

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

**CONSENT DECREE**

**Independent Monitor – Twenty-Fourth Semiannual Report**

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Independent Monitor  
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**TWENTY-FOURTH REPORT AND FOURTH SEMI-ANNUAL REPORT**  
(July 1, 2023 to December 31, 2023)

**I. EXECUTIVE SUMMARY (JULY 1, 2023 – DECEMBER 31, 2023)<sup>1</sup>**

This is the Twenty-Fourth Report and Fourth Semi-Annual Report from Independent Monitor Peter C. Harvey regarding the reforms that both the City of Newark (the “City”) and Newark Police Division (“NPD”) agreed to implement as set forth in the Consent Decree between the City and the United States Department of Justice (“DOJ”). This Semi-Annual Report covers the period from July 1, 2023 to December 31, 2023.

In this Semi-Annual Report, the Monitoring Team discusses the status of ongoing and upcoming compliance Audits and the results of the following Audits: (1) *Third* Use of Force Audit; (2) Supplemental Assessment of In-Car Camera Functionality; (3) *Second* Searches Audit; (4) *First* Bias-Free Policing Audit; (5) *Second* Arrest Audit; and (6) *Second* Property and Evidence Management Audit.

The Report also addresses two other important issues: the City of Newark’s survey on issues related to policing in the city and the decision from the New Jersey Superior Court, Appellate Division regarding NPD’s revised disciplinary matrix for penalties to be imposed upon NPD personnel following an adverse internal affairs investigation and any subsequent administrative proceedings.

**II. DETAILED STATUS UPDATES**

**A. *Third* Use of Force Audit**

The Monitoring Team provided notice on March 20, 2023 that, pursuant to Consent Decree Paragraphs 173 and 180, it would conduct its *Third* Audit of NPD’s practices

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<sup>1</sup> Unless otherwise stated, the City’s and NPD’s progress with respect to Consent Decree tasks, as described in this Report, reflects developments as of December 31, 2023.

regarding Use of Force. The Audit was conducted by Linda Tartaglia, Wayne Fisher, Rosalyn Parks, Kathryn Duffy, and Jonathan Norrell of the Rutgers University Center on Policing, and Subject Matter Expert Lieutenant Daniel Gomez (Ret.) of the Los Angeles Police Department.

During the Audit, the Monitoring Team reviewed NPD's police activities and records for a three-month time period, from July 1, 2022 to September 30, 2022 (the "Audit Period"). To assess whether NPD demonstrated routine adherence to its own Use of Force policies in its day-to-day operations, described in the Audit as "Operational Compliance," the Monitoring Team considered: (a) whether NPD officers' actions were lawful and compliant with the four fundamental principles of NPD's Use of Force policy, described in this Audit as "Substantive Compliance,"<sup>2</sup> and (b) whether all officers involved in a Use of Force incident (meaning those actually employing force, witnessing force, or present in a supervisory capacity) complied with the documentation requirements contained in NPD's policy, described in this Audit as "Documentation Compliance." As in the *Second* Use of Force Audit and other Audits, NPD achieves Overall Operational Compliance only when it satisfies both metrics (*i.e.* Substantive Compliance *and* Documentation Compliance) in 95% of the events reviewed by the Monitoring Team.

With respect to Substantive Compliance, in 96.7% of the events reviewed by the Monitoring Team, NPD officers used force in a manner consistent with its policies, the Consent Decree, New Jersey law, and federal law. Stated differently, in only 3 of the 91 incidents reviewed, NPD officers failed to employ force in a manner consistent with applicable law and policy.

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<sup>2</sup> The four principles are as follows: (1) authorization to initiate force; (2) appropriate cessation of force; (3) last resort; and (4) minimization. See Newark Police Division General Order 18-20, *Use of Force*, dated April 8, 2022.

In terms of Documentation Compliance, NPD was compliant in 87.9% of the 91 incidents of use of force reviewed in this Audit. Thus, the Monitoring Team assessed NPD to be non-compliant in 11 of the 91 use of force incidents reviewed.

Taking into account both substantive use of force and documentation requirements, NPD achieved an Operational Compliance score of 84.6%.

Considering NPD’s performance with respect to Substantive Compliance on consecutive Audits (*First Audit: 92.9%; Second Audit: 94.23%; Third Audit: 96.7%*), the Monitor believes that NPD has demonstrated full and effective compliance pursuant to Consent Decree Paragraphs 223-225 with respect to **substantive** Use of Force requirements. As a result, the Monitor releases NPD from future assessment of its Substantive Compliance with respect to Use of Force. In future Use of Force Audits, the Monitor will assess and report on only NPD’s Documentation Compliance with respect to use of force and will not provide a compliance score related to NPD’s Substantive Compliance.

This table presents an overview of NPD’s compliance in the Monitoring Team’s *Third Audit of Use of Force*.

<b>Overview of Third Use of Force Audit Results</b>		
<b>Audit Subject</b>	<b>Consent Decree Paragraph(s)</b>	<b>Compliance? (Requirement: 95%)</b>
<b>Use of Force Policies</b>	Paragraphs 66, 67, 71, 72, 73, 75-84, 88	Yes.  These Consent Decree Paragraphs and the associated NPD policies were reviewed and approved by the Monitoring Team, and were found to be in compliance in the first Use of Force Audit, and remain so now.

<b>Overview of Third Use of Force Audit Results</b>		
<b>Audit Subject</b>	<b>Consent Decree Paragraph(s)</b>	<b>Compliance? (Requirement: 95%)</b>
<p><b>Substantive Compliance</b></p> <p><i>Whether all officers who employed force acted consistently with the fundamental principles of NPD's Use of Force policy.</i></p>	<p>Paragraphs 66, 67, 71, 72, 76, 77</p>	<p>Yes.</p> <p>96.7% of Use of Force incidents reviewed by the Monitoring Team complied with the substantive requirements. This constitutes full and effective compliance pursuant to Consent Decree Paragraphs 223-225.</p>
<p><b>Documentation Compliance</b></p> <p><i>Whether NPD officers complied with NPD's use of force reporting requirements.</i></p>	<p>Paragraphs 66, 75, 77, 79 (a and c)</p>	<p>No.</p> <p>87.9% of Use of Force incidents reviewed by the Monitoring Team complied with the documentation requirements.</p>
<p><b>Operational Compliance</b></p>	<p>Paragraphs 66, 67, 71, 72, 75, 76, 77</p>	<p>No.</p> <p>84.6% of Use of Force incidents reviewed by the Monitoring Team complied with both substantive and documentation requirements.</p>
<p><b>Outcome Assessments</b></p> <p><i>NPD's production of aggregate use of force data required by the Consent Decree</i></p>	<p>Paragraph 174(b)(i)-(ix)</p>	<p>Outcome assessment data will be reported out separately in a semiannual report.</p>

NPD's rate of Substantive Compliance—the best indicator of individual officer compliance—in this Audit was commendable. However, this Audit revealed NPD continues to fall below the compliance threshold for Documentation Compliance, and the Monitoring Team made recommendations for improvement in this area, including additional review of reports by Supervisors.

The full Audit report is attached to this report as **Appendix C**.

**B. Supplementary Assessment of In-Car Camera Functionality**

In March and April 2023, the Monitoring Team assessed In-Car Camera (“ICC”) functionality, as a supplemental effort to the *Third* Body-Worn Camera and *Second* In-Car Camera Audit (discussed in the Twenty-Second Report and Second Semi-Annual Report). This ICC functionality assessment involved an examination of the functionality of ICCs placed in vehicles from the Second, Third, and Fifth Precincts, as well as certain Traffic Unit vehicles assigned to the Eighth Precinct.

The Monitoring Team examined sixty-five (65) NPD vehicles during this assessment. Of those 65 vehicles, forty-five (45) had functioning camera systems, one (1) did not, and nineteen (19) were unable to be verified because they were out for service during the Monitoring Team’s first inspection in late March 2023 and had not created any ICC videos during the Monitoring Team’s second inspection in mid-April 2023.

Based on this assessment, the Monitoring Team concluded, pursuant to Paragraph 103 of the Consent Decree, that NPD is in full and substantial compliance with the ICC requirements of the Consent Decree. **Hence, NPD is relieved of the requirement to be audited in this area in the future.**

A letter to NPD describing the results of this assessment is attached to this report as **Appendix D**.

**C. Second Searches Audit**

On February 10, 2023, the Monitoring Team provided NPD with notice of its intent to conduct its *Second* Audit of NPD’s policies and practices related to Searches With or Without A Search Warrant. 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 Dan Gomez, Staff Inspector Sekou Kinebrew (Ret.) of the Philadelphia Police Department, and Sergeant Roger Nunez (Ret.) of the Los Angeles Police Department. The Audit covered the two-month period from November 1, 2022 to December 31, 2022, and was conducted on-site from March 28, 2023, through March 31, 2023.

The Monitoring Team's *Second* Audit of NPD's compliance with Consent Decree requirements relating to Search practices analyzed whether NPD's personnel demonstrated routine adherence to NPD's own Search policies in their day-to-day operations, described in the Audit as "Overall Compliance."<sup>3</sup>

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

The Monitoring Team utilized a 95% Search event compliance standard for this audit. NPD achieved "Overall Compliance" when it satisfied both substantive and

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<sup>3</sup> The Monitoring Team also reviewed NPD's General Order 21-04, *Protocol for Analyzing Stop, Search, and Arrest Data*, dated May 27, 2021. The Consent Decree and the Protocol require NPD to produce analyses to improve the efficacy of its stop, search and arrest practices to increase public safety and promote police legitimacy in the Newark community. The Monitoring Team determined that for the purposes of this Audit, NPD's Protocol contained the requirements specified in the Consent Decree.



documentation compliance for 95% of the events in the sample reviewed by the Monitoring Team.

The Monitoring Team found that 85.96% of events reviewed were compliant both substantively and with respect to documentation requirements. In other words, 202 out of 235 events reviewed by the Monitoring Team achieved Overall Compliance.

When further separated by Substantive and Documentation compliance, the Audit revealed that NPD attained a score of 95.74% for Substantive Compliance (225 out of 235 events assessed for Substantive Compliance were determined to be compliant).

NPD’s Documentation Compliance score was 88.94% (209 out of 235 events assessed for Documentation Compliance were determined to be compliant).

This table presents an overview of NPD’s compliance in the Monitoring Team’s *Second* Audit of Searches With or Without a Search Warrant.

<b>Overview of Second Searches Audit Results</b>		
<b>Audit Subject</b>	<b>Consent Decree Paragraph(s)</b>	<b>Compliance</b>
<b>Protocol for Analyzing Stop, Search, and Arrest Data</b>	Paragraphs 53	Yes.  The Monitoring Team previously approved NPD’s methodology, and NPD has submitted a preliminary analysis. Some aspects of that analysis, however, were incomplete when assessed by NPD’s own methodology. In the future, the Monitoring Team expects NPD will be able to adhere strictly to its proposed methodology.
<b>Substantive Compliance</b>  <i>Whether the responsible NPD officer adhered to NPD policy</i>	Paragraphs 29-34; 55-62	Yes. (95.74%)

<b>Overview of Second Searches Audit Results</b>		
<b>Audit Subject</b>	<b>Consent Decree Paragraph(s)</b>	<b>Compliance</b>
<i>by demonstrating that legal justification for the search existed and that the search was within legal and policy-related parameters.</i>		225 of 235 Search events reviewed were substantively compliant.
<b>Documentation Compliance</b>  <i>Whether the responsible NPD officer(s) adhered to NPD policy by demonstrating that <b>all</b> reporting and related narrative requirements were met as determined by NPD policy and the Consent Decree.</i>	Paragraphs 26, 27, 29, 34	No. (88.94%)  209 of 235 Search events reviewed were compliant with respect to documentation.
<b>Overall Compliance</b>  <i>Whether NPD demonstrated overall compliance in its Searches with or without a Search Warrant practices (both substantive and documentation).</i>	Paragraphs 29-34	No. (85.96%)  Overall, 202 of 235 Search events reviewed were compliant both substantively and with respect to documentation.

The Monitoring Team observed that most of the Searches reviewed during the Audit were lawful, constitutional, and were conducted pursuant to circumstances under which a reasonable police officer would undertake the same course of action. In addition, video footage captured on body-worn cameras (BWC) and in-car cameras (ICC) confirmed that, in most interactions with members of the community, NPD officers comported themselves in a professional manner, maintained a courteous and respectful demeanor, and exercised laudable restraint during often tense situations.

However, the Monitoring Team identified a number of documentation-related issues that precluded a determination that NPD had achieved Overall Compliance. For example,

the Monitoring Team observed that for many Searches, the officer whose name appeared on the Stop Report was *not* the officer who conducted the search; that is, the first-person pronouns in the Stop Report did not correspond to the officer who prepared the report (likely due to overuse of the “copy and paste” technique). In some instances, a Stop Report stated that a Search was conducted, but an examination of body-worn and in-car camera footage showed that no Search had occurred. These issues were especially pronounced and recurring with respect to Searches conducted by officers assigned to plain-clothes and other specialized units.

The Monitoring Team recommended that NPD (i) update its policies to account for some of the issues identified during this Audit and (ii) instruct Supervisors to more closely scrutinize issues related to Search documentation.

The full audit report is attached to this report as **Appendix E**.

#### **D. *First Bias-Free Policing Audit***

Pursuant to Paragraphs 173 and 180 of the Consent Decree, by letter on December 1, 2021, the Monitoring Team issued notice to NPD and, later, by Addendum letter on December 14, 2022, that the Monitoring Team would begin its First Audit of NPD’s compliance with certain provisions of the Consent Decree relating to Bias-Free Policing, including Section VII (specifically, Paragraphs 63-65).

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 Brandon del Pozo, Ph. D. (Brown University) and Emily Schwartz, J.D. (New Jersey Institute for Social Justice). The Monitoring Team reviewed NPD activities and records for the three-month period between July 1, 2022 and September 30, 2022 (the “Audit Period”). For this Audit, 178 events were assessed for compliance.

The Monitoring Team analyzed whether: (1) NPD’s policies governing certain practices contained the relevant Consent Decree-required provisions (Paragraphs 63-65); and (2) NPD’s personnel demonstrated routine adherence to NPD’s own Bias-Free Policing policy in their day-to-day operations, described here as “Overall Compliance.”

Regarding the *first* component of this Audit—NPD’s policies and procedures regarding Bias-Free Policing—the Monitoring Team previously approved NPD’s General Order 17-06, *Bias-Free Policing*, dated June 19, 2017.

For the *second* component of this Audit—whether NPD had demonstrated routine adherence to its Bias-Free Policing policy, thereby achieving “Overall Compliance”—the Monitoring Team considered whether NPD officers: (a) acted within the relevant legal and Bias-Free Policing policy-related parameters when carrying out vehicle and pedestrian stops, 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 event was deficient, either substantively or with respect to documentation, that event was deemed “Non-Compliant.” NPD achieved “Overall Compliance” if it satisfied both substantive and documentation compliance for 95% of the events in the sample reviewed by the Monitoring Team.

When separated by Substantive and Documentation Compliance, the Audit revealed that NPD attained a score of 88.8% for Substantive Compliance (158 out of 178 events assessed for Substantive Compliance were determined to be compliant) and 91.0% (162 out of 178 events assessed for Documentation Compliance were determined to be compliant) for Documentation Compliance. Thus, when assessing for Overall Compliance, (*i.e.*, satisfaction of both substantive and documentation requirements), the Monitoring Team found that 82.0% of the

events reviewed by the Monitoring Team achieved Overall Compliance. In other words, 146 out of 178 events reviewed by the Monitoring Team were compliant both substantively and with regard to documentation.

The table below presents an overview of NPD’s compliance in the Monitoring Team’s *First* Audit of Bias-Free Policing Practices.

<b>Overview of First Bias-Free Policing Audit Results</b>		
<b>Audit Subject</b>	<b>Consent Decree Paragraph(s)</b>	<b>Compliance</b>
<b>Bias-Free Policing and Related Policies</b>	Paragraphs 63-65	Yes.  The Monitoring Team has previously approved NPD’s General Order on Bias-Free Policing.
<b>Substantive Compliance</b>  <i>Whether the responsible NPD officer(s) adhered to NPD policy in their bias-free policing practices and that the event was within legal and policy-related parameters.</i>	Paragraphs 63-65	No. (88.8%)
<b>Documentation Compliance</b>  <i>Whether the responsible NPD officer(s) adhered to NPD policy by demonstrating that <b>all</b> reporting and related narrative requirements were met as determined by NPD policy and the Consent Decree.</i>	Paragraphs 63-65	No. (91.0%)
<b>Overall Compliance</b>  <i>Whether NPD demonstrated compliance in its Bias-Free Policing practices (Substantive and Documentation).</i>	Paragraphs 63-65	No. (82.0%)

Although the NPD did not pass this Audit at the required 95% threshold, the uniformed officers observed were, in most cases, courteous, respectful, and offered information and explanations in ways that would give pedestrians and motorists little cause to plausibly believe the encounter was motivated by bias. It was clear in the majority of cases—including many noncompliant ones—those officers understood the relevant procedural requirements. They also understand the need to provide pedestrians and motorists information about the encounter both to justify it and to conclude it as quickly as possible. Barring situations where the nature and pace of the incident precluded compliance with procedure for reasons of safety or exigency, there is no reason to believe officers were unaware of the need to follow specific NPD procedures in the conduct of stops, ones that intend to ensure people understand officers were being impartial in their enforcement of the law. In most cases, they did so.

This courtesy extended to arrest encounters, including domestic violence incidents. Most officers were sympathetic and impartial, while taking care to explain rules, procedures and options to victims, witnesses, and suspects.

That said, there were several cases where civilians would have had cause to wonder whether they were selected for a Stop by uniformed officers for an arbitrary reason, or possibly because of bias. The Monitoring Team identified several areas of potential improvement. Among others, the Monitoring Team recommends that (i) officers be trained to communicate more clearly during stops, identify both themselves and their partner at the outset of a Stop, (ii) explain the basis for a stop to the civilian, and (iii) activate their body-worn cameras in a timely manner. While these recommendations apply to both uniformed and plainclothes officers, it is significant to note that the Monitoring Team consistently observed that *plainclothes officers* failed to activate their body-worn cameras in a timely manner. Indeed,

during this Audit, the Monitoring Team was not able to analyze a single plainclothes encounter from its beginning due to consistent delays in body-worn camera activation. NPD also should provide additional training on communicating with civilians with limited English language skills. NPD also should examine practices concerning the use of tinted windows as a basis for car stops given the risk of arbitrary or biased enforcement in that realm.

The full Audit Report is attached to this report as **Appendix F**.

**E. *Second Audit of Arrests With or Without A Warrant***

On July 14, 2023, 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 Arrests With or Without a Warrant (“Arrests”).

This Audit was conducted by Subject Matter Experts Sekou Kinebrew, Dan Gomez, and Roger Nunez, as well as Linda Tartaglia, Rosalyn Parks, and Jonathan Norrell of the Rutgers University Center on Policing. The Monitoring Team reviewed NPD’s arrests for a two-month period between October 1, 2022 and November 30, 2022 (the “Audit Period”). The Monitoring Team reviewed a randomly selected sample of 225 arrests drawn from the Audit Period and conducted its review in person on various dates in August and September of 2023.

During this Audit, the Monitoring Team analyzed whether NPD’s personnel demonstrated routine adherence to NPD’s own Arrest policies in their day-to-day operations, described here as “Overall Compliance.”

In assessing whether NPD had achieved “Overall Compliance” with the mandates of the Consent Decree, the Monitoring Team considered whether NPD officers conducting an arrest (a) had legal justification for the arrest and whether or not the mechanics of the arrest were within legal and policy related parameters, described in this audit as “Substantive Compliance,” and (b) completed required reports and accurately documented the arrest in the narrative section

of the report, described in this audit as “Documentation Compliance.” If any Arrest event was deficient, either substantively or with respect to documentation, that Arrest event was deemed “Non-Compliant.” NPD achieved “Overall Compliance” if it satisfied both substantive and documentation compliance for 95% of the events in the sample reviewed.

When separated by Substantive and Documentation compliance, the Audit revealed that NPD attained a score of 99.1% for Substantive Compliance, with 223 out of 225 events assessed for Substantive Compliance determined to be compliant. NPD’s Documentation Compliance score was 82.7% (186 out of 225 events assessed for Documentation Compliance were determined to be compliant). Thus, when assessing for Overall Compliance (*i.e.*, satisfaction of **both** substantive and documentation requirements), the Monitoring Team found that 81.3% of events reviewed were compliant both substantively and with respect to documentation requirements. In other words, 183 out of 225 events reviewed by the Monitoring Team achieved Overall Compliance.

The following table presents an overview of NPD’s compliance in the Monitoring Team’s Second Audit of Arrests with or without an Arrest Warrant:

<b>Overview of Second Arrests Audit Results</b>		
<b>Audit Area/Subject</b>	<b>Consent Decree Paragraph</b>	<b>Compliance?</b>
<b>Arrests With or Without an Arrest Warrant Policy and Related Policies</b>	Section VI (Opening Statement) and Paragraphs 35-37, 42, 51, 53, 55-62	Yes.  The Monitoring Team previously determined that NPD’s applicable General Orders, directives, and In-Service Training Bulletins contained each Arrest-related policy requirement specified in the Consent Decree.



<b>Overview of Second Arrests Audit Results</b>		
<b>Audit Area/Subject</b>	<b>Consent Decree Paragraph</b>	<b>Compliance?</b>
<b>Stop, Search and Arrest Analysis Protocol</b>	Paragraph 53	Yes.  The Monitoring Team previously approved NPD's methodology, and NPD has submitted preliminary analyses. Some aspects of those analyses, 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.
<b>Substantive Compliance</b>  <i>Whether the responsible NPD officer adhered to NPD policy by demonstrating that legal justification for the arrest existed and that the arrest was within legal and policy-related parameters.</i>	Section VI (Opening Statement), and Paragraphs 35-38, and 55-62 (First Amendment)	Yes.  NPD was deemed substantively compliant in 99.1% of Arrest events reviewed.
<b>Documentation Compliance</b>  <i>Whether the responsible NPD officer adhered to NPD policy by demonstrating that all reporting and related narrative requirements were met as determined by NPD policy and the Consent Decree.</i>	Section VI (Opening Statement), and Paragraphs 39,42, and 55-62 (First Amendment)	No.  NPD was deemed compliant with respect to documentation in 82.7% of Arrest events reviewed.

<b>Overview of Second Arrests Audit Results</b>		
<b>Audit Area/Subject</b>	<b>Consent Decree Paragraph</b>	<b>Compliance?</b>
<b>Overall Compliance</b> <i>Whether NPD demonstrated overall compliance in its Arrests with or without an Arrest Warrant practices (Substantive and Documentation)</i>	Section VI (Opening Statement), and Paragraphs 35-42, 55-62 (First Amendment)	No.  Overall, 81.3% of Arrest events reviewed were compliant both substantively and with respect to documentation.

The completion of reports is important. Comprehensive police reports are necessary for Supervisors to understand what officers are doing on the street, to members of the public, some of whom may serve on the Civilian Complaint Review Board (“CCRB”), and officers who in the future will perform the same tasks. Going forward, the Monitoring Team recommends that NPD take action to ensure the availability of written documents and Body-Worn Camera videos. Moreover, there should be a consistency between both the written reports and the video footage. During the Audit, the Monitoring Team found that in many cases, arresting officers had failed to complete or submit required documents or video footage and that, even when officers had submitted documents or video footage, classification issues (how the videos were categorized) prevented the Monitoring Team from locating the video footage in a timely manner. Additionally, the Monitoring Team found that some Arrest reports did not specifically identify the officer who effectuated the physical arrest documented in the report and that, in some instances, the officer who prepared the Arrest report was *not* the officer who effectuated the arrest. The Monitoring Team has issued recommendations to NPD on how it can improve its reporting practices, including by instructing Supervisors to inspect reports and ensure they are complete.

The full Audit Report is attached to this report as **Appendix G**.

**F. *Second Property and Evidence Management Audit***

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

On April 11, 2023, the Monitoring Team provided notice that it would conduct its *Second* Audit of NPD’s Property and Evidence Management activities. The Audit covered the period from May 1, 2022 to June 30, 2022 (the “Audit Period”). It was conducted by Linda Tartaglia, Rosalyn Parks, and Jonathan Norrell of the Rutgers University Center on Policing, and Subject Matter Experts Roger Nunez and Dan Gomez.

The Monitoring Team’s *Second* Audit of NPD’s compliance with Consent Decree requirements relating to Property and Evidence Management practices analyzed whether 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.”

To assess whether NPD achieved “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,<sup>4</sup> and (2) the required accountability/property intake procedures in all instances where property or evidence was seized. These two assessments are 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.”

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<sup>4</sup> “System-to-Shelf” refers to the process of booking and subsequently storing property and evidence in the Property Division.

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.

In terms of *Substantive* Compliance, the Audit revealed that NPD achieved a perfect compliance score of 100% (143 of 143 items assessed were compliant) for NPD's System-to-Shelf procedure; meaning that, for 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 86.7% (124 of 143 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 by properly securing and reporting the appropriate information for the property and/or evidence.

The Monitoring Team determined that 53.2% of items reviewed were compliant *both* substantively and with respect to documentation. In other words, 76 out of 143 items reviewed by the Monitoring Team achieved Overall Compliance.

NPD's *Documentation* Compliance score was 61.5% (88 of 143 items assessed were compliant).

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

<b>Overview of Second Property &amp; Evidence Audit Results</b>		
<b>Audit Subject</b>	<b>Consent Decree Paragraph(s)</b>	<b>Compliance?</b>
<b>Property &amp; Evidence Policies</b>	Paragraphs 110(a)-(h)	Yes.
<b>Substantive Compliance</b>  <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 (100%).  Accountability/Property Intake procedure: No (86.7%).
<b>Documentation Compliance</b>  <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 (61.5%).
<b>Overall Compliance</b>  <i>Whether NPD demonstrated overall compliance in its Property &amp; Evidence Management practices (Substantive and Documentation)</i>	Paragraphs 105, 110, 111	No (53.2%).

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

approval for documentation, and (iv) issuing a Memorandum to Supervisors reminding them of their obligation to thoroughly review submitted documents for completeness and accuracy.

The full Audit Report is attached to this report as **Appendix H**.

## **G. Upcoming Audits**

### 1. *Second Bias-Free Policing Audit*

On November 14, 2023, the Monitoring Team provided notice that it would conduct its *Second Bias-Free Policing Audit*. In conjunction with its notice, the Monitoring Team provided an updated audit methodology to NPD. The Audit will cover the period between July 1, 2023 and September 30, 2023 and will be overseen by Subject Matter Experts Brandon del Pozo and Emily Schwartz. On-site work at NPD headquarters in support of the audit began during the week of December 11, 2023 and is ongoing.

More information on the status of the Audit and its outcome will be provided in a future 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.

The Audit remains ongoing and will be addressed in a future report.

## H. City of Newark Policing Survey<sup>5</sup>

From March 17 to March 31, 2023, researchers at Fairleigh Dickinson University conducted a poll of Newark residents designed to assess resident impressions of NPD and their satisfaction with policing in Newark. The poll interviewed 1,104 residents of Newark, with 31% of respondents interviewed by phone and the remaining residents surveyed by text-to-web responses (in which a respondent is sent a link to an online survey *via* text message). The poll was available in English and Spanish. Demographics of respondents were consistent with prior surveys on policing in Newark conducted by Suffolk University, and were as follows (note that not all percentages sum to 100% because these figures do not include respondents who declined to answer the demographic question):

- *Age* - 18-24 Yrs. 14%; 25-34 Yrs. 21%; 35-44 Yrs. 18%; 45-64 Yrs. 29%; 65+ Yrs. 13%
- *Gender* - 47% Male; 50% Female; 1% Other Identity
- *Level of Education* - High School or less 34%; Vocational/Technical School, or some college 30%; College degree or more 34%
- *Race/Ethnicity* - 49% Black; 36% Hispanic/Latino; 11% White; 2% Asian; 2% Other/Multi-racial

Results of the survey suggest that relative to pre-pandemic impressions (prior to March 13, 2020), perceptions of public safety in Newark have generally declined. For example,

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<sup>5</sup> As originally adopted, Paragraphs 22 and 23 of Consent Decree obligate the Monitoring Team to conduct an annual survey “of the Newark community’s experience with and perceptions of NPD and public safety.” Consistent with that requirement, the Monitoring Team worked with the polling programs at Suffolk University and, later, the Eagleton Center for Public Interest Polling Institute, Rutgers University, to survey residents of Newark regarding these issues. The District Court’s May 12, 2022 Order extending the Consent Decree released the Monitoring Team from the obligation to conduct this survey, but required NPD or the City of Newark to conduct annual surveys regarding policing.

68 percent of respondents stated that they feel “very” or “somewhat” safe walking in their neighborhoods during the day, a figure that drops to 42 percent at night. On this metric, conditions in Newark have worsened relative to the last pre-pandemic survey in 2018. Then, 47 percent of respondents said that they felt “very safe” or “somewhat safe” walking at night. And in 2018, only 45 percent of respondents said that they were “not very safe” at night or “not safe at all,” but 53 percent said the same today.

Views of NPD’s performance also have deteriorated post-pandemic as compared to pre-pandemic. Only ten percent of respondents said that the police are doing an “excellent” job serving people in their neighborhood, with 25% giving them a “good.” In contrast, in 2018, those figures were 10% and 33%, respectively. Thirty-four (34%) of respondents stated that the NPD is doing a fair job (32% in 2018), and 25% give them a “poor” rating (up from 20% in 2018).

There were significant racial and geographic disparities in perception of NPD’s performance. For example, White and Asian residents are disproportionately likely to be happy with the NPD. Half (51%) say that the police are doing an “excellent” or “good” job, compared with 33% of Black and 34% of Hispanic residents. And perceptions of neighborhood safety vary significantly across neighborhoods, with 75% of respondents from the East Ward reporting that they feel “very” or “somewhat” safe walking in their neighborhood during the day, as compared to only 15% of residents of the North Ward who feel the same way.

The full report and analysis is available at <https://www.fdu.edu/news/fdu-poll-newark-residents-feel-less-safe-have-less-positive-views-of-police/>.

## **I. Internal Affairs**

As the Monitoring Team has previously discussed in its Eighteenth Quarterly Report (covering the period April 1, 2021 through June 30, 2021) and its Eleventh Quarterly



Report (covering the period July 1, 2019 through September 30, 2019), police unions have pursued legal challenges to NPD's revised Internal Affairs General Order (the "General Order") and its revised Disciplinary Matrix. These legal challenges have been premised principally on the ground that these measures violate the collective bargaining agreement ("CBA") between the union and the City. NPD had postponed implementation of the revised General Order and the Disciplinary Matrix until resolution of these legal challenges, and the Monitoring Team has postponed audits in this area.

The litigation began with both the Fraternal Order of Police, Newark Lodge No. 12, ("FOP") and the Newark Police Superior Officers' Association, Inc. ("SOA") challenging General Order and the Disciplinary Matrix before the New Jersey Public Employees Relations Commission ("PERC"). PERC held that the revisions violated both the CBA and New Jersey law because they were not collectively bargained and ordered NPD to rescind the Disciplinary Matrix and other portions of the General Order that imposed more strict discipline upon officers who violate NPD Rules, Policies and Procedures. The City appealed the PERC decision to the Appellate Division of the Superior Court of New Jersey ("Appellate Division").

On October 3, 2023, the Appellate Division affirmed PERC's decision. Examining the past history in Newark of changes in police disciplinary processes and penalties, the Appellate Division held that NPD could not unilaterally change disciplinary procedures by implementing the General Order and the Disciplinary Matrix without first collectively bargaining those matters with the unions, even though the changes were authorized by the Consent Decree. Because the Appellate Division upheld PERC's decision, the Disciplinary Matrix and certain other aspects of the General Order may not go into effect without first subjecting those proposed changes to collective bargaining in accordance with New Jersey law.

The City and NPD have elected to not pursue further appeals of the Appellate Division's decision. NPD, the City, and the Monitoring Team are evaluating the implications of the Appellate Division's decision for Internal Affairs practices and future audits of the Internal Affairs function. The Monitoring Team will provide more information on developments in this area in future reports.

### **III. APPENDICES**

- A. Compliance Chart — Policy and Training**
- B. Compliance Chart — Operational Compliance**
- C. *Third Use of Force Audit***
- D. Supplemental Assessment of In-Car Camera Functionality**
- E. *Second Searches Audit***
- F. *First Bias-Free Policing Audit***
- G. *Second Audit of Arrests With or Without A Warrant***
- H. *Second Property and Evidence Management Audit***

**Consent Decree Compliance and Implementation  
Policies and Procedures  
(March 30, 2016 to December 31, 2023)**

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## **I. Definitions**

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

### **1. Not Assessed**

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

### **2. Initial Development**

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

### **3. Preliminary Compliance**

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

### **4. Operational Compliance**

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

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

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

**6. Administrative Compliance**

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

**7. Full Compliance**

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

**8. Effective Date**

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

**9. Operative Date**

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

## II. General Officer Training

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

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

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

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

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.
<b>Civilian Oversight (¶ 13)</b>				
The City will implement and maintain a civilian oversight entity.	¶ 13	Within 365 days of the Effective Date (March 30, 2017)	Administrative Compliance	See Fifteenth Quarterly Report, Section II(C).
<b>Community Engagement Measures and Training (¶¶ 14-21)</b>				
NPD will provide 8 hours of in-service training on community policing and problem-oriented policing methods and skills for all officers, including supervisors, managers and executives, and at least 4 hours annually thereafter.	¶ 14	July 9, 2017	Administrative Compliance	See Sixteenth Quarterly Report, Appendix C.
NPD will assess and revise its staffing allocation and personnel deployment to support community policing and problem solving initiatives, and will modify deployment strategies that are incompatible with community policing. NPD’s assessment and modified strategy must be approved by the DOJ and Monitor.	¶ 15	July 9, 2017	Administrative Compliance	See Eighteenth Quarterly Report, Appendix D.



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

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

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

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

#### IV. Stops, Searches, and Arrests

Achievement	Consent Decree Paragraph	Consent Decree Deadline for Achievement	Status	Discussion
<b>Investigatory Stops and Detentions (§§ 25-28)</b>				
NPD will review and revise its current stop, search, and arrest policy or policies to ensure compliance with Consent Decree, consistent with Paragraphs 25-28.	¶ 5	Within two years of the Effective Date (March 30, 2018)	Administrative Compliance	See Nineteenth Quarterly Report, Appendix C.
NPD will ensure that officers have received, read and understand their responsibilities pursuant to the stop, search, and arrest policies or procedure and that the topic is incorporated into the in-service training required.	¶ 11	Within 60 days after approval of policy	Administrative Compliance	See Sixteenth Quarterly Report, Appendix C.
NPD will train officers to use specific and individualized descriptive language in reports or field inquiry forms.	¶ 26	Within two years of the Effective Date (March 30, 2018)	Administrative Compliance	See Twenty-Third Semi-Annual Report, Appendix C.
<b>Searches (§§ 29-34)</b>				
NPD will review and revise its current stop, search, and arrest policy or policies to ensure compliance with Consent Decree, consistent with Paragraphs 29-34.	¶ 5	Within two years of the Effective Date (March 30, 2018)	Preliminary Compliance	See 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
<b>Arrests (¶¶ 35-42)</b>				
NPD will review and revise its current stop, search, and arrest policy or policies to ensure compliance with Consent Decree, consistent with Paragraphs 35-42.	¶ 5	Within two years of the Effective Date (March 30, 2018)	Preliminary Compliance	See Ninth Quarterly Report, Appendix D.
NPD will ensure that officers have received, read and understand their responsibilities pursuant to the stop, search, and arrest policies or procedure and that the topic is incorporated into the in-service training required.	¶ 11	Within 60 days after approval of policy	Preliminary Compliance	See Sixteenth Quarterly Report, Appendix C.
<b>Stop, Search, and Arrest Training (¶¶ 43-50)</b>				
NPD will provide 16 hours of training to all NPD personnel on the First and Fourth Amendments, including the topics set forth in ¶ 43 of the Consent Decree, and at least an additional 4 hours on an annual basis thereafter.	¶ 43	November 1, 2017	Preliminary Compliance	See Nineteenth Quarterly Report, Appendix C.
NPD supervisors will take appropriate action to address violations or deficiencies in stops, detentions, searches, and arrests; maintain records; and identify repeat violators.	¶ 48	Ongoing	Not Assessed	See Twenty-Second Semi-Annual Report, Appendix B, D.
<b>Stop, Search, and Arrest Data Collection and Review (¶¶ 51-54)</b>				
NPD will modify its procedures as set out below to collect and preserve stop, search, and arrest data sufficient to determine the nature and scope of demographic disparities in stop and search practices, as well as which stop, search, and arrest practices are most effective and efficient.	¶ 51	Within two years of the Effective Date (March 30, 2018)	Initial Development	See Nineteenth Quarterly Report, Appendix C.

## Stops, Searches, and Arrests Continued

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-Fourth Semi-Annual Report, Appendix E.
NPD will ensure that all databases comply fully with federal and state privacy standards governing personally identifiable information. NPD will restrict database access to authorized, identified users who will be permitted to access the information only for specific, legitimate purposes.	¶ 54	Within two years of the Effective Date (March 30, 2018)	Non-Compliance	See Nineteenth Quarterly Report, Appendix C.
<b>First Amendment Right to Observe, Object to, and Record Officer Conduct (¶¶ 55-62)</b>				
NPD will require or prohibit officer conduct to comply with ¶¶ 55-62 of the Consent Decree.	¶¶ 55-62	Within two years of the Effective Date (March 30, 2018)	Administrative Compliance	See Nineteenth Quarterly Report, Appendix C.

## 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)	Full 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 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	Administrative Compliance	See Twenty-Fourth Semi-Annual Report, Appendix F.
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 Twenty-Fourth Semi-Annual Report, Appendix F.
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.	Administrative Compliance	See Twenty-Fourth Semi-Annual Report, Appendix F.

## VI. Use of Force

Achievement	Consent Decree Paragraph	Consent Decree Deadline for Achievement	Status	Discussion
<b>Use of Force Policy (¶¶ 66-70)</b>				
NPD will develop and implement a use of force policy or set of policies that cover all force techniques, technologies, and weapons that are available to NPD officers consistent with ¶¶ 66-70. The policy or policies will clearly define each force option and specify that unreasonable use of force will subject officers to discipline.	¶ 66	Within two years of the Effective Date (March 30, 2018)	Full Compliance	See Twenty-Fourth 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	Full Compliance	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 future compliance audits/reviews.
<b>Use of Firearms (¶¶71-74)</b>				
NPD will develop and implement a use of firearms policy consistent with ¶¶71-74.	¶ 5	Within two years of the Effective Date (March 30, 2018)	Full Compliance	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	Full Compliance	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)	Full Compliance	See Twenty-Fourth 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)	Full Compliance	See Twenty-Fourth 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)	Full Compliance	See Twenty-Fourth 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-Fourth Semi-Annual Report, Appendix C.
<b>Use of Force Reporting and Investigation (¶¶ 75-85)</b>				
NPD will adopt a use of force reporting system and a supervisor Use of Force Report, separate from the NPD's arrest and incident reports, and which includes individual officers' accounts of their use of force.	¶ 75	Within two years of the Effective Date (March 30, 2018)	Full Compliance	See Twenty-Fourth 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-Fourth 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)	Full Compliance	See Twenty-Fourth 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)	Not Assessed	The Monitor will assess this requirement during future compliance audits/reviews.
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)	Not Assessed	To be assessed in First Supervision Audit.
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)	Not Assessed	To be assessed in First Supervision Audit.
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)	Not Assessed	
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	To be assessed in First Supervision Audit.

## 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)	Not Assessed	To be assessed in First Supervision Audit.
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)	Not Assessed	To be assessed in First Supervision Audit.
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)	Not Assessed	To be assessed in First Supervision Audit.
<b>Use of Force Review (¶¶ 86-89)</b>				
The chain-of-command supervisor reviewing the investigative report will ensure that the investigation is thorough, complete, and makes the necessary and appropriate findings of whether the use of force was lawful and consistent with policy. Each higher-level supervisor in the chain of command will review the investigative report to ensure that it is complete, the investigation was thorough, and that the findings are supported by a preponderance of the evidence.	¶ 86	Within two years of the Effective Date (March 30, 2018)	Not Assessed	To be assessed in First Supervision Audit.

## 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)	Not Assessed	To be assessed in First Supervision Audit.
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)	Not Assessed	To be assessed in First Supervision Audit.
<b>Reporting and Investigation of Serious Force Incidents (¶¶ 90-94)</b>				
NPD will create a multi-disciplinary Serious Force Investigation Team (“SFIT”) to conduct both the criminal and administrative investigations of Serious Force incidents, and to determine whether these incidents raise policy, training, tactical, or equipment concerns. SFIT will operate consistent with ¶¶ 91-94.	¶¶ 90-94	Within two years of the Effective Date (March 30, 2018)	Administrative Compliance	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
<b>Use of Force Review Board (¶¶ 95-102)</b>				
NPD will implement a General Order establishing the Use of Force review Board (“UFRB”), ensure that it is staffed consistent with the Consent Decree provisions, and ensure that the responsibilities assigned are consistent with Consent Decree provisions.	¶¶ 95-102	Within two years of the Effective Date (March 30, 2018)	Administrative Compliance <sup>3</sup>	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	Administrative Compliance	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.

<sup>3</sup> NPD has not 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 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>Full Compliance as to In-Car Cameras; Administrative Compliance as to Body-Worn Cameras</p>	<p>See Twenty-Fourth Semi-Annual Report, Appendix D (In-Car Cameras); Twenty-Second Semi-Annual Report, Appendix E (Body-Worn Cameras).</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 future compliance audits.
NPD will conduct periodic reviews of the disciplinary histories of its officers who routinely handle valuable contraband or cash, especially those in specialized units, to identify any patterns or irregularities indicating potential risk of theft by officers.	¶ 107	Ongoing	Non-Compliance	N/A

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

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

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

<b>Achievement</b>	<b>Consent Decree Paragraph</b>	<b>Consent Decree Deadline for Achievement</b>	<b>Status</b>	<b>Discussion</b>
NPD will conduct and document periodic audits and inspections of the property room and immediately correct any deficiencies.	¶ 111	Ongoing	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
<b>Complaint Process (¶¶ 112-120)</b>				
NPD will create an Internal Affairs: Complaint Intake and Investigation policy or policies to ensure compliance with Section XI of the Consent Decree.	¶ 5, Section XI	Within two years of the Effective Date (March 30, 2018)	Preliminary Compliance	
NPD will ensure that officers have received, read and understand their responsibilities pursuant to the Internal Affairs: Complaint Intake and Investigation policy or procedure and that the topic is incorporated into the in-service training required.	¶ 11	Within 60 days after approval of policy	Preliminary Compliance	See Ninth Quarterly Report, Appendix C.
The City and NPD, in collaboration with the civilian oversight entity or other community input, will develop and implement a program to effectively publicize to the Newark community how to make misconduct complaints.	¶ 112	Within 365 days of the Operational Date (July 12, 2017)	Not Assessed	
NPD and the City will revise and make forms and other materials outlining the complaint process and OPS contact information available on their website and appropriate government properties.	¶ 113	Within two years of the Effective Date (March 30, 2018)	Initial Development	See Fifth Quarterly Report, Section III(C)(4).
NPD will accept all complaints, by all methods and forms detailed in ¶ 114.	¶ 114	Ongoing	Initial Development	See Fifth Quarterly Report, Section III(C)(4).

