED OWNER		ADDRESS		CITY		STATE	ZIP CODE

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



NEWARK POLICE DIVISION GENERAL ORDER



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

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



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 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 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, 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."



NEWARK POLICE DIVISION GENERAL ORDER



- 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.



NEWARK POLICE DIVISION GENERAL ORDER



- 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.



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 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))



NEWARK POLICE DIVISION GENERAL ORDER



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."



NEWARK POLICE DIVISION GENERAL ORDER



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 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))



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.



NEWARK POLICE DIVISION GENERAL ORDER



- 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.
 - 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.



NEWARK POLICE DIVISION GENERAL ORDER



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 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 RESPONSIBILITIES

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;



NEWARK POLICE DIVISION GENERAL ORDER



- 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;



NEWARK POLICE DIVISION GENERAL ORDER



- 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 (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;



NEWARK POLICE DIVISION GENERAL ORDER



- 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



NEWARK POLICE DIVISION GENERAL ORDER



- 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 and training) up to and including termination.



NEWARK POLICE DIVISION GENERAL ORDER



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.

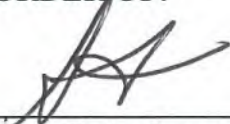
Thereafter, a minimum of four (4) hours of training shall be given **annually**. Training will include:

- 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:



Anthony F. Ambrose
Public Safety Director

AFA/BO/jg

Attachment A – Preliminary Arrest Report (DP1:2036)



NEWARK POLICE DIVISION

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 #	COMPLT NO		
ADDRESS ARRESTED		DATE OF BIRTH	PLACE OF BIRTH		AGE	HEIGHT	WEIGHT	HAIR	EYES	COMPLEXION
RACE	SEX	<input type="checkbox"/> -HISPANIC	<input type="checkbox"/> -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		PLACE OF OCCURRENCE				OCCURRED ON PUBLIC HOUSING PROPERTY? <input type="checkbox"/> -YES <input type="checkbox"/> -NO		
VICTIM OR COMPLAINANT'S NAME		VICTIM OR COMPLAINT'S ADDRESS			COMPLAINANTS TEL NO'S: HOME & BUSINESS					
EVENT #	ARRESTEE PROPERTY BAG #	MONEY IN ARRESTEE'S POSSESSION		DOM. VIOLENCE RELATED <input type="checkbox"/> -YES <input type="checkbox"/> -NO	STRANGER TO STRANGER CRIME <input type="checkbox"/> -YES <input type="checkbox"/> -NO <input type="checkbox"/> -UNKNOWN					

USE THIS SECTION FOR COMMENTS/INSTRUCTIONS

THIS SECTION TO BE COMPLETED BY THE ARRESTING OFFICER AND THE ON-DUTY ASSISTANT PROSECUTOR

PRELIMINARY CHARGE	CHARGE AUTHORIZED BY AP	SUMMONS WARRANT	PRELIMINARY CHARGE	CHARGE AUTHORIZED BY AP	SUMMONS WARRANT
		<input type="checkbox"/> -S <input type="checkbox"/> -W			<input type="checkbox"/> -S <input type="checkbox"/> -W
		<input type="checkbox"/> -S <input type="checkbox"/> -W			<input type="checkbox"/> -S <input type="checkbox"/> -W
		<input type="checkbox"/> -S <input type="checkbox"/> -W			<input type="checkbox"/> -S <input type="checkbox"/> -W
		<input type="checkbox"/> -S <input type="checkbox"/> -W			<input type="checkbox"/> -S <input type="checkbox"/> -W
		<input type="checkbox"/> -S <input type="checkbox"/> -W			<input type="checkbox"/> -S <input type="checkbox"/> -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	

-ORIGINAL - ARRESTING OFFICERS -1ST COPY-MAPS -2ND COPY-LIVE SCAN -3RD COPY-INTAKE SUPERVISOR

Appendix C



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 investigatory stops of people without proper supporting justification is a violation of the 4th 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 4th 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 armed 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 GENERAL ORDER



- 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



VI. 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 investigatory stop, or in some cases, an arrest. Both of which would require adequate levels of suspicion and would require an officer to document the specific facts that support that suspicion in the officer’s report.



NEWARK POLICE DIVISION 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" (DP1:1388) 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.



NEWARK POLICE DIVISION 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" (DP1:1388) 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 (DP1:1493-10M) 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)).



NEWARK POLICE DIVISION GENERAL ORDER



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.



NEWARK POLICE DIVISION GENERAL ORDER



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" (DP1:1388) 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);



NEWARK POLICE DIVISION

GENERAL ORDER



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.



NEWARK POLICE DIVISION

GENERAL ORDER



Supervisors will also review all relevant video 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.