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

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

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

Achievement	Consent Decree Paragraph	Consent Decree Deadline for Achievement	Status	Discussion
NPD will require that all officers and employees report allegations of criminal behavior or administrative misconduct by another NPD officer toward a member of the public, that they may observe themselves or receive from another source, to a supervisor or directly to OPS for review and investigation. When a supervisor receives such allegations, the supervisor will promptly document and report this information to OPS.	¶ 119	Within two years of the Effective Date (March 30, 2018)	Preliminary Compliance	See Ninth Quarterly Report, Appendix D.
NPD will investigate as a misconduct complaint any information or testimony arising in criminal prosecutions or civil lawsuits that indicate potential officer misconduct not previously investigated by NPD.	¶ 120	Ongoing	Not Assessed	The Monitor will assess this requirement during future compliance audits.
<b>Complaint Classification and Assignment of Investigative Responsibility (¶¶ 121-125)</b>				
NPD will adopt and implement a complaint classification protocol that is based on the nature of the alleged misconduct, in order to guide OPS in determining where a complaint should be assigned for investigation.	¶ 121	Within two years of the Effective Date (March 30, 2018)	Preliminary Compliance	See Fifth Quarterly Report, Section III(A)(5).
NPD will ensure that officers have received, read and understand their responsibilities pursuant to the policy or procedure and that the topic is incorporated into the in-service training required.	¶ 11	Within 60 days after approval of protocol	Non-Compliance	
NPD’s OPS will investigate all allegations of Serious Misconduct as defined in the Consent Decree.	¶ 122	Ongoing	Not Assessed	The Monitor will assess this requirement during future 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 future compliance audits.
NPD will maintain a centralized numbering and tracking system for all misconduct complaints.	¶ 125	Within two years of the Effective Date (March 30, 2018)	Initial Development	See Fifth Quarterly Report, Section III(C)(4).
<b>Misconduct Complaint Investigation (¶¶ 126-136)</b>				
NPD will review and revise its policies for releasing complaints and misconduct allegations to incorporate the requirements set out in ¶¶ 126-136.	¶¶ 126-136	Within two years of the Effective Date (March 30, 2018)	Preliminary Compliance	

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

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	
<b>Parallel Administrative and Criminal Investigations of Officer Misconduct (¶¶ 137-140)</b>				
If after a reasonable preliminary inquiry into an allegation of misconduct, or at any other time during the course of an administrative investigation, the OPS has cause to believe that an officer or employee might have engaged in criminal conduct, the OPS will refer the matter to the ECPO, DOJ, or other law enforcement agency as appropriate.	¶ 137	Ongoing	Not Assessed	The Monitor will assess this requirement during future 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 future 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 future 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 future compliance audits.

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

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

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

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

**X. Compliance Reviews and Integrity Audits**

<b>Achievement</b>	<b>Consent Decree Paragraph</b>	<b>Consent Decree Deadline for Achievement</b>	<b>Status</b>	<b>Discussion</b>
<p>NPD will conduct integrity audits and compliance reviews to identify and investigate all officers who have engaged in misconduct including unlawful stops, searches, seizures, excessive uses of force; theft of property or other potential criminal behavior; racial or ethnic profiling and bias against lesbian, gay bisexual and transgender persons.</p> <p>The integrity audits will also seek to identify officers who discourage the filing of complaints, fail to report misconduct or complaints, or otherwise undermine NPD’s integrity and accountability systems.</p>	<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 future 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 future 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
<b>Early Warning System (¶¶ 156-161)</b>				
NPD will enhance its Early Warning System (“EWS”) to support the effective supervision and management of NPD officers.	¶ 156	Within one year of the Effective Date (March 30, 2017)	Non-Compliance	See Ninth Quarterly Report, Section II(A).
City will provide sufficient funding to NPD to enhance its EWS.	¶ 156	Within one year of the Effective Date (March 30, 2017)	Non-Compliance	See Ninth Quarterly Report, Section II(A).
NPD will develop and implement a data protocol describing information to be recorded and maintained in the EWS.	¶ 157	Within two years of the Effective Date (March 30, 2018)	Non-Compliance	See Ninth Quarterly Report, Section II(A).
NPD will revise its use of EWS as an effective supervisory tool. To that end, the EWS will use comparative data and peer group analysis to identify patterns of activity by officers and groups of officers for supervisory review and intervention.	¶ 158-160	Within two years of the Effective Date (March 30, 2018)	Non-Compliance	See Ninth Quarterly Report, Section II(A).
NPD will continue to use its current IAPro software's alert and warning features to identify officers for intervention while further developing and implementing an EWS that is fully consistent with this Agreement.	¶ 161	Ongoing	Initial Development	The Monitor will assess this requirement during future compliance audits.
<b>Records Management System (“RMS”) (¶¶ 162-163)</b>				
NPD will revise its use and analysis of its RMS to make efficient and effective use of the data in the System and improve its ability to interface with other technology systems.	¶ 162	Within two years of the Effective Date (March 30, 2018)	Initial Development	See Ninth Quarterly Report, Section II(A).

**Data Systems Improvement Continued**

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

### XIII. Transparency and Oversight

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

**Consent Decree Compliance and Implementation  
Outcomes  
(March 30, 2016 to December 31, 2023)**

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## **I. Definitions**

In this Compliance Chart, NPD's success in achieving the benchmarks assessed by the Independent Monitoring Team during Audits will be assessed using the following categories: (1) Non-Compliant, (2) Compliant, (3) Fully Compliant. Each of these terms is defined below.

### **1. Non-Compliant**

"Non-Compliant" means that in the most recent Audit, NPD did not achieve the audited benchmark in at least 95% of the events reviewed by the Independent Monitoring Team or failed to achieve another agreed-upon benchmark during the Audit.

### **2. Compliant**

"Compliant" means that in the most recent Audit, NPD achieved the audited benchmark in at least 95% of the events reviewed by the Independent Monitoring Team.

### **3. Fully Compliant**

"Fully Compliant" means that for a given benchmark, NPD has achieved the audited benchmark in at least 95% of the events reviewed by the Independent Monitoring Team in at least two consecutive Audits or has achieved Fully Compliant status by another measure established by the Independent Monitoring Team. When NPD achieves Fully Compliant status for an audited benchmark, it is released from future audits of that benchmark in the future.



## II. Training Records

Outcome	Most Recent % Compliant	Last Measured (Audit Period)	Status	Discussion
<b>Training Records – Bias-Free Policing (§ 173)</b>				
In a representative sample of records, whether NPD provided all officers with the minimum requirement (8 hours initially and 4 hours annually thereafter) of comprehensive and interdisciplinary training on bias-free policing.	97%	<i>Third</i> Training Records Audit (March 1, 2020–December 31, 2020)	Compliant	See Twentieth Quarterly Report, Appendix C.
<b>Training Records – Training Records and Materials Compliance (§ 12)</b>				
In a representative sample of records, whether NPD maintained complete and consistent training records and materials for all officers.	100%	<i>Third</i> Training Records Audit (March 1, 2020–December 31, 2020)	Fully Compliant	See Twentieth Quarterly Report, Appendix C.

### III. Stops, Searches, and Arrests

Outcome	Most Recent % Compliant	Last Measured (Audit Period)	Status	Discussion
<b>Stops – Substantive Compliance (¶¶ 25–28; 55–62)</b>				
In a representative sample of events, 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.	100%	<i>Second</i> Stops Audit (April 1, 2022–May 31, 2022)	Compliant	See Twenty-Third Semi-Annual Report, Appendix C.
<b>Stops – Documentation Compliance (¶¶ 25–28; 55–62)</b>				
In a representative sample of events, 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.	95.36%	<i>Second</i> Stops Audit (April 1, 2022–May 31, 2022)	Compliant	See Twenty-Third Semi-Annual Report, Appendix C.
<b>Stops – Overall Compliance (¶¶ 25–28; 55–62)</b>				
Within a representative sample of events, percentage of events displaying both Substantive and Documentation Compliance.	95.36%	<i>Second</i> Stops Audit (April 1, 2022–May 31, 2022)	Compliant	See Twenty-Third Semi-Annual Report, Appendix C.
<b>Searches – Substantive Compliance (¶¶ 29–34; 55–62)</b>				
In a representative sample of events, whether the responsible NPD officer adhered to NPD policy by demonstrating that legal justification for the search existed and that the search was within legal and policy-related parameters.	95.74%	<i>Second</i> Searches Audit (November 1, 2022–December 31, 2022)	Compliant	See Twenty-Fourth Semi-Annual Report, Appendix E.

**Stops, Searches, and Arrests Continued**

<b>Outcome</b>	<b>Most Recent % Compliant</b>	<b>Last Measured (Audit Period)</b>	<b>Status</b>	<b>Discussion</b>
<b>Searches – Documentation Compliance (¶¶ 26, 27, 29, 34)</b>				
In a representative sample of events, whether the responsible NPD officer(s) adhered to NPD policy by demonstrating that <b>all</b> reporting and related narrative requirements were met as determined by NPD policy and the Consent Decree.	88.94%	<i>Second</i> Searches Audit (November 1, 2022–December 31, 2022)	Non-Compliant	See Twenty-Fourth Semi-Annual Report, Appendix E.
<b>Searches – Overall Compliance (¶¶ 29–34)</b>				
Within a representative sample of events, percentage of events displaying both Substantive and Documentation Compliance.	85.96%	<i>Second</i> Searches Audit (November 1, 2022—December 31, 2022)	Non-Compliant	See Twenty-Fourth Semi-Annual Report, Appendix E.
<b>Arrests – Substantive Compliance (§ VI, ¶¶ 35–38; 55–62)</b>				
In a representative sample of events, whether the responsible NPD officer adhered to NPD policy by demonstrating that legal justification for the arrest existed and that the arrest was within legal and policy-related parameters.	99.1%	<i>Second</i> Arrests Audit (October 1, 2022–November 30, 2022)	Compliant	See Twenty-Fourth Semi-Annual Report, Appendix G.
<b>Arrests – Documentation Compliance (§ VI, ¶¶ 35–38; 55–62)</b>				
In a representative sample of events, whether the responsible NPD officer adhered to NPD policy by demonstrating that all reporting and related narrative requirements were met as determined by NPD policy and the Consent Decree.	82.7%	<i>Second</i> Arrests Audit (October 1, 2022–November 30, 2022)	Non-Compliant	See Twenty-Fourth Semi-Annual Report, Appendix G.

**Stops, Searches, and Arrests Continued**

<b>Outcome</b>	<b>Most Recent % Compliant</b>	<b>Last Measured (Audit Period)</b>	<b>Status</b>	<b>Discussion</b>
<b>Arrests – Overall Compliance (§ VI, ¶¶ 35–38; 55–62)</b>				
Within a representative sample of events, percentage of events displaying both Substantive and Documentation Compliance.	81.3%	<i>Second</i> Arrests Audit (October 1, 2022–November 30, 2022)	Non-Compliant	See Twenty-Fourth Semi-Annual Report, Appendix G.

#### IV. Bias-Free Policing

Outcome	Most Recent % Compliant	Last Measured (Audit Period)	Status	Discussion
<b>Substantive Compliance (¶¶ 63-65)</b>				
In a representative sample of events, whether the responsible NPD officer(s) adhered to NPD policy in their bias-free policing practices and that the event was within legal and policy-related parameters.	88.8%	<i>First</i> Bias-Free Policing Audit (July 1, 2022–September 30, 2022)	Non-Compliant	See Twenty-Fourth Semi-Annual Report, Appendix F.
<b>Documentation Compliance (¶¶ 63-65)</b>				
In a representative sample of events, whether the responsible NPD officer(s) adhered to NPD policy by demonstrating that <b>all</b> reporting and related narrative requirements were met as determined by NPD policy and the Consent Decree.	91.0%	<i>First</i> Bias-Free Policing Audit (July 1, 2022–September 30, 2022)	Non-Compliant	See Twenty-Fourth Semi-Annual Report, Appendix F.
<b>Overall Compliance (¶¶ 63-65)</b>				
Within a representative sample of events, percentage of events displaying both Substantive and Documentation Compliance.	82.0%	<i>First</i> Bias-Free Policing Audit (July 1, 2022–September 30, 2022)	Non-Compliant	See Twenty-Fourth Semi-Annual Report, Appendix F.

## V. Use of Force

Outcome	Most Recent % Compliant	Last Measured (Audit Period)	Status	Discussion
<b>Substantive Compliance (¶¶ 66, 67, 71, 72, 76, 77)</b>				
Within a representative sample of events, whether all officers who employed force acted consistently with the fundamental principles of NPD’s Use of Force policy.	96.7%	<i>Third</i> Use of Force Audit (July 1, 2022–September 30, 2022)	Fully Compliant	See Twenty-Fourth Semi-Annual Report, Appendix C.
<b>Documentation Compliance (¶¶ 66, 75, 77, 79 (a and c))</b>				
Within a representative sample of events, whether NPD officers complied with NPD’s use of force reporting requirements.	87.9%	<i>Third</i> Use of Force Audit (July 1, 2022–September 30, 2022)	Non-Compliant	See Twenty-Fourth Semi-Annual Report, Appendix C.
<b>Overall Compliance (¶¶ 66, 67, 71, 72, 75-77)</b>				
Within a representative sample of events, percentage of incidents displaying both Substantive and Documentation Compliance.	84.6%	<i>Third</i> Use of Force Audit (July 1, 2022–September 30, 2022)	Non-Compliant	See Twenty-Fourth Semi-Annual Report, Appendix C.

## VI. In-Car and Body-Worn Cameras

Outcome	Most Recent % Compliant	Last Measured (Audit Period)	Status	Discussion
<b>Body-Worn Camera Compliance -- Notification (§§ 103, 104)</b>				
Within a representative sample of events, whether NPD met the Notification objective for body-worn cameras.	85.91%	<i>Third</i> Body-Worn Camera and <i>Second</i> In-Car Camera Audit (June 1, 2022–June 30, 2022)	Non-Compliant	See Twenty-Second Semi-Annual Report, Appendix E.
<b>Body-Worn Camera Compliance – Other Objectives (§§ 103, 104)</b>				
Within a representative sample of events, whether NPD met the Activation, Deactivation, and Categorization objective for body-worn cameras.	95.11% (Activation) 100% (Deactivation) 98.04% (Categorization)	<i>Second</i> Body-Worn Camera and <i>First</i> In-Car Camera Audit (June 1, 2021–June 30, 2021)	Fully Compliant	See Twenty-Fourth Semi-Annual Report, Appendix C.
<b>In-Car Camera Compliance –All Objectives (§§ 103)</b>				
Within a representative sample of events, whether NPD met the Activation, Deactivation, and Availability for Review objective for body-worn cameras.	92.19% (Activation) 100% (Deactivation) 83.72% (Availability for Review)	<i>Third</i> Body-Worn Camera and <i>Second</i> In-Car Camera Audit (June 1, 2022–June 30, 2022)	Non-Compliant	See Twenty-Second Semi-Annual Report, Appendix E.

**I. In-Car and Body-Worn Cameras Continued**

Outcome	Most Recent % Compliant	Last Measured (Audit Period)	Status	Discussion
<b>In-Car Camera Compliance –Vehicle Inspection (¶¶ 103)</b>				
Within a representative sample of events, whether NPD equipped patrol cars with cameras, and whether they were functional.	97.8% (of vehicles available for assessment)	Supplemental Assessment of In-Car Camera Functionality (March 2023–April 2023)	Fully Compliant	See Twenty-Second Semi-Annual Report, Appendix D.



**VII. Property and Evidence**

Outcome	Most Recent % Compliant	Last Measured (Audit Period)	Status	Discussion
<b>Substantive Compliance (§§ 110)</b>				
Within a representative sample of events, whether the responsible NPD officer adhered to NPD policy specific to NPD’s System-to-Shelf procedures and Accountability/Property Intake procedures.	100% (System to Shelf)  86.7% (Accountability/Property Intake)	<i>Second</i> Property and Evidence Management Audit (May 1, 2022–June 30, 2022)	Compliant (System to Shelf)  Non-Compliant (Accountability/Property Intake)	See Twenty-Fourth Semi-Annual Report, Appendix H.
<b>Documentation Compliance (§§ 105, 111)</b>				
Within a representative sample of events, whether NPD adhered to all necessary documentation and reporting requirements as required by policy, including periodic audits and correction of deficiencies.	61.5%	<i>Second</i> Property and Evidence Management Audit (May 1, 2022–June 30, 2022)	Non-Compliant	See Twenty-Fourth Semi-Annual Report, Appendix H.
<b>Overall Compliance (§§ 105, 110, 111)</b>				
Within a representative sample of events, percentage of incidents displaying both Substantive and Documentation Compliance.	53.2%	<i>Second</i> Property and Evidence Management Audit (May 1, 2022–June 30, 2022)	Non-Compliant	See Twenty-Fourth Semi-Annual Report, Appendix H.

## VIII. Community-Oriented Policing

Outcome	Consent Decree Paragraph	Compliant?	Last Assessed (Audit Period)	Discussion
NPD will provide “direction and training” to officers on how to achieve effective community engagement.	¶ 14	Non-Compliant	<i>First</i> Community-Oriented Policing Audit (April 1, 2019–September 30, 2019)	See Eighteenth Quarterly Report, Appendix D.
NPD will assess and revise its staffing allocation to improve community-oriented policing practices.	¶ 15	Compliant <sup>1</sup>	<i>First</i> Community-Oriented Policing Audit (April 1, 2019–September 30, 2019)	See Eighteenth Quarterly Report, Appendix D.
NPD must assign two Community Service Officers to each precinct who will become familiar with community and not be assigned to calls for service except in exigent circumstances.	¶ 16	Non-Compliant	<i>First</i> Community-Oriented Policing Audit (April 1, 2019–September 30, 2019)	See Eighteenth Quarterly Report, Appendix D.
NPD must implement a mechanism to measure the breadth, extent, and effectiveness of its community engagement practices.	¶ 17	Non-Compliant	<i>First</i> Community-Oriented Policing Audit (April 1, 2019–September 30, 2019)	See Eighteenth Quarterly Report, Appendix D.
NPD must issue quarterly reports on community engagement efforts. One report must address the results of the staffing assessment required by Paragraph 15.	¶ 18	Non-Compliant	<i>First</i> Community-Oriented Policing Audit (April 1, 2019–September 30, 2019)	See Eighteenth Quarterly Report, Appendix D.

<sup>1</sup> During the most recent Community-Oriented Policing Audit, NPD demonstrated that it had developed a procedure for achieving this outcome but was unable to implement it because of exigent circumstances related to the COVID-19 pandemic. Accordingly, the Monitoring Team deemed NPD provisionally compliant.

**Community-Oriented Policing Continued**

<b>Outcome</b>	<b>Consent Decree Paragraph</b>	<b>Compliant?</b>	<b>Last Assessed (Audit Period)</b>	<b>Discussion</b>
NPD and the City must develop practices to seek and respond to input from the community regarding the Consent Decree’s implementation.	¶ 19	Non-Compliant	<i>First</i> Community-Oriented Policing Audit (April 1, 2019–September 30, 2019)	See Eighteenth Quarterly Report, Appendix D.
NPD and the City must make all studies, analyses, and assessments required by the Consent Decree available on NPD and City websites.	¶ 20	Non-Compliant	<i>First</i> Community-Oriented Policing Audit (April 1, 2019–September 30, 2019)	See Eighteenth Quarterly Report, Appendix D.
NPD must adopt a policy to collect and maintain all data and records necessary to facilitate transparency around NPD’s policies and practices.	¶ 21	Compliant	<i>First</i> Community-Oriented Policing Audit (April 1, 2019–September 30, 2019)	See Eighteenth Quarterly Report, Appendix D.
NPD and the City must cooperate with the annual surveys required by the Consent Decree and publish the survey results on NPD and City websites.	¶ 24	Non-Compliant	<i>First</i> Community-Oriented Policing Audit (April 1, 2019–September 30, 2019)	See Eighteenth Quarterly Report, Appendix D.

**Report of the Independent Monitor's Third Audit of the City of Newark Police  
Division's Use of Force**

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This report presents the findings of the Independent Monitor Peter C. Harvey, regarding the Independent Monitoring Team’s *Third* Audit of the City of Newark’s (the “City”) and Newark Police Division’s (“NPD”) compliance with Consent Decree requirements relating to the Use of Force.

## **I. REVIEWERS**

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

Wayne Fisher, Ph.D., Rutgers University Center on Policing  
Lieutenant Daniel Gomez (Ret.), Los Angeles Police Department  
Linda Tartaglia, Associate Director, Rutgers University Center on Policing  
Rosalyn Bocker Parks, Ph.D., Rutgers University Center on Policing  
Kathryn Duffy, Ph.D. Rutgers University Center on Policing  
Jonathan Norrell, Rutgers University Center on Policing

## **II. INTRODUCTION**

Paragraph 173 of the Consent Decree instructs the Independent Monitor to audit the City’s and NPD’s implementation of and compliance with Consent Decree reforms. Consistent with the Consent Decree, by letter dated March 20, 2023, the Independent Monitor issued notice to the City, NPD, and U.S. Department of Justice (“DOJ”) (collectively, “the Parties”), that the Independent Monitoring Team would begin its *Third* Audit of NPD’s compliance with certain provisions of the Consent Decree relating to the Use of Force and specifically, Consent Decree Section VIII (See Paragraphs 66-102).<sup>1</sup> (See **Appendix A** 45-day notice letter March 20, 2023).

## **III. REVIEW PERIOD**

In this Audit, the Monitoring Team reviewed NPD’s police activities and records for a three-month period from July 1, 2022 up to and including September 30, 2022 (the “Audit Period”).

## **IV. EXECUTIVE SUMMARY**

This report contains the results of the Monitoring Team’s comprehensive audit of NPD’s Use of Force during the three-month Audit Period. To that end, the Monitoring Team analyzed whether NPD demonstrated routine adherence to its own Use of Force policies in its day-to-day operations, described here as “Operational Compliance.”<sup>2</sup>

With respect to whether NPD had demonstrated routine adherence to its use of force policies in its daily operations, the Monitoring Team considered: (a) whether NPD officers’ actions were lawful and compliant with the four fundamental principles of NPD’s Use of

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<sup>1</sup> Consent Decree Paragraphs 68-70, 74, 85-87 and 89-102 will not be covered in the Monitoring Team’s Use of Force audit. The Monitoring Team deems NPD to be in compliance with the policy requirements in Paragraphs 68-70 and 74. *See* Report of the Independent Monitor’s First Audit of the City of Newark and Newark Police Division’s Use of force, Section V.A. Consent Decree Paragraphs 85-87 and 89-102 will be covered in future audits relating to the areas of Supervision and Internal Affairs.

<sup>2</sup> Outcome Assessments as described in Consent Decree Paragraph 174(b) will be included in an upcoming Monitoring Team semi-annual report, and will not be included in this audit report.

Force policy,<sup>3</sup> described in this audit as *substantive compliance*; and (b) whether all officers involved in a Use of Force incident, meaning those actually employing force, witnessing force, or present in a supervisory capacity, complied with the documentation requirements contained in NPD’s policy, described in this audit as *documentation compliance*. As in the *Second Use of Force Audit*, NPD achieves Overall Operational Compliance only when it satisfies both metrics (*i.e.* substantive compliance and documentation compliance) 95% of the time in the sample that the Monitoring Team reviewed.

The Monitoring Team determined that NPD achieved substantive compliance with its Use of Force incidents—meaning that 96.7% of the time NPD officers used force in a manner consistent with its policies, the Consent Decree, New Jersey law, and federal law. NPD officers failed to employ force in a manner consistent with applicable law and policy in only 3 of the 91 incidents reviewed.

In terms of documentation compliance, NPD did not achieve compliance. NPD was compliant in 87.9% of the 91 incidents of use of force reviewed in this Audit. Thus, the Monitoring Team assessed NPD to be non-compliant in 11 of the 91 use of force incidents reviewed.

Based on the 95% threshold for this Consent Decree, in this audit, the Monitoring Team found that NPD did not achieve full and effective compliance with the Consent Decree. NPD achieved over 95% compliance in the substantive review, however they did not meet the threshold for documentation compliance. When both substantive use of force and documentation requirements are combined, NPD achieved an Overall Operational Compliance score of 84.6%.

Considering NPD’s performance with respect to Substantive Operational Compliance on consecutive audits (*First Audit*: 92.9%; *Second Audit*: 94.23%; *Third Audit*: 96.7%), the Monitor believes that NPD has demonstrated full and effective compliance pursuant to Consent Decree Paragraphs 223-225 with respect to **substantive** Use of Force requirements. As a result, the Monitor releases NPD from future assessment of its Substantive Operational Compliance. In the future, the Monitor will assess NPD for Documentation Operational Compliance only.

**Table 1** presents an overview of NPD’s compliance with the Monitoring Team’s *Third Audit* of NPD’s Use of Force.

<b>Table 1</b>		
<b>Overview of Third Use of Force Audit Results</b>		
<b>Audit Subject</b>	<b>Consent Decree Paragraph(s)</b>	<b>Compliance? (Requirement: 95%)</b>
<b>Use of Force Policies</b>	Paragraphs 66, 67, 71, 72, 73, 75-84, 88	Yes <sup>4</sup> .
<b>Substantive Operational Compliance</b>	Paragraphs 66, 67, 71, 72, 76, 77	Yes. 96.7% of Use of Force incidents reviewed by the Monitoring Team complied

<sup>3</sup> The four principles are as follows: (1) authorization to initiate force; (2) appropriate cessation of force; (3) last resort; (4) minimization (*see Appendix B* General Order 18-20 Use of Force).

<sup>4</sup> These Consent Decree Paragraphs and the associated NPD policies were reviewed and approved by the Monitoring Team, and were found to be in compliance in the first Use of Force Audit, and remain so now.

<b>Table 1</b>		
<b>Overview of Third Use of Force Audit Results</b>		
<b>Audit Subject</b>	<b>Consent Decree Paragraph(s)</b>	<b>Compliance? (Requirement: 95%)</b>
<i>Whether all officers who employed force acted consistently with the fundamental principles of NPD's Use of Force policy.</i>		with the substantive requirements. This constitutes full and effective compliance pursuant to Consent Decree Paragraphs 223-225.
<b>Documentation Operational Compliance</b>  <i>Whether NPD officers complied with NPD's use of force reporting requirements.</i>	Paragraphs 66, 75, 77, 79 (a and c)	No. 87.9% of Use of Force incidents reviewed by the Monitoring Team complied with the documentation requirements.
<b>Overall Operational Compliance</b>	Paragraphs 66, 67, 71, 72, 75, 76, 77	No. 84.6% of Use of Force incidents reviewed by the Monitoring Team complied with both substantive and documentation requirements.
<b>Outcome Assessments</b>  <i>NPD's production of aggregate use of force data required by the Consent Decree</i>	Paragraph 174(b)(i)-(ix)	Outcome assessment data will be reported out separately in a bi-annual report.

## V. METHODOLOGY

This Audit followed the same methodology to determine compliance as the first and second Audits of NPD's Use of Force (*see Appendix A Third Use of Force Audit: 45-day Notice*, dated March 20, 2023 for a detailed methodology).

For this *Third* Audit of NPD's Use of Force, the Monitoring Team reviewed: (1) all Serious, Intermediate, and Low-Level Use of Force incidents; (2) all Use of Force incidents in which NPD made a finding of "Policy Non-Compliant;" and (3) all excessive force complaint incidents.

## VI. ANALYSIS

### A. Operational Compliance: Whether NPD is complying with its Use of Force Policies in Practice

To determine whether NPD is complying with its Use of Force policies, the Monitoring Team analyzed the actions of each officer involved in a Use of Force incident, including whether all reporting requirements had been satisfied. As in the First and Second Audits of NPD's Use of Force, for this analysis, the Monitoring Team divided operational compliance into two components: (1) substantive incident compliance (*i.e.*, considering whether NPD had legal authorization to initiate force, used the minimum amount of force necessary, exhausted all other reasonable means, and stopped using force once it was no longer necessary); and (2) documentation compliance (*i.e.*, considering whether NPD



accurately completed and submitted all the reports concerning a Use of Force that are required by NPD policy). The results of this analysis are discussed below.

### 1. Overall Operational Compliance

To determine whether NPD had demonstrated routine adherence to its Use of Force policies in its day-to-day operations, thereby achieving Overall Operational Compliance, the Monitoring Team considered (a) whether NPD officers’ actions were lawful and compliant with the four fundamental principles of NPD’s Use of Force policy, described in this audit as *substantive* compliance; and, (b) whether all officers involved in a use of force incident, meaning those actually employing force, witnessing force, or present in a supervisory capacity, complied with the documentation requirements contained in NPD’s policy, described in this audit as *documentation* compliance. As in the First and Second Audits of Use of Force, NPD achieves Overall Operational compliance only when it satisfies both metrics (*i.e.* substantive compliance and documentation compliance) 95% of the time within the sample reviewed by the Monitoring Team.

In totality, the Monitoring Team found that NPD achieved 84.6% Overall Operational Compliance. Specifically, 77 of the 91 Use of Force incidents reviewed were found to be in compliance for this Audit.

**Table 2** summarizes the Overall Operational Compliance results.

Table 2		
Summary of Overall Compliance		
Incidents Reviewed	Overall Operationally Compliant	Score
91	77	84.6%

### 2. Substantive Compliance

To determine whether NPD achieved substantive compliance, the Monitoring Team analyzed whether NPD officers’ actions were lawful and compliant with four fundamental principles in NPD’s use of force policy: (1) authorization to initiate force (*i.e.*, whether the officer initiated force consistent with NPD policy); (2) appropriate cessation of force (*i.e.*, whether the officer ceased using force consistent with NPD policy); (3) last resort (*i.e.*, whether the officer exhausted all other reasonable means, including de-escalation and alternative resolution); and (4) minimization (*i.e.*, whether the amount of force applied was the minimum amount necessary). See **Appendix B** (NPD General Order 18-20, *Use of Force*).

As in the First and Second Use of Force Audits, an individual officer’s actions were determined to be compliant if they satisfied each of these four criteria. A use of force incident was deemed compliant only if each officer using force acted in accordance with one or more of the above four criteria.

To conduct its assessment, the Monitoring Team reviewed all 91 Use of Force incidents occurring during the three-month Audit Period. For a complete list of the Use of Force numbers associated with each Use of Force incident reviewed, see **Appendix F**. These incidents included:

- (1) All “serious” Use of Force incidents (1 of the 91 incidents reviewed). The Consent Decree defines a “serious” force incident as one involving loss of consciousness; a canine bite; a strike, blow, or kick against a handcuffed or restrained person, or any head, neck, or throat strike or neck hold resulting in injury that is not investigated by the Essex County Prosecutor’s Office pursuant to New Jersey Attorney General Directive 005-006. *See* Consent Decree Paragraph 4 (rr).
- (2) All “intermediate” Use of Force incidents (24 of the 91 incidents reviewed). The Consent Decree defines an “intermediate” use of force incident as one involving the use of chemical spray, use of an impact weapon to strike a person, but where no contact is made, use of a baton for non-striking purposes (*e.g.* prying limbs, moving or controlling a person), or weaponless defense techniques (*e.g.* elbow strikes, kicks, leg sweeps, and takedowns). *See* Consent Decree Paragraph 4 (x).
- (3) All “low” level use of force incidents that occurred during the audit period (66 of the 91 incidents reviewed). The Consent Decree defines a “low” level use of force incident as one involving the use of hand controls or escort techniques (*e.g.*, elbow grip, wrist grip, or shoulder grip) applied as pressure point compliance techniques or that result in injury or complaint of injury. *See* Consent Decree Paragraph 4 (z).

**Table 3** provides a summary of all levels of Use of Force incidents reviewed.

<b>Table 3</b>		
<b>Summary of Level of Use of Force Incidents</b>		
<b>Level of Force</b>	<b>Use of Force Incidents</b>	<b>Percent of Total</b>
Low	66	71.5%
Intermediate	24	26.4%
Serious	1	1.1%
Total	91	100%

For the 91 incidents reviewed, the Monitoring Team reviewed all available and relevant reports, documentation and video footage associated with each Use of Force incident, including: (1) Use of Force Reports; (2) Incident Reports (DPI 802); (3) Arrest Reports (DPI 800); (4) Continuation Reports (DPI 795); Stop Reports (DPI 1388); (6) Supervisor Review Routing Reports; (7) Debriefing Forms (DPI 2004); (8) Body-Worn Camera (“BWC”) Video; and (9) Supervisor Use of Force Investigation Reports (DPI 1005). However, not every Use of Force incident called for the creation of each category or record cited above. For example, arrest reports were not available for incidents where no arrest was made.

The total of 91 Use of Force incidents reviewed involved 167 different NPD officers, some of whom used force more than once during the review period. The Monitoring Team therefore reviewed a total of 234 instances of an NPD officer using force upon a member of the public.

**Table 4** reports the number of instances for each officer using force during the review period.

<b>Table 4</b>	
<b>Individual Officer Reports of Force</b>	
<b>Number of Officers Who Used Force in One or More Instances</b>	<b>Total Number of Instances of an Officer Using Force</b>
119 Officers used force once	119
34 Officers used force twice	68
10 Officers used force three times	30
3 Officers used force four times	12
1 Officer used force five times	5
Total	234

Eighty-eight of the 91 (96.7%) incidents reviewed were substantively compliant.

**Table 5** provides a report of the substantive compliance score for each level of force.

<b>Table 5</b>			
<b>Summary of Substantive Compliance</b>			
<b>Level of Force</b>	<b>Compliant</b>	<b>Total</b>	<b>Percent</b>
Low	66	66	100%
Intermediate	22	24	91.7%
Serious	0	1	0%
Total	88	91	96.7%

**Table 6** provides a summary of the substantively non-compliant incidents reviewed by the Monitoring Team, including the circumstances relevant to each incident.

<b>Table 6</b>	
<b>Substantively Non-Compliant Incidents</b>	
<b>Incident Number</b>	<b>Circumstances</b>
22-221 <sup>5</sup>	Use of Force – Officer failed to cease using force at proper time
22-226	Use of Force – Officer used more than minimum force necessary
22-228	Use of Force – Officer improperly initiated use of force

### 3. Documentation Compliance

The Monitoring Team assessed whether each officer involved in the 91 Use of Force incidents had fulfilled the documentation requirements in NPD’s General Order 18-21, Use of Force Reporting, Investigation and Review. *See Appendix C.* If one officer in a Use of Force incident did not comply, the Monitoring Team found the entire incident non-compliant *except* for situations where NPD’s own internal review process identified and remediated documentation deficiencies prior to the start of the audit process.

NPD’s compliance rate for Documentation Compliance was 87.9%.

**Table 7** provides a summary. In 80 of the 91 incidents reviewed, all officers involved—including those using force, witnessing the use of force, or supervising the use of force—documented their actions consistent with applicable NPD policy.

<b>Table 7</b>			
<b>Summary of Documentation Compliance</b>			
<b>Level of Force</b>	<b>Compliant</b>	<b>Total</b>	<b>Percent</b>
Low	59	66	89.4%
Intermediate	20	24	83.3%
Serious	1	1	100%
Total	80	91	87.9%

<sup>5</sup> Incident #22-221 was the only “serious” use of force incident.

**Table 8** provides a summary of the non-compliant documentation incidents reviewed by the Monitoring Team, including the circumstances relevant to each incident.

<b>Table 8</b>	
<b>Summary of Documentation Non-Compliance Incidents</b>	
<b>Incident Number</b>	<b>Circumstances</b>
22-180	Missing Report – Supervisor: Subject injured. No report from Supervisor
22-195	Missing Report – Use of Force: No report from Supervisor identified <i>via</i> BWC as using force
22-198	Missing Report – Supervisor: No report from Supervisor, Intermediate level force
22-200	Missing Report – Witness: No report from Supervisor identified <i>via</i> BWC on scene who witnessed force
22-209	Missing Report – Witness: No report from Police Officer identified <i>via</i> BWC as witnessing force
22-211	Missing Report – Use of Force: No report from Supervisor identified in Witness Continuation Report (DPI:795) as using force
22-212	Missing Report – Supervisor: No report from Supervisor identified <i>via</i> BWC who received complaint by subject re: Police Officer use of force
22-215	Missing Report – Use of Force: No report of force used on second subject identified in reports of this incident
22-233	Missing Report – Use of Force: No report from Police Officer identified <i>via</i> facility camera as using force at MAPS; Witness: No report from Supervisor also identified as witnessing force
22-244	Missing Report – Use of Force: No report from Police Officer identified <i>via</i> other reports as using force
22-263	Missing Report – Witness: No report from Police Officers identified <i>via</i> BWC as witnessing use of force

## **B. Outcome Assessment Data**

Paragraph 174(b) (i)-(ix) of the Consent Decree requires NPD to provide the Monitor with nine categories of Use of Force data to allow the Monitoring Team to undertake use of force-related outcome assessments. NPD is compliant when it provides *each* of the nine categories of data to the Monitoring Team.

Outcome Assessment data will be reported separately in the Monitor’s Semi-Annual Report.

## VII. OBSERVATIONS & RECOMMENDATIONS

The Monitoring Team offers the following observations and recommendations specific to this Audit:

As was the case in both the *First* and *Second* Use of Force Audits, the Monitoring Team found commendable NPD's rate of substantive compliance, the best indicator of individual officer compliance. With respect to documentation compliance, the Monitoring Team found some reduction in the rate as compared to the Second Audit, but the rate of documentation compliance remained well above that found in the First Audit of NPD's Use of Force.

Once again, the Monitoring Team noted several incidents in which documentation deficiencies were identified and generally addressed as a result of All-Force Investigation Team's ("AFIT") review process. As in the prior Audit, many of the deficiencies noted by AFIT could have been, and should have been, addressed by way of supervisory review at the command level.

The Monitoring Team noted that, as was the case in the First and Second Audits, many of the Use of Force incidents contained documentation indicating that the force subject was an emotionally disturbed person (EDP). These are subjects with social, mental, or behavioral problems that manifest as erratic behavior, including potentially hurting themselves or others. The proportion of subjects deemed EDPs increased to 30.7% in the Third Audit as compared to the First and Second Audits (25.0% and 22.1% respectively). As was the case in the first two Audits, the Monitoring Team found in this Audit that, in each incident involving an EDP, the actions of all officers who used force were substantively compliant with applicable NPD policy. Nonetheless, the Monitoring Team recommends that officer training specifically addressing this topic be included as an ongoing component of in-service use of force training.

The Monitoring Team also observed issues with NPD's classification of Use of Force incidents. Specifically, a number of the incidents reviewed were classified as "low" inconsistent with applicable policy. The operative General Order provides that force incidents employing strikes with the elbow or fist, as well as leg sweeps and kicks, are to be classified as "intermediate." And certain specific supervisory review measures are not required in low level force incidents. The Monitoring Team found that there was no uniform implementation of policies requiring the presence of a Supervisor at the scene of a force incident in order to properly classify it. As a practical matter, all incidents undergo supervisory review at AFIT. But, the net impact of the AFIT's review is a shifting of incident review responsibilities away from line supervision. The Monitoring Team recommends that the NPD command staff address this issue by reviewing (a) the classification criteria in the applicable General Order, (b) the manner in which force incidents are classified, (c) the role of line supervisors *vis-à-vis* the AFIT, and (d) the report forms to be used by supervisors conducting force incident reviews. In the absence of other deficiencies, this observation did not warrant a determination of non-compliance for any use of force incident. The circumstance will, however, be addressed as a component of a broader audit of agency supervision.

The Monitoring team continued to see *Supervision* as an area of concern in the Third Audit. The Monitoring Team noted once again the absence of a consistent response by Supervisors to the location of force incidents as required by *General Order 18-20*. The

Monitoring Team further noted the absence of consistent documentation of officer actions taken to notify Supervisors of force incidents. As was the case above, the absence of a Supervisor response was not deemed sufficient to warrant a finding of non-compliance for any individual use of force incident but will be addressed as a component of a broader audit of agency supervision.

The Monitoring Team's final concern involves the de-escalation of potential force situations as well as officer conduct in post-force situations. Specifically, although certain incidents involved an appropriate Use of Force, the Monitoring Team nonetheless observed officer conduct and statements which could have better served the end of situation de-escalation. Likewise, officer statements in post-force situations could have better served the objective of productive police-community dialog.

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The Consent Decree requires that both the City and NPD post this report on their websites. *See* Consent Decree Paragraph 20 ("All NPD studies, analyses, and assessments required by this agreement will be made publicly available, including on NPD and City websites --- to the fullest extent permitted under law."); Paragraph 166 ("all NPD audits, reports, and outcomes analyses ... will be made available, including on city and NPD websites, to the fullest extent permissible under law."). The Monitor expects the City and NPD to do so expeditiously.

DATED: August, 23 2023

Peter C. Harvey  
Independent Monitor

# APPENDIX A



March 20, 2023

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**VIA EMAIL**

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**RE: Third Use of Force Audit: 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 May 8, 2023, the Monitoring Team will conduct its Third Audit of the Use of Force by members of the Newark Police Division (“NPD”). The Audit will cover the following period: July 1, 2022 up to and including September 30, 2022 (the “Audit Period”) to assess whether NPD is in compliance with Section VIII of the Consent Decree (See Paragraphs 66-102).<sup>1</sup>

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<sup>1</sup> Consent Decree Paragraphs 68-70, 74, 85-87, and 89-102 will not be covered in the Monitoring Team’s Use of Force audit. The Monitoring Team deems NPD to be in compliance with the policy requirements in Paragraphs 68-70 and 74. See Report of the Independent Monitor’s First Audit of the City of Newark and Newark Police Division’s Use of Force, Section V.A. Consent Decree Paragraphs 85-87 and 89-102 will be covered in future audits relating to the areas of Supervision and Internal Affairs.

Section VIII of the Consent Decree requires, among other things, that “NPD will develop and implement policies and training directing that the use of force by NPD officers accords with the rights secured and protected by the Constitution and state and federal law.” Paragraph 173 of the Consent Decree requires the Monitor to “conduct reviews or audits as necessary to determine whether the City and NPD have implemented and continue to comply with the requirements” of the Consent Decree. The Monitoring Team must assess whether the City and NPD have “implemented the (Use of Force) requirements into practice.” (See Consent Decree Paragraph 173).

### **I. Subject Matter Experts**

This Third Use of Force Audit will be carried out by the following Monitoring Team Subject Matter Experts (“SMEs”): Wayne Fisher, Ph.D., Rutgers University Center on Policing, and Lieutenant Daniel Gomez, (Ret.) of the Los Angeles Police Department. The Data Team is composed of Linda Tartaglia, Associate Director, Rutgers University Center on Policing, Rosalyn Bocker Parks, Ph.D., Rutgers University Center on Policing, Kathryn Duffy, Ph.D., Rutgers University Center on Policing, and Jonathan Norrell, Rutgers University Center on Policing. The Data Team will work with the SMEs on this audit.

### **II. Request for Information**

In preparation for the Audit, at least two (2) weeks prior to the start of the Audit, and no later than April 17, 2023, the Monitoring Team requires NPD and the City to provide the following data and records for the Audit Period:

- Records showing the total number of arrests made by the NPD;
- A list of all event numbers and Use of Force numbers for all Use of Force incidents including the level of force designation (General Order 18-20 Section VII.A.3; Consent Decree Paragraphs 4(x), 4(z), 4(rr) for each incident;
- A list of event numbers and Use of Force Numbers for all Use of Force Incidents in which there was a finding of “Policy Non-Compliant” for any officer;
- A list of all IOP (Investigation of Personnel) numbers for all excessive force complaints, or complaints regarding any use of force policy violation, received or reaching disposition (Sustained, Not Sustained, Exonerated, Unfounded).

After receiving this information, the Monitoring Team will, in a timely manner, provide the City and NPD with the Use of Force and IOP numbers of the cases it seeks to review. All reports and body-worn camera video associated with the event, Use of Force, and IOP numbers included in the sample will be made available to the Monitoring Team on the day(s) of the Audit in the workplace NPD provides to the Team. The Monitoring Team requests that the NPD identify all videos associated with the event numbers and Use of Force incident numbers identified for review and provide that content for onsite review by the Monitoring Team. Toward that end, NPD should mark all BWC and ICC videos for the Audit Period for indefinite retention to further ensure that all videos will be available for SME review. In the event that onsite review is not feasible, NPD should download the identified videos in a non-proprietary format (converted from Panasonic) onto a Monitoring Team-provided secure encrypted drive.

### **III. Methodology**

This Third Use of Force Audit will utilize the same methodology as was employed in the Second Use of Force Audit to determine NPD's Operational Compliance (see Report of the Independent Monitor's Second Audit of the City of Newark and Newark Police Division's Use of Force, dated August 11, 2022). Additionally, the Monitoring Team will use a similar methodology to assess NPD's compliance in constructive authority incidents.<sup>2</sup>

For the Audit Period, the Monitoring Team will review: (1) all Serious and Intermediate level use of force incidents; (2) all use of force incidents in which NPD made a finding of "Policy Non-Compliant"; (3) all excessive force complaint incidents; and (4) a sample of or all Lower-Level use of force incidents. To do so, the Monitoring Team will require workspace at the All-Force Investigations Team Office (22 Franklin St., 4<sup>th</sup> Floor Annex) and electronic access to body-worn and in-car video.

### **IV. Consent Decree Paragraphs 66, 67, 71 and 72**

Consent Decree Paragraph 66 requires NPD to "develop and implement a Use of Force policy or set of policies that comply with applicable law and requirements of (the Consent decree)".

Consent Decree Paragraph 67 requires NPD's Use of Force policies to contain the following provisions outlined in subparagraphs (a)-(i) and (k)-(l):

- Officers will use advice, warnings, and verbal persuasion, when possible, before resorting to force (Paragraph 67(a));
- Force will be appropriately de-escalated as resistance decreases (Paragraph 67(b));
- When feasible, officers will rely on area containment; employ surveillance; wait out subjects; summon reinforcements; or call in specialized tactical units, in order to reduce the need for force and increase officer and civilian safety (Paragraph 67(c));
- Officers will allow individuals the opportunity to submit to arrest before force is used wherever possible (Paragraph 67(d));
- NPD will explicitly prohibit neck holds, except where lethal force is authorized (Paragraph 67(e));
- NPD will explicitly prohibit head strikes with hard objects, except where lethal force is authorized (Paragraph 67(f));
- NPD policy will prohibit the gratuitous use of force against restrained individuals. The use of force against a restrained individual is presumptively unreasonable. An officer

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<sup>2</sup> The Monitoring Team will begin its review of constructive authority incidents subsequent to its review of other use of force incidents as part of this Third Use of Force audit. At a later date, the Monitoring Team will issue a letter apprising NPD and the City of the reports, video, and other material necessary to complete the constructive authority portion of the Third Use of Force Audit.

may overcome that presumption by showing that the force used was necessary to protect the safety of the subject or another individual (Paragraph 67(g));

- NPD will prohibit the use of force beyond unresisted handcuffing to overcome passive resistance, except that physical removal is permitted as necessary and objectively reasonable (Paragraph 67(h));
- NPD will explicitly prohibit the use of retaliatory force by officers, including force used after a threat has diminished or that is otherwise not reasonably necessary; force used to punish individuals for fleeing or otherwise resisting arrest; and force used in response to disrespectful language or actions (Paragraph 67(i));
- NPD will prohibit officers from using force to effect compliance with a command that is knowingly unlawful (Paragraph 67(k));
- Immediately following a use of force, officers and, upon arrival, a supervisor will inspect and observe subjects for injury or complaints of pain resulting from the use of force, and immediately obtain any necessary medical care. If qualified to do so, an officer will be expected to provide emergency first aid until professional medical care providers are on scene (Paragraph 67(l));

Consent Decree Paragraph 71 requires NPD to “prohibit officers from possessing or using unauthorized firearms or ammunition in connection with or while performing policing duties.”

Consent Decree Paragraph 72 requires NPD to “prohibit officers from discharging a firearm at a moving vehicle unless a person in the vehicle is immediately threatening the officer or another person with deadly force.”

To determine whether NPD has complied with Consent Decree Paragraphs 66, 67, 71 and 72, the Monitoring Team will utilize the same methodology as was employed in the *Second Use of Force* audit to determine NPD’s *Operational Compliance*. Specifically, the Monitoring Team will analyze whether NPD officers’ actions were lawful and compliant with four fundamental principles in NPD’s use of force policy, *General Order 18-20, Use of Force*: (1) *authorization to initiate force* (i.e., whether the officer initiated force consistent with NPD policy); (2) *appropriate cessation of force* (i.e., whether the officer ceased using force consistent with NPD policy); (3) *last resort* (i.e., whether the officer exhausted all other reasonable means, including de-escalation and / alternative resolution); and (4) *minimization* (i.e., whether the amount of force applied was the minimum amount necessary).<sup>3</sup>

An officer’s actions will be determined to be compliant in connection with a Use of Force incident if the officer satisfies each of these four criteria. A Use of Force

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<sup>3</sup> The Monitoring Team will review all available and relevant reports, documentation and video footage associated with each use of force incident, including: (1) Use of Force Reports; (2) Incident Reports (DPI 802); (3) Arrest Reports (DPI 800); (4) Continuation Reports (DPI 795); (5) Stop Reports (DPI 1388); (6) Supervisor Review Routing Reports; (7) Debriefing Forms (DPI 2004); (8) Body-Worn Camera (“BWC”) Video; and (9) Supervisor Use of Force Investigation Reports (DPI 1005). While not every Use of Force incident will require the creation of each category of record, where these records are available and where they shed light on the context of a particular use of force incident, the Monitoring Team may review such records

incident will be deemed compliant if each officer using force is compliant with respect to the four criteria.

#### **V. Consent Decree Paragraphs 67(j) and 73**

Consent Decree Paragraph 67(j) requires NPD to put in place policies that state that “unholstering a firearm and pointing a firearm at a person will be documented and tracked and used only when objectively and reasonably necessary to accomplish a lawful police objective.”

Consent Decree Paragraph 73 requires NPD to “prohibit officers from unholstering or exhibiting a firearm unless the officer reasonably believes that the situation may escalate to create an immediate threat of serious bodily injury or death to the officer or another person. Under those circumstances, the officer will place his or her finger outside the trigger guard and have it ready for self-defense. The finger is only to be placed on the trigger when on target and ready to engage a threat.”

The Monitoring Team will begin its review of constructive authority incidents subsequent to its review of other use of force incidents as part of this Third Use of Force audit. At a later date, the Monitoring Team will issue a letter apprising NPD and the City of the reports, video, and other material necessary to complete the constructive authority portion of the Use of Force Audit, which will cover Consent Decree Paragraphs 67(j) and 73.

#### **VI. Consent Decree Paragraphs 75-84 and 88**

Consent Decree Paragraphs 77-84 and 88 require NPD to adopt a Use of Force reporting system and a supervisor Use of Force Report and sets forth the processes that shall be included in NPD’s reporting of use of force incidents, that is separate from NPD’s arrest and incident reports and includes individual officers’ accounts of their Use of Force.

To assess NPD’s compliance with Consent Decree Paragraphs 77-84 and 88, which relate to Use of Force reporting requirements, the Monitoring Team will review all reports concerning a Use of Force that are required by NPD policy to assess whether each officer involved in the sampled use of force incidents fulfilled the reporting requirements in NPD’s *General Order 18-21, Use of Force Reporting, Investigation and Review*. If one officer in a use of force incident does not comply with the requirements of General Order 18-21, the Monitoring Team will find the incident non-compliant, except for situations where NPD’s own internal review process identified and remediated the reporting deficiency.

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March 20, 2023

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Prior to the commencement of the audit, and within the 45-day period following the issuance of this letter, the Parties will contact the Monitoring Team to schedule a pre-audit meeting to review and discuss the methodology that will be used for the Third Use of Force Audit.

Sincerely,



Peter C. Harvey

#### Enclosures

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# **APPENDIX B**



# NEWARK POLICE DIVISION GENERAL ORDER



**SUBJECT:  
USE OF FORCE**

**GENERAL ORDER NO.  
18-20**

**SUPERSEDES:  
G.O. 63-2**

**DATED:  
November 8, 2018**

**This Order consists of the following numbered sections:**

- I. PURPOSE**
- II. POLICY**
- III. DEFINITION OF TERMS**
- IV. USE OF FORCE STANDARDS**
- V. USE OF FORCE**
- VI. USE OF DEADLY FORCE**
- VII. USE OF FORCE LEVELS OF CONTROL**
- VIII. DE-ESCALATION TECHNIQUES**
- IX. EMOTIONALLY DISTURBED PERSON**
- X. DUTY TO PROVIDE MEDICAL AID**
- XI. USE OF FORCE REPORTING AND REVIEW**
- XII. TRAINING**
- XIII. EFFECTS OF THIS ORDER**





# NEWARK POLICE DIVISION GENERAL ORDER



## I. PURPOSE

The purpose of this order is to establish Newark Police Division policy and procedures that are designed to guide Police Division members in the use of force, and to further ensure that Police Division members treat all persons with dignity and respect as they execute the duties they have been entrusted to perform. The provisions of this order shall apply to regular Police Division members, Newark Special Police Officers, Newark Auxiliary Police Officers, and Police Division members assigned to special details outside of the Police Division.

## II. POLICY

The Police Division places the highest value on the sanctity of all human life. It is the policy of the Police Division that its members will in all instances attempt to exercise their responsibilities without the use of force. It is further the policy of the Police Division to de-escalate situations without using force when possible in order to decrease the likelihood that force will have to be employed. Police Division members shall de-escalate the use of force at the earliest opportunity, and will make efforts to exhaust all other reasonable means available before resorting to the use of force, as long as the member's safety or that of other persons is not compromised.

The Police Division limits the use of force by its members to those situations when it is objectively reasonable to effect an arrest or protect the safety of the Police Division member or another person. The use of force shall never be considered routine. In determining to use force the member shall be guided by the principle that the amount of force employed in any situation should be the minimum amount necessary. Any force used shall not create substantial risk of injury to bystanders. Therefore, it is imperative that members make every effort to ensure that each instance of use of force is not only legally warranted, but also rational and humane.

Police Division policy and training require that members not only follow the legal standard of using force, which was established in *Graham v. Connor*, 490 U.S. 386 (1989), but also strive to utilize the minimum amount of force necessary in order to bring about their lawful objectives. Members are reminded that a degree of force, which may have been justified earlier in an encounter, does not remain justified indefinitely. Force shall be decreased as the subject's resistance or threat decreases.

Police Division members are duty bound to prevent and or intervene when the use of force by other members or members from another law enforcement agency appears to be unreasonable and or illegal in type or amount. This policy sends a clear message that Police Division members share an obligation beyond the requirements of the law to intervene and prevent the application of unreasonable or unlawful use of force.

This policy is not intended to limit the lawful authority of Police Division members to use objectively reasonable force or otherwise fulfill their law enforcement obligations. However, members must remain mindful that they derive their authority from the U.S. Constitution, Federal



# NEWARK POLICE DIVISION GENERAL ORDER



Laws, the Laws of the State of New Jersey and the community. The use of unreasonable and or illegal force undermines the legitimacy of that authority and shall not be tolerated. Members are subject to discipline, possible criminal prosecution, and or possible civil liability for violations of the law or provision of this policy.

### **III. DEFINITIONS**

#### **A. Active Resistance**

1. Active resistance occurs when a subject is uncooperative and takes some level of physical action to resist and prevent a Police Division member from taking control of the subject and or placing the subject in custody.
2. Examples include levels of resistance from non-assaultive actions such as pulling or running away all the way up to a lethal attack on the member.

#### **B. Bodily Harm**

1. Bodily harm means physical pain, temporary disfigurement, or impairment of physical condition.
2. An example is a subject who fell to the ground or was taken to the ground while resisting arrest and as a result he or she sustains minor scrapes and/or bruises to his knees and/or arms.

#### **C. Constructive Authority**

1. Constructive authority, as defined in the State of New Jersey Attorney General Guidelines, means using the Police Division members' authority to exert control over a subject that does not involve actual physical contact.
2. Examples include verbal commands, gestures, warnings, and un-holstering, exhibiting, or pointing a firearm. Pointing a firearm at a subject is an element of constructive authority to be used only in appropriate situations.

#### **D. De-Escalation**

1. De-escalation means steps taken during a potential use of force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation without use of force or with a reduction in the force necessary.



# NEWARK POLICE DIVISION GENERAL ORDER



2. An example would be using verbal persuasion to calm down a person in crisis who is threatening to do harm to the member, but who has not actually taken any affirmative steps to harm the member.

**E. Deadly Force (Synonymous w/Lethal Force)**

Deadly force is any use of force which a Police Division member uses that is likely to cause death or serious bodily harm, including, but not limited to using a firearm, neck hold, strike with a hard object to the head, neck or throat.

**F. Enhanced Mechanical Force**

1. Enhanced Mechanical Force is an intermediate force option between mechanical force and deadly force, requiring a greater level of justification than that pertaining to physical or mechanical force, but a lower level of justification than required for the use of deadly force.
2. An example would be using a Conducted Energy Device (CED) against a person who the member reasonably believes poses an imminent danger of death or serious bodily injury to him/herself.

**G. Feasible**

Feasible means capable of being done or carried out, reasonable.

**H. Imminent Danger (Synonymous with Imminent Threat)**

1. Imminent danger describes threatened actions or outcomes that may occur during an encounter without action by the Police Division member.
2. The period of time involved is dependent upon the circumstances and facts evident in each situation and is not the same in all situations. The threatened harm does not need to be instantaneous.

**I. Less-Lethal Force**

Less-lethal force is force employed that is less likely and not intended to cause death or serious bodily harm.

**J. Mechanical Force**

1. Mechanical force involves the use of some device or substance, other than a firearm, to overcome a subject's active resistance.



# NEWARK POLICE DIVISION GENERAL ORDER



2. Examples include the use of a baton or other object, or chemical or natural agent spray.

## **K. Member**

A sworn employee of the Newark Police Division.

## **L. Neck Hold**

A neck hold is considered **deadly force** and includes:

1. A bar-arm control hold, which inhibits breathing by compression of the airway in the neck (choke hold);
2. A carotid restraint hold, which inhibits blood flow by compression of the blood vessels in the neck;
3. A lateral vascular neck constraint; or
4. A hold with a knee or other object to the back of a prone subject's neck.

## **M. Passive Resistance**

1. Passive Resistance occurs when a subject is uncooperative and is not complying with a Police Division member's lawful commands, but is not using physical force or minimal physical force to prevent a member from placing the subject in custody and taking control.
2. Examples include but are not limited to verbal non-compliance – such as stating, "No", refusing to move, going limp, locking arms, or holding onto a fixed object.

## **N. Physical Contact**

1. Physical contact means routine or procedural contact with a subject necessary to effectively accomplish a legitimate law enforcement objective or an arrest.
2. Examples include guiding a subject into a police vehicle, holding the subject's arm while transporting him or her, handcuffing a subject, and maneuvering or securing a subject for a frisk.

## **O. Physical Force**



# NEWARK POLICE DIVISION GENERAL ORDER



1. Physical force means contact with a subject beyond physical contact that is used to effect an arrest or other law enforcement objective. Physical force is employed when necessary to overcome a subject's active resistance to the Police Division member's authority or to protect persons or property.
2. Examples include wrestling a subject to the ground, using wrist locks or arm locks, striking with hands or feet, or other similar methods of hand-to-hand confrontation.

## **P. Serious Bodily Harm**

Serious bodily harm means bodily harm that creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ or which results from aggravated sexual assault or sexual assault.

## **Q. Substantial Risk**

1. A substantial risk exists when an officer disregards a foreseeable likelihood that bystanders will be endangered by the use of force.
2. For example, firing a weapon into a confined space (room, vehicle, etc.) occupied by bystanders exposes those persons to a substantial risk of harm.

## **IV. USE OF FORCE STANDARDS**

### **A. General Requirements**

1. Policing at times requires that a member exercise control of a violent or resisting subject to make an arrest or to protect the member, other members, or members of the community from risk of imminent harm. Clearly, not every potential violent confrontation can be de-escalated. However, members do have the ability to impact the direction and the outcome of many situations they handle, based on their decision-making and the tactics they choose to employ. The member shall consider and use de-escalation techniques where appropriate.
2. Members should continually assess every situation with the goal of bringing the situation to a safe, peaceful conclusion. This conclusion may be accomplished by using time, distance, information, isolation, teamwork, force option, coordination, and other techniques to maximize a member's advantage.

### **B. Objectively Reasonable Force**



# NEWARK POLICE DIVISION GENERAL ORDER



1. The United States Supreme Court decided in *Tennessee v. Garner*, 471 U.S. 1 (1985), that apprehension by the use of deadly force by police officers is a seizure subject to the reasonable standard under the Fourth Amendment of the United States Constitution.
2. The test and analysis that courts will use to examine whether a use of force is constitutional was set forth in *Graham v. Connor*, 490 U.S. 386 (1989) and the test has been expanded by subsequent court cases.
3. The Court concluded in *Graham* that use of force by police officers during an arrest, investigatory stop, or other seizure of a person shall be analyzed under an objective reasonableness standard.
4. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than from 20/20 hindsight. The standard of reasonableness must take into account the fact that officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving.
5. The standard of reasonableness in reviewing use of force is an objective one: were the officer's actions objectively reasonable given the facts and circumstances confronting him or her? The facts available to the officer at the time, along with other objective factors that may impact the reasonableness of an officer's actions, must be considered. The courts analyze the reasonableness of an officer's use of force actions by utilizing the "test of reasonableness," which consists of the following "*Graham Factors*":
  - a. "the severity of the crime at issue";
  - b. "whether the suspect poses an imminent threat to the safety of the officers or others"; and
  - c. "whether he/she is actively resisting arrest or attempting to evade arrest by flight".

## **C. Duty to Intervene**

1. Police Division members present at the scene of a use of force incident shall ensure that the force used complies with the law and with Division policies, rules and regulations.
2. Any member who witnesses force being used unreasonably or unlawfully shall, when reasonable to do so:



# NEWARK POLICE DIVISION GENERAL ORDER



- a. verbally and or physically intervene as necessary to prevent or stop the use of unreasonable or unlawful force;
- b. safeguard the person upon whom the force was used;
- c. render aid (Ref. to section X – Duty to Provide Medical Aid);
- d. notify a non-involved supervisor to respond to the scene; and
- e. report and document the incident on Police Division authorized forms (BlueTeam, etc.).

## V. USE OF FORCE

### A. General Requirements

Force may be used by a Police Division member in the following situations, recognizing that when force is used the member will use the minimal force needed to accomplish the law enforcement objective:

1. When the member reasonably believes that force is immediately necessary to make a lawful arrest and:
  - a. The member has advised the person of the reason for their arrest or reasonably believes that it is already known to the subject; or
  - b. The reason for the arrest cannot reasonably be made known to the person.
2. When a person is actively resisting arrest.
3. To prevent an escape under New Jersey statute, if it can be employed to effect an arrest for which the person is in custody:
  - a. The degree of force used shall be determined by the gravity of the offense committed, and
  - b. The force employed shall not be excessive in either type or amount.
4. If immediately necessary to prevent escape of a person who has been charged with or convicted of a crime, committed to a jail, prison or other detention facility.



# NEWARK POLICE DIVISION GENERAL ORDER



5. To prevent the commission of a crime involving the threatening of bodily harm, property damage, or suicide.

## **B. Restrictions**

The Division strictly prohibits using force that is not objectively reasonable and proportional to the threat or resistance of the subject under the circumstances. For example:

1. Members shall not use force to effect compliance with a command that is knowingly unlawful. The use of force is unreasonable when the initial arrest or detention was knowingly unlawful to the member based on information known to the member at the time of the arrest or detention.
2. The Division strictly prohibits the use of force against persons in handcuffs, except as objectively reasonable to prevent imminent bodily harm to a member or another person/s, or as objectively reasonable, where physical removal is necessary to overcome passive resistance.
3. Members shall not use force to overcome passive resistance, except that objectively reasonable force is permitted when necessary for the purposes of handcuffing and physically removing a passively resisting person.
4. Members shall not use force to retaliate against a person, including, but not limited to:
  - a. force used after a threat has diminished or is otherwise not reasonably necessary;
  - b. force used to punish individuals for fleeing or otherwise resisting arrest; and
  - c. force used in response to disrespectful language or actions.

## **VI. USE OF DEADLY FORCE**

### **A. General Requirements**

1. Police Division members are empowered to carry and use firearms in the exercise of their service to the citizens of the City of Newark. This power is based on trust, and therefore, must be balanced by a system of accountability.
2. Purposely firing a firearm in the direction of another person or at a vehicle, building or structure in which another person is believed to be positioned





# NEWARK POLICE DIVISION GENERAL ORDER



constitutes deadly force unless the firearm is loaded with less-lethal ammunition and fired by a law enforcement officer in the performance of the officer's official duties (NJS 2C:3-11b). Further, this policy recognizes that the use of an impact weapon may constitute deadly force.

3. For that reason, firearms, and similar less-lethal means of deadly force, and impact weapons shall be used only under the limited circumstances described in this section.
4. Deadly force may be used when the Police Division member reasonably believes that such action is immediately necessary to protect the member or another person from imminent danger of death or serious bodily harm.
5. Deadly force may be used to prevent the escape of a fleeing suspect, if:
  - a. The member has probable cause to believe the suspect has committed an offense that caused or attempted to cause death or serious bodily harm; and
  - b. The suspect will pose an imminent danger of death or serious bodily harm should escape succeed; and
  - c. When the use of deadly force presents no substantial risk of injury to bystanders.
6. When feasible, a Police Division member must identify himself/herself as an officer and state his/her intention to shoot before using the firearm.
7. Police Division members may use their firearms to protect themselves or the public from animals that pose an imminent threat to the safety of the member or the public.
8. Police Division members may also use their firearm to destroy a sick or injured animal after obtaining authorization from a supervisor.
9. Police Division members shall be familiar with, and strictly adhere to: State of New Jersey Attorney General Guidelines, Division Memoranda and Orders, and the tenets of Chapter 8, of the Newark Police Division's Rules and Regulations, entitled: **FIREARMS**, including, but not limited to using, carrying, handling, caring, storing, requalifying on all Division approved firearms, ammunition, and using special weapons.

## **B. Restrictions**



# NEWARK POLICE DIVISION GENERAL ORDER



1. Police Division members shall not use deadly force to subdue persons whose actions are only destructive to property.
2. Police Division members shall not use deadly force against persons whose conduct is injurious only to themselves.
3. Police Division members shall not discharge a firearm as a signal for help or as a warning shot.
4. Neck holds are prohibited, except under circumstances in which deadly force would be authorized.

## **C. Un-holstering, Exhibiting, or Pointing a Firearm**

1. Police Division members shall not un-holster, exhibit, or point a firearm except under the following circumstances:
  - a. Routine maintenance of a firearm,
  - b. To secure the firearm,
  - c. During firearms training exercises, qualifications, or re-qualifications, or
  - d. When the circumstances create an objectively reasonable belief that the un-holstering and exhibiting of a firearm or pointing of a firearm will help establish control over a subject during an encounter that has the potential to escalate to create a risk of death or serious bodily harm to the member or another person.
    - i. These tactics are intended to give members a tactical advantage and opportunity to protect themselves or others from death or serious bodily harm prior to the threat becoming immediate, which may be too late.
    - ii. The use of these tactics shall be reported and tracked (BlueTeam).

## **D. Motor Vehicle and Use of Deadly Force**

1. While any discharge of a firearm entails risk, discharging a firearm at or from a moving vehicle entails even greater risk of death or serious bodily injury to bystanders. Public safety is jeopardized when a fleeing suspect is disabled and loses control of his or her vehicle. There is also a substantial risk of harm to occupants



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of the suspect vehicle who may not be involved, or involved to a lesser extent, in the actions which necessitated the use of deadly force.

2. Due to this greater risk, and considering that firearms are not generally effective in bringing moving vehicles to a rapid halt, Police Division members shall not fire from a moving vehicle or at the driver or occupant of a moving vehicle unless the member reasonably believes:
  - a. there exists an imminent danger of death or serious bodily harm to the member or another person; and
  - b. no other means are available at that time to avert or eliminate the danger.
3. Police Division members shall not fire a weapon solely to disable a moving vehicle.
4. When confronting an oncoming vehicle, Police Division members shall make every effort to move out of its path, rather than discharge their firearms at the oncoming vehicle.
5. Police Division members shall not intentionally place themselves in the path of an oncoming vehicle and attempt to disable the vehicle by discharging their firearm.

## VII. USE OF FORCE LEVELS OF CONTROL

### A. Levels of Control Categories

1. Police Division members shall consider a subject's level of resistance when using force. When feasible, members shall use the minimum force necessary to perform their duty and not expose themselves to unreasonable risk of injury. The level of control used shall be proportional to the threat or resistance the member encounters, whether passive or active.
2. Police Division members are not limited to using equal force, but may use a higher level of force than the subject's resistance as long as it is necessary and objectively reasonable to accomplish a lawful purpose. Similarly, force shall be appropriately de-escalated as resistance decreases. When feasible, members shall allow individuals the opportunity to submit to arrest before using force.
3. The Police Division classifies use of force into three categories based on the seriousness of any injuries that are likely to or actually result from the force



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employed. These categories determine the Police Division's supervisory and investigative response to a use of force incident. The three categories are:

- a. **“Low Level Force” or “Low Level Use of Force”** – any use of force that is not likely to and does not result in bodily harm or complaint of bodily harm. For example, the use of wrist or arm locks.
- b. **“Intermediate Force” or “Intermediate Use of Force”** – any use of force that is likely to or actually does result in bodily harm or complaint of bodily harm. For example, the use of OC spray.
- c. **“Serious Force” or “Serious Use of Force”** – any use of force that results or is likely to result in loss of consciousness; any canine bite; any strike, blow, or kick against a handcuffed or restrained subject; or any strike with a hard object to the head, neck, or throat; or neck hold resulting in serious bodily harm or death that is not investigated by the Essex County Prosecutor's Office pursuant to New Jersey Attorney General Directive 2005-06.

These three categories broadly encompass the more specific use of force **control tactics** defined in the State of New Jersey Attorney General Guidelines, which include: the *member's presence, physical contact, constructive authority, physical force, mechanical force, enhanced mechanical force, and deadly force (Cross Ref. G.O. #18-22 Firearms and Other Weapons)*. In all instances, members should exhaust all other reasonable means before resorting to using force tactics, recognizing that members will use only force which is objectively reasonable and necessary.

## VIII. DE-ESCALATION TECHNIQUES

### A. Tactics and Techniques

1. De-escalation tactics and techniques are verbal and non-verbal actions used by members, when safe and without compromising law enforcement objectives, to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance.
2. Division members shall look for opportunities to de-escalate situations. When reasonable and based on the totality of the circumstances and where it may be accomplished without increasing the risk of harm to the member or others, members shall:
  - a. gather information about the incident;



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- b. assess the risks to the subject(s), officer(s) and general public;
        - c. assemble resources (e.g., EMS, ESU, SWAT);
        - d. communicate and coordinate a response; and
        - e. attempt to slow the momentum of the incident.
  3. When feasible, members will rely on area containment; employ surveillance; wait out the subjects; summon reinforcements; or call in specialized tactical units in order to reduce the need for force and increase member and civilian safety.
- B. Special Considerations**
  1. Members shall use all available resources and training in determining what, if any, force is appropriate based on the following factors:
    - a. Medical Condition;
    - b. Mental Impairment;
    - c. Developmental Disability;
    - d. Physical Limitation;
    - e. Language Barrier;
    - f. Under the Influence of Drugs/Alcohol;
    - g. Behavioral Crisis;
    - h. Hearing, Speech, or Vision Impairment; or
    - i. Any other factor that may impair the person's ability to understand or comply with the member's instructions.

Members shall consider these factors and make efforts to avoid or minimize the use of force and attempt to obtain appropriate assistance for the person.
  2. Members are expected to recognize that their approach, such as tone and body language, to a civilian interaction may influence whether a situation escalates to the need of using force.



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3. Supervisors will become involved as soon as practical in managing an overall response to potentially violent encounters by coordinating resources and members' tactical actions. Supervisors should possess a good knowledge of tactics and ensure that members under their supervision perform to Division standards.
4. The number of Police Division members on scene may increase the available force options and may increase the ability to reduce the overall force used.

## **IX. EMOTIONALLY DISTURBED PERSON**

Police Division members responding to or encountering a subject suffering from mental illness (E.D.P.- Emotionally Disturbed Person) and in need of assistance shall be guided by Newark Police Division G.O. #08-05.

## **X. DUTY TO PROVIDE MEDICAL AID**

Police Division members are duty bound to ensure that injured persons or those alleging injury, including complaints of pain, as a result of the use of force, receive immediate medical aid.

Whenever a Division member observes or is made aware of the presence of an injury, including, complaints of pain, the member shall ensure that Emergency Medical Services (E.M.S.) is requested to respond. This also applies to incidents in which a member uses any weapon against a person such as, but not limited to, less-lethal ammunition, OC spray, or a conducted energy device and contact is made with the subject with any of these weapons. Additionally, members shall render aid to the level in which they are trained until relieved by emergency medical responders.

If a person subjected to use of force exhibits signs of injury or complains of pain and refuses medical aid, the Division member shall still notify E.M.S. The member shall also document the refusal on the corresponding Police Division form (Use of Force Report/Incident Report/Arrest Report/etc.).

## **XI. USE OF FORCE REPORTING AND REVIEW**

Police Division members shall report whenever a firearm is un-holstered or exhibited or pointed at a subject as an element of constructive authority.

Members shall also report every time they use physical force, mechanical force, enhanced mechanical force, or deadly force.

Members who **witness** the use of physical, mechanical, enhanced mechanical, or deadly force shall document their observations in a Continuation Report (DP1:795).



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Members are also required to immediately notify an on-duty supervisor who did not use, direct, or was otherwise involved in the use of force incident. The supervisor must then respond to the scene. If the immediate supervisor is not available any other on-duty supervisor must respond.

All reporting of use of force shall be documented on Police Division authorized forms (BlueTeam, etc.).

Use of force incidents will be referred to A-FIT Team for review and investigation pursuant to the Use of Force Reporting, Investigation, and Review General Order #18-21.

Members who fail to abide by the use of force reporting requirements shall be subject to disciplinary action.

All requirements associated with reporting, investigating, and reviewing of use of force incidents can be found in Use of Force Reporting, Investigation, and Review General Order #18-21.

## **XII. TRAINING**

Police Division members are required to receive and maintain Police Division in-service training and weapons certification requirements in the proper use of firearms, as per the State of New Jersey Attorney General Guidelines; as well as all relevant Division policies, rules, and regulations.

In addition, Police Division members are required to attend in-service emergency first aid training to enable them to render first aid until professional medical care providers are on the scene.

Members must complete and pass a Division-approved certification course of instruction for all mechanical, enhanced mechanical or deadly force options.

Members are required to receive annual and/or biannual recertification training, or as directed, in order to maintain their certification to utilize any of the Division-authorized use of force options.

Any member who does not complete required certifications, and/or re-certifications will be prohibited from carrying/using any Division-authorized use of force option. Similarly, if a member fails any certification/re-certification course, the member shall be prohibited from utilizing the affected force option.

Members who do not pass their **required** annual or bi-annual re-certification requirements risk suspension and or termination.

For training and certification requirements and for all training in use of force options, please refer to the Newark Police Training Division and the State of New Jersey Attorney General Guidelines.



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## XIII. EFFECTS OF THIS ORDER

All previous Memorandums and Orders that are in conflict with this Order are repealed.

BY ORDER OF

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**ANTHONY F. AMBROSE**  
**PUBLIC SAFETY DIRECTOR**

AFA/BO:ma

**C: Darnell Henry, Chief of the Police Division**

**Related General Orders**

- G.O. #67-04 Secondary Firearms
- G.O. #84-01 Firearms Range
- G.O. #05-03 Police Officers Carrying Firearms
- G.O. #08-05 Emotionally Disturbed Persons
- G.O. #94-03 Vehicle Pursuit Policy
- G.O. #16-02 Officer Involved Critical Incident Management
- G.O. #18-21 Use of Force Reporting, Investigation and Review
- G.O. #18-22 Firearms and Other Weapons

**Related Rules and Regulations**

Chapters 8, 12, 15, and 18

**Department of Public Safety Police Division Memoranda**

- DPS #16-737 Critical Incident Response Team
- DPS #16-856 Ammunition Change

**Attorney General Guidelines & Directives**



# **APPENDIX C**



# NEWARK POLICE DIVISION GENERAL ORDER



<b>SUBJECT:</b> <b>USE OF FORCE REPORTING, INVESTIGATION AND REVIEW</b>	<b>GENERAL ORDER NO.</b> <b>18-21</b>
<b>SUPERSEDES:</b> <b>NEW</b>	<b>DATED:</b> <b>November 8, 2018</b>

**This Order consists of the following numbered sections:**

- I. PURPOSE**
- II. POLICY**
- III. DEFINITIONS**
- IV. ALL FORCE INVESTIGATIONS AND TRACKING TEAM (A-FIT)  
STRUCTURE AND RESPONSIBILITIES**
- V. GENERAL REQUIREMENTS FOR USE OF FORCE REPORTING AND  
INVESTIGATION**
- VI. NOTIFICATIONS**
- VII. USE OF FORCE REPORTING AND INVESTIGATIVE  
RESPONSIBILITIES**
- VIII. USE OF FORCE REVIEW**
- IX. TRAINING**
- X. EFFECTS OF THIS ORDER**



# NEWARK POLICE DIVISION GENERAL ORDER



## I. PURPOSE

The purpose of this Policy is to set out the reporting, analytical, and investigatory responsibilities for use of force incidents involving Newark Police Division members, and to create one central team known as the *All-Force Investigations & Tracking Team (A-FIT)*.

This policy is intended to supplement the Newark Police Division's (NPD) Use of Force General Order by expanding on the provisions regarding use of force reporting and supervisor use of force investigations.

All definitions in the Use of Force General Order shall apply to this order.

## II. POLICY

Newark Police Division members will report anytime they use force.

The Newark Police Division will investigate and review all uses of force.

The *All-Force Investigations & Tracking Team* will be responsible for the review of all uses of force, and will conduct the administrative investigations of more serious uses of force. *A-FIT Team's* response to a use of force incident does not assume criminal or administrative violations have occurred.

Use of force incidents will be categorized into three levels based on seriousness, and will be investigated accordingly.

Violations of established Newark Police Division Rules & Regulations, General Orders, policies, federal & state law, the U.S. Constitution, or Attorney General Guidelines will result in disciplinary sanctions, which can include counseling (verbal warnings), written warning, fines, civil liability, criminal charges, suspension, /or up to termination.



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## III. DEFINITIONS

For the purpose of providing supervisors with a standard for the reporting and investigating of use of force incidents by Division members, the following terms and definitions apply.

### A. Low-Level Use of Force

“Low-Level Force” or “Low-Level Use of Force” – any use of force that is not likely to and does ***not result in bodily harm*** or complaint of bodily harm.

Includes the use of:

1. ***physical force*** to overcome resistance (e.g., hand controls or escort techniques such as elbow grip, wrist grip, or shoulder grip applied as pressure point compliance technique). (Ref. Use of Force G.O. #18-20 def.).

### B. Intermediate-Level Use of Force

“Intermediate-Level Force” or “Intermediate-Level Use of Force” – any use of force that is likely to or actually does ***result in bodily harm*** or complaint of bodily harm.

Includes the use of:

1. ***physical force*** to overcome resistance (as described above) or wrestling a person to the ground, elbow strikes, fist strikes not likely to cause death or serious injury, kicks, leg sweeps, or other hand-to-hand physical maneuvers, etc.;
2. ***mechanical force***, baton strikes to non-lethal areas, use of some device or substance, other than a firearm, to overcome a subject’s active resistance (Ref. Use of Force G.O. #18-20)

### C. Serious-Level Use of Force

“Serious-Level Force” or “Serious-Level Use of Force” – ***any use of force*** that ***results*** or is ***likely to result in serious bodily harm*** or ***death***.

Including but not limited to:

1. use of less-lethal weapons (e.g., firing of bean bag rounds);



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2. use of enhanced mechanical force (e.g., conducted energy devices such as stun guns and Tasers);
3. firearm discharges (not pointing);
4. **any use of force** that results in **loss of consciousness**;
5. any canine bite;
6. any strike, blow, or kick against a handcuffed or restrained subject;
7. any strike with a hard object to the head, neck, or throat; or
8. neck holds (Ref. Use of Force G.O. #18-20);

**D. All-Force Investigations and Tracking Team (A-FIT Team)**

The All-Force Investigations and Tracking Team is a subcomponent of the Office of Professional Standards (OPS). The *A-FIT Team* is responsible for reviewing, tracking, and analyzing all Police Division members' use of force incidents. The *A-FIT Team* is also responsible for investigating "serious use of force" incidents not investigated by the Essex County Prosecutor's Office, and any other use of force incident as directed by the *A-FIT Team Commander*.

**E. Risk Analysis Review Board (RARB)**

The Risk Analysis Review Board is a panel of Police Division command and executive-level members responsible for reviewing and analyzing a variety of Division matters (ref. G.O. #17-02), which include all use of force investigations, to ensure compliance with the United States Constitution, the State of New Jersey Constitution, law, rules, regulations, policies, and procedures; to identify deficiencies in procedures, policies, or supervision; and to recommend training/retraining or discipline to correct deficiencies and address improper patterns of behavior.



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## IV. ALL-FORCE INVESTIGATIONS AND TRACKING TEAM (*A-FIT TEAM*) STRUCTURE AND GENERAL RESPONSIBILITIES

### A. Structure

The *A-FIT Team* will be a subcomponent of the Office of Professional Standards (OPS) and shall be placed accordingly on the Newark Police Division Organizational Plan.

The *A-FIT Team* shall be staffed by highly trained, experienced investigators from various areas of the Police Division.

The *A-FIT Team* will include a commander, supervisory, and investigative personnel.

### B. General Responsibilities

1. The *A-FIT Team* is responsible for investigating serious use of force incidents, except for use of force incidents investigated by the Essex County Prosecutor's Office or other Law Enforcement Agencies (Ref. Attorney General Directive 2006-5).
2. The *A-FIT Team* shall respond to and where appropriate will investigate the following types of use of force incidents:
  - a. "Serious use of force" incidents;
  - b. Any use of force incident, where the incident potentially involves criminal conduct or misconduct on the part of the member; or
  - c. Any other use of force incident as directed by the *A-FIT Team Commander*.
3. The *A-FIT Team* will assist and guide field supervisors with the handling of use of force incidents.
4. When the *A-FIT Team* is contacted by a field supervisor for assistance concerning a use of force incident he or she is investigating, the *A-FIT Team* member shall be responsible for providing guidance to that supervisor, and shall be responsible for ensuring that the supervisor follows the instructions given.
5. The *A-FIT Team* shall review and analyze all use of force incidents.



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6. The *A-FIT Team* shall be responsible for developing and maintaining a system to track all use of force incidents, including those incidents investigated by the Essex County Prosecutor's Office or other Law Enforcement Agencies.
7. The *A-FIT Team* shall be responsible for the administrative investigation of use of force incidents after the completion of investigations by the Essex County Prosecutor's Office or other Law Enforcement Agencies.
8. If the *A-FIT Team* determines that administrative charges are being recommended for violations of N.J. Attorney General Guidelines, Newark Police Division General Orders, or Rules and Regulations, *A-FIT Team* will contact OPS to generate a Complaint Against Personnel (C.A.P.) number. OPS is the central repository for all C.A.P. numbers.
9. *A-FIT Team* shall forward findings for use of force investigations to the RARB.

## C. *A-FIT Team Members*

### 1. **Commander**

- a. The **Commander** of the *A-FIT Team* will oversee the day-to-day operations of the Team in accordance with established Police Division policies, procedures, rules, and regulations. The Commander shall also be responsible for tracking, analyzing, and reviewing all use of force investigations.
- b. The **Commander** shall ensure that the data captured in members' use of force reports and supervisors' investigative reports is analyzed as necessary to identify significant trends, to correct deficient policies and practices, and to document the findings in an **annual report** that will be made **publicly available**. The analysis will include evaluations and assessments of use of force by type, unit or assignment, demographics of the subjects, the shift or time of day, location, the nature of offense, the resistance encountered, and comparisons among officers or units.



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## 2. Supervisor

**Supervisors** will be guided by established Police Division policies, procedures, rules and regulations concerning supervisory and investigative responsibilities. They shall lead the investigations of use of force incidents assigned to the *A-FIT Team*.

## 3. Investigative Personnel

**Investigative Personnel** will conduct use of force investigations assigned to *A-FIT Team*, and report to the *A-FIT Team* supervisor.

## V. GENERAL REQUIREMENTS FOR REPORTING AND INVESTIGATING USE OF FORCE INCIDENTS

### A. Reporting and Investigating the use of Constructive Authority

1. Un-holstering, exhibiting, or pointing a firearm at a person as an act of constructive authority shall be reported (BlueTeam).
2. Incidents involving use of the member's presence, physical contact, verbal persuasion, commands, or threats to use force—shall not be considered reportable incidents and will not require a use of force report or investigation.
3. However, although some incidents do not require a use of force report or investigation, Police Division members will accurately and thoroughly document their encounter on the appropriate Division form (e.g., Incident Report, Arrest Report).

### B. Reporting & Investigating the use of Physical, Mechanical, Enhanced Mechanical, or Deadly Force

1. Any use of physical, mechanical, enhanced mechanical, or deadly force by Division members shall be reported and investigated.
2. When an incident involves multiple levels of force applied, the incident shall be investigated and documented based on the highest level of force used.





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3. Whenever a supervisor uses, directs, or is otherwise personally involved in any type of force, another supervisor who was not involved in the use of force will conduct the investigation.
4. At the discretion of the Public Safety Director, Chief of Police, or OPS Commander, a use of force investigation may be assigned or reassigned to the *A-FIT Team* or another supervisor for further investigation or analysis.

## VI. NOTIFICATIONS

Division members involved in a use of force incident shall notify the Communications Division/911 Call Center as soon as feasible.

The Communications Division/911 Call Center shall notify an uninvolved supervisor to respond to the scene.

Supervisors notified of a use of force incident shall respond to the scene and assess the incident. Once the supervisor makes a preliminary determination as to what level of force was used, he or she shall make immediate notification to the appropriate use of force investigative component (*A-FIT Team*, O.P.S., and/or E.C.P.O.) and be guided by that component.

In accordance with N.J. Attorney General Directive 2006-5, certain types of incidents require immediate notification to the Essex County Prosecutor's Office. Division members may not participate in those investigations, except that nothing shall preclude any Division member from helping to secure the scene, providing medical assistance to injured person, or from participating in the search for or pursuit of any person suspected of a crime related to the use of force incident. This provision applies to:

1. **any use of force** by a member involving death or serious bodily injury to a person;
2. where deadly force is employed by a member with no injury; or
3. where any injury to a person results from the use of a firearm by the member;
4. **Additionally**, the Essex County Prosecutor's Office will be notified on every firearm discharge by Police Division members, acting in the performance of their law enforcement authority, either on-duty or off-duty,



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including “no hit” incidents, animal shootings, and accidental discharges (Ref. DPSM #16-737).

All notifications have to be made through the Communications Division/911 Call Center. The Communications Division/911 Call Center Supervisor shall be responsible for making all requested and required notifications in accordance with established Division procedures and the N.J. Attorney General Directive 2006-5.

The Communications Division/911 Call Center supervisor shall also make immediate notification to the Public Safety Director and the Chief of Police on **all** incidents of “serious use of force” by Division members.