NEWARK POLICE DIVISION GENERAL ORDER



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

A handwritten signature in blue ink, consisting of stylized, overlapping letters that appear to be "AFA".

**ANTHONY F. AMBROSE
PUBLIC SAFETY DIRECTOR**

AFA/BO/jg

Attachment A – Stop Report (DP1:1388)

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

Appendix D



NEWARK POLICE DIVISION GENERAL ORDER



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

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 4th 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 4th 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 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. 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 4th 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.



NEWARK POLICE DIVISION

GENERAL ORDER



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;



NEWARK POLICE DIVISION

GENERAL ORDER



- 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.



NEWARK POLICE DIVISION

GENERAL ORDER



- 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.



NEWARK POLICE DIVISION

GENERAL ORDER



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.



NEWARK POLICE DIVISION GENERAL ORDER



- 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 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);
 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;



NEWARK POLICE DIVISION

GENERAL ORDER



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 4th 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:



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 E



NEWARK POLICE DIVISION GENERAL ORDER



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

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**



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 COMPLAINT

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, 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."



NEWARK POLICE DIVISION

GENERAL ORDER



- 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.



NEWARK POLICE DIVISION GENERAL ORDER



- 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.

VIII. ARREST WITH AN ARREST WARRANT



NEWARK POLICE DIVISION GENERAL ORDER



- 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)*)



NEWARK POLICE DIVISION

GENERAL ORDER



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]henver 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:



NEWARK POLICE DIVISION GENERAL ORDER



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



NEWARK POLICE DIVISION

GENERAL ORDER



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



NEWARK POLICE DIVISION GENERAL ORDER



(“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



NEWARK POLICE DIVISION GENERAL ORDER



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 RESPONSIBILITIES

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;



NEWARK POLICE DIVISION GENERAL ORDER



- 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;



NEWARK POLICE DIVISION

GENERAL ORDER



- 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;



NEWARK POLICE DIVISION GENERAL ORDER



- 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



NEWARK POLICE DIVISION GENERAL ORDER



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.



NEWARK POLICE DIVISION GENERAL ORDER



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

ANTHONY F. AMBROSE
PUBLIC SAFETY DIRECTOR

AFA/BO/jg

Attachment A – Preliminary Arrest Report (DP1:2036)

Appendix F



DEPARTMENT OF PUBLIC SAFETY MEMORANDUM



TO: POLICE DIVISION **DATE:** JUNE 12, 2019
FROM: ANTHONY AMBROSE
PUBLIC SAFETY DIRECTOR **NUMBER:** 19 - 276
SUBJECT: IMPLEMENTATION OF G.O. 18-12 **FILE REF:** PUB 4
RE: FIRST AMENDMENT RIGHT TO OBSERVE, OBJECT
TO, AND RECORD POLICE ACTIVITY

The purpose of this memorandum is to announce the issuance of the Newark Police Division's new *First amendment right to observe, object to, and record police activity; General Order 18-12*. This General Order shall take effect immediately.

This policy provides officers with guidance for dealing with situations in which members of the public comment on or object to an officer's conduct and 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.

Officers are prohibited from detaining, arresting, or threatening to detain or arrest, individuals based on activity protected by the First Amendment to the U.S. Constitution and by Article I, Paragraph 6 of the New Jersey Constitution, including verbal criticism, questioning police actions, or gestures. Officers are also prohibited 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.

This policy also provides officers with guidance for when a recording device may be seized and/or searched. The seizure of a bystanders recording device, the subsequent search and viewing of the contents, without a warrant (e.g. **Communications Data Warrant - CDW**) is not permitted and is presumed to be illegal under the Fourth Amendment.

Recording the actions and activities of police officers in the performance of their public duties is a form of protected speech, through which individuals may gather and disseminate information of public concern. This right is extended to video and audio recording of any police activity performed in public or where an individual otherwise has a legal right to be present.

All Police Division members shall become familiar with the tenets of General Order 18-12. Police Division members shall acknowledge receipt and compliance with this memorandum and General Order 18-12 via PowerDMS by Thursday, July 25, 2019.

BY ORDER OF:

ANTHONY F. AMBROSE
PUBLIC SAFETY DIRECTOR

AFA/BO:lc

Attachment: General Order 18-12

c: Darnell Henry, Chief of Police



NEWARK POLICE DIVISION GENERAL ORDER



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

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 V.I.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 4th 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 read "A. Ambrose", is written over a horizontal line.

**ANTHONY F. AMBROSE
PUBLIC SAFETY DIRECTOR**

AFA:BO/lc

Appendix G



NEWARK POLICE DIVISION GENERAL ORDER



SUBJECT: Body-Worn Cameras		GENERAL ORDER NO. 18-05
SUPERSEDES: September 11, 2019	DATED: October 22, 2019	SECTION CODE:

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. 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, 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, 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.



NEWARK POLICE DIVISION GENERAL ORDER



- 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 4th 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 several overlapping loops and strokes, positioned above a horizontal line.

ANTHONY F. AMBROSE
PUBLIC SAFETY DIRECTOR

AA/BO:jn

Appendix H



**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



SUBJECT: In-Car Camera	GENERAL ORDER NO. 18-06	
SUPERSEDES: New	DATED: April 13, 2018	SECTION CODE:

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/repared. The desk supervisor must email the Technology Unit immediately. The email must:
 - Be addressed to 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.



NEWARK POLICE DIVISION GENERAL ORDER



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, 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.



NEWARK POLICE DIVISION GENERAL ORDER



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.



NEWARK POLICE DIVISION

GENERAL ORDER



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



NEWARK POLICE DIVISION GENERAL ORDER



- 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



NEWARK POLICE DIVISION GENERAL ORDER



- 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 4th 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:

**ANTHONY F. AMBROSE
PUBLIC SAFETY DIRECTOR**

AFA/BO:dd

Appendix I



NEWARK POLICE DIVISION GENERAL ORDER



SUBJECT:
Protocol for Analyzing Stop, Search, and Arrest Data

GENERAL ORDER NO.
21-04

SUPERCEDES:
New

DATED:
05/27/2021

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.



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?



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 1st through September 30th – Report to be published **no later** than October 31st
- October 1st through April 30th – Report to be published **no later** than May 31st

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



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.



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 blue ink signature of Brian A. O'Hara, written in a cursive style.

BRIAN A. O'HARA
PUBLIC SAFETY DIRECTOR

BAO/CM/MA;jg

Appendix J

#	Consent Decree Paragraph	NPD Policy
1.	25	General Order 18-14, <i>Consensual Citizen Contacts and Investigatory Stops</i> : Section V.A
2.	26	General Order 18-14, <i>Consensual Citizen Contacts and Investigatory Stops</i> : Sections II; Section VI.B.12; Section VII. (A & B)
3.	27	General Order 18-14, <i>Consensual Citizen Contacts and Investigatory Stops</i> : Section V.B-L
4.	28	General Order 18-14, <i>Consensual Citizen Contacts and Investigatory Stops</i> : Section II; Section VI.B.12; Section VII (A & B)
5.	43	Pursuant to the 45-day notice, the Monitoring Team is satisfied that NPD has crafted (and begun disseminating) the training described (see Paragraph 43). Accordingly, the Monitoring Team will audit the specific conditions of the training when it reviews the required provisions under the “Training” sections of the Consent Decree.
6.	51	Pursuant to the 45-day notice, the Monitoring Team recognizes that this provision was largely satisfied with the augmentation of the Stop Report, which was acknowledged in the First Stop Audit Report.
7.	52	Pursuant to the 45-day notice, the Monitoring Team recognizes that this provision was largely satisfied with the augmentation of the Stop Report, which was acknowledged in the First Stop Audit Report.
8.	53	Pursuant to the 45-day notice, 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.
9.	54	Pursuant to the 45-day notice, Consent Decree Paragraph 54 will not be a part of the Monitoring Team’s review for the purpose of the second Stop 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.
10.	55	General Order 18-14, <i>Consensual Citizen Contacts and Investigatory Stops</i> : Section V (M & N); General Order 18-12, <i>First Amendment Right to Observe, Object to, and Record Police Activity</i> : Section V
11.	56	General Order 18-12, <i>First Amendment Right to Observe, Object to, and Record Police Activity</i> : Section V (A & B)
12.	57	General Order 18-12, <i>First Amendment Right to Observe, Object to, and Record Police Activity</i> : Section V (A & B)
13.	58	General Order 18-12, <i>First Amendment Right to Observe, Object to, and Record Police Activity</i> : Section

		V (A & B).
14.	59	General Order 18-12, <i>First Amendment Right to Observe, Object to, and Record Police Activity</i> : Section V (A & B)
15.	60	General Order 18-12, <i>First Amendment Right to Observe, Object to, and Record Police Activity</i> : Section V (A & B)
16.	61	General Order 18-12, <i>First Amendment Right to Observe, Object to, and Record Police Activity</i> : Section V (A & B)
17.	62	General Order 18-12, <i>First Amendment Right to Observe, Object to, and Record Police Activity</i> : Section V (D)
18.	65	Pursuant to the 45-day notice, Consent Decree Paragraph 65 will not be a part of the Monitoring Team review for the purpose of the second Stop 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.
19.	164	Pursuant to the 45-day notice, Consent Decree Paragraph 164 will not be a part of the Monitoring Team review for the purpose of the second Stop 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.
20.	168	Pursuant to the 45-day notice, Consent Decree Paragraph 168 will not be a part of the Monitoring Team review for the purpose of the second Stop 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.
21.	174(a), (d), (e)	Pursuant to the 45-day notice, consent Decree Paragraphs 174(a), (d), and (e) will not be a part of the Monitoring Team review for the purpose of the second Stop Audit. The Monitoring Team will audit this paragraph when it reviews all the required provisions under the “data and data collection”, “supervisory”, and “bias” sections of the Consent Decree.