## VII. USE OF FORCE REPORTING AND INVESTIGATIVE RESPONSIBILITIES

### A. Low-Level Use of Force Investigation

#### 1. Member

- Shall, complete a use of force entry in BlueTeam or Use of Force Report.
- If equipped with B.W.C. & IN CAR CAMERA(S), shall upload, classify, and save the video footage in accordance with Division policy (Ref. Body-Worn Cameras G.O. #18-05).
- Notify the field supervisor.
- When feasible, remain on the scene of the use of force incident and wait for the field supervisor to respond. If it is not reasonable or safe to remain on the scene, notify the field supervisor accordingly.

#### 2. Witnessing Member

- Witnessing member, if any, will document their observations on a Continuation Report (DPI:795), and forward same to the uninvolved supervisor conducting the use of force review/investigation.
- If equipped with B.W.C. & IN CAR CAMERA(S), shall upload, classify, and save the video footage in accordance with Division policy (Ref. Body-Worn Cameras G.O. #18-05).
- Ensure that a supervisor is notified to respond.



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### 3. **Field Supervisor**

- Respond to the scene or, if he/she is not available, another on-duty supervisor shall respond.
- Evaluate and assess the use of force incident, and make a preliminary determination as to the level of force used (Low, Intermediate, or Serious).
- Visually check for signs of injury.
- Review member's Body Worn Camera video and or In-Car Camera video, and ensure that the footage is uploaded, properly classified, and saved (Ref. Body-Worn Cameras G.O. #18-05).
- Ensure that members report and document the incident.
- Review the use of force reports for thoroughness, clarity, and completeness.
- Document steps taken and findings in BlueTeam or Use of Force Report.
- If, after review of completed reports, the field supervisor finds cause to upgrade a low-level use of force investigation to intermediate or serious, he or she shall do so.

### 4. ***A-FIT Team***

- All completed members' reports and field supervisor reports with findings will be forwarded to the ***A-FIT Team*** for review, analysis, and tracking. The ***A-FIT Team*** is not required to respond to the scene for low-level uses of force.

## B. **Intermediate-Level Use of Force Investigation**

### 1. **Member**

- Shall complete a use of force entry in BlueTeam or Use of Force Report.
- If equipped with B.W.C. & IN CAR CAMERA(S), shall upload, classify, and save the video footage in accordance with Division policy (Ref. Body-Worn Cameras G.O. #18-05).
- Notify the field supervisor.



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- When feasible, remain on the scene of a use of force incident and wait for the field supervisor to respond. If it is not reasonable or safe to remain on the scene, notify the field supervisor accordingly.
- If there is a crime scene, secure the scene.
- Render aid consistent with training and qualifications, and request E.M.S. to respond to the scene where injuries are observed or alleged (**including complaints of pain**).
- Identify potential witnesses to the use of force and request they remain on the scene until the supervisor responds.

### 2. Witnessing Member

- Witnessing member, if any, will document their observations on a Continuation Report (DPI:795), and forward same to the uninvolved supervisor conducting the use of force review/investigation.
- If there is a crime scene, assist with securing the scene.
- If equipped with B.W.C. & IN CAR CAMERA(S), shall upload, classify, and save the video footage in accordance with Division policy (Ref. Body-Worn Cameras G.O. #18-05)
- Ensure a supervisor is notified to respond.

### 3. Field Supervisor

- Respond to the scene, if he/she is not available another on duty supervisor shall respond.
- Evaluate and assess the use of force incident, and make a preliminary determination as to the level of force used (Low, Intermediate, or Serious).
- Visually check for signs of injury.
- Ensure medical aid is provided to any injured parties, and that E.M.S. is notified.
- If there is a crime scene and or injuries are being reported, ensure the scene is secured and arrange for Crime Scene Unit to respond to photograph and process the scene. ***This includes photographing any injuries.***
- Review member's Body Worn Camera video and or In-Car Camera video, and ensure that the footage is uploaded, properly classified, and saved (Ref. Body-Worn Cameras G.O. #18-05).



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- Canvass area for privately owned video that may have captured the incident, and attempt to obtain copies voluntarily. If the owner refuses, document the location and/or owner of the video. If no privately-owned video is discovered, document that none was found.
- As soon as practicable, interview member and any witnessing members for investigative purposes and to gather information to provide to the *A-FIT Team*.
- If the incident is determined to be an intermediate use of force, notify the *A-FIT Team*.
- Ensure that members report and document the incident.
- Review the use of force reports for thoroughness, clarity, and completeness.
- Document steps taken and findings in BlueTeam and complete a Supervisor Use of Force Investigation Report (DPI:1005F).

#### 4. *A-FIT Team*

Upon being notified by the field supervisor, or through the Communications Division/911 Call Center, and being provided with the circumstances surrounding an intermediate use of force incident, the *A-FIT Team* supervisor shall apprise their commander of the incident to determine if a response is necessary. If instructed to respond, the *A-FIT Team* shall do so with sufficient personnel to conduct the investigation.

The *A-FIT Team* supervisor shall do the following:

- Assume control of the investigation.
- Interview the field supervisor on the scene to obtain any and all information gathered concerning the incident.
- Interview Police Division members on the scene involved in the use of force and those who witnessed the use of force.
- Review all BlueTeam entries relevant to the incident, which include the Use of Force Report (i.e., BlueTeam entry).
- Review member's Body Worn Camera video and or In-Car Camera video (Ref. Body-Worn Cameras G.O. #18-05).



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- Document thoroughly, clearly, and in detail all the information collected on the Supervisor Use of Force Investigation Report (DPI:1005F).
- Forward all relevant reports to the *A-FIT Team* commander for review.

If at any point during the investigative process the *A-FIT Team* supervisor learns of possible criminal conduct involving Police Division members' use of force he/she will immediately notify OPS and will be guided by their instructions.

## C. Serious-Level Use of Force Investigation

### 1. Member

- Shall complete a use of force entry in BlueTeam or Use of Force Report.
- If equipped with B.W.C. & IN CAR CAMERA(S), shall upload, classify, and save the video footage in accordance with Division policy (Ref. Body-Worn Cameras G.O. #18-05).
- Notify the field supervisor.
- When feasible, remain on the scene of a use of force incident and wait for the field supervisor to respond. If it is not reasonable or safe to remain on the scene, notify the field supervisor accordingly.
- If there is a crime scene, secure the scene.
- Render aid consistent with training and qualifications, and request E.M.S. to respond to the scene where injuries are observed or alleged (**including complaints of pain**).
- Identify potential witnesses to the use of force and request they remain on the scene until the supervisor responds.
- Remain at the scene until instructed otherwise by the investigating component supervisor taking the lead in the serious use of force investigation.
- Be available to provide written or audio statements to *A-FIT Team* or the E.C.P.O. investigators concerning the serious use of force incident.



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### 2. Witnessing Member

- Witnessing member, if any, will document their observations on a Continuation Report (DPI:795), and forward same to the uninvolved supervisor conducting the use of force review/investigation.
- If there is a crime scene, assist with securing the scene.
- If equipped with B.W.C. & IN CAR CAMERA(S), shall upload, classify, and save the video footage in accordance with Division policy (Ref. Body-Worn Cameras G.O. #18-05).
- Ensure a supervisor is notified to respond.

### 3. Field Supervisor

- Respond to the scene and, if he/she is not available, another on-duty supervisor shall respond.
- Evaluate and assess the use of force incident, and make a preliminary determination as to the level of force used (Low, Intermediate, or Serious).
- Visually check for signs of injury.
- Ensure medical aid is provided to any injured parties, and that E.M.S. is notified.
- Manage the scene by ensuring that it is properly secured.
- As soon as practical, secure any weapons used by Division members during the use of force incident.
- Quickly and efficiently gather pertinent information, and then notify ***A-FIT Team***.
- Ensure that members involved in the use of serious force or who witnessed the use of serious force remain on the scene, unless medical aid is immediately necessary. (Refer to Officer Involved-Critical Incident Management G.O.# 16-02.)
- If the member involved in the use of serious force needs to go to the hospital, the supervisor will assign a unit/member to escort/standby at the hospital with the member.
- Upon response by either E.C.P.O. or the ***A-FIT Team*** to the scene, the supervisor will provide investigators with any and all information gathered concerning the incident.
- The field supervisor shall cooperate fully with and follow instructions given by the ***A-FIT Team*** investigators or E.C.P.O. investigators.
- Ensure that members report and document the incident.



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- Review the use of force reports for thoroughness, clarity, and completeness.
- The field supervisor shall complete entries in BlueTeam. No Supervisor Use of Force Investigation Report (DPI:1005F) is needed because it will be completed by ***A-FIT Team*** investigators.

#### 4. ***A-FIT Team***

- Assume control of the investigation.
- Ensure that EMS was notified to address any injuries being reported.
- If there is a crime scene and or injuries are being reported, ensure the scene is secured and arrange for Crime Scene Unit to respond to photograph and process the scene. ***This includes photographing any injuries.***
- Interview the field supervisor on the scene to obtain any and all information gathered concerning the incident.
- Interview Police Division members on the scene involved in the use of force, as well as those who witnessed the use of force.
- Interview the subject of the use of force.
- Canvass area for privately owned video that may have captured the incident, and attempt to obtain copies voluntarily. If the owner refuses, document in detail specific information such as the location and/or owner of the video. If no privately owned video is discovered, document that none was found.
- Review all BlueTeam entries relevant to the incident.
- Review member's Body Worn Camera video and or In-Car Camera video (Ref. Body-Worn Cameras G.O. #18-05).
- Document thoroughly, clearly, and in detail all the information collected on the Supervisor Use of Force Investigation Report (DPI:1005F).
- Forward all relevant reports to the ***A-FIT Team*** commander for review.
- The ***A-FIT Team*** will lead all serious use of force investigations not handled by the E.C.P.O.
- The ***A-FIT Team*** will tailor its response to the incident, but will normally include at a minimum a supervisor and investigative personnel.





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- The *A-FIT Team* supervisor or commander will be responsible for notifying the involved member's chain of command up to the Public Safety Director, as well as OPS as soon as reasonably possible.
- Within 30 days, or as soon as possible thereafter, the *A-FIT Team* commander will present the completed investigation to the commander of OPS, the officer's chain of command, and the Risk Analysis Review Board (RARB), when it next convenes.
- If the investigation reveals potential criminal conduct or administrative misconduct, the *A-FIT Team* commander will be responsible for notifying the command staff and confer with OPS and the Public Safety Director as appropriate, as well as referring the matter to the appropriate authority for investigation if necessary, while proceeding with the administrative investigation after conferring with the prosecuting authority. Under no circumstance will the *A-FIT Team* or OPS compel a statement from the subject member without first consulting with the prosecuting agency, Public Safety Director, and Chief of Police.

### VIII. USE OF FORCE REVIEW

#### A. *A-FIT Team Review*

1. The *A-FIT Team* supervisor shall review all completed use of force investigations that were assigned to *A-FIT Team* investigators, as well as completed investigations conducted by field supervisors. He/she shall:
  - a. Review pertinent reports from use of force incidents to ensure the investigations are complete and thorough.
  - b. Ensure that the findings are supported by the preponderance of the evidence.
  - c. Determine whether the force used was lawful, the minimal amount necessary, whether de-escalation techniques were used where appropriate, and consistent with policy.
  - d. Forward the investigation to the *A-FIT Team* Commander for further review.
2. The *A-FIT Team* commander shall also review all completed use of force investigations. He/she shall:



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- a. When it appears that findings are not supported by a preponderance of the evidence, recommend in writing changes to the findings after consultation with the investigating supervisor and previous reviewer, the evidence or analysis supporting the modification will be documented. If deficiencies are noted, the reviewer will initiate corrective action where appropriate.
  - b. If the use of force investigation is complete, supported by the evidence, and free from deficiencies he/she will forward the use of force investigation to the Risk Analysis and Review Board (RARB) for final review.
3. Serious use of force investigations conducted by and completed by the *A-FIT Team* will be forwarded to the RARB for review and findings.
  4. If after review the RARB finds the investigation to be complete, thorough, and supported by the evidence, the Board shall make the necessary and appropriate finding of whether the force was lawful and consistent with policy.

## **B. Risk Analysis Review Board (RARB)**

The Risk Analysis Review Board (RARB) shall consist of members from various commands (Ref. Risk Analysis Review Board G.O. #17-02).

The Commanding Officer of the Transparency and Risk Analysis Management Unit shall be the Chairperson for the RARB.

The RARB shall be responsible for timely, comprehensive, and reliable reviews of all use of force investigations to determine whether the findings are consistent with the law and policy and supported by a preponderance of evidence; whether the investigations are thorough and complete; and whether there are tactical, equipment, or policy considerations that need to be addressed.

All completed use of force investigations shall be forwarded to the RARB within **5 Days** so that the RARB is able to review during its next monthly meeting.

The RARB shall also include in its review investigations completed by the E.C.P.O. pursuant to New Jersey Attorney General Directive 2006-05 that were referred back to the *A-FIT Team* for administrative investigation.

The RARB shall review *A-FIT Team* investigations and ensure that they are



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complete, thorough, and supported by the preponderance of the evidence. If an investigation is found to be deficient, the RARB shall send it back to *A-FIT Team* to complete any additional investigation.

The RARB will document its findings and recommendations for *A-FIT Team* investigations. Unless the RARB Chairperson grants an extension, the review should be conducted within seven days after the *A-FIT Team* presentation of the completed investigation to the RARB.

It shall be the responsibility of the Chairperson of the RARB to provide a summary report to the Public Safety Director.

The summary report shall be due to the Public Safety Director by 1100 hours on the Tuesday after the review date and shall include the following:

- a. Summary of each Use of Force Report reviewed
- b. Summary of any procedures violated
- c. Corrective action recommendations
- d. Any incident that was directed to the Office of Professional Standards or *A-FIT Team* for further investigation.

The RARB will not make recommendations concerning discipline; however, the Chairperson of the RARB is obligated to ensure referral back to *A-FIT Team* if potential misconduct is uncovered in the review process. The *A-FIT Team* supervisor will then ensure to coordinate with the OPS Commander concerning the alleged misconduct.

Should policy, equipment, or training deficiencies be noted in the review process, the RARB Chairperson will ensure that such deficiencies are brought to the attention of the relevant commanding officer for appropriate action. The unit commander of the member involved with the use of force will have the final responsibility regarding retraining or recommending discipline to the Public Safety Director.

If the use of force incident is found to be inconsistent with Division policies or if deficiencies are identified in training, tactics, or the use of equipment, the Public Safety Director or designee will ensure that appropriate remedial action is taken.

Likewise, if the use of force incident investigation and review is found to be deficient in any way, the Public Safety Director or designee shall ensure that appropriate remedial action is taken.



# NEWARK POLICE DIVISION GENERAL ORDER



## XII. TRAINING

As a component of use of force training, all members shall be trained on the use of the BlueTeam database for use of force reporting and investigation purposes.

All new supervisors shall be trained on the tenets of this General Order during their supervisor academy training program.

New *A-FIT Team* members shall receive specialized use of force investigations training. The training will include but will not be limited to: Division Use of Force Policy, Rules and Regulations, state and federal law concerning the Use of Force, N.J. Attorney General Guidelines on Use of Force, Division Policy on Firearms and Other Weapons, De-Escalation Techniques, and Interview Techniques.

The commander of the *A-FIT Team* shall be responsible for the coordinating and tracking of all training for *A-FIT Team* members.

The RARB members assigned to review use of force investigations shall receive a minimum of eight (8) hours of training on an annual basis, to include legal updates regarding use of force and the Training Division's current use of force curriculum.

## XIII. EFFECTS OF THIS ORDER

All previous Memorandums and Orders that are in conflict with this Order are repealed.

BY ORDER OF

ANTHONY F. AMBROSE  
PUBLIC SAFETY DIRECTOR

AFA: BO/ma

c: Darnell Henry, Chief of the Police Division

### Related General Orders

G.O. #67-04 Secondary Firearms

G.O. #05-03 Police Officers Carrying Firearms Out of State



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G.O. #08-05 Emotionally Disturbed Person  
G.O. #94-03 Vehicle Pursuit Policy  
G.O. #16-02 Officer Involved Critical Incident Management  
G.O. #18-20 Use of Force  
G.O. #18-22 Firearms and Other Weapons  
G.O. #17-02 Risk Analysis Review

**Department of Public Safety Police Division Memoranda**

DPS #16-737 Critical Incident Response Team  
DPS #16-856 Ammunition Change

# **APPENDIX D**



# NEWARK POLICE DIVISION GENERAL ORDER



**SUBJECT:  
FIREARMS AND OTHER WEAPONS**

**GENERAL ORDER NO.  
18-22**

**SUPERSEDES:  
NEW**

**DATED:  
November 8, 2018**

**This Order consists of the following numbered sections:**

- I. PURPOSE**
- II. POLICY**
- III. DEFINITIONS**
- IV. FIREARMS AND AMMUNITION**
- V. FIREARMS RANGE**
- VI. OTHER WEAPONS**
- VII. TRAINING**
- VIII. EFFECTS OF THIS ORDER**



# NEWARK POLICE DIVISION GENERAL ORDER



## **I. PURPOSE**

The purpose of this policy is to identify the types of firearms and other weapons sworn Newark Police Division (NPD) members are authorized to carry and use while in the performance of their lawful duties.

The policy also addresses the pre-deployment and post-deployment considerations as they pertain to using weapons as instruments of force.

All definitions in the Use of Force G.O. #18-20 and Use of Force Reporting, Investigation, and Review G.O. #18-21 apply to this Order.

## **II. POLICY**

It is the policy of the Newark Police Division to ensure that Division members are properly trained and equipped with the weapons they need to perform their official duties as law enforcement officers and guardians of the community.

Members are **prohibited** from carrying and using any weapon that has not been authorized by the Police Division's Public Safety Director or Chief of Police.

Members shall be mindful that the use of force is never routine, and that the same applies to the use of authorized weapons.

Members shall be guided by New Jersey State Laws, Federal Laws, Police Division Policies, Rules, and Regulations, N.J. Attorney General Guidelines, and Newark Police Training Division/Firearms Range training regarding the carrying, and use of authorized weapons.

Supervisors shall, consistent with the responsibilities of their rank and assignment, inspect members within their command for compliance with NPD Policies, Rules and Regulations concerning certifications, proper care, maintenance, and carrying of Division-authorized weapons and ammunition. Discrepancies shall be documented and addressed immediately.





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### III. DEFINITIONS

#### A. **Conducted Energy Device (CED)**

Any device that is capable of firing darts/electrodes that transmit an electrical charge or current intended to temporarily disable a person.

CEDs are categorized under N.J. Attorney General Guidelines as a form of enhanced mechanical force (Ref. def. in Use of Force G.O. #18-20).

#### B. **Firing of Conducted Energy Device**

Causing the darts/electrodes of a conducted energy device to be ejected from the main body of the device and to come into contact with a person for the purpose of transmitting an electrical charge or current against the person.

#### C. **Discharge of Conducted Energy Device**

Cause an electrical charge or current to be directed at a person in contact with the darts/electrodes of a conducted energy device.

#### D. **Distraction Devices**

Distraction Devices, also referred to as Flash Bang/Flash/Sound Diversionary Devices, are less-lethal mechanical devices, which emit a bright flash, loud report, and heat on detonation, with the purpose of creating a distraction or diversion to the intended target, allowing for a safer environment for tactical team members to operate.

#### E. **Firearm**

Any handgun, rifle, shotgun, machine gun, automatic or semi-automatic rifle, or any gun, device or instrument in the nature of a weapon from which may be fired or ejected any solid projectable ball, slug, pellet, missile or bullet, or any gas, vapor or other noxious thing, by means of a cartridge or shell or by the action of an explosive or the igniting of flammable or explosive substances. It shall also include, without limitation, any firearm, which is in the nature of an air gun, spring gun or pistol or other weapon of a similar nature in which the propelling force is a spring, elastic band, carbon dioxide, compressed or other gas or vapor, air or compressed air, or is ignited by compressed air, and ejecting a bullet or



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missile smaller than three-eighths of an inch in diameter, with sufficient force to injure a person.

### **F. Less-Lethal Ammunition**

Any ammunition approved by the Attorney General which is designed to stun, temporarily incapacitate or cause temporary discomfort to a person without penetrating the person's body. The term shall also include ammunition approved by the Attorney General, which is designed to gain access to a building or structure and is used for that purpose.

### **G. Oleoresin Capsicum (i.e., OC, pepper spray)**

Oleoresin Capsicum (OC) spray is an essence of cayenne peppers. OC is an inflammatory agent, classified as a lacrimator (producer of tears), that causes an intense burning sensation of the skin, eyes, and mucous membranes. OC canisters are color coded for immediate identification (color code: black).

The proper use of OC spray may reduce or eliminate the need for substantial physical force to make an arrest or gain custody. It may reduce the potential for injuries to members and subjects.

### **H. Chloracetophenone (i.e., CN, tear gas)**

Chloracetophenone is a chemical irritant that is deployed as a gas. Classified as a lacrimator (producer of tears), that causes irritation to the eyes, and skin. CN canisters are color coded for immediate identification (color code: red).

The proper use of CN is generally an effective and safe method to disperse unruly or riotous crowds.

### **I. Orthochlorobenzalmalononitrile (i.e., CS, tear gas)**

Orthochlorobenzalmalononitrile is a chemical irritant that is deployed as a gas. Classified as a lacrimator (producer of tears), that causes irritation to the eyes, respiratory tract, and skin. CS is stronger and safer than CN. CS canisters are color coded for immediate identification (color code: blue).

The proper use of CS is generally an effective and safe method to disperse unruly or riotous crowds.



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## **J. Special Weapons**

Special weapons include those firearms and other weapons specifically designed for use during high-risk situations (e.g., Long guns, automatic weapons, OC/CN/CS launchers).

Special weapons are intended for use by highly trained specialized units (ESU/SWAT) who have been trained in the care, and use of these weapons.

## **IV. FIREARMS AND AMMUNITION**

### **A. General Requirements**

Members shall only possess or use firearms and ammunition approved by the Police Division's Public Safety Director or Chief of Police while on duty.

Division Firearms include:

1. Handguns (see Appendix A)
2. Shotguns (see Appendix A)
3. Special Weapons (see Appendix A)
  - a. Rifles/Long Guns
  - b. Less-Lethal Weapons and Ammunition

### **B. Pre-Deployment Considerations**

Members shall be guided by the Use of Force General Order #18-20 when considering whether to use a firearm.

Police Division members shall be cognizant that the use of a firearm constitutes deadly force and may only be used when the member reasonably believes such an action is immediately necessary to protect the member or another person from imminent danger of death or serious bodily harm.



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Police Division members shall use the utmost care when handling and using firearms.

Members shall ensure that the use of Division-authorized firearms does not pose a substantial risk of injury to innocent persons.

Members shall, when feasible, issue a verbal warning to the subject and other members prior to discharging a firearm.

Members shall be guided by the Firearms Range training, and Manufacturer recommendations for the care, maintenance, storage, and carrying of Division-issued firearms.

## C. **Post-Deployment Considerations**

When a member discharges a firearm he or she **shall**:

1. Immediately after rendering the scene safe, provide aid in accordance with their training and experience to any injured person;
2. Notify E.M.S.;
3. Notify the on-duty supervisor to respond to the scene;
4. Secure the scene;
5. Identify any witnesses;
6. Follow instructions from the on-duty supervisor; and
7. Report and document the discharge by completing all relevant Division reports in accordance with the Use of Force Reporting, Investigation, and Review General Order #18-21.

In accordance with New Jersey Attorney General Directive 2006-05, discharges of a firearm by law enforcement officers are investigated by the Essex County Prosecutor's Office (E.C.P.O.). Therefore, the scene of any discharge shall be secured pending response by the E.C.P.O. Investigative Personnel.



# NEWARK POLICE DIVISION GENERAL ORDER



## Exceptions

Police Division members are not required to report, and no investigation is required, for discharges of Division-approved firearms during recreational shooting at an appropriate site (range), or during Division -required firearms training.

Police Division issued firearms **shall not** be used for sports or recreational hunting activities.

## D. Handguns

### 1. Authorization - On-duty

Division members shall carry the Division-issued and authorized handgun and ammunition while on duty.

Uniformed members shall keep their duty handgun in the Division-provided and authorized holster.

Plain clothes members shall keep their duty handgun in a holster they purchase that is approved by the Firearms Range and which conforms to Division specifications (see G.O. #67-04 Secondary Firearms).

Uniformed and plain clothes members may also carry a back-up handgun. The back-up handgun must be purchased by the member, conform to Division specifications, and must be authorized by the Division.

Members must also qualify with the back-up handgun in order to carry it while on or off duty. Furthermore, members must also re-qualify on a semi-annual basis with the back-up handgun. The member must provide his/her own Division-authorized ammunition during qualification at the Firearms Range. Members shall be guided by **G.O. #67-04 Secondary Firearms** when considering the purchase of an on-duty back-up handgun or an off-duty handgun.



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## **Authorization - Off-duty**

Division members have the option of carrying off-duty the Division-issued handgun or a Division-approved off-duty handgun owned by the member.

Members shall be responsible for the care and maintenance of their Division-issued handgun and any Division-approved off-duty handgun they own.

Members shall carry their *Division-issued handgun* in a holster purchased by the member which conforms to Division specifications, and is approved by the Firearms Range.

Members shall carry their *off-duty handgun* in a holster purchased by the member that conforms to Division specifications, and is approved by the Firearms Range.

Personnel may qualify with their off-duty handgun when they receive in-service training at the Firearms Range or on their off-duty time. Those members who opt to qualify on their off-duty time shall comply with the conditions listed in Section V.C.1 of this Order.

Members shall be responsible for re-qualifying on a semi-annual basis with their off-duty handgun. He/she must provide his/her own Division-authorized ammunition during qualification at the Firearms Range. Refer to **G.O. #67-04 Secondary Firearms** for more information on off-duty handguns.

Members who fail to re-qualify on a semi-annual basis with their off-duty handgun are prohibited from carrying the off-duty handgun at any time.

## **E. Shotguns**

### **1. Authorization to Use**

Members shall only use shotguns and ammunition issued by the Division.

Shotguns shall only be carried and used by authorized on-duty Division members.



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When members are teamed up in the same Division vehicle only one shotgun per team shall be carried.

Members shall be guided by Firearms Range training concerning the proper procedures for the carrying, storing, loading, and unloading of ammunition, and use of shotguns.

When a member authorized to carry a shotgun signs one out of their command, he or she shall inspect the shotgun for damage. If any damage that may affect the operation of the shotgun is observed, the member shall immediately return the shotgun, submit an administrative report documenting the damage, and request a replacement if available.

Shotguns signed out by members shall be mounted on the shotgun rack inside their Division vehicles. When no rack is available the shotgun shall be stored in the trunk of the Division vehicle.

### **2. Supervisor Responsibilities**

Supervisors shall ensure that all members issued a shotgun are authorized to carry the shotgun. Supervisors at any time may request that a member present his/her Firearms Qualification Card, which must be stamped with approval to carry a shotgun. Only members authorized to carry shotguns shall be allowed to sign them out of their command.

All supervisors who are responsible for issuing shotguns and ammunition shall conduct an inventory of all shotguns and ammunition at the beginning and end of their shift, and shall document the inventory in accordance with Division procedures.

When issuing shotguns, the supervisor shall inspect the weapon to ensure that it appears operational before issuing it to the member.

If a shotgun appears to be inoperable or damaged, the supervisor shall submit an Administrative Report indicating the need for repair, and notify the Firearms Range at **973-733-6019** or **7915** to arrange for the repair.



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## **F. Special Weapons**

The Commander of SOD shall ensure that members under his/her command receive appropriate training on the care, storage, and use of special weapons.

No member shall be permitted to utilize special weapons without proper training and required periodic qualification.

Rifles/Long Guns and Less-Lethal Weapons and Ammunition are considered special weapons and are kept by the Division and issued as needed to members who are trained in their use.

These weapons are reserved for high-risk incidents such as violent emotionally disturbed persons, barricaded persons, active shooters, hostage situations, and terrorist attacks.

The use of special weapons requires advanced training; therefore, special weapons shall only be carried and used by members trained and qualified in their use.

The Commander of the Special Operations Division (SOD) shall ensure that all special weapons command are tracked, and shall ensure that a monthly inventory of all special weapons is conducted.

## **V. FIREARMS RANGE**

### **A. Organizational Structure**

1. The Firearms Range is organizationally placed under the Training Division on the Newark Police Division's Organizational Plan.
2. The Firearms Range Commander shall oversee all operations of the Firearms Range, and shall as required provide updates on range operations to the Commander of the Training Division.
3. The Firearms Range shall be staffed by trained and certified firearms instructors.





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### **B. Responsibilities**

1. The Firearms Range staff shall conduct all firearms training which shall include the care, maintenance, carrying, and use of all Division-issued firearms, and approved off-duty/back-up firearms.
2. The Firearms Range operations shall be conducted in a manner consistent with Division Rules, Regulations, Policies and Procedures, N.J. Attorney General Guidelines, Police Training Commission, State and Federal Laws.
3. The Firearms Range staff shall track and maintain records for all firearms training and other assigned in-service training as designated by the Training Division Commander, Chief of Police, or Public Safety Director. Firearms Range records shall include but will not be limited to:
  - a. Dates and times of Firearms Range operation.
  - b. Type of training conducted.
  - c. Names of members attending training.
  - d. Members' scores for all firearms training for both on- and off-duty firearms.
  - e. Inventory of all firearms, ammunition, and targets.
  - f. Any other records deemed necessary for the proper operation of the Firearms Range.
4. Additional training, specifically in-service semi-annual state and Division mandated training conducted by the Firearms Range staff includes, but is not limited to, the following subject matters:
  - a. Use of Force
  - b. Domestic Violence
  - c. Sexual Harassment
  - d. Vehicle Pursuit Policy



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- e. Blood Borne Pathogens
  - f. Right to Know (OSHA)
  - g. Prisoner Watches
  - h. Hazardous Communication
5. Firearms Range staff shall provide the Office of Professional Standards (OPS) with copies of all members' firearms training records for entry into IA-Pro.
6. The Firearms Range Commander shall:
- a. Ensure that **all Division firearms** are properly maintained, repaired, tracked, and inventoried.
  - b. Issue firearms only to trained and qualified Division members.
  - c. Ensure that all Firearms Range Safety Rules (See Appendix B) are followed and enforced, and take appropriate action when they are not.
  - d. Ensure to procure and maintain a sufficient supply of ammunition for in-service training.
  - e. Prepare an annual firearms report addressed to the County Prosecutor. The report shall first be forwarded to the Office of the Public Safety Director for approval and signature. The report must be sent to the Public Safety Director's Office no later than the 10<sup>th</sup> of January in order to be sent prior to the January 15<sup>th</sup> due date as set forth in N.J. Attorney General Guidelines. The report shall detail the following:
    - i. A description of all Division-authorized firearms and ammunition.
    - ii. The Division's training/qualification schedule, including the dates and types of qualification sessions conducted during the report year.



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iii. The number of participants who satisfied qualification requirements and the number of non-qualifying participants during each qualification session for each type of course and weapon: service weapon, off-duty weapon and Division-authorized shotgun.

7. The Public Safety Director, Chief of Police or designee shall provide a written report to the Essex County Prosecutor of any member who fails to qualify on the service weapon.

## C. Use of Firearms Range

### 1. Off-duty Personnel

Off-duty personnel shall be permitted to utilize the Firearms Range facility under the following guidelines:

- a. Off-duty personnel must utilize the range in conjunction with the Division In-Service Training Program.
- b. Appointments must be made in advance by contacting the Range Commander at the Firearms Range at (973)-733-6019.
- c. For reasons of scheduling, only four (4) off-duty personnel per day will be permitted to use the range.
- d. All safety rules must be strictly obeyed. (Appendix B)
- e. Off-duty personnel must supply their own ammunition.

### 2. Other Police Agencies

The Newark Police Division will permit other police agencies to utilize its firearms range facilities under the following conditions:

- a. All requests must be in written form and addressed to the Public Safety Director for approval.
- b. Once approved, scheduling shall be arranged by the Range Commander.



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- c. These other police agencies shall provide their own instructors, ammunition, targets and shall comply with all firearms range rules, procedures and policies.
- d. These other police agencies shall assume all responsibility for their personnel and any liabilities incurred through the actions of their officers.

### VI. OTHER WEAPONS

#### A. **Conducted Energy Devices (CED)**

##### 1. **Authorization to Use**

Conducted Energy Devices (CED) are issued by the Police Division. Only members who have been trained and authorized by the Essex County Prosecutor's Office in accordance with N.J. Attorney General Guidelines may carry and use CEDs. This authority may be revoked at any time by the Essex County Prosecutor's Office, Public Safety Director or Chief of Police.

Conducted Energy Devices are categorized as a form of enhanced mechanical force under N.J. Attorney General Guidelines.

Members authorized to use CEDs shall be guided by the N.J. Attorney General Guidelines, the Conducted Energy Device General Order #18-10, and the Use of Force General Order #18-20.

CEDs shall be stored at the authorized member's command, in a similar fashion as shotguns, in a secured location.

##### 2. **Pre/Post Deployment Considerations**

Refer to the CED General Order #18-10.

##### 3. **Supervisor Responsibilities**

Supervisors responsible for the issuance of CEDs shall ensure that they conduct an inventory at the beginning and end of their shift of all CEDs under their control.

Supervisors shall only issue CEDs to trained and authorized Division personnel.



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Supervisors shall be guided by the Use of Force Reporting, Investigation, and Review General Order #18-21, and the Conducted Energy Devices General Order #18-10.

### B. Oleoresin Capsicum Spray (OC)

#### 1. Authorized Use

Members are **prohibited** from using any OC spray that is not authorized by the Division.

OC spray is provided by the Division to all members trained in its use, who shall also carry the Division-issued OC spray at all times when in full police uniform.

The Division issued OC spray *must be labeled EDW- Electronic Discharge Weapon Tested and Safe/Non-Flammable*.

OC is categorized as an element of mechanical force under N.J. Attorney General Guidelines and the Use of Force General Order (III, J).

#### 2. Pre-Deployment Considerations

Members shall avoid the use of OC spray in hospitals, nursing homes, schools, areas where children may be affected (playgrounds), or where bystanders may be affected.

Members **shall not** use OC spray when wind, weather, or tactical conditions do not allow for the safe and proper use of the chemical agent.

Members **shall not** use OC spray near open flames.

OC spray is used as a means of control to minimize the potential for injury to members, offenders, or other persons during a use of force incident. OC is generally a safe, effective and humane method for members to protect themselves or other persons against actively resisting and/or combative persons, or vicious animals.

Members shall be guided by the Use of Force General Order #18-20 when considering whether to use OC spray.



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Members shall, if feasible and safe to do so, issue a warning prior to using OC spray.

Members shall not use OC spray in a moving vehicle or upon the person positioned on the driver side of any running vehicle.

### **3. Post-Deployment Considerations**

Members who use OC spray upon a person shall as soon as practicable

- a. Reassure the person that they will recover;
- b. Place the person in a fresh air environment;
- c. Allow the person to flush out exposed areas with clean cool water;
- d. Allow the person to remove contact lenses if worn; and
- e. Contact EMS to evaluate the person.

Members shall document on the appropriate Division forms the use of the OC spray.

A supervisor shall be notified and requested to respond to any incident where a member uses OC spray.

### **4. Supervisor Responsibilities**

Supervisors shall respond to all deployments of OC spray and shall be guided by the Use of Force General Order #18-20 and the Use of Force Reporting, Investigation, and Review General Order #18-21.

Supervisors shall, at a minimum, inspect annually members' OC spray to ensure that it is not expired, and that it is in compliance with Division Rules, Regulations, Policies and Procedures, and this G.O. Supervisors shall document the results of their inspections on the Supervisor's Field Inspection Report.



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## **5. Property & Evidence Division Responsibilities**

The commander of the Property and Evidence Division shall ensure that a sufficient quantity of OC spray is procured and stored at the Property & Evidence Division to equip the entire Police Division as needed.

Members shall further refer to the Use of Chemical Agents and Non-Lethal Aerosol Incapacitating Agent General Order #68-2 for additional information concerning OC and other Chemical Agents.

## **C. Other Chemical Agents**

The following other chemical agents (e.g., CN/CS) are intended to be used only by the Special Weapons and Tactics Team (SWAT) or Emergency Services Unit (ESU) members.

Only members who have successfully completed a Division approved training course in the proper use of CN, and CS shall be authorized to use them.

The use of CN/CS chemical agents in any form (e.g., spray, gas) by a Division member requires that the member complete a use of force report. The member will further be guided by the relevant provisions contained in the Use of Force Reporting, Investigation, and Review General Order.

The reporting for the deployment of these other chemical agents shall also be documented in the SWAT team's After Action Report.

### **1. Chloracetophenone (CN) & Orthochlorobenzalmalononitrile (CS) – Chemical Agents Authority to Use**

#### **a. Authorized Use**

The authority to use CN or CS rests with the ranking member of SWAT or ESU.

#### **b. Pre-Deployment Considerations**

In a riotous or unruly crowd, incident members must first attempt other less intrusive methods to disperse the crowd.



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An escape route for the crowd must be available.

Division members in the immediate area must be equipped with gas masks.

To ensure effective deployment, weather conditions, such as wind, should be considered.

If deployment is authorized, notify E.M.S. to respond. This will allow for immediate aid to be available for any person(s) who may have an adverse reaction to the CN or CS.

**c. Post-Deployment Considerations**

If any person is injured as a result of the use of a chemical agent, EMS shall be notified to respond. Members shall also provide aid in accordance with their training and experience.

**d. Supervisor Responsibilities**

The SWAT Commander or ESU Commander or their designee shall review the use of CN/CS after each incident or operation to ensure that the device(s) was/were properly deployed and functional. All Deployments and unusual occurrences shall be documented in the mission After Action Report.

**D. Police Batons**

**1. Authorized Use**

Members of the Division are authorized to carry and use Police Batons.

Members are responsible for purchasing their own Police Batons. All Police Batons must conform to Division specifications and must be approved by the Training Division (see Basic Uniform Regulations G.O. #63-22).





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Members are prohibited from carrying or using Police Batons that are not approved by the Training Division.

Members shall carry a Police Baton at all times when in full police uniform.

### **2. Pre-Deployment Consideration**

Members shall be guided by the Use of Force General Order when considering the use of a Police Baton.

Batons are considered a form of mechanical force in accordance with N.J. Attorney General Guidelines. They can be used to block or strike when active resistance is experienced by a member. Batons are generally not considered lethal weapons, but do have the potential to be lethal if improperly used or when the circumstances warrant the use of a baton as a lethal weapon.

Members shall be aware of what are known as red zones when using a Police Baton (e.g., head, neck, groin). Strikes to these areas constitute deadly force and are not authorized unless the use of deadly force is authorized as per the Use of Force General Order.

### **3. Post-Deployment Consideration**

When a member uses a Police Baton to strike a person during an incident warranting the use of such force, and an injury is observed or alleged, the member shall notify EMS and render aid commensurate to their training and experience as needed.

The member shall also document the use of such force in accordance with the Division Use of Force General Order #18-20 and the Use of Force Reporting, Investigation, and Review General Order #18-21.

A supervisor must be notified and must respond to all incidents where a Police Baton is used to strike a person regardless of whether the person is injured.



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## **E. Distraction Devices**

Distraction devices are designed for a variety of purposes that do not necessarily constitute a use of force. They can be used when dealing with violent or armed persons to distract (noise), create cover (smoke), and other tactical purposes. The use of distraction devices reduces the risk of injury to members and other persons.

### **1. Authorized Use**

Except in emergent situations, the use of a distraction device requires the authorization of the SWAT Commander or SWAT Team Leader.

### **2. General Deployment**

Generally, the use of Distraction Devices may be considered whenever their use would enhance safety and mitigate risks associated with any given mission.

These situations include, but are not limited to:

- i.** Barricaded persons
- ii.** Hostage situations
- iii.** High-risk warrant service (Intelligence indicates violent offenders, weapons present, fortified structures etc.)
- iv.** Presence of aggressive canines that exhibit behavior threatening to SWAT or ESU members.

NOTE: Every tactical situation has its own unique circumstances and obstacles, and must be resolved with its own unique solution. SWAT or ESU members must rely on their training and experience, as well as common sense and sound judgment, when utilizing this equipment.

### **3. Pre-Deployment Considerations**

Prior to deploying a Distraction Device, personnel shall consider intelligence information and circumstances to determine if devices may be safely deployed. Unless justification can be clearly articulated, Distraction Devices shall not be deployed in the following circumstances:



# NEWARK POLICE DIVISION GENERAL ORDER



- a. Young children are present in the target area.
- b. Elderly persons are present in the target area.
- c. Flammable vapors or flammable liquids are present in the target area.

A portable fire extinguisher shall be readily accessible whenever these devices are to be deployed.

Distraction Devices may be deployed by hand or initiated by pole.

Distraction Devices may be deployed at the breach point or away from the breach point if deemed necessary.

SWAT or ESU members should, whenever possible, quickly visually inspect the area of deployment and deploy the device approximately one meter off the breach point.

#### **4. Post-Deployment Considerations**

If any person is injured as a result of the use of a Distraction Device, EMS shall be immediately notified to respond. Members shall also provide aid in accordance with their training and experience.

#### **5. Supervisor Responsibilities**

The SWAT Commander or ESU Commander or their designee shall review the use of Distraction Devices after each incident or operation to ensure that the device(s) was/were properly deployed and functional. All Deployments and unusual occurrences, shall be documented in the mission After Action Report.

## **VII. TRAINING & RE-QUALIFICATIONS**

### **A. Firearms Training – Police Recruit**

The Training Division & Firearms Range shall conduct its police recruit firearms training program in compliance with the mandates and qualifying standards established by the N.J. Police Training Commission.



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### **B. Firearms In-Service Re-Qualifications**

The Firearms Range Commander shall develop and provide a practical training course for members involving the use of barricades, vehicles, and urban scenarios. The Range Commander shall review and update this course quarterly.

All Officers shall qualify at least twice annually at the Firearms Range for any firearm the officer will carry or use while on duty following the procedures and requirements established by the New Jersey State Attorney General Guidelines for Firearms Qualification.

When a member successfully passes the qualification course, the Range Commander will issue a card (Firearms Qualification Card) to that member indicating the date the member passed the course. The member shall maintain possession of the card, and produce it upon request by a supervisor. The member shall also provide a copy of the card to their Command for record-keeping purposes.

Members are responsible for ensuring they qualify at the Firearms Range twice per year.

Members must complete the required semi-annual re-qualification course to continue to carry and use authorized firearms in accordance with N.J. Attorney General Guidelines, Division Rules, Regulations, Policies and Procedures.

The Firearms Range shall notify Division Commanders of all members assigned to their Commands in need of re-qualification. This notification shall be made one month in advance from when the member is in need of re-qualification.

Members who fail to meet the training requirements will receive remedial instruction and will be rescheduled in order to comply with the training requirements.

If after remedial training and subsequent attempts to qualify the member still does not fire a passing score, the supervising firearms instructor shall report this information to the Chief of Police and Public Safety Director. The Chief of Police and the Public Safety Director will then determine what action is appropriate and maintain whatever records are appropriate.



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Members who fail to meet the training requirements for the use of authorized firearms shall relinquish their Division issued firearm.

Members who fail to qualify after remedial training within a reasonable time will be subject to disciplinary action, up to and including termination of employment.

The Executive Officer of each Command shall be responsible for scheduling members within their Command for the bi-annual firearm range re-qualification.

The Executive Officer shall provide a list of members they have scheduled for re-qualification to the Firearms Range one (1) week in advance of the scheduled training.

Each Command shall maintain records of attendance at the Firearms Range for personnel assigned to their Command.

## **C. Other Weapons Training**

The Essex County Prosecutors Office is responsible for all initial Conducted Energy Device (CED) user training in accordance with N.J. Attorney General Guidelines. The Firearms Range shall be responsible for all CED training re-certifications.

The Firearms Range shall be responsible for the routine inventory of Division-wide CEDs.

The tracking of training for the use of special weapons, other than firearms, shall be the responsibility of the Special Operations Commander.

The SOD Commander shall ensure members receive proper training and retraining in accordance with N.J. Attorney General Guidelines and Manufacturer recommendations.

Members shall be guided by the Firearms Range and the Training Division regarding any and all training or re-qualification concerning all other weapons not covered above.



# NEWARK POLICE DIVISION GENERAL ORDER



## VIII. EFFECTS OF THIS ORDER

All previous Memorandums and Orders that are in conflict with this Order are repealed.

BY ORDER OF

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

ANTHONY F. AMBROSE  
PUBLIC SAFETY DIRECTOR

AFA/BO/ma

c: Darnell Henry, Chief of the Police Division

### **Related General Orders**

G.O. #63-22 Basic Uniform Regulations

G.O. #67-04 Secondary Firearms

G.O. #68-02 Use of Chemical Agents and Non-Lethal Aerosol Incapacitating Agent

G.O. #05-03 Police Officers Carrying Firearms

G.O. #08-05 Emotionally Disturbed Person

G.O. #16-02 Officer Involved Critical Incident Management

G.O. #18-20 Use of Force

G.O. #18-21 Use of Force Reporting, Investigation, and Review

### **Attorney General Guidelines & Directives**



# NEWARK POLICE DIVISION GENERAL ORDER



## APPENDIX A

### AUTHORIZED DIVISION FIREARMS AND OTHER WEAPONS

A. Hand guns:

- Sig Sauer P229 9mm Semi-Automatic (*Division Handgun*)
- Sig Sauer P229 40mm Semi-Automatic
- Glock Model 22 .40 cal. Semi-Automatic

B. Shot guns:

- Remington Model 870 and 870P 12-gauge Shotguns
- Benelli M1 12-gauge Shotgun

C. Long guns:

- Colt Model AR-15 .223 cal. Semi-Automatic
- Colt M4 Model Commando .223 cal. Rifle Semi/Automatic
- Colt M4 Model A2 .223 cal. Rifle Semi/Automatic
- Benelli M16 Assault Rifle
- Remington Model 700TWS Bolt Action Centerfire Rifle 26" Barrel .308 Winchester (Ammunition: Remington 308 Windmag)
- FN Herstal M-249 .223 cal. Automatic Assault Weapon

D. Chemical Agents:

- Oleoresin Capsicum (OC)
- Chloracetophenone (CN)
- Orthochlorobenzalmalononitrile (CS)

E. Conducted Energy Device (CED):

- Taser Class III – X2 w/Cam.

F. Police Batons:

- Monadnock PR24
- Monadnock 22: Expandable Baton w/Power Tip



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- Foam Batons

## G. Ammunition:

- .223 Ammunition
- 9mm hollow-point Ammunition
- 9mm ball Ammunition
- .40 ball Ammunition
- .40 hollow-point Ammunition
- Segmented Slugs Ammunition (for Shotguns)
- 00 Buck Ammunition (for Shotguns)
- Less-than-lethal Ammunition:
  - Foam Round Bean Bags
  - Chemical Agent Rounds (OC/CN/CS)
- Hatton Rounds

## H. Launchers:

- 37mm Single-Shot Launcher
- 37mm Multi-Shot Launcher
- 40mm Multi-Shot Launcher





# NEWARK POLICE DIVISION GENERAL ORDER



## APPENDIX B

### Firearms Range Safety Rules

- A. Any violation of the following Rules may result in disciplinary action:
- B. **NO** horseplay is allowed at the Firearms Range.
- C. Weapons will remain holstered at all times unless otherwise instructed by the Range Commander or the firearms instructor.
- D. When on the firing line, drawn weapons will be pointed down range and level to the ground.
- E. Any weapon malfunctions, or misfires, will be immediately reported to an instructor.
- F. Only shooters and instructors are permitted on the firing line.
- G. All personnel on the firing line must wear ear and eye protection.
- H. Unsupervised firing of weapons is prohibited. Firearms Range Personnel must be present when weapons are discharged at the Firearms Range.
- I. No armor piercing and or tracer ammunition is allowed at the Firearms Range. *Exception:* Specialized Units, such as the Emergency Response Team (ERT), are allowed to fire such rounds.
- J. The use of cross-draw (in the pants) holsters and shoulder holsters shall be prohibited at the range. Only those holsters approved by the Department shall be utilized.
- K. The following safety rules shall apply when responding to the Firearms Range:
  - 1. Any officer having any physical disability, limitation, illness or other condition that would affect their ability to participate safely in any aspect of the firearms program shall immediately notify the supervising firearms instructor.
  - 2. Any officer under the influence of any prescription/non-prescription drug or alcohol shall immediately notify the supervising firearms instructor.
  - 3. Never draw or re-holster a weapon with your finger in the trigger guard or on the trigger guard.
  - 4. Never go forward on the firing line unless instructed to do so by a firearms instructor.



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5. While on the firing line, never bend over to retrieve dropped articles until instructed to do so by a firearms instructor.
6. No talking on the firing line, except by or with a firearms instructor.
7. No eating, chewing tobacco or smoking on the firing line.
8. All officers must pay strict attention to the Firearms Range Instructors.
9. Never anticipate a command.
10. Never permit the muzzle of a firearm to touch the ground.
11. Range staff/armorers shall conduct a safety check of all weapons before and after a training session.
12. The Supervisor in charge of qualification training on a particular day as well as the officer/participant shall make sure that the ammunition they are using is a "Service Load" (ammunition authorized by the agency and issued for duty use) or "Equivalent Load" (ammunition which is equivalent to the Service Load designed for training use) and is of the same caliber for the firearm in which it is used, and it is not damaged in any way.
13. Before firing any firearm that is unfamiliar to you, make sure that you understand exactly how it functions. A lack of familiarity with the firearm can result in serious accidents.
14. Always wash hands after leaving the range to reduce the possibility of lead contamination.
15. The Firearms Range's Commanding Officer shall ensure that personnel equipped to provide first aid are present on the firearms range during all qualification activities. (This person can be a certified member of a local volunteer first aid squad, an agency member certified as a first responder or emergency medical technician, or a member of the agency who is otherwise adequately trained.
16. The Firearm Range's Commanding Officer shall ensure that adequate first aid supplies are on-site at all times.

# **APPENDIX E**

#	Consent Decree Paragraph	NPD Policy
1	67(a)	General Order 18-20, <i>Use of Force</i> : Sections II, III.D.2 and VII.A.2
2	67(b)	General Order 18-20, <i>Use of Force</i> : Section II
3	67(c)	General Order 18-20, <i>Use of Force</i> : Sections IV.A.2, VIII A.2 and VIII.A.3
4	67(d)	General Order 18-20, <i>Use of Force</i> : Section II
5	67(e)	General Order 18-20, <i>Use of Force</i> : Sections III.E, III.L and VI.A.4
6	67(f)	General Order 18-20, <i>Use of Force</i> : Section III.E
7	67(g)	General Order 18-20, <i>Use of Force</i> : Section V.B.2
8	67(h)	General Order 18-20, <i>Use of Force</i> : Section V.B.3
9	67(i)	General Order 18-20, <i>Use of Force</i> : Section III.B.4
10	67(j)	General Order 18-20, <i>Use of Force</i> : Section VI.C.1.d.ii
11	67(k)	General Order 18-20, <i>Use of Force</i> : Section V.B.1
12	67(l)	General Order 18-20, <i>Use of Force</i> : Section X
13	68	General Order 18-20, <i>Use of Force</i> : Section XII
14	69	General Order 18-20, <i>Use of Force</i> : Section XII
15	70	General Order 18-20, <i>Use of Force</i> : Section XII
16	71	General Order 18-22, <i>Firearms and Other Weapons</i> : Section IV.A
17	72	General Order 18-20, <i>Use of Force</i> : Section VI.D
18	73	General Order 18-20, <i>Use of Force</i> : Section VI.C.1.d
19	74	General Order 18-20, <i>Use of Force</i> : Section XII; General Order 18-22, <i>Firearms and Other Weapons</i> : Section VII.B
20	75	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections II and VII
21	76	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VI
22	77	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections III.A, III.B and III.C; General Order 18-20, <i>Use of Force</i> : Section VII.A.3
23	78	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections IV and VII

#	Consent Decree Paragraph	NPD Policy
24	78(a)	General Order 18-20, <i>Use of Force</i> : Section XI; General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII
25	78(b)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VIII
26	78(c)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VIII
27	78(d)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VIII
28	79(a)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section V; General Order 18-20, <i>Use of Force</i> : Section XI
29	79(b)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VII.A.3, VII.B.3 and VII.C.3
30	79(c)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section V.B.2
31	79(d)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections IV.B.5 and IV.B.6
32	79(e)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VI
33	80	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VII.A.3, VII.B.3 and VII.C.3
34	81	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VII.B.1, VII.B.3, VII.C.1 and VII.C.3
35	82(a)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII
36	82(b)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII
37	82(c)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VII.B.3 and VII.C.3
38	82(d)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VII.A.3, VII.B.3 and VII.C.3
39	82(e)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VII.A.3, VII.B.3 and VII.C.3
40	82(f)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VII.B.3 and VII.C.3
41	82(g)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VII.B.3 and VII.C.3
42	82(h)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VII.B.3 and VII.C.3

#	Consent Decree Paragraph	NPD Policy
43	83	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VII.B.3 & VII.C.4
44	84	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section V.B.4 (Memo: 2018-88)
45	84(a)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VII B.3 and VII.C.4
46	84(b)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VII B.3 and VII.C.4
47	84(c)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VII.B.3 and VII.C.4
48	85	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section IV.C.1.b
49	86	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section V.B
50	87	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VIII.A.1 and VIII.A.2
51	88	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section V.B
52	89	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section V.B.4
53	90	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section IV
54	91(a)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section IV.B.2.a
55	91(b)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section IV.B.2.b
56	91(c)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section IV.B.2.c
57	92	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII.C.4
58	93	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII.C.3
59	94(a)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII.C.4
60	94(b)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII.C.4
61	94(c)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII.C.4
62	94(d)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII.C.4
63	94(e)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII.C.4
64	94(f)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII.C.4

#	Consent Decree Paragraph	NPD Policy
65	94(g)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII.C.4
66	94(h)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII.C.4
67	94(i)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII.C.4
68	94(j)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII.C.4
69	94(k)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII.C.4
70	95	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VIII.B
71	96	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VIII.B
72	97	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section IX
73	98	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VIII.B
74	99	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VIII.B
75	100	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VIII.B
76	102	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VIII.B

# **APPENDIX F**



#	Consent Decree Paragraph	NPD Policy
1	67(a)	General Order 18-20, <i>Use of Force</i> : Sections II, III.D.2 and VII.A.2
2	67(b)	General Order 18-20, <i>Use of Force</i> : Section II
3	67(c)	General Order 18-20, <i>Use of Force</i> : Sections IV.A.2, VIII A.2 and VIII.A.3
4	67(d)	General Order 18-20, <i>Use of Force</i> : Section II
5	67(e)	General Order 18-20, <i>Use of Force</i> : Sections III.E, III.L and VI.A.4
6	67(f)	General Order 18-20, <i>Use of Force</i> : Section III.E
7	67(g)	General Order 18-20, <i>Use of Force</i> : Section V.B.2
8	67(h)	General Order 18-20, <i>Use of Force</i> : Section V.B.3
9	67(i)	General Order 18-20, <i>Use of Force</i> : Section III.B.4
10	67(j)	General Order 18-20, <i>Use of Force</i> : Section VI.C.1.d.ii
11	67(k)	General Order 18-20, <i>Use of Force</i> : Section V.B.1
12	67(l)	General Order 18-20, <i>Use of Force</i> : Section X
13	68	General Order 18-20, <i>Use of Force</i> : Section XII
14	69	General Order 18-20, <i>Use of Force</i> : Section XII
15	70	General Order 18-20, <i>Use of Force</i> : Section XII
16	71	General Order 18-22, <i>Firearms and Other Weapons</i> : Section IV.A
17	72	General Order 18-20, <i>Use of Force</i> : Section VI.D
18	73	General Order 18-20, <i>Use of Force</i> : Section VI.C.1.d
19	74	General Order 18-20, <i>Use of Force</i> : Section XII; General Order 18-22, <i>Firearms and Other Weapons</i> : Section VII.B
20	75	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections II and VII
21	76	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VI
22	77	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections III.A, III.B and III.C; General Order 18-20, <i>Use of Force</i> : Section VII.A.3
23	78	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections IV and VII

#	Consent Decree Paragraph	NPD Policy
24	78(a)	General Order 18-20, <i>Use of Force</i> : Section XI; General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII
25	78(b)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VIII
26	78(c)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VIII
27	78(d)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VIII
28	79(a)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section V; General Order 18-20, <i>Use of Force</i> : Section XI
29	79(b)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VII.A.3, VII.B.3 and VII.C.3
30	79(c)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section V.B.2
31	79(d)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections IV.B.5 and IV.B.6
32	79(e)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VI
33	80	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VII.A.3, VII.B.3 and VII.C.3
34	81	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VII.B.1, VII.B.3, VII.C.1 and VII.C.3
35	82(a)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII
36	82(b)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII
37	82(c)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VII.B.3 and VII.C.3
38	82(d)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VII.A.3, VII.B.3 and VII.C.3
39	82(e)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VII.A.3, VII.B.3 and VII.C.3
40	82(f)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VII.B.3 and VII.C.3
41	82(g)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VII.B.3 and VII.C.3
42	82(h)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VII.B.3 and VII.C.3

#	Consent Decree Paragraph	NPD Policy
43	83	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VII.B.3 & VII.C.4
44	84	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section V.B.4 (Memo: 2018-88)
45	84(a)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VII B.3 and VII.C.4
46	84(b)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VII B.3 and VII.C.4
47	84(c)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VII.B.3 and VII.C.4
48	85	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section IV.C.1.b
49	86	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section V.B
50	87	General Order 18-21, <i>Reporting, Investigation and Review</i> : Sections VIII.A.1 and VIII.A.2
51	88	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section V.B
52	89	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section V.B.4
53	90	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section IV
54	91(a)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section IV.B.2.a
55	91(b)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section IV.B.2.b
56	91(c)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section IV.B.2.c
57	92	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII.C.4
58	93	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII.C.3
59	94(a)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII.C.4
60	94(b)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII.C.4
61	94(c)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII.C.4
62	94(d)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII.C.4
63	94(e)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII.C.4
64	94(f)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII.C.4

#	Consent Decree Paragraph	NPD Policy
65	94(g)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII.C.4
66	94(h)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII.C.4
67	94(i)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII.C.4
68	94(j)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII.C.4
69	94(k)	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VII.C.4
70	95	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VIII.B
71	96	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VIII.B
72	97	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section IX
73	98	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VIII.B
74	99	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VIII.B
75	100	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VIII.B
76	102	General Order 18-21, <i>Reporting, Investigation and Review</i> : Section VIII.B

September 4, 2023

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**Re: In-Car Camera Functionality**

Dear Parties:

In March and April of 2023, Subject Matter Experts (“SMEs”) from the Independent Monitoring Team examined the functionality of in-car cameras (“ICCs”) placed in vehicles from the 2<sup>nd</sup>, 3<sup>rd</sup>, and 5<sup>th</sup> Precincts, as a supplementary effort to the most recent BWC and ICC audit. The SMEs also examined any Traffic Unit vehicles belonging to the 8<sup>th</sup> Precinct they came across during their audit.

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In total, the SMEs examined 65 vehicles. Of these, 45 had functioning camera systems, 1 did not, and 19 were unable to be verified.<sup>1</sup> In light of these numbers, the Monitoring Team has determined that NPD is in full and substantial compliance with the ICC requirements of the Consent Decree. *See* Consent Decree ¶ 103. NPD is accordingly relieved of the need to be audited in this area going forward.

The Monitoring Team recommends that a member of the Technology Unit or other appropriate Precinct designee should be required to test the ICC system in each vehicle to ensure that it is functioning as designed when it returns from the service fleet or from the ICC vendor. Testing of vehicles should occur prior to the police vehicle returning to service, all results should be documented, and the desk supervisors/watch commander advised of the results of the vehicle tests. While General Order 18-06 currently does not require these additional measures, the Monitoring Team believes these steps will improve the ICC functionality of NPD's vehicles.

Best regards,



Peter C. Harvey  
Independent Monitor

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<sup>1</sup> Those vehicles that were unable to be verified were out for service during the first inspection on March 30, 2023, and had still not created any ICC videos by the time of the SMEs' second inspection on April 20, 2023.

**Report of the Independent Monitor’s Second Audit of the City of Newark and Newark  
Police Division’s Searches With or Without a Search Warrant**

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

## **I. Reviewers**

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

- 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 Bocker Parks, Ph.D., Rutgers University Center on Policing
- Kathryn Duffy, Ph.D., Rutgers University Center on Policing
- Jonathan Norrell, Rutgers University Center on Policing

## **II. Review Period**

In this Audit, the Monitoring Team reviewed NPD’s Searches With or Without A Search Warrant for a two-month time period – from November 1, 2022, up to and including December 31, 2022 (the “Audit Period”).

On February 10, 2023, the Monitoring Team provided NPD with notice of its intent to conduct this Audit. The Subject Matter Experts (“SMEs”) conducted their activities on-site from March 28, 2023, through March 31, 2023.

## **III. Executive Summary**

The Monitoring Team’s *Second* Audit of NPD’s compliance with Consent Decree requirements relating to Search practices analyzed whether NPD’s personnel demonstrated routine adherence to NPD’s own Search policies in their day-to-day operations, described here as “Overall Compliance.”

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



With respect to whether NPD had demonstrated routine adherence to its Searches With or Without a Warrant policy, thereby achieving “Overall Compliance” with the mandates of the Consent Decree—the Monitoring Team considered whether NPD officers conducting a Search (a) had legal justification for the Search, and whether or not the mechanics of the Search were within legal and policy-related parameters, described in this Audit as *substantive compliance*;<sup>1</sup> and, (b) completed required reports and accurately documented the Search in the narrative section of the report, described in this audit as *documentation compliance*. If any Search event was deficient, either substantively or with respect to documentation, that Search event was deemed “Non-Compliant.”

The Monitoring Team utilized a 95% Search event compliance standard for this audit. NPD achieved “Overall Compliance” when it satisfied both substantive and documentation compliance for 95% of the events in the sample reviewed by the Monitoring Team.<sup>2</sup>

The Monitoring Team found that 85.96% of events reviewed were compliant both substantively and with respect to documentation requirements. In other words, 202 out of 235 events reviewed by the Monitoring Team achieved Overall Compliance.

When further separated by substantive and documentation compliance, the audit revealed that NPD attained a score of 95.74% for substantive compliance (225 out of 235 events assessed for substantive compliance were determined to be compliant).

NPD’s documentation compliance score was 88.94% (209 out of 235 events assessed for documentation compliance were determined to be compliant).

This table presents an overview of NPD’s compliance in the Monitoring Team’s *Second* Audit of Searches With or Without a Search Warrant.

<b>Overview of Second Searches Audit Results</b>		
<b>Audit Area/Subject</b>	<b>Consent Decree Paragraph</b>	<b>Compliance?</b>
<b>Protocol for Analyzing Stop, Search, and Arrest Data</b>	Paragraph 53 <sup>3</sup>	Yes. <sup>4</sup>
<b>Overall Compliance</b>	Paragraphs 29-34	No. 85.96%.

<sup>1</sup> For the purpose of assessing substantive compliance, the SMEs limited their evaluations to the actions of the initiating officers and the officers responsible for conducting the searches.

<sup>2</sup> By separately assessing NPD’s *substantive compliance* and *documentation compliance*, the Monitoring Team affords NPD the ability to more easily identify areas in which it may focus its resource to address deficiencies, if any, in its Searches With or Without a Search Warrant practices.

<sup>3</sup> For the purpose of the 2nd Search Audit, Consent Decree Paragraph 53 was satisfied with the creation of NPD GO #21-04. However, the contents and efficacy of the policy will be examined during the Data and/or EWS audits.

<sup>4</sup> The Monitoring Team previously approved NPD’s methodology, and NPD has submitted a preliminary analysis. Some aspects of that analysis, however, were incomplete when assessed by NPD’s own methodology. In the future, the Monitoring Team expects NPD will be able to adhere strictly to its proposed methodology.

Overview of Second Searches Audit Results		
Audit Area/Subject	Consent Decree Paragraph	Compliance?
<i>Whether NPD demonstrated overall compliance in its Searches with or without a Search Warrant practices (both substantive and documentation).</i>		Overall, 202 of 235 Search events reviewed were compliant both substantively and with respect to documentation.
<b>Substantive Compliance</b>  <i>Whether the responsible NPD officer adhered to NPD policy by demonstrating that legal justification for the search existed ad that the search was within legal and policy-related parameters.</i>	Paragraphs 29-34; 55-62	Yes. 95.74%.  225 of 235 Search events reviewed were substantively compliant.
<b>Documentation Compliance</b>  <i>Whether the responsible NPD officer adhered to NPD policy by demonstrating that all reporting and related narrative requirements were met as determined by NPD policy and the Consent Decree.</i>	Paragraphs 26, 27, 29, 34	No. 88.94 %  209 of 235 Search events reviewed were compliant with respect to documentation.

#### IV. Consent Decree Requirements Regarding Searches

Paragraph 173 of the Consent Decree instructs the Independent Monitor, Peter C. Harvey (along with the Monitoring Team), 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 February 10, 2023, that the Monitoring Team would begin its *Second* Audit of NPD’s compliance with certain provisions of the Consent Decree relating to Searches With or Without A Warrant, and specifically, Section VI (Paragraphs 29-34, 43 and 51-62); Section VII (Paragraph 65).<sup>5</sup> (See **Appendix A**, February 10, 2023 45-day notice letter).

<sup>5</sup> The areas of Stops and Arrests were not the subject of this Audit, but they will be the subject of separate audit(s). However, this Audit includes Stop, Search, and Arrest Training (Section VI D, Paragraph 43 as it pertains to content of the required annual training), which encompasses all three topical areas. Additionally, the Monitoring Team did

Concerning Searches With or Without A Warrant, the Consent Decree requires NPD to, in part:

- Prohibit NPD officers from considering any demographic category in determining whether to conduct a search or to seek a search warrant, except that officers may rely on a demographic category in a specific suspect description, where the description is from a trustworthy source that is relevant to the locality and time (Paragraph 29).
- Prohibit NPD officers from relying on information known to be materially false or incorrect to justify a warrantless search or to seek a search warrant (Paragraph 30).
- Prohibit NPD officers from seeking consent to search a motor vehicle unless the officer has a reasonable and articulable suspicion that the search will reveal evidence of a crime. Officers will document in writing the basis for this suspicion or other legal authority (Paragraph 31).
- Require that NPD officers obtain the approval of a supervisor prior to conducting a search of an individual or a home based upon consent (Paragraph 32).
- Require that an officer seeking consent for a search will affirmatively inform the subject of the right to refuse and to revoke consent at any time. The officer will record this notification and the subject's grant or denial of consent on his or her body-worn camera, and on a written form that explains these rights. Supervisors will review the video and written documentation of consent prior to approving an arrest based on evidence obtained via a consent search (Paragraph 33).
- Ensure that the consent to search form includes separate signature lines for officers to certify that they have advised the subject of the right to refuse a search and for the subject to affirm that they understand that right (Paragraph 34).
- Provide all officers with at least 16 hours of training on stops, searches, arrests, and the requirements of this Agreement by November 1, 2017, 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:
  - the requirements of Fourth Amendment and related law, NPD policies, and this Agreement regarding investigatory stops and detentions, searches and seizures, including:

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not audit supervisory reviews of Searches during the Second Audit of Searches. The Monitoring Team intends to include a supervisory review of Searches in a subsequent Supervisory Audit. Specifically, Paragraph 33 requires NPD Supervisors to "review the video and written documentation of consent prior to approving an arrest based on evidence obtained via a consent search". NPD's compliance with this portion of the provision will be covered in a subsequent audit of NPD's compliance with supervisory obligations (*see Appendix A*, February 10, 2023, 45-day notice letter).

- 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).
- 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;
  - date and time of the stop,
  - location of the stop;
  - duration of the stop;
  - 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;
  - 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 of 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
  - disposition of the stop, including whether a citation or summons was issued to or any 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, detention, 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 serious crime, the officer may secure such evidence only (1) in exigent circumstances where it is reasonable to believe that the recording will be destroyed, lost, tampered with or otherwise rendered useless as evidence before a warrant can be obtained, and (2) only for 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., 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 officer or units. These analyses will be made publicly available pursuant to Section XV. (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).<sup>6</sup>

## **V. Methodology**

To assess compliance, the Monitoring Team evaluated whether NPD is following its own policy, protocols, procedural guidelines, notification(s), and reporting requirements as outlined in NPD's General Order 18-15, *Searches With or Without a Search Warrant*, dated May 27, 2021, and, specifically focusing on the paragraphs addressing Searches, General Orders 18-14, *Consensual Citizen Contacts and Investigatory Stops*; 18-16, *Arrests With or Without an Arrest Warrant*; General Order 18-12, *First Amendment Right to Observe, Object to, and Record Police Activity*; General Order 21-04, *Protocol for Analyzing Stop, Search and Arrest Data*, and related In-Service Training Bulletins.

The Monitoring Team also considered whether data elements required by the Consent Decree and NPD's General Order 18-15, *Searches With or Without a Warrant* were recorded within the Stop Reports (and/or other relevant NPD standardized forms) reviewed.

For further detailed information regarding the Monitoring Team's Methodology with respect to the audit of NPD's Searches, see **Appendix A** (45-day notice letter).

## **VI. Analysis**

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

Paragraph 53 of the Consent Decree requires NPD to develop a protocol for comprehensive analysis of stop, search, and arrest data. The protocol must establish steps for determining the nature and scope of demographic disparities in stop and search practices, and whether any such disparities can be decreased or eliminated, as well as steps for determining

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<sup>6</sup> Paragraph 174(a) of the Consent Decree requires NPD to provide the Monitor with data to allow the Monitoring Team to undertake outcome assessments. Outcome Assessment data will be reported out separately in the Independent Monitor's semi-annual reports.

which stop, search, and arrest practices are most effective and efficient in increasing public safety and police legitimacy within the Newark community. The analysis includes an assessment of the efficacy and any demographic disparities in the use of pretext stops and consent searches. This protocol is subject to the review and approval of the Monitor and DOJ (Consent Decree Paragraph 53).

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

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

The Monitoring Team initially generated a random sample of 200 search events from the Audit Period (November 1, 2022, up to and including December 31, 2022) to analyze for this Audit. The random sample was drawn from a total population of 458 events for the Audit Period. While on-site conducting the Audit, SMEs added 39 events as more than one subject was searched during certain events reviewed. Four events were removed as they pertained to search warrants.<sup>7</sup> The final Audit Sample after SME review was 235 events. (See **Appendix K**: List of Events Removed and Added to Sample).

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

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

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

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<sup>7</sup> Searches conducted pursuant only to the execution of search warrants were removed from this audit after NPD received, and forwarded, guidance from the New Jersey AG's office regarding the matter. See Attorney General Law Enforcement Directive No. 2002-2, *Approval of Search Warrant Applications, Execution Of Search Warrants, And Procedures To Coordinate Investigative Activities Conducted By Multiple Law Enforcement Agencies*.

<sup>8</sup> The mechanics of a search are within legal and policy-related parameters if the responsible officer properly executes "protective sweeps incident to arrest," has sufficient probable cause to conduct a search without a warrant and uses language specific to the facts supporting the particular search in question, not *pro forma* or conclusory language without supporting detail in the required reports (see **Appendix A**, February 10, 2023, 45-day notice letter).

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



Monitoring Team also reviewed associated body-worn and in-car camera videos from the Audit Period (November 1, 2022, through December 31, 2022) to corroborate the written description provided in the reports.

*1. Overall Compliance*

NPD achieved an overall compliance score of 85.96%. In total, 202 of 235 events reviewed by the Monitoring Team were compliant both substantively and in terms of documentation. Accordingly, 33 events were found to be overall non-compliant (14.04%). For a list of events and accompanying circumstances that were determined to be non-compliant overall, *see Appendix N.*

<b>Total Number of Events Reviewed</b>	<b>Number of Events Deemed Overall Compliant</b>	<b>Compliance Score</b>
235	202	85.96%

Below is a summary of the 33 events that were found to be substantively non-compliant, documentation non-compliant, or both substantively and documentation non-compliant.

<b>Summary of Non-Compliant Events</b>		
<b>Non-Compliance Type</b>	<b>Number of Non-Compliant Events</b>	<b>Percentage</b>
Non-Compliant (Substantive)	7	21.21%
Non-Compliant (Documentation)	23	69.70%
Non-Compliant (Both)	3	9.09%
Total	33	100%

Although NPD achieved an overall compliance score of 85.96%, the “non-compliant” determination was based largely upon the nature of the issues encountered by the SMEs, rather than the numerical compliance score. While the audit confirmed that NPD has made appreciable progress, both substantively and with regard to documentation, in the estimation of the SMEs, the documentation errors observed are serious enough to warrant the non-compliance determination.

For example, as indicated in the “Observations & Recommendations” section of this report, for many search events, the primary officer (i.e., the officer whose name appears at the bottom of the Stop Report) is not the searching officer, causing the primary officer to (1) fail to

document the search or (2) document a search that he or she did not personally observe (as evidenced on Body-Worn Camera footage).

The following two (2) illustrations explain the non-compliance determination:

- **Example 1** - Police officers arrest a female (driver) and male (passenger) during a vehicle stop. A responding Sergeant performs a brief pat-down of the female. This action was lawful based upon the totality of circumstances. However, it was *not* documented on required reports, and the Stop Report indicates that *no* protective pat-down was conducted. This inaccurate reporting probably occurred because, at the time of the Sergeant's actions, the reporting officer was searching the male passenger and did *not* observe the pat-down being concurrently performed by the Sergeant.

The Sergeant should have documented the pat-down or ensured that it was properly documented on the responding officer's Stop Report.

- **Example 2** - Primary officer reports that an offender was searched (ostensibly by himself). However, Body-Worn Camera footage shows that the transporting officer performed a search prior to placing the defendant in the transporting vehicle. The searching officer's identity and actions are *not* documented in the Stop Report. The officer's identity was confirmed by review of Body-Worn Camera footage.

In addition, in documents associated with many search events reviewed by the SMEs, first-person pronouns do not correspond to the officer who prepared the report. This ambiguity is likely due to overreliance on "copy and paste" functionality. As an example, consider Event #P22453003. For Event #P22453003, the following officers were recorded as having prepared the corresponding reports:

- o First Stop Report & Arrest Report: Officer #1
- o Second Stop Report: Officer #2
- o Property Reports: Officer #3
- o Incident Report: Officer #4

For all four (4) listed reports, the narrative sections are identical. It is unlikely that four officers would provide the exact same account of a search using the exact same language, including the use of first-person pronouns. These "mirror image" narratives render the majority of the reports defective. All officers cannot be accurately identified using the same first-person pronouns, without changes to context. In the future, officers must be trained to provide their own individual accounts of what occurred during the search.

If unaddressed, issues such as these could severely damage individual officer credibility, as well as overall agency legitimacy. As a result, the above revelations were significant factors in the Monitoring Team rendering the "non-compliant" determination.

## 2. Substantive Compliance

To determine whether NPD achieved Substantive Compliance, for each search event, the Monitoring Team analyzed whether legal justification for the search existed, and whether the mechanics of the search were within legal and policy-related parameters. In doing so, the SME's analyzed whether the responsible NPD officer (i) complied with NPD policy in terms of reasonable articulable suspicion, (ii) properly executed "protective sweeps incident to arrest," (iii) had sufficient probable cause to conduct a search without a warrant, and (iv) whether or not that officer used *pro forma* or conclusory language without supporting detail in their reporting.<sup>10</sup>

NPD achieved a Substantive Compliance score of 95.74%. In 225 of the 235 events reviewed, the responsible officers adhered to substantive requirements according to NPD policy.

A breakdown of substantive compliance scores follows.

Total Number of Events Reviewed	Number of Events Deemed Substantively Compliant	Compliance Score
235	225	95.74%

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

## 3. Documentation Compliance

To determine whether NPD achieved Documentation Compliance, the Monitoring Team assessed whether the responsible officer for each event 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 88.94%. In 209 of the 235 events reviewed, the responsible officers completed documentation/reporting requirements according to NPD policy.

Total Number of Events Reviewed	Number of Events Deemed Documentation Compliant	Compliance Score
235	209	88.94%

Of the 235 events reviewed by the Monitoring Team, 26 (11.06%) were non-compliant due to documentation/reporting related deficiencies. For a list of events that were determined to be non-compliant with respect to documentation, see **Appendix M**.

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

## VII. Observations and Recommendations

For the *Second* Search Audit, the Monitoring Team made six (6) principal observations and corresponding recommendations, as summarized below:

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

**Observation:** The great majority of the Searches reviewed by the SMEs were exhaustively lawful, constitutional, and were conducted pursuant to circumstances under which a reasonable police officer would undertake the same course of action. In addition, video footage captured on body-worn and in-car cameras confirmed that, in the overwhelming majority of interactions with members of the community, NPD officers comported themselves in a professional manner, maintained a courteous and respectful demeanor, and exercised laudable restraint during often tense situations.

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

### 2. *Primary Officer is Not Searching Officer*

**Observation:** For numerous events, the primary officer (*i.e.*, the officer whose name appears at the bottom of the Stop Report) is **not** the searching officer, causing one of the following issues: (1) primary officer fails to document search, or (2) primary officer documents a search that he or she did not personally observe (as evidenced on BWC video). This is a recurring issue, particularly regarding searches conducted by officers assigned to plainclothes and other specialized units.

**Recommendation:** The Monitoring Team recommends that NPD update its policy relating to Searches to include a requirement that either the officer who conducts a search (or initiates the interaction that leads to a search) prepare the stop report, or at minimum, that the searching officer be clearly identified within the contents of the stop report.

### 3. *First-Person Pronouns Do Not Correspond to Actual Writer of Reports*

**Observation:** For many search events, the first-person pronouns do not correspond to the officer who prepared the report. This is likely due to overreliance on “copy and paste” functionality. This is a recurring issue, particularly with regard to Searches conducted by officers assigned to plain-clothes and other specialized units.

**Recommendation:** The Monitoring Team recommends that NPD update its policies regarding documentation and report-writing to include a requirement that, for each event, officers (and their actions) be clearly identified on all corresponding reports.

4. *Search Affirmatively Indicated on Stop Report, While Body-Worn Camera/In-Car Camera Shows That No Search Occurred*

**Observation:** For several search events, a Search action was affirmatively indicated on the stop report. However, corresponding body-worn camera and in-car camera video shows that no search occurred (but should have). As indicated earlier, this is often because the primary officer (*i.e.*, “reporting officer”) is not present during the entirety of the encounter and, therefore, does not personally observe whether or not a search occurred.

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

5. *Ancillary Search Actions Not Documented or Lacking Articulated Legal Sufficiency*

**Observation:** For several events, secondary and tertiary Search actions were either undocumented or lacked articulated legal sufficiency. While instances of this type of deficiency are objectively rare, because of the inherent gravity associated with a failure to document a Search, the Monitoring Team determined that this recommendation should be included in the audit report.

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

6. *Lapses In Communication Among Officers*

**Observation:** In certain instances, better communication among officers is needed prior to detaining individuals, particularly during incidents wherein one officer’s actions are solely based upon another officer’s observations. This will help mitigate potential stakeholder scrutiny and agency liability as a result of a search.

**Recommendation:** In instances such as those described above, officers should engage in stronger and more detailed communication prior to detaining individuals. In addition, front-line supervisors should emphasize the importance of tactical communication during roll calls and informal briefings.

\* \* \*

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 outcome 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: September 18, 2023

Peter C. Harvey  
Independent Monitor

## List of Appendices

Appendix A: 45-day Notice letter, dated February 10, 2023

Appendix B: Methodology

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

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

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 21-04 *Protocol for Analyzing Stop, Search, and Arrest Data*, dated May 27, 2021

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

Appendix I: General Order 18-06 *In-Car Cameras*, dated April 13, 2018

Appendix J: List of all Events

Appendix K: List of Events Removed and Added to Sample

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

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

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

# Appendix A



February 10, 2023

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**Re: Second Audit: Searches - 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 police-citizen encounters involving search events (also referred to as "Searches"). This audit will cover the period **from November 1, 2022 up to and including December 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 29-34, 43, & 51-62); Section VII (specifically, Paragraph 65); Section XV (specifically, Paragraphs 164 and 168).

This second audit of Searches will be conducted 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 Searches.

**The topical areas of Stops 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 Searches during this second search audit.** It is the Monitoring Team’s intention, however, to complete a subsequent audit of supervisory reviews as part of the impending Supervision audit.

## 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 Searches); G.O. #18-15 – *Searches with or without a Warrant, dated May 27, 2021*; 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 18-15 – *Searches with or without a Warrant* have been recorded within the Stop Reports (and/or other relevant NPC standardized form) reviewed.

To identify and extract those search events to be audited, the Monitoring Team will draw a randomized sample from all searches conducted by NPD officers during the audit period. To that end, the Monitoring Team will randomly select 200 search events, and will review required forms and videos associated with the searches to assess their content (e.g., whether reasonable suspicion or probable cause was established and properly articulated, whether officers used pro forma or conclusory language without supporting detail, etc.).

For further information regarding the Monitoring Team’s methodology with respect to the audit of NPD’s Searches, please see Appendix A.

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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 search 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 18-15; Section 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.

**Compliance Assessment Method:** To assess compliance with Consent Decree Section VI, Opening Statement, for each search 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 searches conducted during the Audit Period. Accordingly, the SME's shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from Body-Worn and In-Car Cameras. The Monitoring Team will consider whether NPD officers: (i) sufficiently established and articulated probable cause or reasonable suspicion for the search action; (ii) adhered to the procedures outlined in General Order 18-15 (and related areas of NPD policy); and, (iii) refrained from using pro forma or conclusory language without supporting detail.

**2 - Paragraph 29:** NPD will prohibit officers from considering any demographic category in determining whether to conduct a search or to seek a search warrant, except that officers may rely on a demographic category in a specific suspect description, where the description is from a trustworthy source that is relevant to the locality and time.

**General Order / Policy Assessment (General Order 18-15; Section II - Policy):** 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.

**Compliance Assessment Method:** To assess compliance with Consent Decree Paragraph 29, for each search 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 searches conducted during the Audit Period. Accordingly, the SME's shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from Body-Worn and In-Car Cameras. The Monitoring Team will consider whether NPD officers: (i) sufficiently established and articulated probable cause or reasonable suspicion for the search action; (ii) adhered to the procedures outlined in General Order 18-15 (and related areas of NPD policy); and, (iii) refrained from using pro forma or conclusory language without supporting detail.

**3 - Paragraph 30:** NPD will prohibit officers from relying on information known to be materially false or incorrect to justify a warrantless search or to seek a search warrant.

**General Order / Policy Assessment (General Order 18-15; Section V.C):** Newark Police Officers are prohibited from 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.

**Compliance Assessment Method:** To assess compliance with Consent Decree Paragraph 30, for each search 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 searches conducted during the Audit Period. Accordingly, the SME's shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from Body-Worn and In-Car Cameras. The Monitoring Team will consider whether NPD officers: (i) sufficiently established and articulated probable cause or reasonable suspicion for the search action; (ii) adhered to the procedures outlined in General Order 18-15 (and related areas of NPD policy); and, (iii) refrained from using pro forma or conclusory language without supporting detail.

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

**General Order / Policy Assessment (General Order 18-15; Section V.D):** Newark Police 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.

**Compliance Assessment Method:** To assess compliance with Consent Decree Paragraph 31, for each search 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 searches conducted during the Audit Period. Accordingly, the SME's shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from Body-Worn and In-Car Cameras. The Monitoring Team will consider whether NPD officers: (i) sufficiently established and articulated probable cause or reasonable suspicion for the search action; (ii) adhered to the procedures outlined in General Order 18-15 (and related areas of NPD policy); and, (iii) refrained from using pro forma or conclusory language without supporting detail.

**5 - Paragraph 32:** NPD will require that officers obtain the approval of a supervisor prior to conducting a search of an individual or a home based upon consent.

**General Order / Policy Assessment (General Order 18-15; Section II - Policy):** Newark Police Officers are prohibited from conducting a search of an individual or home based upon consent without first obtaining the approval of a Supervisor.

**Compliance Assessment Method:** To assess compliance with Consent Decree Paragraph 32, for each search 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 searches conducted during the Audit Period. Accordingly, the SME's shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from Body-Worn and In-Car Cameras. The Monitoring Team will consider whether NPD officers: (i) sufficiently established and articulated probable cause or reasonable suspicion for the search action; (ii) adhered to the procedures outlined in General Order 18-15 (and related areas of NPD policy); and, (iii) refrained from using pro forma or conclusory language without supporting detail.

**6 - Paragraph 33:** NPD will require that an officer seeking consent for a search will affirmatively inform the subject of the right to refuse and to revoke consent at any time. The officer will record this notification and the subject's grant or denial of consent on his or her body-worn camera, and on a written form that explains these rights.

**General Order / Policy Assessment (General Order 18-15; Section VII.A):** 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.

**Compliance Assessment Method:** To assess compliance with Consent Decree Paragraph 33, for each search 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 searches conducted during the Audit Period. Accordingly, the SME's shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from Body-Worn and In-Car Cameras. The Monitoring Team will consider whether NPD officers: (i) sufficiently established and articulated probable cause or reasonable suspicion for the search action; (ii) adhered to the procedures outlined in General Order 18-15 (and related areas of NPD policy); and, (iii) refrained from using pro forma or conclusory language without supporting detail.

**7 - Paragraph 34:** NPD will ensure that the consent to search form includes separate signature lines for officers to certify that they have advised the subject of the right to refuse a search and for the subject to affirm that they understand that right.

**General Order / Policy Assessment (General Order 18-15; Section VII.A):** 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.

**Compliance Assessment Method:** To assess compliance with Consent Decree Paragraph 34, for each search 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 searches conducted during the Audit Period. Accordingly, the SME's shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from Body-Worn and In-Car Cameras. The Monitoring Team will consider whether NPD officers: (i) sufficiently established and articulated probable cause or reasonable suspicion for the search action; (ii) adhered to the procedures outlined in General Order 18-15 (and related areas of NPD policy); and, (iii) refrained from using pro forma or conclusory language without supporting detail.

**8 - 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 “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.
- 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.

**9 - 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.

**10 - 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.



**11 - 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.

**12 - 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 Search 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.

**13 - 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 search 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 searches 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 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 search 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 searches 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 57:** NPD will 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.

**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;

- o Intentionally block or obstruct cameras or recording devices; or
- o 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 search 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 searches 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 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 search 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 searches 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 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 search 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 searches 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 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 search 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 searches 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 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 search 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 searches 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.

**20 - 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 search 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 searches 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.

**21 - 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 Search 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 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 Search 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.

**23 - 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 Search 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.