Appendix K

Appendix K List of All Events

Count	Event Number
1	P21435573
2	P22009975
3	P22014821
4	P22058288
5	P22066585
6	P22070011
7	P22074176
8	P22131527
9	P22131761
10	P22132101
11	P22132475
12	P22133477
13	P22133736
14	P22134390
15	P22134841
16	P22134854
17	P22134990
18	P22135075
19	P22136119
20	P22136134
21	P22136666
22	P22137532
23	P22137541
24	P22137609
25	P22138020
26	P22138098
27	P22138250
28	P22138886
29	P22139110
30	P22140774
31	P22142695
32	P22142939
33	P22143051
34	P22143600
35	P22143684
36	P22143730

37	P22144146
38	P22144911
39	P22144919
40	P22145028
41	P22145056
42	P22145569
43	P22145766
44	P22146179
45	P22147961
46	P22149394
47	P22150793
48	P22150864
49	P22150914
50	P22151260
51	P22151781
52	P22152248
53	P22152423
54	P22153026
55	P22153686
56	P22153726
57	P22153779
58	P22154396
59	P22155049
60	P22155170
61	P22155303
62	P22155740
63	P22156655
64	P22157075
65	P22157500
66	P22157840
67	P22158863
68	P22159517
69	P22160019
70	P22161344
71	P22161642
72	P22161726
73	P22162538
74	P22162629
75	P22162730

76	P22162893
77	P22163879
78	P22163944
79	P22164875
80	P22166390
81	P22166523
82	P22166558
83	P22166939
84	P22168286
85	P22169212
86	P22169227
87	P22169272
88	P22169288
89	P22169743
90	P22169966
91	P22170487
92	P22171220
93	P22171367
94	P22171401
95	P22172101
96	P22172161
97	P22172941
98	P22173070
99	P22174462
100	P22174484
101	P22174817
102	P22175776
103	P22176437
104	P22176722
105	P22176899
106	P22177014
107	P22177887
108	P22178681
109	P22179139
110	P22179431
111	P22181580
112	P22181956
113	P22182083
114	P22182120

115	P22182151
116	P22182170
117	P22182191
118	P22182592
119	P22182855
120	P22184990
121	P22185669
122	P22185908
123	P22186030
124	P22186320
125	P22187122
126	P22188492
127	P22188950
128	P22189087
129	P22189099
130	P22189221
131	P22189522
132	P22189937
133	P22190015
134	P22190168
135	P22190592
136	P22190674
137	P22191531
138	P22191598
139	P22191674
140	P22191895
141	P22192116
142	P22192191
143	P22193046
144	P22193368
145	P22194400
146	P22194898
147	P22195198
148	P22195335
149	P22195853
150	P22197438
151	P22197643
152	P22198029
153	P22198332

154	P22198527
155	P22198553
156	P22199299
157	P22199489
158	P22199514
159	P22200830
160	P22201294
161	P22202376
162	P22202599
163	P22202784
164	P22203116
165	P22203140
166	P22203235
167	P22203783
168	P22203871
169	P22204651
170	P22206553
171	P22206559
172	P22207215
173	P22209205
174	P22209933
175	P22210064
176	P22210252
177	P22210912
178	P22210943
179	P22210960
180	P22211888
181	P22212182
182	P22212224
183	P22212382
184	P22212407
185	P22212796
186	P22214090
187	P22214292
188	P22214346
189	P22214411
190	P22215269
191	P22215550
192	P22215966

193	P22217038
194	P22217076
195	P22217080
196	P22217119
197	P22217294
198	P22218972
199	P22219616
200	P22219701

Appendix L

Appendix L List of Events Removed from Sample

Count	Event Number	Removal Criteria
1	P22134390	Warrant/Fugitive apprehension section
2	P22150864	Warrant Arrest made by US Marshal Service
3	P22161642	Conducted by Special Law Enforcement Officers ("SPOs"), assigned to Housing Authority property
4	P22182120	Inter-agency task force event involving the Newark Housing Authority Police