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To identify and extract those search events to be audited, the Monitoring Team will draw a randomized sample from all searches conducted by NPD officers during the audit period. The Monitoring Team will randomly select 200 events during the audit period (initial sample) to assess for compliance. The

Monitoring Team will review all forms associated with searches 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 the search events identified in the secondary sample 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, 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 searches 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. This information is due no later than February 27, 2023.
- 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). This information is due to the Monitoring Team by March 15, 2023.
- 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). This information is due to the Monitoring Team by March 15, 2023.
- 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. This information is due to the Monitoring Team by March 15, 2023.
- E. 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). This information is due to the Monitoring Team by March 15, 2023.
- F. 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). This information is due to the Monitoring Team by March 15, 2023.
- G. 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). This information is due to the Monitoring Team by March 15, 2023.
- H. 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). This information is due to the Monitoring Team by March 15, 2023.

- I. 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). This information is due to the Monitoring Team by March 15, 2023.

The SMEs will be on-site at NPD Headquarters the week of March 27, 2023. Upon NPD's receipt of this 45-day notice, a pre-audit meeting will be scheduled for February 22, 2023 to discuss the methodology. The Monitoring Team requests that NPD pull the data for the sample and return it to the Monitoring Team by February 27, 2023. The Monitoring Team will submit a randomly selected sample on March 1, 2023. The Monitoring Team requests that NPD submit all required data to the Monitoring Team by March 15, 2023.

Best regards,

Peter Harvey

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# Appendix B



# **METHODOLOGY FOR SECOND SEARCH AUDIT (Nomenclature & Guidelines)**

(February 10, 2023)

## **Introduction:**

The Independent Monitoring Team's (IMT) Second Search Audit is projected to commence in Spring 2023.

## **Definition of Search:**

For the purpose of the audit, a "search" will be defined as follows:

A **search** occurs whenever a **police officer** makes physical contact with a citizen, or the citizen's garments, property or vehicle, for the purpose of detecting the presence of evidence, contraband, or weapons.

This audit will be limited to searches that commenced after the initiation of a stop (and are, therefore, documented on corresponding "Stop Reports"). Additionally, as multiple Stop Reports may correspond to a given "event," the "unit of measure" for the audit will be "unique event numbers" (as opposed to individual Stop Reports).

## **Types of Searches:**

The IMT has identified five types of searches that will be subject to audit:

- **Protective Pat-Down:**
  - i.e., protective frisk, "Terry" frisk, etc.

- For officer safety, and when reasonable suspicion exists, an officer may perform a limited pat-down of a detainee's outer garments for the presence of weapons.
- If, during a protective pat-down, an officer detects what he or she reasonably believes is a weapon (or what the officer immediately recognizes as contraband), the officer may retrieve the item.
- The result of a protective pat-down may result in an arrest and a subsequent post-arrest search.

- **Probable Cause Search (without Arrest):**

- Under certain conditions, an officer, having established probable cause, may conduct a search without (or prior to) an arrest being made (e.g., a probable cause search of a vehicle).
- The result of this type of search may result in an arrest and a subsequent post-arrest search.

- **Consent Search:**

- A consent search is permissible (even in the absence of probable cause), so long as the citizen is informed that he or she is free to decline the search without penalty or further detainment. Pursuant to NPD policy, the consent must be granted in writing, and a supervisor must approve the search prior to commencement.
- The result of a consent search may result in an arrest and a subsequent post-arrest search.

- **Inventory Search:**

- When a vehicle becomes subject to a lawful impoundment, an officer may perform a cursory inspection of the vehicle in order to document the presence of valuables inside the vehicle.
- In many instances, the owner or operator of the vehicle is present during this inspection, and may retrieve his or her belongings prior to impoundment.

- **Search Incident to Arrest:**

- After a lawful (probable cause-based) arrest of a citizen, officers are required to conduct a search of the arrestee for evidence, weapons, and contraband.
- The results of this type of search may result in the filing of additional charges.

**Parameters of Search Audit:**

- **Audit Period:** November 1, 2022 through December 31, 2022
- **Limitations of Audit:** This audit will be limited to searches that commenced after the initiation of a stop (which are, therefore, documented on corresponding Stop Reports). To that end, the IMT will assess unique event numbers randomly drawn for this audit, as described within the contents of the 45-Day Letter. Additionally, The IMT is aware that multiple reports may correspond to a given "event."

**Search Event Compliance:**

Search Event compliance will be assessed using a 95% standard. In order to achieve compliance, NPD must demonstrate that it has complied with substantive and documentation provisions of law, policies and procedures, including, but not limited to the following:

- United States Constitution – 4<sup>th</sup> Amendment
- New Jersey Constitution – Article 1, Section 7
- *Terry v. Ohio (1968)*
- NPD General Order 18-15 (Searches with or without a Warrant)
- NPD General Order 18-05 (Body Worn Cameras)
- NPD General Order 2002-2 (Strip Search - Body Cavity Search)
- Consent Decree Section VI – Introductory Paragraph
- Consent Decree Paragraphs related to searches (PP. 29, 30, 31, 32, 33, & 34)
- Other Consent Decree Paragraphs, as indicated within the 45-Day Letter.

The IMT has subdivided this audit into substantive and documentation components, as this provides NPD a greater opportunity to remediate any failures identified in this compliance assessment. Substantive and documentation compliance for each search event will be specifically assessed as follows:

**Substantive Compliance:** Legal justification for the search event must exist, and the mechanics of the search must be within legal and policy-related parameters.

For the purpose of determining a substantive "pass" or "failure," the SMEs will limit their evaluations to the actions of the initiating officers and the officers responsible for conducting the searches and policies associated with their actions.

The Subject Matter Experts (SMEs) recognize that in some instances, the initiating officers will also be the officers who conduct (or should conduct) the searches, while in other instances, secondary officers (e.g., transporting officers) may be responsible for conducting the searches.

**Documentation Compliance:** The IMT has identified three criteria through which documentation compliance will be assessed for this audit:

- The reports must be completed in full.
- The report narratives must be descriptive of the events.
- Relevant BWC and ICC must:
  - Exist in accordance with BWC policy (Note: The IMT recognizes that not every NPD officer is equipped with a body-worn camera.)
  - Be made available to the SMEs at the time of the audit, and must match the report narrative.

**A Search Event will be assessed "overall compliant" only when both "substantive" and "documentation" compliance thresholds have been met.**

## Required Materials:

In order to conduct a comprehensive audit, **for each search event identified in the sample**, the IMT will require that NPD provide the following documents and materials:

- Stop Report
- Body-Worn Camera Footage
- In-Car Camera Footage
- Consent Search Documentation (where applicable)
  - Consent by citizen
  - Approval by supervisor
- Inventory Search Documentation (where applicable)
- 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, for each event, the body-worn and in-car camera footage must be submitted to the IMT **alongside** the corresponding Stop Report (and any other relevant documentation associated with that specific event).

[Note: Given the layout of the NPD Stop Report, it appears that probable cause, consent, inventory, and post-arrest searches are subsets of protective pat-downs. Accordingly, the sample selection will likely consist entirely of protective pat-downs, and will only contain indicia of the remaining types of searches should the investigating officers' actions extend beyond the scope of a protective pat-down.]

# Appendix C



# NEWARK POLICE DIVISION GENERAL ORDER



<b>SUBJECT:</b>	<b>GENERAL ORDER NO.</b>
Searches With or Without a Search Warrant	18-15
<b>SUPERCEDES:</b>	<b>DATED:</b>
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 4<sup>th</sup> Amendment to the U.S. Constitution, and Article 1, Paragraph 7 of the New Jersey Constitution, as well as federal and state law and Division policy. It is important to understand that an illegal search will render any evidence found during the search inadmissible in court. Any officer who engages in an illegal search is subject to administrative discipline (including termination), civil liability, and/or criminal prosecution.

#### **II. POLICY**

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

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

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



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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.



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



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

### V. PROHIBITED ACTIONS

Newark Police Officers are prohibited from:

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



# NEWARK POLICE DIVISION GENERAL ORDER



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

## VI. SEARCHES WITH A WARRANT

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

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

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

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



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

### **VII. SEARCHES WITHOUT A WARRANT**

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

#### **A. Consent Searches**

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

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

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

The Newark Police Division requires that an officer seeking consent for a search affirmatively inform the consenting party of the right to refuse and to revoke consent at any time. The officer must use the Consent to Search form (DP1:1493-10M) 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.



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

If the officer is unable to capture interaction in a recording then the officer shall articulate, in writing or on camera, all the reasons why they were unable to record the event. The officer must also record this information when completing the required "Stop Report" (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.



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Types of consent searches include:

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

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

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

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

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





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## B. Exigent Circumstances

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

## C. Open View and Plain View Doctrines

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

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

## D. Protective Searches

- a. **Terry Frisk** – an officer must have reasonable and articulable suspicion that the person they lawfully stopped is in possession of a weapon and is a danger to him/herself or the public. This is usually conducted by the officer running their hands over the outermost garments of a subject in order to ensure the person is not in possession of anything that could be used as a weapon. During the course of the Terry Frisk, if an officer feels something that becomes immediately recognizable as a specific type of contraband, the officer may seize the contraband as evidence. An officer may also search any area where the subject has immediate control of and could produce a weapon.
- b. **Protective Sweeps** – Officers may conduct protective sweeps of an area for people, limited to places where a person can hide.
  - 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.



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

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

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

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

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



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

### E. Vehicle Searches

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

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

### F. Motor Vehicle Impoundment and Inventory

Officers may impound a motor vehicle under the following circumstances:

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



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

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

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

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

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

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

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



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

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

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

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

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

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

## **H. Custodial Search**

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



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

### **I. Probation and Parole Searches**

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

### **VIII. STRIP SEARCHES AND BODY CAVITY SEARCHES**

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

### **IX. SEARCHES OF ELECTRONIC DEVICES AND WIRETAPPING**

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

### **X. REPORTING REQUIREMENTS**

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



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- B.** Information for each person searched must be documented by completing a report into the “Stop Report” (DP1:1388) within the Newark Police Division Records Management System, and/or in the corresponding incident report, if one is applicable. **A separate record shall be generated for each person that was searched.** The entries shall be 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;



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

### **XI. SUPERVISOR RESPONSIBILITIES**

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

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

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

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

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





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**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.



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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.



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## XIII. TRAINING

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

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

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

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



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## 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 D



# NEWARK POLICE DIVISION GENERAL ORDER



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

**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**



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## I. PURPOSE

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

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

## II. POLICY

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

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

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

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

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



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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.





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- F. Demographic Category** - A shared common characteristic of a population, including but not limited to, age, race, ethnicity, national origin, gender, gender identity, language ability, disability, political belief, sexual orientation, immigration status, economic status, or housing status.
- G. 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.



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**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;



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



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## 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.



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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.



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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)).



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

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

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

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



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

## VI. REPORTING REQUIREMENTS

- A. Documentation of an interaction between a person and the police is **required when the person stopped does not feel free to leave**. Because a stopped person's perception should be considered in determining what must be reported, it is incumbent on the officer to make sure that people know that they are free to leave, or are being stopped / detained.
- B. Information for each person stopped must be documented by completing a "Stop Report" (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);





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

### **VII. SUPERVISOR RESPONSIBILITIES**

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

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

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



# 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.



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

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

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

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

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

## **VIII. ADMINISTRATIVE REVIEW**

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

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

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

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



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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.



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## **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**

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**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 E



# NEWARK POLICE DIVISION GENERAL ORDER



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

**Related policies:**

General Order 17-06 “Bias-Free Policing”

General Order 14-16 “Stationhouse Adjustments”

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

General Order 87-03 “Administrative Reporting Unusual Events”

This Order contains the following numbered Sections:

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



# NEWARK POLICE DIVISION GENERAL ORDER



## **XIII. SUPERVISOR RESPONSIBILITIES**

## **XIV. ADMINISTRATIVE REVIEW**

## **XV. TRAINING**

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

### **I. PURPOSE**

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

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

### **II. POLICY**

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

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

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





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

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

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

### III. RESPONSIBILITY FOR 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.



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

## V. PROHIBITED ACTIONS

Newark Police Officers are prohibited from:

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



# NEWARK POLICE DIVISION GENERAL ORDER



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

## VI. PROBABLE CAUSE

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

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



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



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

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

There is no "bright line" test to determine when an investigative stop becomes 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



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

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

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

## IX. ARRESTS WITHOUT AN ARREST WARRANT

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



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2. New Jersey strictly follows the common law of arrest that allows a police officer to effect a warrantless arrest upon probable cause that a crime has been or is being committed by the person being arrested.
  3. New Jersey law grants municipal police officers the authority to effect an arrest anywhere in the state for a crime that is committed in his or her presence. N.J.S.A. 40A:14-152.1 provides: "Notwithstanding the provisions of N.J.S.A. 40A:14-152 or any other law to the contrary, any full-time, permanently appointed municipal police officer shall have full power of arrest for any crime committed in said officer's presence and committed anywhere in the territorial limits of the State of New Jersey."
- B.** When dealing with disorderly persons and petty disorderly persons offenses, state statute (N.J.S.A. 2A:169-3) provides: "[w]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:



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

AND

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

## X. ENTRY OF STRUCTURE TO EFFECT AN ARREST

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

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

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

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

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

1. **Hot pursuit** - This means that an officer has probable cause to arrest a suspect and the pursuit of the fleeing felon (for an indictable offense) was set in motion in a public place.
2. **Threat to Public Safety** – This is a situation where officers have probable cause to arrest a Suspect because (a) the suspect is reasonably believed to be armed or dangerous, (b) the suspect is inside a structure, (c) the suspect has injured or threatened to injure themselves or others; and (d) the suspect has refused to surrender to authorities or is in the process of causing bodily harm to someone. (*Ryburn v. Huff*, 132 S.Ct. 987 (2012))
3. **Destruction of Evidence** – Officers are authorized to enter a structure to effect an arrest, absent any type of warrant, if there is a serious threat that incriminating evidence on the premises being





# 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;



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- reviewing the available video and written documentation of consent prior to approving an arrest based on evidence obtained via a consent search;
- For every search or arrest involving the recovery of contraband evidence, the arresting officer's Desk Lieutenant or Unit Commander will review the circumstances of the encounter, including video from body-worn cameras alongside the corresponding Incident Report (DP1:802), to assess the appropriateness of the seizure. The Supervisor will memorialize that review in writing and will include an assessment of the circumstances under which the search was conducted, the evidence was recovered and/or the probable cause for the arrest was ascertained.
- On an on-going basis, Supervisors will also review a random selection of video recordings of stops and detentions, searches and arrests amounting to a minimum of 10 percent of all stops and detentions, searches, and arrests.
- Upon reviewing videos of investigatory stops and detentions, searches, and arrests, Supervisors shall submit an administrative report (DP1:1001) filed under the event number for the corresponding video reviewed by the end of their tour of duty, listing:
  - The event number;
  - The name(s) of the officer(s) who recorded the video(s) and type of video they recorded (e.g. body worn camera video, in-car video, or both);
  - The reason for reviewing the video (e.g. random review, recovery of contraband, stop, search, detention, arrest, suspected non-compliance with NPD policy or law);
- approving or disapproving the officer's arrest recommendation, based on existence of justifiable probable cause and NPD policy; and
- taking appropriate actions to address violation or deficiencies in the officer's arrest recommendation, including:
  - releasing the subject;
  - recommending non-disciplinary corrective action for the involved officer; or
  - referring the incident for administrative or criminal investigation.

### C. Unit Commander

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



# 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 F. AMBROSE~~ PUBLIC SAFETY DIRECTOR

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. Darrell 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.



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## 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;



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

## B. 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 VLE.3, officers **shall not** attempt to download, or otherwise access any material contained within the device without a warrant.





# NEWARK POLICE DIVISION GENERAL ORDER



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

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

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



# NEWARK POLICE DIVISION GENERAL ORDER



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

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



# NEWARK POLICE DIVISION GENERAL ORDER



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

## VI. RESPONSIBILITIES OF THE FIELD SUPERVISOR

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



# NEWARK POLICE DIVISION GENERAL ORDER



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

ANTHONY F. AMBROSE  
PUBLIC SAFETY DIRECTOR

AFA:BO/lc

# Appendix G



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

The analysis report will highlight any significant disparities. It shall also contain graphs and/or charts with numerical values depicting the following comparisons for the current period, as well as a comparison to the cumulative data collected during the previous twelve months:

### A. Stops Analysis

1. Aggregate data of stops analysis
  - Pedestrian
    - Compute the number of pedestrian stops categorized by gender, age, and race.
    - Compare by command assigned, precinct and sector of occurrence, common police work shifts, and stop disposition.



# NEWARK POLICE DIVISION GENERAL ORDER



- Motor Vehicle
    - Compute the number of motor vehicle stops categorized by gender, age, and race.
    - Compare by command assigned, precinct and sector of occurrence, common police work shifts, and stop disposition.
  - 2. Aggregate data of protective pat down analysis
    - Compute the number of protective pat downs categorized by gender, age, and race.
    - Compare by command assigned, precinct and sector of occurrence, common police work shifts, and discovery of contraband.
  - 3. Reasonable suspicion to stop audit
    - Conducted under the guidance of U.S. Government Accountability Office, Generally Accepted Government Auditing Standards (2018 Revision) with a sample size obtained using the one-tail test with a 95 percent confidence level and error rate of five percent
  - 4. Reasonable suspicion to conduct protective pat down audit
    - Conducted under the guidance of U.S. Government Accountability Office, Generally Accepted Government Auditing Standards (2018 Revision) with a sample size obtained using the one-tail test with a 95 percent confidence level and error rate of five percent
- B. Searches Analysis
- 1. Aggregate data of searches analysis
    - Compute the number of searches categorized by gender, age, and race.
    - Compare by command assigned, precinct and sector of occurrence, common police work shifts, and discovery of contraband.
  - 2. Probable cause to search audit
    - Conducted under the guidance of U.S. Government Accountability Office, Generally Accepted Government Auditing Standards (2018 Revision) with a sample size obtained using the one-tail test with a 95 percent confidence level and error rate of five percent



# 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 H





# NEWARK POLICE DIVISION GENERAL ORDER



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

## I. PURPOSE

This purpose of this policy is to maintain public trust, enhance safety, and provide members with instructions on when and how to use body-worn cameras (BWCs) in order to record their interactions with the public. This technology will allow the Newark Police Division (NPD) to produce effective material for training and additional evidence of an incident. Within this policy, there are guidelines for the use, management and storage of video recordings.

## II. POLICY

The Newark Police Division will issue all sworn members a BWC regardless of rank. Uniformed members will be required to use the BWC during the performance of their duties. The Public Safety Director may authorize use of a BWC to members in plain clothes or assigned to a specialized unit.

NPD uniformed officers will record police-citizen contacts using BWCs in order to assist personnel in the performance of their duties, provide an unbiased recorded account of an incident, and hold officers along with members of the public accountable for their actions.

The NPD recognizes that recordings may not always illustrate the entire circumstance of police-citizen contact, nor do video recordings always capture the entire scenario. A BWC recording is only one piece of evidence, providing one perspective of the incident. This technology does not eliminate the requirement of officers, detectives and sergeants to provide written documentation of an incident.

Members shall activate and deactivate their BWC in accordance with Section IX, Procedure, of this policy. All images, video, metadata, and audio recordings captured or otherwise produced are the exclusive property of the NPD and subject to disclosure under the law.

## III. DEFINITIONS

1. **Activate** – Turn on the recording mode/function of a BWC.
2. **Deactivate** – Turn off the recording mode/function of a BWC.



# NEWARK POLICE DIVISION GENERAL ORDER



3. **Body-Worn Camera (BWC)** – Device worn by a law enforcement officer that makes an electronic audio and visual recording. The term does not include a mobile video recording device when mounted inside a police vehicle (i.e., dash cam). The term also does not include any other form of an electronic recording device worn by a law enforcement officer while acting in an undercover capacity, or electronic recording devices used to comply with the requirements of Rule 3:17 (electronic recording of station house custodial interrogations).
4. **Investigation of a Criminal Offense** – Any police activity pertaining to the investigation of an indictable crime, disorderly persons offense, or petty disorderly offense, including but not limited to responding to a report of a possible criminal offense; an investigative detention based on or leading to reasonable and articulable suspicion to believe that a criminal offense has been or is being committed; an arrest for a criminal offense; an interview of a potential witness to a criminal offense; or canvassing an area for potential witnesses to a criminal offense.
5. **Law Enforcement Agency, Agency or Department** – A law enforcement body operating under the authority of the laws of New Jersey.
6. **Law Enforcement Officer or Officer** – A sworn member employed by a Law Enforcement Agency.
7. **Tagging Video** - A notation or indicator placed on specific video that may raise special privacy or safety issues.

## IV. NOTIFICATION TO THE PUBLIC AND POLICY REVIEW

A written announcement regarding the implementation of the BWC program and which members will be mandated to use the BWC must be posted on the website, [www.newarkpdonline.org](http://www.newarkpdonline.org). In addition to the written announcement, the following information must be available on the website:

- BWC policy
- A picture of the BWC along with a picture showing where the BWC will be positioned on the member's uniform.
- Electronic survey regarding the BWC policy for community feedback (temporarily).

The online BWC community survey and the “comment” section of the policy will allow residents to express their opinions, concerns or recommendations with the deployment and policy governing the use of BWCs.

The Consent Decree and Planning Unit shall review this policy quarterly during the pilot phase and on an annual basis after full deployment.



# NEWARK POLICE DIVISION GENERAL ORDER



## V. AUTHORIZED USE

1. Only BWCs and storage servers that are issued and approved by the Division shall be used. All BWCs, related equipment, data, images, video, and metadata captured, recorded or otherwise produced are the sole property of the Newark Police Division.
2. No member shall wear or operate a BWC without receiving training on the proper care and use of the device.
3. Members working in an administrative, investigative, or plain clothes capacity shall not wear BWCs. Members assigned to uniformed patrol duty must use the BWC. The Public Safety Director, at his/her discretion, may direct members in plain clothes or assigned to a specialized unit to use a BWC.
4. Members shall only use the police division issued BWC.
5. Members assigned to a task force, team, or unit composed of officers from more than one law enforcement agency shall be authorized to use the BWC if the chief law enforcement officer overseeing the task force authorizes the use.
6. Members who are not issued a BWC may voluntarily request one by submitting an administrative report through the chain of command.

## VI. TRAINING

1. Members shall receive training on this policy and complete the BWC training course before using the BWC. This will ensure the BWC is used in accordance with policy.
2. The commander of the Training Division is responsible for scheduling BWC training for all newly hired officers during their in-service training. In addition, a curriculum shall be established to provide initial and bi-annual "refresher" training.

## VII. INSPECTION, MAINTENANCE and USE

1. BWC equipment is the responsibility of the assigned member and shall be used with reasonable care. An inspection of the BWC must be done at the commencement of each shift to ensure both video and audio recording capabilities are working. The inspection shall include, but not be limited to:
  - a. Ensuring the BWC is turned on;
  - b. Ensuring the battery is fully charged; and
  - c. Ensuring the lens is not obstructed in any manner.
2. The BWC must be affixed to the outermost garment in the middle of the torso. The magnet, clip and/or bracket must be used to secure the BWC in an upright, forward facing position in the center of the torso without any obstruction of view.
3. Malfunctioning BWCs shall be documented in an administrative report and the camera must be returned to the desk supervisor.
4. The desk supervisor is responsible for issuing a replacement camera to the member.



# NEWARK POLICE DIVISION GENERAL ORDER



5. The administrative report must indicate the issues, the BWC number and the replacement BWC number that was issued.
6. Reports shall be forwarded through the chain of command and sent to the Technology Division.
7. When a report is generated documenting criminal activity or a police action where the BWC captured video of the event, an indication must be typed at the end of the Incident Report, Field Interview Report, Continuation Report, Towed Vehicle Report, etc. The indication must state "BWC Recording".

## VIII. REPLACEMENT CAMERAS

1. The Technology Unit is responsible for coordinating with the BWC vendor for replacement or repair.
2. Replacement cameras will be distributed to each command by the Technology Division.

## IX. PROCEDURE

### A. Notice of Activation

1. When activation of a BWC is required, members shall notify the subject that the camera is recording at the earliest opportunity that is safe and feasible.
2. If it is not safe and/or feasible to notify the subject, the officer shall document the reason in their report or by narrating the reason on the BWC recording.
3. If a civilian inquires if an officer is equipped with a BWC or inquires if the device is activated, the member shall answer truthfully unless the Public Safety Director or the Chief of Police has expressly authorized a covert recording.

### B. Activation of BWC is Required

Members shall activate the BWC to record police-related interactions with citizens in the performance of their duties. Activation is required immediately upon receiving a dispatched assignment or the initiation of a police action. When activation is required upon entering any residence, members shall notify the subject(s) that the camera is recording at the earliest opportunity that is safe and feasible. The following circumstances require the BWC to be activated:

1. Motor vehicle stop, from the time the violation is observed until the stop is concluded, to include:
  - a. Car/truck inspection
  - b. Motor vehicle pursuit
  - c. Motor Vehicle Safety Checkpoint
  - d. Vehicle pursuit
2. Call for service (activate upon receipt of the assignment).
3. Aiding a motorist or a pedestrian (community caretaking check).



# NEWARK POLICE DIVISION GENERAL ORDER



4. Interviewing a witness or a victim in the course of investigating a criminal offense. Ensure the witness or victim is aware the BWC is activated.
5. Conducting a custodial interrogation of a suspect, unless the interrogation is otherwise
6. being recorded in accordance with N.J. Court Rule 3:17 (electronic recordation of station house interrogation). Making an arrest.
7. During a search (consensual or otherwise, including a protective frisk for weapons). The member must record the notification to the subject of the right to allow or refuse a consent to search.
8. Civil disorder, strike, picket line, demonstration or protest in circumstances where the member is engaged with or in the presence of civilians and the member or any other officer on the scene may be required to employ constructive authority or force.
9. Investigative detention/field interview (e.g., *Terry v. Ohio* criminal suspicion stop).
10. Pedestrian stop, which includes a stop that falls short of a *Terry* stop because the pedestrian is free to walk away, such as a “mere inquiry” (e.g. asking where someone is going).
11. Use of constructive authority or force, or reasonable belief that constructive authority may be used in an encounter or situation.
12. Transporting an arrestee to a police station, county jail, other place of confinement, hospital or other medical care/mental health facility. The BWC shall remain activated until the arrestee is secured in the holding cell, processing room or until the arrestee is with hospital/medical/mental health personnel. During a prisoner watch at the hospital, the BWC shall be reactivated when there is movement of the arrestee (e.g., moving to a different room, escort to the bathroom, etc.) or if the arrestee becomes verbally or physically aggressive.
13. When the member is involved in any police action/encounter where departmental policy requires a report and/or notation on a log sheet is required.
14. When responding to an active scene where knowing or reasonably believing that police deadly force has been or is being used, or to a scene where a member has requested emergency assistance (e.g., officer in distress, shots fired, etc.) While at the scene of a police deadly-force event or the on-scene investigation of that event the member shall not deactivate the BWC unless instructed to do so by the investigator that is investigating the deadly force incident.
15. In a school, healthcare facility or house of worship **only** when:
  - a. Investigating a criminal offense;
  - b. Responding to an emergency;
  - c. Reasonably believing constructive authority or force will be required.
  - d. Or as otherwise noted in section IX, B 12 of the policy (transporting arrestees).
16. In any situation where the member deems a recording to be necessary.

## **C. Continuous Operation of a BWC, Once Initiated.**

1. Except as stipulated in this policy, BWCs shall remain activated for the entire duration of each event/encounter, and shall not be deactivated until either the member(s) or all citizens have departed the scene.
2. When providing assistance or backup to another officer, all members responding to the scene are required to have their BWC activated until all citizens have departed or assistance is no longer required.



# NEWARK POLICE DIVISION GENERAL ORDER



## **D. Tagging**

To identify BWC recordings that may raise special, privacy or safety issues, members shall tag recordings by pressing the “1” button on the side of the BWC. This will place an indicator on the video when viewed/stored. Recordings containing any of the following shall be tagged:

1. Image of a victim of a criminal offense;
2. Image of a child;
3. Images in a residential premises (e.g., home, apartment, college dormitory room, hotel/motel room, etc.), a school or youth facility, healthcare facility or medical office, substance abuse or mental health treatment facility, or a place of worship.);
4. Conversation with a person whose request to deactivate the BWC was denied;
5. Non-investigatory Special operations event or execution of an arrest and/or search warrant where confidential tactical information may have been recorded;
6. Image of an undercover officer or confidential informant;
7. Screen of a law enforcement computer monitor that is displaying confidential personal or law enforcement sensitive information.

## **E. Activation of BWC is Prohibited**

1. BWCs shall be used only in conjunction with official law enforcement duties. Activating a BWC is prohibited, unless a law enforcement action is required, during the following:
  - When on break (e.g. meal, using a restroom, etc.) or not actively performing law enforcement duties.
  - For a personal purpose or when engaged in police union business.
  - During any form of disciplinary proceedings (e.g. counseling, police trial, inspections, evaluations, etc.) or any similar supervisory interaction.
  - In any location where there is a reasonable expectation of privacy (e.g., restroom, locker room, break room, etc.), unless enforcement action is required.
  - Courtroom proceedings, unless associated with a call for service or incident.

## **F. Deactivation of BWC**

If a member fails to activate the BWC when required, fails to record the entire event/contact, or interrupts the recording, the member shall document the reason in the applicable investigation and/or incident report. If an incident report is not required, that fact must be documented on an administrative report referencing the time, date, location and event number, if applicable.

In any instance where a BWC was deactivated, the device shall be reactivated as soon as it is safe and practical and when the circumstances justifying deactivation no longer exist.

1. Members may deactivate a BWC when a civilian conversing with the officer requests that the device be turned off under the circumstances where it reasonably appears that the person will not provide information or otherwise cooperate with the officer unless that request is respected.



# NEWARK POLICE DIVISION GENERAL ORDER



- a. Members shall not suggest to a person that the BWC should be deactivated or ask whether they would prefer the BWC be deactivated. The request for de-activation must be self-initiated by the civilian.
  - b. In deciding whether to deactivate the BWC, the member shall consider the privacy and safety interests of the person requesting deactivation, whether the encounter is occurring in the person's residence, and the need for the information or assistance that the person will provide is important to the investigation, yet is not critical to require recording.
  - c. If a civilian asks a member if they are equipped with a BWC or asks if the device is activated, the member shall answer truthfully unless the Public Safety Director has expressly authorized to make a covert recording.
2. When a member deactivates a BWC at the request of a civilian, the following procedures shall be followed:
    - Conversation requesting the deactivation shall be recorded.
    - Member shall narrate the circumstances of deactivation on the BWC prior to deactivating (e.g., "I am now turning off my BWC as per the victim's request").
    - Member shall report the circumstances concerning deactivation to their immediate supervisor.
    - Member shall document the circumstances of the deactivation in any investigation or report concerning the incident.
  3. If a member declines a request to deactivate a BWC, the reasons for declining the request (e.g. officer believes that it may be necessary to use constructive authority during encounter) must be narrated on the recording and shall be reported to the officer's immediate supervisor as soon as it is safe and practicable to do so.
  4. When declining a deactivation request, the member must immediately inform the person making the request of that decision. Members shall not mislead the person into believing that the BWC has been turned off unless a covert recording has been authorized by the Public Safety Director.
  5. Members shall deactivate a BWC when participating in any discussion of a criminal investigation strategy or plan except in circumstances where the strategy/plan is discussed in the immediate presence of a civilian, or where that the member wearing the BWC is actively engaged in the collection of physical evidence. Before a BWC is deactivated, the member must narrate the circumstances of the deactivation.
  6. Members must deactivate a BWC when a person, other than an arrestee, is seeking emergency medical services for him or herself or another and requests deactivation.
  7. Members shall deactivate a BWC when specifically authorized to do so by an assistant prosecutor or their assistant or deputy attorney general. Prior to deactivation, the member shall narrate, on the BWC, the circumstances for deactivation indicating the name of the person who authorized the deactivation.
  8. Members shall not use a BWC when in a school, healthcare facility, house of worship, or courtroom unless:
    - a. investigating a criminal offense;
    - b. responding to a call for service;
    - c. reasonably believing constructive authority or force will be required.



# NEWARK POLICE DIVISION GENERAL ORDER



In the event a BWC captures the image of a patient in a healthcare treatment facility, the member's immediate supervisor shall be notified and a notification to the BWC Administrator and the Public Safety Director shall be made to ensure compliance with all applicable federal laws and regulations that require the confidentiality of health care information, or that provide for the confidentiality of information for substance abuse treatment. The recording shall be tagged and a notation documenting the date, time, person notified and details of the notification shall be documented in the BWC record-keeping system. The recording shall not be accessed without the express approval of the Public Safety Director or designee. (Destruction of the recording is inappropriate until it is determined that exculpatory information was not captured.).

9. If the BWC radio-frequency interferes with an electronic alcohol breath testing device, the BWC shall be deactivated or removed from the area while the alcohol breath test device is being used. The member must narrate the reason for deactivation (e.g., "I am deactivating the BWC because the suspect is about to take a breath test."). The BWC must be reactivated once the test is complete.
10. Members shall deactivate when an arrestee is secured in the holding cell, processing room or in the care of the hospital/medical/mental healthcare personnel.
11. Members shall deactivate upon entering a police facility when transporting a victim or witness.
12. The BWC shall be deactivated when the member and all civilians have departed the scene.

## X. RESPONSIBILITIES

### A. Officer Responsibilities

1. Ensure the BWC issued during roll-call is the camera that was issued to you (refer to the serial number and division identification number).
2. Ensure that the BWC is operational and in good working order.
3. BWC must be positioned in the center of the torso, on the outermost garment.
4. Pair the BWC to the vehicle (refer to the BWC Training Manual).
5. Launch the Arbitrator Front-End Client and log-on. This will ensure all video recorded is associated with the officer.
6. Pair the BWC of the second officer, if applicable (refer to BWC Training Manual).  
**\*\*\*\*If an issue occurs with pairing or launching the Arbitrator Front-End Client,\*\*\*  
restart the mobile data computer. Repeat the steps.**
7. If the BWC does not pair to the emergency lights, the BWC must be activated independently from the in-car camera.
8. During vehicle inspection, activate the BWC and record all sides of the vehicle. Ensure video is categorized properly (vehicle inspection/test). This video footage does not replace reporting requirements when damage to a city vehicle is observed.
9. Activate, deactivate and tag video in accordance with this policy.
10. Ensure an event number is entered for each video (dispatched assignment or stop).
11. Categorize each video with all proper classifications from the "drop down" selection:
  - Vehicle Inspection/ Test (inspection of vehicle for damage at beginning of tour)





# NEWARK POLICE DIVISION GENERAL ORDER



- Call for service (no arrest)
  - Special Detail (protest, civil disturbance)
  - Traffic Matter (use of emergency light; non-call for service or stop)
    - e.g., activating lights to move a vehicle along.
  - Motor Vehicle Stop
  - Motor Vehicle Accident
  - Motor Vehicle Aid
  - Pedestrian Stop
  - Frisk or Search
  - Arrest
  - DB Investigation (follow-up investigation by a detective, statements, etc.)
  - Critical Incident (homicide, serious bodily injury, suspicious death, serious use of force)
  - Internal Affairs (**Office of Professional Standards use only**)
12. Ensure vehicles are parked within range of the wireless access point. This will allow in-car video to upload automatically.
13. Ensure you are logged-off from the Arbitrator Front-End Client, within the vehicle, upon completion of the tour of duty. This will not allow another user to record video with your credentials.
14. BWC must be docked in the charging station, in the “on” position, to upload video.
15. BWC must be docked, in the “on” position, and left in the charging station at the end of the tour. This will ensure:
- BWC has a fully charged battery for the commencement of the tour of duty.
  - All BWC video is uploaded to the server.
  - BWC receives the latest firmware update.
  - BWC is able to be serviced, if needed, in a timely fashion.
16. Ensure all video is of official police business.
17. If an issue occurs with the BWC, the member’s immediate supervisor must be notified to attempt to resolve the issue.
18. If the BWC requires service, notify the desk supervisor to email the Technology Division to have the camera repaired:  
The email must:
- Be addressed to [mis2@ci.newark.nj.us](mailto:mis2@ci.newark.nj.us), the member’s commanding officer, executive officer and principal clerk.
  - Indicate the member name, identification number, command and BWC serial number.
  - Indicate the problem/ malfunction.
  - Indicate the replacement BWC issued to the member, if applicable.



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19. If a BWC is in need of repair and a replacement camera is not immediately available, the member must submit an administrative report indicating they are without a BWC until the camera is serviced/repaired.
20. Refer to your immediate supervisor for any questions or concerns.

## **B. Supervisor Responsibilities**

1. Desk supervisor shall issue BWCs that are operational and in good working order to all trained on-duty personnel during roll-call.
2. Desk supervisors shall inspect personnel to ensure BWCs are positioned in the center of the torso, on the outermost garment.
3. Supervisors using a BWC shall activate, deactivate and tag video in accordance with this policy.
4. Field supervisors shall ensure members are all logged-on to the Arbitrator Front-End Client in the vehicle during field inspections and that the BWCs are positioned in the center of the torso on the outermost garment of all personnel.
5. Desk supervisors shall log-on to the Arbitrator Back-End Client, during their tour of duty from the precinct computer at the desk, to ensure officers/supervisors are properly logging-on to the Arbitrator Front-end Client and that video has:
  - An event number.
  - A proper classification from the “drop down” selection.
6. On a daily basis, the supervisors shall randomly select two videos of officers and/or the supervisor from their tour of duty, pertaining to Stops, Detentions and Searches. The supervisors shall review the Arbitrator Back-End Client “Main” page and view video to determine if the member complied with law and NPD policy. The “Main” page will provide a list of all uploaded video (body-worn and in-car video).
7. An email shall be sent to the commander, executive officer and principal clerk by the end of the tour of duty indicating:
  - The name of the member(s).
  - The date and period of time the audit of video was conducted.
  - List the videos, from the “Main” page selected (date, time, event#, etc.).
  - If the officer(s)/ supervisors are in compliance.
  - Actions taken to address any deficiency.
8. The desk supervisor shall ensure an email is sent to the Technology Division to have the camera repaired when notified of a malfunctioning BWC. The email must:
  - Be addressed to [mis2@ci.newark.nj.us](mailto:mis2@ci.newark.nj.us), the member’s commanding officer, executive officer and principal clerk.
  - Indicate the member name, identification number, command and BWC serial number.
  - Describe the problem/ malfunction.
  - Identify the replacement BWC issued to the officer, if applicable.
9. During normal business hours, the commanding officer must make a follow-up telephone call to the Technology Unit.



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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.



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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.



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4. Ensure the outcome of the audit/review of video is included in the monthly report.

## **H. Training Division**

1. Ensure all BWC training signature rosters are maintained at the division.

## **I. Advocate Unit**

1. Video must be provided to the collective bargaining entity, for each case, prior to the date of the hearing.

## **XI. DATA UPLOAD and FIRMWARE UPDATES**

1. Members using a BWC shall upload data by docking the device in the docking station at any command. The BWC shall be placed in the docking station, which will automatically upload data and charge the battery. All video shall be uploaded by the end of shift.
2. BWC firmware updates are distributed through the server. In order to receive the latest update, the BWC must be placed in the docking station. When the indicator on the BWC continuously flashes at the same time, an update is taking place.

## **XII. RETENTION OF BWC RECORDINGS**

The retention period for BWC recordings shall not be less than 90 days. The Technology Unit is responsible for coordinating with the BWC vendor to establish a retention and disposition schedule, in accordance with requirements set forth by the State of New Jersey. The following shall be subject to the following additional retention periods:

- When a BWC recording pertains to a criminal investigation or otherwise records information that may be subject to discovery in a prosecution, the recording shall be treated as evidence and shall be kept in accordance with the retention period for evidence in a criminal prosecution.
- When a BWC records an arrest that did not result in an ongoing prosecution, or records the use of police force, the recording shall be kept until the expiration of the statute of limitations for filing a civil complaint against the officer and/or agency. If a civil action relating to the incident depicted on the recording is filed the recording shall be maintained until the conclusion of the civil action. NPD personnel responsible for the disposal of video images shall contact the office of the Newark Corporation Counsel for guidance regarding the destruction of the video images.



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- When a BWC records an incident that is the subject of an internal affairs complaint, the recording shall be kept pending final resolution of the internal affairs investigation and any resulting administrative action.
- When a civilian who is the subject of the video makes a written request that footage be retained, the recording shall be kept until the expiration of the statute of limitations for filing a civil complaint against the officer and/or agency.

The following is list of video categories and their retention period:

- Vehicle Inspection/ Test – 90 days
- Call for service (no arrest) - 90 days
- Special Detail – 90 days
- Traffic Matter – 90 days
- Motor Vehicle Stop – 3 years
- Motor Vehicle Accident – 3 years
- Motor Vehicle Aid - 3 years
- Pedestrian Stop - 3 years
- Frisk or Search – 3 years
- Arrest - 7 years
- DB Investigation – 7 years
- Critical Incident (homicide, serious bodily injury, suspicious death, serious use of force) - Indefinite
- Internal Affairs - Indefinite

### **XIII. ACCESS TO, DISSEMINATION OF BWC RECORDINGS AND RELATED RESTRICTIONS**

Viewing of BWC events is strictly limited to authorized employees of this Division. Viewing by any other person is prohibited unless authorized by the Public Safety Director. No law enforcement officer or civilian employee of this Division shall access, view, copy, disseminate or otherwise use a BWC recording except for an official purpose. Access to and use of a BWC recording is permitted only in the following situations:

1. When relevant to and in furtherance of a criminal investigation or prosecution.
2. When relevant to and in furtherance of an internal affairs investigation which shall include an investigation of any use of force.
3. When relevant to and in furtherance of a management review process to identify circumstances indicating possible police misconduct or to determine the existence of a pattern of possible misconduct.
4. To assist the member whose BWC made a recording to prepare his or her own police report, except as delineated in number 16 of this section.



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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



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such disclosure is expressly approved by the Public Safety Director.

18. A BWC recording tagged pursuant to Section IX, Subsection D, of this policy shall not be accessed, viewed, copied, disseminated, or otherwise used without the express permission of the Public Safety Director, in accordance with the Attorney General directive.

## **XIV. DATA CONTROL AND MANAGEMENT**

**Members shall not erase or in any other manner alter, tamper with, destroy, or conceal BWC recordings, and shall not alter, remove, obstruct or disable any camera. Any such tampering is a violation of NJSA 2C:28-7, and is a 4<sup>th</sup> degree crime. In addition, members may also be subject to internal discipline.**

1. Data uploaded from BWCs will be stored on storage servers located at 480 Clinton Avenue, or any other secure storage location ordered by the Public Safety Director. Accessing, copying, releasing, tampering with, destroying video and transmitting files for non-law enforcement purposes is strictly prohibited.
2. Events captured on BWCs shall not be released to other law enforcement entities other than the Essex County Prosecutor's Office, the New Jersey Division of Criminal Justice or U.S. Department of Justice without the express permission of the Public Safety Director.
3. The commander of the Technology Division shall manage the integrity and storage of all BWC recordings. The commander shall prevent unauthorized access to all BWC recordings and must establish and maintain rules within the system to document the following information:
  - a. Date and time of access;
  - b. Specific BWC recordings that were accessed;
  - c. Member who accessed the stored BWC recording;
  - d. Person who approved access, where applicable;
  - e. Reason(s) for access, specifying the purpose or purposes for access and the relevant case/investigation number, where applicable;
  - f. Groups of NPD members with specific user privileges.
  - g. A BWC recording that has been "tagged" for special privacy or safety issues, Section IX, Subsection D, shall not be accessed, viewed, copied, disseminated or otherwise used without first obtaining the permission of the Public Safety Director or County Prosecutor.





# NEWARK POLICE DIVISION GENERAL ORDER



## XV. REFERENCES

1. Bureau Justice of Assistance National Body Worn Camera Tool Kit.  
U.S. Department of Justice C.O.P.S./ Police Executive Research Forum “Implementing a Body-Worn Camera Program, Recommendations and Lessons Learned” report.

BY ORDER OF

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

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ANTHONY F. AMBROSE  
PUBLIC SAFETY DIRECTOR

AA/BO:jn

# Appendix I



**DEPARTMENT OF PUBLIC SAFETY  
MEMORANDUM**



**TO: POLICE DIVISION**

**DATE: June 05, 2018**

**FROM: ANTHONY F. AMBROSE  
PUBLIC SAFETY DIRECTOR**

**NUMBER: 18-322  
TICKLER: 18-447**

**SUBJECT: IN-CAR CAMERAS  
RE: GENERAL ORDER 18-06**

**FILE REF: PUB 4  
x PTL 1**

General Order 18-06, In-Car Cameras, has been created to serve as the Newark Police Division's policy governing the use of in-car cameras. This order establishes a uniform procedure for activation, deactivation, tagging and management of video.

Prior to use, members will receive an eight-hour training course. The training course will consist of a classroom session covering policy and hands-on training for the use of the in-car camera.

All commanders shall sign a copy of this directive. The signed copy shall be forwarded to the Office of the Public Safety Director no later than June 22, 2018.

**By order of:**

**Anthony F. Ambrose  
Public Safety Director**

AFA/BO dd

Rank	Name	ID#	Command	Date
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# NEWARK POLICE DIVISION GENERAL ORDER



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

**I. PURPOSE**

This policy establishes uniform procedures for the Newark Police Division’s (Division) in-car camera system and provides members with instructions on when and how to use an in-car camera. Implementation of this technology will allow the Division to maintain public trust, enhance officer safety, and provide an unbiased recorded account of an incident. Within this policy, there are guidelines for the use, management, and storage of video recordings.

**II. POLICY**

It is the policy of the Newark Police Division to equip all marked patrol vehicles with an in-car video system. Members assigned a marked patrol unit with an in-car camera will make every effort to record traffic stops, pursuits, searches and police-citizen contacts.

**III. DEFINITIONS**

- A. **Activate** – Turn on the record mode/function of the in-car camera.
- B. **Deactivate** – Turn off the record mode/function of the in-car camera.
- C. **In-Car Camera** - Camera mounted in either the front or rear compartments of the vehicle. The camera mounted in the front compartment will face forward capturing the view from the front of the vehicle. The camera mounted in the rear will capture the rear passenger compartment.
- D. **Wireless Access Point** – A networking hardware device that allows a wireless internet device to connect to a wired network. This device will be mounted in a specifically designated area at each precinct.

**IV. TRAINING**

- A. The commander of the Training Division is responsible for scheduling in-car camera training for all newly hired officers during their in-service training. In addition, a curriculum shall be established to provide “refresher” training at least every five years or more frequently if there are material changes to the in-car camera technology.



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- 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](mailto:mis2@ci.newark.nj.us), the member's commanding officer, executive officer and principal clerk.



# NEWARK POLICE DIVISION GENERAL ORDER



- Indicate the officer name, identification number, command and vehicle number.
  - Indicate the problem/malfunction.
3. During normal business hours, a follow-up telephone call must be made by the commanding officer to the Technology Unit.
  4. The desk supervisor must issue the member another vehicle with a working in-car camera, if available.

## VII. RESPONSIBILITY

### A. Officer Responsibilities

The member shall:

1. Conduct an inspection of the in-car camera and related equipment in the marked patrol unit during the vehicle inspection.
2. Pair the body-worn camera to the vehicle.  
**\*\*\*If the in-car camera does not pair with the BWC, activation of the in-car cameras must be done independently\*\*\***
3. Launch the Arbitrator Front-End Client and log on. This launch will ensure that the video is associated with the member that is logged on.
4. Activate and deactivate the in-car camera in accordance with this policy.
5. Ensure that an event number is entered for each video (dispatched assignment or police action).
6. Categorize each video with the proper classification from the "drop down" selection:
  - Vehicle Inspection/Test;
  - Call for service (no arrest);
  - Special Detail (protest, civil disturbance)
  - Traffic Matter (use of emergency lights; non-call for service or stop)
    - Activating lights to move a vehicle along
  - Motor Vehicle Stop;
  - Motor Vehicle Accident;
  - Motor Vehicle Aid;
  - Pedestrian Stop;
  - Frisk or Search;
  - Arrest;
  - DB Investigation;
  - Critical Incident (homicide, serious bodily injury, suspicious death, serious use of force); and
  - Internal Affairs (**Office of Professional Standards use only**).
7. Ensure vehicles are parked within range of the wireless access point (refer to the wireless signal strength indicator on the mobile data computer to determine if the vehicle is within range). This parking location will allow in-car video to upload automatically.



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8. Log off from the Arbitrator Front-End Client, within the vehicle, upon completion of the tour of duty. This log off will prevent other users from recording video with other members' credentials.

## **B. Supervisor Responsibilities**

1. Desk supervisors shall log on to the Arbitrator Back-End Client, during their tour of duty, from the precinct computer at the desk to verify if officers video has:
  - An assigned event number.
  - Classifications from the "drop down" selection.
2. On a daily basis, supervisors shall randomly select two videos of officers and/or the supervisor from their tour of duty pertaining to Stops, Searches and Detentions. Supervisors shall review the Arbitrator Back-End Client "Main" page and view video to determine if the members complied with law and NPD policy. The "Main" page will provide a list of all uploaded video (body-worn and in-car video).
3. Before the end of each tour of duty, the desk supervisor shall send an email to the commander, executive officer and principal clerk indicating:
  - The name of the member(s).
  - The date and period of time the audit of video was conducted.
  - List the videos, from the "Main" page selected (date, time, event number, etc.)
  - If the member(s) were in compliance.
  - Actions taken to address deficiency/ recommendation for retraining.
4. When the desk supervisor learns that an in-car camera is not working, that desk supervisor must send an email to the Technology Unit. The email must:
  - Be addressed to [mis2@ci.newark.nj.us](mailto:mis2@ci.newark.nj.us), the member's commanding officer, executive officer and principal clerk.
  - Indicate the officer name, identification number, command, and vehicle number.
  - Indicate the problem/malfunction.
5. During normal business hours, the commanding officer must make a follow-up telephone call to the Technology Unit.
6. Supervisors will review investigatory stops and detentions, searches, and arrests for completeness and adherence to law and NPD policy. Supervisors will:
  - Review all written documentation;
  - Review all relevant video recordings for all incidents in which the supervisor suspects, for any reason, that an officer's conduct may not have complied with law or NPD policy; and
  - On an ongoing basis, review a random selection of video recordings of stops and detentions, searches, and arrests amounting to at least 10 percent of all stops and detentions, searches and arrests.



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7. For every search or arrest involving the recovery of contraband evidence, the desk supervisor will review the circumstances of the encounter, including BWC video, to assess the adequacy of the seizure.
8. Field supervisors shall ensure that members are logged on to the Arbitrator Front End-Client during the field inspections.
9. Field supervisors shall initiate an Investigation of Personnel (IOP) when damage is observed to the camera/related equipment or when a report of damage is received.
10. Upon reviewing report and video for investigatory stops and detentions, searches and arrests, supervisors shall submit an administrative report for each event reviewed, by the end of their tour of duty, listing:
  - An event number for each event viewed when prompted in RMS (e.g., P18012345)
  - Name(s) of the officer(s) for each event reviewed.
  - Type of video reviewed (body camera video, in-car video, or both).
  - Reason for reviewing video (recovery of contraband, stop, search, detention, arrest, suspected non-compliance with policy or law).

## **C. Command Responsibility**

1. Commanders shall ensure that all members comply with the mandates within this policy.
2. Commanders shall coordinate to schedule members for retraining based on the assessment of the desk supervisor.
3. Commanders shall contact the Technology Unit when an email is received regarding a malfunctioning in-car camera.

## **D. Technology Unit**

1. Provide all personnel a username and password for the Arbitrator software.
2. Setup and maintain an Active Directory list to ensure user privileges are granted to each member.
3. Ensure newly hired, promoted, or separated personnel are added, deleted, or adjusted accordingly within the Active Directory.
4. Maintain a database of vehicles equipped with an in-car camera and the history of any repair or replacement to the camera.
5. Upon receiving a notification of a malfunctioning in-car camera, an on-site assessment is required to determine the issue. In addition, an assessment shall be made of any issue with recording or uploading of video.
6. On a weekly basis, conduct an overall assessment of video upload in the Back-End Client and coordinate with the vendor to address any issue.
7. Coordinate with the vendor to have cameras repaired or replaced.
8. Retrain members in the use of the in-car camera, BWC and Arbitrator software.





# 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 4<sup>th</sup> degree crime, and members may be subject to internal discipline.

- A. Data uploaded from in-car cameras will be stored on servers located at 480 Clinton Avenue, or any other secure storage location ordered by the Police Director.
- B. Events captured on in-car cameras shall not be released to other law enforcement entities other than the Essex County Prosecutor's Office, New Jersey Division of Criminal Justice or U.S. Department of Justice without the expressed permission of the of the Public Safety Director.
- C. The Technology Unit shall prevent unauthorized access to in-car video recordings and must establish and maintain rules within the system to document:
  - Identity of member who is accessing video;
  - Date and time of access;
  - Specific in-car video that was accessed;
  - Groups of NPD members with specific user privileges.

**BY ORDER OF:**

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**ANTHONY F. AMBROSE  
PUBLIC SAFETY DIRECTOR**

AFA/BO:dd

# Appendix J

Appendix XX: List of All Events

List of All Events	
Count	Event Number
1	P22233777
2	P22354959
3	P22372169
4	P22385415
5	P22411432
6	P22417830
7	P22437252
8	P22437252-A
9	P22440197
10	P22440217
11	P22440217-A
12	P22440217-B
13	P22440965
14	P22442329
15	P22442792
16	P22442804
17	P22443497
18	P22443497-A
19	P22444150
20	P22444717
21	P22444717-A
22	P22445316
23	P22445414
24	P22445503
25	P22445595
26	P22445926-A
27	P22445926-B
28	P22446020
29	P22446269
30	P22446587
31	P22446618
32	P22447329
33	P22449221
34	P22449789-A
35	P22451008



36	P22451381
37	P22451797
38	P22452434
39	P22452583
40	P22452626-A
41	P22452626-B
42	P22452732
43	P22453003-A
44	P22453003-B
45	P22453290
46	P22454365
47	P22454564
48	P22454787
49	P22454902
50	P22455077
51	P22455318
52	P22455965
53	P22457100
54	P22457100-2
55	P22457100-3
56	P22457344
57	P22457809
58	P22458472
59	P22458641
60	P22460152
61	P22460286
62	P22460363
63	P22460583
64	P22460794
65	P22460794-2
66	P22460834
67	P22461310
68	P22461563
69	P22462182
70	P22462298
71	P22462298-2
72	P22462298-3
73	P22462736
74	P22463079

75	P22463111
76	P22463262
77	P22463686
78	P22463710
79	P22463839
80	P22464252
81	P22464930
82	P22465565
83	P22465770
84	P22466684
85	P22468060
86	P22468142
87	P22468878
88	P22469369
89	P22469369-2
90	P22469823
91	P22469888-A
92	P22469888-B
93	P22469888-C
94	P22469888-D
95	P22471830
96	P22471830-2
97	P22473318
98	P22473318-2
99	P22475225-A
100	P22475225-B
101	P22475540
102	P22475798
103	P22475798-2
104	P22475871
105	P22475871-2
106	P22476495
107	P22476547
108	P22477766
109	P22478198
110	P22478443-A
111	P22478443-B
112	P22478712
113	P22479299

114	P22480086-A
115	P22480086-B
116	P22480086-C
117	P22480086-D
118	P22480970
119	P22481036
120	P22481122
121	P22481656
122	P22481676
123	P22482438
124	P22482453
125	P22482473
126	P22482473-2
127	P22482825
128	P22482884
129	P22483581-A
130	P22483581-B
131	P22483581-C
132	P22483581-D
133	P22483876-A
134	P22483876-B
135	P22484064
136	P22484178
137	P22484301
138	P22485945
139	P22485945-2
140	P22486077
141	P22486085
142	P22487281
143	P22487483
144	P22488047
145	P22488594
146	P22489075
147	P22489201
148	P22489684
149	P22489684-2
150	P22489684-3
151	P22489952
152	P22490294

153	P22490803
154	P22491848
155	P22492939
156	P22493256
157	P22493282
158	P22493335
159	P22493490
160	P22493513
161	P22493802
162	P22494232
163	P22495119
164	P22496314
165	P22496716
166	P22496727
167	P22496727-2
168	P22497274
169	P22497274-2
170	P22497990
171	P22500762
172	P22501505
173	P22501505-2
174	P22501918
175	P22502326
176	P22502326-2
177	P22502326-3
178	P22502787
179	P22502880
180	P22502930
181	P22503088
182	P22503536
183	P22503727
184	P22503979
185	P22504232
186	P22504232-2
187	P22504266
188	P22505424
189	P22505424-2
190	P22506178
191	P22506670

192	P22507601
193	P22507616
194	P22508347
195	P22508937
196	P22509073
197	P22509073-2
198	P22509352
199	P22511170
200	P22511705
201	P22512490-A
202	P22512490-B
203	P22512758
204	P22512794
205	P22513071
206	P22513073
207	P22514534
208	P22514593
209	P22514962
210	P22514962-2
211	P22515074
212	P22516363
213	P22516603
214	P22517787
215	P22518360
216	P22518360-2
217	P22518360-3
218	P22518625
219	P22518808
220	P22519202
221	P22519246-A
222	P22519246-B
223	P22519246-C
224	P22519318
225	P22519494
226	P22519494-2
227	P22520128-A
228	P22520128-B
229	P22520128-C
230	P22520810

231	P22521978-A
232	P22521978-B
233	P22521978-C
234	P22521978-D
235	P22521978-E

# Appendix K

Appendix XX: List of Events Removed & Added to Sample

Second Search Audit: List of Events Removed from the Sample			
Count	Event Number	SME(s)	Reason(s)
1	P22449789-B	DG	During audit session, SMEs determined that this search was directly related to the execution of a search warrant.
2	P22483871	IMT	Removed prior to on-site review, known search warrant under investigation.
3	P22500735	IMT	Removed prior to on-site review, known search warrant under investigation.
4	P22500735	IMT	Removed prior to on-site review, known search warrant under investigation.

Second Search Audit: List of Events Added to the Sample			
Count	Event Number	SME(s)	Reason(s)
1	P22437252-A	DG	Additional search identified during review of event by SME
2	P22440217-A	DG	Additional search identified during review of event by SME
3	P22440217-B	DG	Additional search identified during review of event by SME
4	P22443497-A	DG	Additional search identified during review of event by SME
5	P22444717-A	DG	Additional search identified during review of event by SME
6	P22453003-B	DG	Additional search identified during review of event by SME
7	P22457100-2	SK	Additional search identified during review of event by SME
8	P22457100-3	SK	Additional search identified during review of event by SME
9	P22460794-2	SK	Additional search identified during review of event by SME
10	P22462298-2	SK	Additional search identified during review of event by SME
11	P22462298-3	SK	Additional search identified during review of event by SME
12	P22469369-2	SK	Additional search identified during review of event by SME
13	P22469888-D	SK	Additional search identified during review of event by SME
14	P22471830-2	SK	Additional search identified during review of event by SME
15	P22473318-2	SK	Additional search identified during review of event by SME
16	P22475798-2	SK	Additional search identified during review of event by SME
17	P22475871-2	SK	Additional search identified during review of event by SME
18	P22480086-C	SK	Additional search identified during review of event by SME
19	P22480086-D	SK	Additional search identified during review of event by SME
20	P22482473-2	SK	Additional search identified during review of event by SME



21	P22483581-D	SK	Additional search identified during review of event by SME
22	P22485945-2	SK	Additional search identified during review of event by SME
23	P22489684-2	SK	Additional search identified during review of event by SME
24	P22489684-3	SK	Additional search identified during review of event by SME
25	P22496727-2	RN	Additional search identified during review of event by SME
26	P22497274-2	RN	Additional search identified during review of event by SME
27	P22501505-2	RN	Additional search identified during review of event by SME
28	P22502326-3	RN	Additional search identified during review of event by SME
29	P22504232-2	RN	Additional search identified during review of event by SME
30	P22505424-2	RN	Additional search identified during review of event by SME
31	P22514962-2	RN	Additional search identified during review of event by SME
32	P22518360-3	RN	Additional search identified during review of event by SME
33	P22519494-2	SK	Additional search identified during review of event by SME
34	P22520128-B	DG	Additional search identified during review of event by SME
35	P22520128-C	DG	Additional search identified during review of event by SME
36	P22521978-B	DG	Additional search identified during review of event by SME
37	P22521978-C	DG	Additional search identified during review of event by SME
38	P22521978-D	DG	Additional search identified during review of event by SME
39	P22521978-E	DG	Additional search identified during review of event by SME

# Appendix L

Appendix XX: List of Non-Compliant Substantive Events

Second Search Audit: List of Non-Compliant Substantive Events		
Count	Event Number	Explanation
1	P22457809	No reasonable suspicion for PPD of second and third suspects.
2	P22466684	Search warrant required for recovery of gun box and ammunition (exigent circumstances no longer existed).
3	P22493282	No search was conducted (prior to arrival at MAPS).
4	P22493513	No search was conducted (prior to arrival at MAPS).
5	P22494232	No search was conducted (prior to arrival at MAPS).

6	P22502930	BWC provided does not support that a PPD occurred, as indicated on written documentation.
7	P22512794	No search was conducted (prior to arrival at MAPS).

# Appendix M

Appendix XX: List of Non-Compliant Documentation Events

Second Search Audit: List of Non-Compliant Documentation Events		
Count	Event Number	Explanation
1	P22233777	Reports do not match BWC and/or ICC video (no search was conducted).
2	P22354959	Reports do not match BWC and/or ICC video (PPD conducted but not documented).
3	P22417830	Reports do not match BWC and/or ICC video (no search was conducted).
4	P22440217-A	Reports do not match BWC and/or ICC video (search occurred but was not documented).
5	P22443497	Relevant BWC and/or ICC present at time of audit session.
6	P22443497-A	Relevant BWC and/or ICC present at time of audit session
7	P22444150	Reports do not match BWC and/or ICC video (no PPD was conducted).
8	P22444717-A	No stop report present at time of audit session.
9	P22446020	Reports do not match BWC and/or ICC video.
10	P22446269	No articulated reasonable suspicion for PPD.
11	P22452626-B	Reports do not match BWC and/or ICC video (likely due to use of “copy and paste” function).
12	P22453003-B	Relevant BWC and/or ICC present at time of audit session. Reporting inconsistencies due to use of “copy and paste” function.
13	P22477766	Consent not documented in writing or via BWC.
14	P22480970	Consent not documented in writing or via BWC.
15	P22496727-2	Stop report not present at time of audit session.
16	P22501505-2	Stop report does not match BWC and/or ICC video (reporting officer was not working when incident occurred).
17	P22514962-2	Stop report (for second subject) not present at time of audit session.
18	P22520128-B	Reporting inconsistencies due to use of “copy and paste” function.
19	P22520128-C	Reports do not match BWC and/or ICC video (search of subject not documented in stop report).
20	P22521978-B	No articulated reasonable suspicion for PPD.

21	P22521978-C	Stop report not present at time of audit session.
22	P22521978-D	Stop report not present at time of audit session.
23	P22521978-E	Stop report not present at time of audit session.

# Appendix N



Appendix XX: List of Non-Compliant Substantive & Documentation Events

Second Search Audit: List of Non-Compliant & Documentation Events		
Count	Event Number	Explanation
1	P22446618	No reasonable suspicion for PPD.
2	P22463710	Reports do not match BWC and/or ICC video (no search was conducted).
3	P22480086-D	Reports do not match BWC and/or ICC video (search of third subject not documented on any reports provided).

**Report of the Independent Monitor's First Audit of the City of Newark and Newark  
Police Division's Bias-Free Policing**

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This report presents the findings of the Independent Monitor Peter C. Harvey, regarding the Independent Monitoring Team’s *first* Audit of the City of Newark’s (the “City”) and Newark Police Division’s (“NPD”) compliance with Consent Decree requirements relating to Bias-Free Policing.

## I. Reviewers

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

Brandon del Pozo, Ph.D., MPA, MA., Assistant Professor of Medicine and Health Services, Policy, and Practice, Brown University

Emily Schwartz, J.D., Senior Counsel, Criminal Justice Reform Program, New Jersey Institute for Social Justice

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 Monitor Peter C. Harvey, to audit the City’s and NPD’s compliance with Consent Decree reforms. The Monitor is assisted in this task by the Independent Monitoring Team (the “Monitoring Team”). 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”), by letter on December 1, 2021, and by Addendum letter on December 14, 2022, that the Monitoring Team would begin its first audit of NPD’s compliance with certain provisions of the Consent Decree relating to Bias-Free Policing, including Section VII (specifically, Paragraphs 63 through 65). See **Appendix A** (*First Bias Audit 45-day Letter* dated December 1, 2021) and **Appendix B** (*First Bias Audit 45-Day Letter Addendum* dated December 14, 2022).

The above-referenced paragraphs of the May 2016 Consent Decree require NPD to:

- Provide all officers with a minimum of eight hours of comprehensive and interdisciplinary training on bias-free policing, including implicit bias, procedural justice, and police legitimacy, by July 1, 2017, and at least four hours annually thereafter. Such training must emphasize that discriminatory policing, in the form of either selective enforcement or non-enforcement of the law, including the selection or rejection of particular policing tactics or strategies, is prohibited by policy and will subject officers to discipline. In addition, the training must address:
  - a. Methods and strategies for more effective policing which rely upon nondiscriminatory factors;
  - b. The differences and similarities between police and community perspectives related to discriminatory policing;

- c. Constitutional and other legal requirements related to equal protection and unlawful discrimination, including the requirements of [the Consent Decree];
  - d. The protection of civil rights as a central part of the police mission and as essential to effective policing;
  - e. The impact of arbitrary classifications, stereotyping, and implicit bias;
  - f. Instruction in the data collection protocols required by [the Consent Decree];
  - g. Identification of key decision points where prohibited discrimination can take affect at both the incident and strategic-planning levels; and
  - h. Methods, strategies, and techniques to reduce misunderstanding, conflict, and complaints due to perceived bias or discrimination, including problem-oriented policing strategies. (Paragraph 63)
- 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 must also prohibit officers from using proxies for demographic category, including language ability, geographic location, mode of transportation, or manner of dress. (Paragraph 64)
  - 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 must 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. (Paragraph 65)

### III. Review Period

In this Audit, the Monitoring Team reviewed NPD’s police activities and records for a three-month period, specifically, from July 1, 2022 to September 30, 2022 (the “Audit Period”).

On December 14, 2022, the Monitoring Team provided NPD with notice of its intent to conduct this Audit. *See Appendix B* (Addendum to 45-day letter, dated December 14, 2022).

#### IV. Executive Summary

This report contains the results of the Monitoring Team’s *first* audit of NPD’s Bias-Free Policing practices.<sup>1</sup> The Monitoring Team analyzed whether: (1) NPD’s policies governing these practices contained the Consent Decree-required provisions (as listed above); and (2) NPD’s personnel demonstrated routine adherence to NPD’s own Bias-Free Policing policy in their day-to-day operations, described here as “Overall Compliance.”

Regarding the *first* component of this Audit—NPD’s policies and procedures regarding Bias-Free Policing—the Monitoring Team previously approved NPD’s General Order 17-06, *Bias-Free Policing*, dated June 19, 2017 (see **Appendix C**). Additional policies referenced for this review included, but are not limited to, General Order 18-05 *Body-Worn Cameras*, dated October 22, 2019, and General Order 18-06 *In-Car Cameras*, dated June 5, 2018. (see **Appendix D** and **Appendix E**).

For the *second* component of this Audit—whether NPD had demonstrated routine adherence to its Bias-Free Policing policy, thereby achieving “Overall Compliance”—the Monitoring Team considered whether NPD officers: (a) acted within the relevant legal and Bias-Free Policing policy-related parameters when carrying out vehicle and pedestrian stops, 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 event was deficient, either substantively or with respect to documentation, that event was deemed “Non-Compliant.”

The Monitoring Team utilized a 95% compliance standard for this Audit. NPD achieved “Overall Compliance” if it satisfied both substantive and documentation compliance for 95% of the events in the sample reviewed by the Monitoring Team.<sup>2</sup>

When separated by substantive and documentation compliance, the audit revealed that NPD attained a score of 88.8% for substantive compliance (158 out of 178 events assessed for substantive compliance were determined to be compliant). NPD’s documentation compliance score was 91.0% (162 out of 178 events assessed for documentation compliance were determined to be compliant). Thus, when assessing for Overall Compliance, (*i.e.*, satisfaction of both substantive and documentation requirements), the Monitoring Team found that 82.0% of the events reviewed by the Monitoring Team achieved Overall Compliance. In other words, 146 out of 178 events reviewed by the Monitoring Team were compliant both substantively and with regard to documentation.

The table below presents an overview of NPD’s compliance in the Monitoring Team’s *First* Audit of Bias-Free Policing Practices.

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<sup>1</sup> NPD defines the term “*Bias-Based Policing*” as the differential treatment of any person by members motivated by the specific characteristics, perceived or actual, of that person (See **Appendix C** NPD GO 17-06 Bias-Free Policing).

<sup>2</sup> By separately assessing NPD’s substantive compliance and documentation compliance, the Monitoring Team affords NPD the ability to more easily identify areas in which it may focus its resources to address deficiencies, if any, in its Bias-Free Policing practices.

<b>Overview of First Bias-Free Policing Audit Results</b>		
<b>Audit Subject</b>	<b>Consent Decree Paragraph(s)</b>	<b>Compliance</b>
<b>Bias-Free Policing and Related Policies</b>	Paragraphs 63-65	Yes. <i>See Appendix C</i>
<b>Substantive Compliance</b> <i>Whether the responsible NPD officer(s) adhered to NPD policy in their bias-free policing practices and that the event was within legal and policy-related parameters.</i>	Paragraphs 63-65	No. (88.8%)
<b>Documentation Compliance</b> <i>Whether the responsible NPD officer(s) adhered to NPD policy by demonstrating that <b>all</b> reporting and related narrative requirements were met as determined by NPD policy and the Consent Decree.</i>	Paragraphs 63-65	No. (91.0%)
<b>Overall Compliance</b> <i>Whether NPD demonstrated compliance in its Bias-Free Policing practices (Substantive and Documentation).</i>	Paragraphs 63-65	No. (82.0%)

## **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 Bias-Free Policing Policy and Related Policies**

The Consent Decree requires NPD to implement policies directing officers to adhere to certain procedures in their bias-free policing practices. Prior to this Audit, the Monitoring Team reviewed and approved NPD's Bias-Free Policing policy, as specified in

General Order 17-06, *Bias-Free Policing*, dated September 19, 2017 (see **Appendix C**), as well as related written directives, and related In-Service Training Bulletins.<sup>3</sup>

Before approving these policies, the Monitoring Team conducted a formal review to determine whether the policies contained each requirement relevant to Bias-Free Policing 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 G**: Crosswalk).

## **B. Compliance: Substantive, Documentation, and Overall**

The Monitoring Team initially generated a random sample of 200 events from the Audit Period to analyze for this Audit. This random sample was drawn from a total population of 4,325 events during the Audit Period. The Monitoring Team removed 22 events from the sample of 200 events because they did not meet the objectives for this Audit (see **Appendix I** for a list of events removed). The final Audit sample accordingly contained 178 events in the following three (3) categories: (1) suspicious persons without a weapon; (2) motor vehicle violation stops; and (3) pedestrian stops. These three types of events all have the following in common: the stop is generated by a discretionary assessment of reasonable suspicion (or reasonable suspicion satisfying a higher legal standard) made by the officer himself or herself (rather than supplied by some other person) and they hinge on a discretionary judgement of the level of severity of the violation in a particular circumstance and the accompanying need to take action. In these circumstances, the officers also have two levels of discretion: to make the stop in the first place, and to take an enforcement action or not (see **Appendix H** for the complete list of events).<sup>4</sup> Thus, these are the class of events most likely to leave civilians vulnerable to the impression that the discretionary decisions made by officers could have been motivated by bias. Accordingly, the procedures specified by the NPD under these circumstances are meant to provide civilians with information and related assurances (e.g., a brief stop for a well-articulated reason) that minimize the likelihood of such a perception.

An event was deemed to be in “Overall Compliance”, only when the NPD officer was compliant with regard to both *substantive* and *documentation* requirements for the event assessed. Accordingly, if an officer’s actions relevant to that event were substantively non-compliant, or non-compliant with respect to documentation, or both, that event was deemed “Non-Compliant.”

To assess Substantive Compliance for each event, the Monitoring Team evaluated whether officers emphasized brief, courteous, transparently-conducted pedestrian and vehicle stops (while accounting for considerations of public safety, officer, safety, and any corresponding exigent circumstances). Accordingly, there are six non-discretionary requirements; however, not every requirement applies to all situations (see **Appendix B** Addendum to 45-day letter).

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<sup>3</sup> NPD’s General Order 18-05 *Body-Worn Camera* policy (see **Appendix D**) and General Order 18-06 *In-Car Camera* policy (see **Appendix E**) are also relevant to this audit.

<sup>4</sup> The Monitoring Team also requested all internal and/or external bias complaints for the period of January 2022 through September 2022. While eight (8) complaints were identified, the Monitoring Team only received information on three (3) of these. The five (5) remaining are currently under review by Internal Affairs and were unable to be provided for Monitoring Team review in this audit.



The Monitoring Team evaluated the actions of all officers appearing on body-worn or in-car camera video. If the substantive assessment in its entirety was determined to be deficient, the event was assessed to be “substantively non-compliant.”

For events involving multiple officers, the Monitoring Team analyzed the actions of every officer involved in the event and/or on the scene during the event. An event was deemed compliant only if *every* officer involved complied both substantively and with respect to documentation, or at least one of the officers did so and others did not contravene or contradict their actions (*e.g.*, they observed a stop conducted by a primary officer in relative silence or partially complemented the statements and actions of the primary officer). A failure by any officer involved in an event resulted in non-compliance

To assess Documentation Compliance for each event, the Monitoring Team inspected the relevant materials to determine whether *all* written relevant documentation was completed according to NPD policy, and, when applicable, BWC and ICC was available in its entirety.

### *1. Substantive Compliance*

In assessing substantive compliance for each event, the Monitoring Team reviewed officer body-worn camera and/or in-car video footage as well as related reports captured during the Audit Period to determine whether officers followed the procedure outlined in General Order 17-06 *Bias-Free Policing*, Section IV (3) (b-g), referred to as “Objective Two” of the Policy. Accordingly, there are six non-discretionary requirements listed below. The Monitoring Team did not assign any particular order of priority to these requirements in its assessment.

- A. The officer must introduce himself or herself to the civilian (providing name and agency affiliation), and state the reason for the stop as soon as practical, unless providing this information will compromise officer or public safety (G.O 17-06 Section IV(3)(b));
- B. On vehicle stops, the officer shall provide this information (described above and in Section IV, sub 3(b)) before asking the driver for his or her license, registration, or insurance. The officer must not ask the driver if they know why they are being stopped (G.O 17-06 Section IV(3)(c));
- C. The officer must ensure that a detention is no longer than necessary to take appropriate action for the known or suspected offense and that the civilian understands the reason for any delays (G.O 17-06 Section IV(3)(d));
- D. The officer must answer any questions the civilian may have, including explaining options for traffic summons dispositions, if relevant (G.O. 17-06 Section IV(3)(e));
- E. The officer must provide his or her name and badge number when requested, in writing or on a business card (if authorized) (G.O. 17-06 Section IV(3)(f)); and

- F. The officer must apologize and/or explain if he or she determines that the reasonable suspicion was unfounded (e.g., after an investigatory stop) (G. O. 17-06 Section IV(3)(g)).

For an event to be deemed compliant, all applicable requirements for the event must be satisfied, unless there was an exigent circumstance, with the following exception: if an officer was in full uniform with their last name and the agency patch clearly displayed in a manner that is visible to the typical person, the incident was not deemed non-compliant if the only relevant omission was a failure to provide name and agency affiliation. Events lacking legal or constitutional sufficiency (as assessed by the Monitoring Team) were deemed “substantively non-compliant.”

In total, 158 of the 178 (88.8%) events reviewed were substantively compliant.

Events Reviewed	Number of Substantively Compliant Events	Score
178	158	88.8%

Below is a summary of the 20 events that were determined to be non-compliant because of substantive deficiencies, and the relevant circumstances surrounding each event.<sup>5</sup>

Summary of Substantive Non-Compliant Events	
Event Number	Relevant Non-Discretionary Factors
P22270370	Factors (A), (B) Failure to introduce and disclose reason for stop in a timely manner.
P22275994	Factor (A) Failure to disclose reason for the stop.
P22277602	Factors (A), (B) Failure to introduce and disclose reason for stop in a timely manner.
P22289318	Factors (A), (B), (D) Failure to introduce; Failure for asking civilian to provide knowledge of the reason for the stop; Failure to answer all relevant questions asked by civilian.
P22308579	Factors (A), (B) Failure to disclose reason for stop.
P22322805	Factor (B) Failure to disclose reason for stop in a timely manner.
P22333137	Factors (A), (B), (C), (F) Failure to introduce; Failure to disclose reason for stop; Failure to ensure detention did not take longer than necessary and; Failure to apologize for unfounded reasonable suspicion.
P22335612	Factors (A), (B) Failure to disclose reason for stop in a timely manner.
P22343148	Factors (A), (B) Failure to introduce and failure to disclose reason for stop in a timely manner.

<sup>5</sup> As indicated by the asterisks, four (4) of the 20 events were non-compliant due to both substantive and documentation deficiencies. See **Appendix J** for the list of events that were both substantive and documentation non-compliant.

<b>Summary of Substantive Non-Compliant Events</b>	
<b>Event Number</b>	<b>Relevant Non-Discretionary Factors</b>
P22357085	Factors (A), (B) Failure to introduce and failure to disclose reason for stop in a timely manner.
P22360427	Factors (A), (B) Failure to introduce and failure to disclose reason for stop in a timely manner.
P22365647	Factors (A), (C) Failure to introduce and failure to ensure detention did not take longer than necessary.
P22371624	Factors (A), (B) Failure to introduce; Failure to disclose reason for stop in a timely manner; Failure for asking civilian to provide knowledge of the reason for the stop.
P22375529	Factors (A), (B), (D) Failure to introduce; Failure to disclose reason for stop; Failure to answer civilian questions.
P22382373	Factors (A), (B), (D) Failure to introduce; Failure to disclose reason for stop; Failure to answer civilian questions.
P22347258	Factors (B), (D) Failure to provide reason for the stop; Failure to answer civilian questions.
P22283324*	Factors (A), (B), MISSING BWC Failure to introduce, failure to disclose reason for stop
P22289073*	Factors (A), (B), MISSING BWC Failure to introduce, failure to disclose reason for stop
P22301982*	Factors (A), (B), MISSING BWC Failure to introduce, failure to disclose reason for stop
P22305432*	Factors (A), (B), MISSING BWC Failure to introduce, failure to disclose reason for stop <sup>6</sup>

## 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 91.0%. In 162 of the 178 events reviewed, the responsible officer(s) completed documentation reporting requirements according to NPD policy.

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<sup>6</sup> In this incident the officer neglected to turn off his BWC. Subsequent footage showed that he then approached a teen/young person with no justification and conducted a frisk with no explanation.

Events Reviewed	Number of Documentation Compliant Events	Score
178	162	91.0%

Of the 16 non-compliant events reviewed by the Monitoring Team for documentation compliance, 12 were non-compliant due *only* to documentation-related deficiencies.<sup>7</sup>

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

Summary of Documentation Non-Compliant Events	
Event Number	Circumstances
P22217619	MISSING BWC
P22281842	MISSING BWC
P22296139	MISSING BWC
P22297129	MISSING BWC
P22299513	MISSING BWC
P22317707	MISSING BWC
P22333266	MISSING BWC
P22335211	MISSING BWC
P22346494	MISSING BWC
P22361046	MISSING BWC
P22363391	MISSING BWC
P22367440	MISSING BWC

### 3. Overall Compliance

NPD achieved a “Overall Compliance” score of 82.0%. In total, 146 of the 178 events reviewed by the Monitoring Team were compliant both substantively and in terms of documentation.

Events Reviewed	Number of Overall Compliant Events	Score
178	146	82.0%

### 4. Racial Demographics and Compliance

Of the 178 incidents reviewed, 61% of the subject citizens were identified by the reporting officer as Black, 19.7% were identified as Hispanic or Latino, and 14.6% were identified as white.

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<sup>7</sup> The four (4) events that were non-compliant due to both substantive and documentation deficiencies are included in the Substantive Non-Compliance chart only. For a list of these four (4) events that failed both substantive and documentation compliance, see **Appendix J**.

<b>Total Sample by Subject's Race</b>	
<b>Race</b>	<b>Percentage (n=178)</b>
Black	61.2%
Hispanic or Latino	19.7%
Middle Eastern	0.6%
Other	3.9%
White	14.6%
Total	100.0%

The total number of non-compliant incidents, including both substantive and documentation failures, were 32 incidents. Of those incidents 78.1% involved Black subjects, as identified by the officer writing the report.

<b>Total Non-Compliant Events by Subject's Race</b>	
<b>Race</b>	<b>Percentage (n=32)</b>
Black	78.1%
Hispanic or Latino	9.4%
Middle Eastern	0.0%
Other	3.1%
White	9.4%
Total	100.0%

Given the comparatively small number of noncompliant incidents, which indicates even small changes in the distribution of outcomes by race would introduce significant variance in the results, the IMT reserves comment regarding trends or patterns based on race drawn from this data. This data therefore relates the prevalence of racial demographics among the overall study sample and the resulting noncompliant incidents without drawing conclusions about the reasons for the observed variance.

## **VII. Observations and Recommendations**

The Monitoring Team made the following principal observations and corresponding recommendations during this Audit:

Although the NPD did not pass this Audit at the required 95% threshold, the uniformed officers observed were, in most cases, courteous, respectful, and offered information and explanations in ways that would give pedestrians and motorists little cause to plausibly believe the encounter was motivated by bias. It was clear in the majority of cases—including many noncompliant ones—those officers understood the relevant procedural requirements. They also understand the need to provide pedestrians and motorists information about the encounter both to justify it and to conclude it as quickly as possible. Barring situations where the nature and pace of the incident precluded compliance with procedure for reasons of safety or exigency, there is no cause to believe officers were unaware of the need to follow specific NPD procedures in the conduct of stops, ones that intend to ensure people understand officers were being impartial in their enforcement of the law. In most cases, they did so.

This courtesy extended to arrest encounters, including domestic violence incidents. The majority of officers were sympathetic and impartial, while taking care to explain rules, procedures and options to victims, witnesses, and suspects.<sup>8</sup>

That said, there were several cases where civilians would have had cause to wonder if they were selected for a stop by uniformed officers for an arbitrary reason, or possibly owing to bias. The following observations are noteworthy:

1. **Observation:** Some officers began encounters speaking rapidly, rushing to provide their information and the reason for the stop. The pace was too fast to understand any substantive information. Auditors had to watch multiple times to see and hear what was being said. Given the difficulty the auditors experienced, it is clear civilians were equally, if not more, unsure of what transpired, especially since they would not have had the opportunity to rewind and review body-worn camera footage. Although this deficiency was not a basis for a conclusion of noncompliance, speaking clearly and slowly will reassure the public that they are treated with respect and that they understand why a police stop has occurred.
  - **Recommendation:** Administer training, such as a brief module at roll calls, reviewing what information should be conveyed during a stop (vehicle and pedestrian) and the need to convey this information slowly and clearly so there can be no doubt that the average person could easily understand what an officer is saying.
2. **Observation:** Some officers who were the lead on a stop took the extra step of identifying their partner and other officers on scene at interaction. The officers who did so consistently conveyed a calm, confident professionalism and openness that reduced the risk of a civilian perceiving possible bias.

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<sup>8</sup> The auditors were not provided with sufficient data to draw any conclusions about the performance of plainclothes officers, however, for whom no body-worn camera footage was provided for the incidents included in our sample, as discussed below.

- **Recommendation:** Encourage this same practice among officers. While it is not required by procedure, where it happened, the interactions were often quicker and civilians more accommodating.
3. **Observation:** Several events reviewed involved officers' interactions with civilians who did not speak English. The NPD is commended for having a diverse department where officers were able to speak the civilian's language confidently and with ease. In some instances, however, to overcome the language barrier, officers spoke English louder, more slowly, and repeated their statements. This accomplishes little. Civilians who cannot understand what the police are saying cannot be assured that the enforcement taken against them is free of bias and may instead believe they were subject to enforcement because they are non-English speakers.
- **Recommendation:** NPD must develop a clear policy for best practices when officers encounter a language barrier. It will ensure all civilians have the same level of understanding when they encounter police and will serve to enhance trust between law enforcement and the community they serve. The Monitoring Team is aware that there are language and translation resources available to NPD officers. The Monitoring Team recommends that NPD officers receive additional training to increase the awareness and use of these resources. It is the expectation of the Monitoring Team that NPD officers will adhere to the policy regardless of language barriers.
4. **Observation:** During car stops, some officers neglected to tell the civilian why they were being pulled over.
- **Recommendation:** Officers should always state the reason for the stop, even if it seems obvious, or if the motorist spontaneously supplies it. Stops in which officers quickly and clearly supplied reasons were more likely to be shorter and conclude with fewer challenges by the motorist.
5. **Observation:** A large portion of the car stops observed were premised on the car having tinted windows. While that is a lawful basis, the Monitoring Team wishes to highlight some concerns. Use of tinted windows is widespread in Newark. Accordingly, if there is any readily-observable violation that can be used as a pretext to stop a vehicle of interest that is not exhibiting facially dangerous driving behavior or evidence of a crime or other more serious violation, it would be tinted windows. The public is aware of this, and so stops for tinted windows always come with the risk of a motorist perceiving the stop was based on a bias-motivated pretext.
- **Recommendation:** NPD should examine the frequency of tinted windows as a basis for car stops, since "tint" stops border on pretext stops in practice (in the way the other equipment violations may as

well) and, therefore, leave the NPD open to perceptions of bias on the part of motorists stopped for tint. This is especially the case since tint laws vary in the NPD's tristate area and beyond (unlike nearly all other equipment rules), which may cause motorists to feel that being one of the motorists stopped in New Jersey is arbitrary, or for pretexts stemming from bias.<sup>9</sup> Officers should consider using greater discretion in the issuance of tickets for a "tint" violation. In some cases, these auditors observed up to six tickets issued for various aspects of the same tint violation, all of which were lawfully issued and in accordance with procedure in a technical sense, but may seem redundant or excessive, especially if the goal is to alter driver behavior rather than generate revenue or severely punish for a minor violation.

6. **Observation:** Plainclothes officers consistently fail to activate their body cameras in a timely manner. Because of this failure the Monitoring Team could not analyze a single plainclothes encounter from its beginning, except for one that was incidentally captured because it began on the tail of another for which body cameras had been belatedly activated (and that was found to be noncompliant). The fact that the Monitoring Team did observe the tail end of several plainclothes encounters when uniformed officers arrived on the scene with activated BWCs, and the inability of the NPD to locate the corresponding initial BWC footage of plainclothes officers, implies recurring noncompliance with BWC policies on the part of plainclothes officers. For this reason, nearly all such encounters were marked noncompliant from a procedural standpoint.
  - o The consistent lack of BWC activation among plainclothes officers leaves the officers of the NPD vulnerable to a widespread inference of bias. It is important to note that plainclothes officers have an advantage over uniformed officers that makes timely activation especially feasible in most cases. Since they are not readily identifiable as police, and since they engage in proactive police officers work based on their assessments and discretion, plainclothes officers overwhelmingly pick the times and places of their encounters, including the specific moment of initiation. In these cases, which constitute most plainclothes work, plainclothes officers can assuredly activate their camera once they have decided to engage with a person and begin their initial approach. In the case of sudden, unplanned observations of crimes in progress or wanted suspects that require and emergency intervention, a delay of a few seconds may be foreseeable, as noted when uniformed officers operate

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<sup>9</sup> New Jersey statutes as they relate to tints: N.J.S.A. 39:3-74 (West 2022) (Windshield must be unobstructed); N.J.S.A. 39:3-75 (Safety glass—requirement that the safety glass not have material causing “undue or unsafe distortion of visibility” and includes language as to the glass being “discolored”); N.J.S.A. 39:3-75.3 (failure to provide medical card authorizing tinted glass). New York statutes are permissive of tints: NY VTL § 375 (12-a)(b). 75 Pa.CSW § 4524 (Pennsylvania follows a similar framework as New York).



under the same circumstances. The two-minute video lag function of the BWCs was designed to account for such exigencies, but our Audit revealed in all cases the initial encounter happened before the lag function recorded it, suggesting a significant and deliberate delay in body camera activation.

- **Recommendation:** Plainclothes officers *must* turn on their cameras before engaging with civilians in compliance with NPD policy.

\*\*\*\*\*

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: September 22, 2023

Peter C. Harvey, Independent Monitor

# **APPENDIX A**

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December 1, 2021

**VIA EMAIL**

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**Re: First Bias-Free Policing Audit: 45-Day Notice**

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

Pursuant to Consent Decree Paragraphs 173 and 180, I write to provide notice that, starting no sooner than 45 days from the date of this letter, the Monitoring Team will conduct its first audit of the City of Newark’s (the “City”) Newark Police Division’s (“NPD”) compliance with certain paragraphs of the Consent Decree relating to Bias-Free Policing (specifically, ¶¶ 63-65). This audit will cover the period from July 1, 2021 up to and including November 30, 2021 (the “Audit Period”).

This first audit of NPD’s Bias-Free Policing practices will be conducted by the following Monitoring Team Subject Matter Experts:

- Brooke Lewis, Associate Counsel, New Jersey Institute for Social Justice
- Brandon del Pozo, PhD, MPA, MA.

## I. SCOPE

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

Paragraph 173 of the Consent Decree requires the Monitor to “conduct reviews and audits as necessary to determine whether the City and NPD have implemented and continue to comply with the requirements” of the Consent Decree. The Monitoring Team must assess whether the City and NPD have “implemented the [Bias-Free Policing] requirements into practice.” (See Consent Decree ¶ 173.)

The Independent Monitoring Team will audit NPD’s compliance with Paragraphs 63 through 65 of Section VII of the Consent Decree, titled, “Bias-Free Policing.” Section VII requires, among other things, that “NPD will deliver services that are equitable, respectful, and free of unlawful bias, in a manner that promotes broad community engagement and confidence in the Division.” Section VII further requires that NPD “operate without bias based on any demographic category and in accordance with the rights, privileges, or immunities secured and protected by the Constitution and laws of the United States.”

## II. METHODOLOGY

### **Paragraph 63**

Paragraph 63 requires NPD to “provide all officers with a minimum of eight hours of comprehensive and interdisciplinary training on bias-free policing, including implicit bias, procedural justice, and police legitimacy.” Furthermore, NPD’s Bias-Free Policing training must address the following:

- methods and strategies for more effective policing which rely upon nondiscriminatory factors (Paragraph 63(a))
- the differences and similarities between police and community perspectives related to discriminatory policing (Paragraph 63(b));
- constitutional and other legal requirements related to equal protection and unlawful discrimination, including the requirements of this Agreement (Paragraph 63(c));
- the protection of civil rights as a central part of the police mission and as essential to effective policing (Paragraph 63(d));
- the impact of arbitrary classifications, stereotyping, and implicit bias (Paragraph 63(e));
- instruction in the data collection protocols required by this Agreement (Paragraph 63(f));
- identification of key decision points where prohibited discrimination can take effect at both the incident and strategic-planning levels (Paragraph 63(g)); and

- methods, strategies, and techniques to reduce misunderstanding, conflict, and complaints due to perceived bias or discrimination, including problem-oriented policing strategies (Paragraph 63(h)).

To assess compliance with Consent Decree Paragraph 63, the Monitoring Team will determine whether NPD's Bias-Free Policing training provides officers with "comprehensive and interdisciplinary training on bias-free policing, including implicit bias, procedural justice, and police legitimacy," including whether it addresses each of the requirements in subsections (a)-(h). The Monitoring Team will review NPD's Bias-Free policing materials, including (1) training objectives, (2) instructor guidelines, (3) instructor information, (4) teaching materials (*e.g.*, PowerPoint presentation, curricula, lesson plans *etc.*) and (5) testing materials to determine whether NPD's training meets the requirements in subsections (a)-(h). NPD will be compliant with Consent Decree Paragraph 63 if its training includes **all** requirements set forth in subsections (a)-(h), and if the training has been administered to all officers in accordance.<sup>1</sup>

#### **Paragraph 64**

Paragraph 64 requires that NPD "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 also is required to prohibit officers from using proxies for demographic category, including language ability, geographic location, mode of transportation, or manner of dress.

Pursuant to Paragraph 64, NPD created General Order 17-06, *Bias-Free Policing*, that was approved by the Monitor and the United States Department of Justice and subsequently put into effect on June 19, 2017. The General Order contains three main provisions or objectives that are responsive to the requirements of Consent Decree Paragraph 64: (1) prohibiting officers from engaging in bias-based conduct; (2) requiring officers to mitigate the perception of biased policing by following certain procedures when interacting with the public; and (3) requiring supervisors to review and respond to allegations of biased policing. The Monitoring Team will assess compliance with these three provisions or *Objectives* to assess compliance with Paragraph 64.

To assess compliance with Paragraph 64, the Monitoring Team will retrieve, inspect and analyze body-worn camera and/or in-car camera footage, as well as related reports (*e.g.*, Stop Reports (form DP1:1388)) for the following types of events occurring during the Audit Period: (1) Suspicious Persons Without a Weapon; (2) Motor Vehicle Violation Stops; and

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<sup>1</sup> The Monitoring Team's *Third* Training Records audit determined that NPD has successfully administered Bias-Free Policing training to its officers.

(3) Individual Stops. The Monitoring Team will draw random, cross-sectional samples from these event categories, and will utilize these samples to assess NPD's compliance with each of the three objectives as follows.

For *Objective One*, the Monitoring Team will review officer body-worn camera and/or in-car video footage as well as related reports captured during the Audit Period to determine whether officers did not "consider an individual's specific characteristics when engaging in enforcement activities or delivering police services," except when an individual's characteristics are instrumentally relevant to the event under review as part of a detailed "Be On the Lookout" description or similar description of a person of interest, pursuant to General Order 17-06, *Bias-Free Policing*, Section IV (2).

If 95% of the sample reviewed shows that NPD did not consider an individual's specific characteristics when engaging in enforcement activities or delivering police services, except when an individual's characteristics are part of a detailed "Be on the Lookout" description as provided in Paragraph 64, then the Monitoring Team will find the NPD's practices to be in compliance with Objective One of NPD's General Order 17-06 for the Audit Period.

For *Objective Two*, the Monitoring Team will review officer body-worn camera and/or in-car video footage as well as related reports captured during the Audit Period and make a series of binary (*i.e.*, yes/no) determinations to conclude whether officers followed the procedures outlined in General Order 17-06, *Bias-Free Policing*, Section IV (3) (b-g). Specifically, the section requires an officer to do all of the following:

- Introduce himself or herself to the citizen (providing name and agency affiliation), and state the reason for the stop as soon as practical, unless providing this information will compromise officer or public safety (Section IV(3)(b));
- On vehicle stops, the officer shall provide this information (described above in Section IV, sub. 3(b)) before asking the driver for his or her license, registration, or insurance. Do not ask the driver if they know why they are being stopped (Section IV(3)(c));
- Ensure that a detention is no longer than necessary to take appropriate action for the known or suspected offense and that the citizen understands the reason for any delays (Section IV(3)(d));
- Answer any questions the citizen may have, including explaining options for traffic summons dispositions, if relevant (Section IV(3)(e));
- Provide his or her name and badge number when requested, in writing or on a business card (if authorized) (Section IV(3)(f)); and
- Apologize and/or explain if he or she determines that the reasonable suspicion was unfounded (*e.g.*, after an investigatory stop) (Section IV(3)(g)).

If 95% of the sample reviewed was compliant with each of the relevant requirements outlined in Section IV (3) (b-g), the Monitoring Team will find that NPD's practices are in compliance with Objective Two of NPD's General Order for the Audit Period.

For *Objective Three*, the Monitoring Team will review all complaints of biased-based policing (both externally and internally initiated) recorded during the audit period with the corresponding complaint entry and other relevant documentation submitted by the investigating Supervisor, as required by General Order 17-06, *Bias-Free Policing*, Section V.

If 95% of the complaints reviewed show that Supervisors properly documented each complaint and the steps taken to investigate and address the complaint, and that these steps taken were in compliance with the NPD's relevant investigative procedures, then the Monitoring Team will find that NPD practices are in compliance with Objective Three of the Policy for the Audit Period.

If NPD achieves a 95% compliance rate in *each* of these three Policy Objectives, then the Monitoring Team will find that NPD's practices are in compliance with Consent Decree Paragraph 64 for the Audit Period.

### **Paragraph 65**

Paragraph 65 requires that NPD "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 as set forth in Section VI.F of the Consent Decree, "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 must be made publicly available.

If NPD produces to the Monitoring Team demographic analyses that it conducted pursuant to Consent Paragraph 65, and the Monitoring Team determines that the analyses (i) meets the requirements set forth in General Order 17-06, *Bias-Free Policing*, Section VIII, and (ii) that the analyses has been made publicly available, then NPD will be found in compliance.

### III. REQUIRED DATA

In preparation for the audit, at least two (2) weeks prior to the start of the audit, and no later than December 31, 2021, the Monitoring Team requires that NPD provide it with the following data and records for the Audit Period:

- A. NPD's cumulative and quarterly demographic analyses pursuant to Consent Decree paragraph 65, and evidence of any official actions taken as a result of the

determinations of these analyses. NPD should also provide the Monitoring Team with the location where its analyses have been made publicly available;

- B. A separate list of incident numbers and corresponding dates of occurrence for all (1) Suspicious Persons Without a Weapon; (2) Motor Vehicle Violation Stops; and (3) Individual Stops during the Audit Period. For each category, the universe of incidents generated will be used by the Monitoring Team to construct a random sample for auditing purposes that balances the feasibility of conducting the audit in a timely and efficient manner with the thorough analysis of a statistically robust sample. Upon the identification of these samples, that should be described by incident number, the NPD also should provide the Monitoring Team with all associated body-worn and car camera footage and reports for the incidents contained in the samples. The Monitoring Team will provide adequate time for the NPD to collect and provide the information required by the samples once they have been constructed;
- C. All training materials developed and used in connection with NPD's Bias-Free Policing training, including: (1) training objectives, (2) instructor guidelines, (3) instructor information, (4) teaching materials (*e.g.*, PowerPoint presentation, curricula, lesson plans etc.) and (5) testing materials for all didactic instruction rendered in fulfillment of the requirements outlined in Consent Decree Paragraph 63.

With respect to the aforementioned data and records request, NPD should indicate in writing what data and/or records requests cannot be fully satisfied, either in part or in their entirety. In instances where the request cannot be fully satisfied, NPD should provide an explanation as to why it cannot fully respond to the request and whether, or not, the request can be fulfilled, including the time period needed to comply with the request, if necessary.

One week after receiving the requested information, the Monitoring Team will provide the City and NPD with the incident numbers of those events that it seeks to review. All reports, body-worn camera video and in-car 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



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

Best regards,

/s/ Peter C. Harvey  
Peter C. Harvey

cc:

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# **APPENDIX B**

December 14, 2022

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**Re: First Bias Audit 45-Day Letter Addendum**

Dear Parties:

On May 3, 2022 the City of Newark sent an e-mail to the Independent Monitoring Team (“IMT”) requesting a postponement of the Bias Audit, and indicating that the City was not in a position to start the Bias Audit at that time. As a result, the Monitoring Team did not conduct the audit during its originally scheduled timeframe of [DATE].

The IMT is now preparing to conduct the First Bias Audit. Due to the extended period of the postponement the IMT decided that a new audit sample and period was required. The new audit period is July 1, 2022 through September 30, 2022. The audit will take place on November 28, 2022 at Newark Police Division Headquarters. The reviewers for the IMT will be Brandon del Pozo and Emily Schwartz.

The IMT will require the following information for this audit:

- **Required Data**

- The IMT will review police actions relating to the following categories:
  - ◆ Suspicious Persons Without a Weapon
  - ◆ Motor Vehicle Violation Stops
  - ◆ Individual Stops
  - ◆ All internal or external Bias Complaints (for the period January 2022 through September 30, 2022)
- NPD must provide an *EXCEL* file listing all of these categories of events that occurred during the audit period. The IMT requests these events be color coded (as in the previously provided bias audit data). The list will serve as the population for this audit. We will sample accordingly after we review the included data and provide this sample back to NPD.

- **Required Documentation**

- Once a sample has been selected, the IMT requires all BWC/ICC to be retained and made available for each event as well as all associated stop reports, or other relevant documentation.
- The IMT also requires all complaints of biased policing (whether initiated internally or externally) recorded during the audit period with the corresponding complaint entry and other relevant documentation submitted during the investigation from between January 1, 2022, through September 30, 2022.

The IMT understands that the Department has not received, or initiated any Bias Complaints against personnel. IMT will, however, review eight (8) citizen complaints for events that have been classified by NPD's Office of Professional Standards as Differential Treatment. The IMT recognizes that NPD does not categorize these as "bias" incidents, as a determination of bias is made only after a full investigation. The IMT takes no position as to whether these differential treatment complaints are in fact "bias," but will consider the differential treatment complaints in determining compliance.

Prior to the postponement, the Parties held two preaudit meetings on March 9, 2022 and March 16, 2022 regarding the methodology of the Audit. The Audit will assess whether NPD is in substantial compliance with General Order 17-06, *Bias-Free Policing*, Section IV (3) (b-g). This section, referred to as “Objective Two” of the Policy, provides specific procedures officers must follow when carrying out vehicle and pedestrian stops. By emphasizing brief, courteous, transparently-conducted stops (while accounting for considerations of public safety, officer safety, and any corresponding exigent circumstances), these procedures serve to mitigate the possibility of citizens perceiving bias during their interactions with law enforcement and limit an officer’s discretion in ways that prevent disparate treatment during the course of pedestrian and vehicle stops. Accordingly, there are six non-discretionary requirements:

1. The officer must introduce himself or herself to the citizen (providing name and agency affiliation), and state the reason for the stop as soon as practical, unless providing this information will compromise officer or public safety (Section IV(3)(b));
2. On vehicle stops, the officer shall provide this information (described above and in Section IV, sub. 3(b)) before asking the driver for his or her license, registration, or insurance. The officer must not ask the driver if they know why they are being stopped (Section IV(3)(c));
3. The officer must ensure that a detention is no longer than necessary to take appropriate action for the known or suspected offense and that the citizen understands the reason for any delays (Section IV(3)(d));
4. The officer must answer any questions the citizen may have, including explaining options for traffic summons dispositions, if relevant (Section IV(3)(e));
5. The officer must provide his or her name and badge number when requested, in writing or on a business card (if authorized) (Section IV(3)(f)); and
6. The officer must apologize and/or explain if he or she determines that the reasonable suspicion was unfounded (*e.g.*, after an investigatory stop) (Section IV(3)(g)).

Based on the plain language of Section IV (3) (b-g), not every requirement applies to all situations. For example, Question (2) applies only to vehicle stops, Question (4) applies only where the citizen has a question, Question (5) applies only where the citizen requests the officer’s name and badge number, and Question (6) applies *only* where the officer determined reasonable suspicion was unfounded.

November 22, 2022

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For an incident to be deemed compliant, all applicable requirements for the stop must be satisfied, unless there was an exigent circumstance, with the following exception: if an officer is full uniform with their last name and the agency patch clearly displayed, the incident will not be deemed noncompliant if the only relevant omission is failure to provide name and agency affiliation.

Upon completion of the analysis of the selected sample, noncompliant incidents will be examined for their distribution by race. The analysis will have two dimensions: (1) it will examine the distribution of each noncompliant *incident* as the unit of analysis (*i.e.*, the overall stop), and (2) it also will look at the distribution of noncompliance for each pertinent *requirement* (*i.e.*, 1-6 above) across all noncompliant incidents, as a more granular unit of analysis.

The test will be the same for both aspects of the analysis. Each test will assume a null hypothesis that no pattern of disparity exists, and an inability to reject the null hypothesis constitutes compliance with the standard set by the test. The expected result, therefore, will be a proportional distribution of noncompliant incidents across races, where the proportion is set by the relative number of people of each race in the selected sample. A chi squared test—or another statistically robust method meant to provide the same insights based on the particular features of the given sample—will be used to calculate the probability that any deviation from the expected result is due to chance. If the probability is greater than .05 (*i.e.*, 5%) then the analysis will not reject the null hypothesis and the NPD will be found in compliance.

The IMT looks forward to working with NPD on this audit.

Best regards,



Peter C. Harvey  
Independent Monitor

# **APPENDIX C**



DEPARTMENT OF PUBLIC SAFETY  
MEMORANDUM



TO: POLICE DIVISION  
FROM: ANTHONY F. AMBROSE  
PUBLIC SAFETY DIRECTOR  
SUBJECT: GENERAL ORDER: 17-06  
RE: BIAS-FREE POLICING

DATE: SEPTEMBER 19, 2017  
NUMBER: 17- 505  
TICKLER: 17- 794  
CD: 17-51  
FILE REF: PUB 4 & PUB 4-1

The Newark Police Division has developed General Order: 17-06, Re: "Bias-Free Policing". The purpose of this policy is to establish procedures to guide members of the Division in their conduct, and to establish an environment that prohibits any type of bias-based behavior by NPD personnel.

It is the policy of the Newark Police Division to prohibit its members from taking enforcement actions, or providing police services based solely on the specific characteristics of a resident or member of the community.

Specific Characteristics shall include, but are not limited to the following: Age, Race, Color, Ethnic Background, National Origin, Gender Identity or Sexual Orientation, Mental or Physical Disability, Religious Belief, Social Status, Legal Status, or Political Belief System.

As a result of General Order: 17-06 "Bias-Free Policing", the following General Order shall be hereby immediately rescinded:

General Order: 03-04 "Policy on Bias-Based Policing".

All NPD members shall become familiar with the tenets of General Order: 17-06. This memorandum shall be the subject of roll-call training for a period of three (3) weeks.

Commanders shall submit a signature roster containing the names of all personnel under their command, acknowledging receipt, understanding, and compliance with this directive. The signed roster shall be received in the Office of the Public Safety Director no later than Monday, October 20, 2017.

BY ORDER OF:

ANTHONY F. AMBROSE  
PUBLIC SAFETY DIRECTOR

APA/JR mem

c: Darrell Henry – Chief of the Police Division





# NEWARK POLICE DIVISION GENERAL ORDER



<b>SUBJECT:</b> <b>BIAS-FREE POLICING</b>		<b>GENERAL ORDER NO.</b> <b>17-06</b>
<b>SUPERCEDES:</b> <b>G.O. 03-04 (JUNE 6, 2003)</b>	<b>DATED:</b> <b>September 19, 2017</b>	<b>SECTION CODE:</b> <b>A-42</b>

**This General Order contains the following numbered sections:**

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



# NEWARK POLICE DIVISION GENERAL ORDER



## I. PURPOSE

The purpose of this order is to establish policies and procedures that prevent members of the Newark Police Division from engaging in any form of discriminatory practices and to ensure that every citizen will receive fair, respectful, and equitable treatment that is free of bias when that person encounters a member of the Newark Police Division.

## II. POLICY

It is the policy of the Newark Police Division that all decisions and actions by members shall be fair, impartial, and free of bias and unlawful discrimination. This policy applies equally to all law enforcement activities and the provision of all police services.

Bias-based conduct is strictly prohibited. Members' decisions and actions must be based upon conduct, not a person's specific characteristics including, but not limited to age, race, color, ethnic background, national origin, gender, gender identity, sexual orientation, disability, religion, economic status, or political belief system. Members will be subject to discipline, (including counseling, mediation and training) up to and including termination, for practicing or condoning bias-based policing. Treating a person differently based upon that person's specific characteristics degrades the public's confidence in the Division and is detrimental to effective law enforcement because it fosters distrust in the community and undermines the Division's ability to enforce the law.

## III. DEFINITIONS

**1. Bias-Based Policing:** The differential treatment of any person by members motivated by the specific characteristics, perceived or actual, of that person.

**2. Explicit Bias:** Attitudes and beliefs about a person or group on a conscious level. These biases and their expression often arise as the direct result of a perceived threat.

**3. Implicit Bias:** Bias that results from an unconscious negative or uncomplimentary association, feeling, perception, attitude and/or stereotype that influences an officer's judgment or conduct with respect to another person.

Unlike explicit bias, implicit bias may exist without the member's awareness and can contradict that member's stated beliefs.



# NEWARK POLICE DIVISION GENERAL ORDER



**4. Integrity Control Officer (ICO):** A superior officer assigned to a command with responsibilities outlined in G.O. 80-1, who reports directly to the Commander of the Office of Professional Standards.

**5. Member:** A sworn or civilian employee of the Newark Police Division.

**6. Police Services:** Sometimes referred to as community-caretaking functions, these are actions and activities that lay outside the enforcement of the law, which may include contributing to the overall well-being and safety of the public.

These actions include, but are not limited to, assistance at a fire scenes, traffic accidents, medical emergencies, rendering first aid, proactive crime prevention, traffic control, public information, community engagement, answering calls for service, or education.

**7. Specific Characteristics:** For purposes of this General Order, a set of specific personal characteristics that include, but are not limited to, age, race, color, ethnic background, national origin, gender, gender identity, sexual orientation, disability, religion, economic status, or political belief system.

## IV. PROCEDURES

1. Bias-based policing is prohibited both in the enforcement of laws, and the delivery of police services. Services will be delivered in an equitable and respectful manner that effectively enforces the law, complies with constitutional and other legal standards and promotes trust between the community and the Police Division.
2. Members shall not consider an individual's specific characteristics when engaging in enforcement activities or delivering police services.

The only exception will be when the individual's specific characteristics are part of a detailed, "**Be On The Lookout**" (BOLO) description (e.g., wanted flyer or Amber Alert). In such situations, information concerning the characteristics of the suspect or wanted person may be legally used by members, along with other objective factors (i.e., vehicle, clothing, height, weight, etc.), as the basis for taking action.

3. In an effort to prevent inaccurate perceptions of bias-based policing, each member shall do the following when interacting with members of the public:



# NEWARK POLICE DIVISION GENERAL ORDER



- a) Be courteous, respectful, and professional;
  - b) Introduce himself or herself to the citizen (providing name and agency affiliation), and state the reason for the stop as soon as practical, unless providing this information will compromise officer or public safety.
  - c) On vehicle stops, the officer shall provide this information (described above in Section IV, sub. 3(b)) before asking the driver for his or her license, registration, or insurance. Do not ask the driver if they know why they are being stopped;
  - d) Ensure that a detention is no longer than necessary to take appropriate action for the known or suspected offense and that the citizen understands the reason for any delays;
  - e) Answer any questions the citizen may have, including explaining options for traffic summons dispositions, if relevant;
  - f) Provide his or her name and badge number when requested, in writing or on a business card (if authorized); and
  - g) Apologize and/or explain if he or she determines that the reasonable suspicion was unfounded (e.g., after an investigatory stop).
4. The use of racially offensive and derogatory language towards the public is expressly prohibited.
5. Unless exigent circumstances exist, members of the Newark Police Division shall not engage in law enforcement matters that involve the member's own family member, friend, relative, or other person with whom the member has a personal relationship.

This restriction is designed to prevent any conflict of interest and to prevent the decisions of the member from being in fact, or appearing to be, compromised. It is also designed to prevent any appearance of impropriety to a third party, including the justice system.

In situations where the member is personally involved, the member shall recuse him or herself and shall call for another member to handle the matter.



# NEWARK POLICE DIVISION GENERAL ORDER



## V. REPORTING REQUIREMENTS

When feasible, members shall intervene at the time a bias-based policing incident occurs, which may prevent further damage to the trust and confidence between the community and the Police Division.

Members who witness or who are aware of instances of bias-based policing shall report the incident as soon as possible to a supervisor. Failure to report will subject the officer to disciplinary action.

Where there has been an allegation of bias-based policing, the investigating supervisor will complete a complaint entry into "BlueTeam" or other appropriate data system to document the circumstances of the allegation and the steps that were taken to address the matter.

The complaining citizen's information will be collected, if the citizen wishes to provide it, including; citizen's name, address, phone number or email address, and name and contact information of witnesses who observed the incident.

The investigating supervisor shall submit all documentation of an allegation of bias-based policing by the end of their workday to the Office of Professional Standards (OPS).

## VI. TRAINING

Newark Police Division shall provide bias-free training to all new recruits and current members of the Newark Police Division.

NPD will ensure that all members receive, at a minimum, an initial eight (8) hours of comprehensive and interdisciplinary training on bias-free policing, including implicit bias, explicit bias, procedural justice, and police legitimacy.

Thereafter, a minimum of four (4) hours of training shall be given annually based on New Jersey or federal law and/or NPD policy. Training will emphasize that bias-based policing, in the form of either selective enforcement or non-enforcement of the laws, including the selection or rejection of particular policing tactics or strategies, is prohibited by policy and will subject the offending member(s), whether supervisory, or rank and file, to discipline.

Bias-free training will address the following areas:

- a) The existence and impact of arbitrary classifications, stereotypes, and implicit bias in decision making;



# NEWARK POLICE DIVISION GENERAL ORDER



- b) Police and community perspectives related to discriminatory policing;
- c) Federal, and State, Constitutional, and other legal requirements related to equal protection and unlawful discrimination;
- d) The protection of civil rights as a central part of the police mission and is essential to effective policing;
- e) Identification of key decision points where prohibited discrimination can take effect at both the incident and strategic-planning levels;
- f) Methods and strategies for more effective policing which rely upon nondiscriminatory factors;
- g) Cultural competency;
- h) Methods, strategies, and techniques to reduce misunderstandings, de-escalate conflict, and avoid complaints due to perceived bias or discrimination, including problem-oriented policing strategies;
- i) Instruction in data collection protocols.

## VII. SUPERVISORY RESPONSIBILITIES

Active and conscientious supervision is essential in guarding members of the Police Division against preventable allegations of bias-based policing and monitoring instances where citizens make allegations of bias-based policing against members.

Supervisors will play a key role in ensuring that members serve the community in a bias-free manner, including:

Monitoring and assessing subordinate personnel for any behavior that may conflict with the purpose of this policy;

- a. Interceding immediately should any behavior indicate the member is using bias-based policing by discussing the issue with the Member and their immediate supervisor;
- b. Completing a complaint entry into "BlueTeam" or other appropriate data system to document the circumstances of the allegation and the steps that were taken to resolve the matter; and



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- c. Ensuring that no retaliatory actions are taken against any member of the Police Division who discloses information concerning discriminatory and/or bias-based policing.

## VIII. ADMINISTRATIVE REVIEW

Cumulative and quarterly demographic analyses of the enforcement activities of Newark Police Division members will be conducted by the Integrity Control Officer (ICO) to ensure that anti-discrimination/bias-free policing policy is implemented and adequately monitored.

The ICO 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's 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 and detention 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.

## IX. 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.



# NEWARK POLICE DIVISION GENERAL ORDER



## X. EFFECT OF 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:

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

**ANTHONY F. AMBROSE  
PUBLIC SAFETY DIRECTOR**

AFA/JR:mem



# **APPENDIX D**



# NEWARK POLICE DIVISION GENERAL ORDER



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

## I. PURPOSE

This purpose of this policy is to maintain public trust, enhance safety, and provide members with instructions on when and how to use body-worn cameras (BWCs) in order to record their interactions with the public. This technology will allow the Newark Police Division (NPD) to produce effective material for training and additional evidence of an incident. Within this policy, there are guidelines for the use, management and storage of video recordings.

## II. POLICY

The Newark Police Division will issue all sworn members a BWC regardless of rank. Uniformed members will be required to use the BWC during the performance of their duties. The Public Safety Director may authorize use of a BWC to members in plain clothes or assigned to a specialized unit.

NPD uniformed officers will record police-citizen contacts using BWCs in order to assist personnel in the performance of their duties, provide an unbiased recorded account of an incident, and hold officers along with members of the public accountable for their actions.

The NPD recognizes that recordings may not always illustrate the entire circumstance of police-citizen contact, nor do video recordings always capture the entire scenario. A BWC recording is only one piece of evidence, providing one perspective of the incident. This technology does not eliminate the requirement of officers, detectives and sergeants to provide written documentation of an incident.

Members shall activate and deactivate their BWC in accordance with Section IX, Procedure, of this policy. All images, video, metadata, and audio recordings captured or otherwise produced are the exclusive property of the NPD and subject to disclosure under the law.

## III. DEFINITIONS

1. **Activate** – Turn on the recording mode/function of a BWC.
2. **Deactivate** – Turn off the recording mode/function of a BWC.



# NEWARK POLICE DIVISION GENERAL ORDER



3. **Body-Worn Camera (BWC)** – Device worn by a law enforcement officer that makes an electronic audio and visual recording. The term does not include a mobile video recording device when mounted inside a police vehicle (i.e., dash cam). The term also does not include any other form of an electronic recording device worn by a law enforcement officer while acting in an undercover capacity, or electronic recording devices used to comply with the requirements of Rule 3:17 (electronic recording of station house custodial interrogations).
4. **Investigation of a Criminal Offense** – Any police activity pertaining to the investigation of an indictable crime, disorderly persons offense, or petty disorderly offense, including but not limited to responding to a report of a possible criminal offense; an investigative detention based on or leading to reasonable and articulable suspicion to believe that a criminal offense has been or is being committed; an arrest for a criminal offense; an interview of a potential witness to a criminal offense; or canvassing an area for potential witnesses to a criminal offense.
5. **Law Enforcement Agency, Agency or Department** – A law enforcement body operating under the authority of the laws of New Jersey.
6. **Law Enforcement Officer or Officer** – A sworn member employed by a Law Enforcement Agency.
7. **Tagging Video** - A notation or indicator placed on specific video that may raise special privacy or safety issues.

## IV. NOTIFICATION TO THE PUBLIC AND POLICY REVIEW

A written announcement regarding the implementation of the BWC program and which members will be mandated to use the BWC must be posted on the website, [www.newarkpdonline.org](http://www.newarkpdonline.org). In addition to the written announcement, the following information must be available on the website:

- BWC policy
- A picture of the BWC along with a picture showing where the BWC will be positioned on the member's uniform.
- Electronic survey regarding the BWC policy for community feedback (temporarily).

The online BWC community survey and the “comment” section of the policy will allow residents to express their opinions, concerns or recommendations with the deployment and policy governing the use of BWCs.

The Consent Decree and Planning Unit shall review this policy quarterly during the pilot phase and on an annual basis after full deployment.



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## 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.



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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).



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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.



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## **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.



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- 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.





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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)



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- Call for service (no arrest)
  - Special Detail (protest, civil disturbance)
  - Traffic Matter (use of emergency light; non-call for service or stop)
    - e.g., activating lights to move a vehicle along.
  - Motor Vehicle Stop
  - Motor Vehicle Accident
  - Motor Vehicle Aid
  - Pedestrian Stop
  - Frisk or Search
  - Arrest
  - DB Investigation (follow-up investigation by a detective, statements, etc.)
  - Critical Incident (homicide, serious bodily injury, suspicious death, serious use of force)
  - Internal Affairs (**Office of Professional Standards use only**)
12. Ensure vehicles are parked within range of the wireless access point. This will allow in-car video to upload automatically.
13. Ensure you are logged-off from the Arbitrator Front-End Client, within the vehicle, upon completion of the tour of duty. This will not allow another user to record video with your credentials.
14. BWC must be docked in the charging station, in the “on” position, to upload video.
15. BWC must be docked, in the “on” position, and left in the charging station at the end of the tour. This will ensure:
- BWC has a fully charged battery for the commencement of the tour of duty.
  - All BWC video is uploaded to the server.
  - BWC receives the latest firmware update.
  - BWC is able to be serviced, if needed, in a timely fashion.
16. Ensure all video is of official police business.
17. If an issue occurs with the BWC, the member’s immediate supervisor must be notified to attempt to resolve the issue.
18. If the BWC requires service, notify the desk supervisor to email the Technology Division to have the camera repaired:  
The email must:
- Be addressed to [mis2@ci.newark.nj.us](mailto:mis2@ci.newark.nj.us), the member’s commanding officer, executive officer and principal clerk.
  - Indicate the member name, identification number, command and BWC serial number.
  - Indicate the problem/ malfunction.
  - Indicate the replacement BWC issued to the member, if applicable.



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19. If a BWC is in need of repair and a replacement camera is not immediately available, the member must submit an administrative report indicating they are without a BWC until the camera is serviced/repaired.
20. Refer to your immediate supervisor for any questions or concerns.

### **B. Supervisor Responsibilities**

1. Desk supervisor shall issue BWCs that are operational and in good working order to all trained on-duty personnel during roll-call.
2. Desk supervisors shall inspect personnel to ensure BWCs are positioned in the center of the torso, on the outermost garment.
3. Supervisors using a BWC shall activate, deactivate and tag video in accordance with this policy.
4. Field supervisors shall ensure members are all logged-on to the Arbitrator Front-End Client in the vehicle during field inspections and that the BWCs are positioned in the center of the torso on the outermost garment of all personnel.
5. Desk supervisors shall log-on to the Arbitrator Back-End Client, during their tour of duty from the precinct computer at the desk, to ensure officers/supervisors are properly logging-on to the Arbitrator Front-end Client and that video has:
  - An event number.
  - A proper classification from the “drop down” selection.
6. On a daily basis, the supervisors shall randomly select two videos of officers and/or the supervisor from their tour of duty, pertaining to Stops, Detentions and Searches. The supervisors shall review the Arbitrator Back-End Client “Main” page and view video to determine if the member complied with law and NPD policy. The “Main” page will provide a list of all uploaded video (body-worn and in-car video).
7. An email shall be sent to the commander, executive officer and principal clerk by the end of the tour of duty indicating:
  - The name of the member(s).
  - The date and period of time the audit of video was conducted.
  - List the videos, from the “Main” page selected (date, time, event#, etc.).
  - If the officer(s)/ supervisors are in compliance.
  - Actions taken to address any deficiency.
8. The desk supervisor shall ensure an email is sent to the Technology Division to have the camera repaired when notified of a malfunctioning BWC. The email must:
  - Be addressed to [mis2@ci.newark.nj.us](mailto:mis2@ci.newark.nj.us), the member’s commanding officer, executive officer and principal clerk.
  - Indicate the member name, identification number, command and BWC serial number.
  - Describe the problem/ malfunction.
  - Identify the replacement BWC issued to the officer, if applicable.
9. During normal business hours, the commanding officer must make a follow-up telephone call to the Technology Unit.



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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.



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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.



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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 4<sup>th</sup> degree crime. In addition, members may also be subject to internal discipline.**

1. Data uploaded from BWCs will be stored on storage servers located at 480 Clinton Avenue, or any other secure storage location ordered by the Public Safety Director. Accessing, copying, releasing, tampering with, destroying video and transmitting files for non-law enforcement purposes is strictly prohibited.
2. Events captured on BWCs shall not be released to other law enforcement entities other than the Essex County Prosecutor's Office, the New Jersey Division of Criminal Justice or U.S. Department of Justice without the express permission of the Public Safety Director.
3. The commander of the Technology Division shall manage the integrity and storage of all BWC recordings. The commander shall prevent unauthorized access to all BWC recordings and must establish and maintain rules within the system to document the following information:
  - a. Date and time of access;
  - b. Specific BWC recordings that were accessed;
  - c. Member who accessed the stored BWC recording;
  - d. Person who approved access, where applicable;
  - e. Reason(s) for access, specifying the purpose or purposes for access and the relevant case/investigation number, where applicable;
  - f. Groups of NPD members with specific user privileges.
  - g. A BWC recording that has been "tagged" for special privacy or safety issues, Section IX, Subsection D, shall not be accessed, viewed, copied, disseminated or otherwise used without first obtaining the permission of the Public Safety Director or County Prosecutor.



# NEWARK POLICE DIVISION GENERAL ORDER



## XV. REFERENCES

1. Bureau Justice of Assistance National Body Worn Camera Tool Kit.  
U.S. Department of Justice C.O.P.S./ Police Executive Research Forum “Implementing a Body-Worn Camera Program, Recommendations and Lessons Learned” report.

BY ORDER OF

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

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ANTHONY F. AMBROSE  
PUBLIC SAFETY DIRECTOR

AA/BO:jn

# **APPENDIX E**



**DEPARTMENT OF PUBLIC SAFETY  
MEMORANDUM**



**TO: POLICE DIVISION**

**DATE: June 05, 2018**

**FROM: ANTHONY F. AMBROSE  
PUBLIC SAFETY DIRECTOR**

**NUMBER: 18-322  
TICKLER: 18-447**

**SUBJECT: IN-CAR CAMERAS  
RE: GENERAL ORDER 18-06**

**FILE REF: PUB 4  
x PTL 1**

General Order 18-06, In-Car Cameras, has been created to serve as the Newark Police Division's policy governing the use of in-car cameras. This order establishes a uniform procedure for activation, deactivation, tagging and management of video.

Prior to use, members will receive an eight-hour training course. The training course will consist of a classroom session covering policy and hands-on training for the use of the in-car camera.

All commanders shall sign a copy of this directive. The signed copy shall be forwarded to the Office of the Public Safety Director no later than June 22, 2018.

**By order of:**

**Anthony F. Ambrose  
Public Safety Director**

AFA/BO dd

Rank	Name	ID#	Command	Date
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# NEWARK POLICE DIVISION GENERAL ORDER



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

## I. PURPOSE

This policy establishes uniform procedures for the Newark Police Division’s (Division) in-car camera system and provides members with instructions on when and how to use an in-car camera. Implementation of this technology will allow the Division to maintain public trust, enhance officer safety, and provide an unbiased recorded account of an incident. Within this policy, there are guidelines for the use, management, and storage of video recordings.

## II. POLICY

It is the policy of the Newark Police Division to equip all marked patrol vehicles with an in-car video system. Members assigned a marked patrol unit with an in-car camera will make every effort to record traffic stops, pursuits, searches and police-citizen contacts.

## III. DEFINITIONS

- A. **Activate** – Turn on the record mode/function of the in-car camera.
- B. **Deactivate** – Turn off the record mode/function of the in-car camera.
- C. **In-Car Camera** - Camera mounted in either the front or rear compartments of the vehicle. The camera mounted in the front compartment will face forward capturing the view from the front of the vehicle. The camera mounted in the rear will capture the rear passenger compartment.
- D. **Wireless Access Point** – A networking hardware device that allows a wireless internet device to connect to a wired network. This device will be mounted in a specifically designated area at each precinct.

## IV. TRAINING

- A. The commander of the Training Division is responsible for scheduling in-car camera training for all newly hired officers during their in-service training. In addition, a curriculum shall be established to provide “refresher” training at least every five years or more frequently if there are material changes to the in-car camera technology.



# NEWARK POLICE DIVISION GENERAL ORDER



- B. All members must receive training on this policy and complete the in-car camera training course to ensure proper use of the in-car camera system.
- C. The vendor will host training on the in-car camera system and body-worn camera (BWC) simultaneously. In-car camera training will be scheduled upon issuance of a BWC.

## V. AUTHORIZED USE and POLICY REVIEW

- A. Only in-car cameras and storage servers issued by the Division shall be used.
- B. All in-car cameras, related equipment, data, images, video and metadata captured, recorded or otherwise produced are the sole property of the Newark Police Division.
- C. The Consent Decree and Planning Unit shall review this policy quarterly during the pilot program and on an annual basis after full deployment.

## VI. INSPECTION, MAINTENANCE, and USE of CAMERA

- A. The in-car cameras and related equipment installed in the marked patrol unit are the responsibility of the member assigned the vehicle. That member must conduct, at the beginning of his/her tour of duty and before calling in-service, an inspection of the vehicle, including in-car camera equipment. This inspection will include:
  - 1. Turning the vehicle on;
  - 2. Inspecting camera and related equipment for signs of physical damage (damage must be documented on an administrative report);
  - 3. Opening the Arbitrator Front-End Client Application on the mobile data computer;
  - 4. Logging in to the Arbitrator Front-End Client Application;
  - 5. Pairing the body-worn camera to the vehicle (if applicable);
  - 6. Activating the emergency lights;
  - 7. Ensuring the in-car cameras record (both front and rear cameras);
  - 8. Reviewing the video to ensure cameras are recording video; and
  - 9. Categorizing this procedure/video as a "Vehicle Inspection/Test" in the Arbitrator Software.
- B. If any of the functions of the in-car camera (i.e., pairing BWC to vehicle, logging in, video recording, etc.) do not work, restart the mobile data computer and repeat steps 1-5 in Section VI, subsection A. If, after doing so, the front or rear cameras still do not function correctly:
  - 1. The member must notify his/her immediate supervisor to attempt to resolve the issue.
  - 2. If the problem continues, member must notify the desk supervisor to email the Technology Unit to have the camera assessed/repared. The desk supervisor must email the Technology Unit immediately. The email must:
    - Be addressed to [mis2@ci.newark.nj.us](mailto:mis2@ci.newark.nj.us), the member's commanding officer, executive officer and principal clerk.



# NEWARK POLICE DIVISION GENERAL ORDER



- Indicate the officer name, identification number, command and vehicle number.
  - Indicate the problem/malfunction.
3. During normal business hours, a follow-up telephone call must be made by the commanding officer to the Technology Unit.
  4. The desk supervisor must issue the member another vehicle with a working in-car camera, if available.

## VII. RESPONSIBILITY

### A. Officer Responsibilities

The member shall:

1. Conduct an inspection of the in-car camera and related equipment in the marked patrol unit during the vehicle inspection.
2. Pair the body-worn camera to the vehicle.  
**\*\*\*If the in-car camera does not pair with the BWC, activation of the in-car cameras must be done independently\*\*\***
3. Launch the Arbitrator Front-End Client and log on. This launch will ensure that the video is associated with the member that is logged on.
4. Activate and deactivate the in-car camera in accordance with this policy.
5. Ensure that an event number is entered for each video (dispatched assignment or police action).
6. Categorize each video with the proper classification from the "drop down" selection:
  - Vehicle Inspection/Test;
  - Call for service (no arrest);
  - Special Detail (protest, civil disturbance)
  - Traffic Matter (use of emergency lights; non-call for service or stop)
    - Activating lights to move a vehicle along
  - Motor Vehicle Stop;
  - Motor Vehicle Accident;
  - Motor Vehicle Aid;
  - Pedestrian Stop;
  - Frisk or Search;
  - Arrest;
  - DB Investigation;
  - Critical Incident (homicide, serious bodily injury, suspicious death, serious use of force); and
  - Internal Affairs (**Office of Professional Standards use only**).
7. Ensure vehicles are parked within range of the wireless access point (refer to the wireless signal strength indicator on the mobile data computer to determine if the vehicle is within range). This parking location will allow in-car video to upload automatically.



# 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](mailto:mis2@ci.newark.nj.us), the member's commanding officer, executive officer and principal clerk.
  - Indicate the officer name, identification number, command, and vehicle number.
  - Indicate the problem/malfunction.
5. During normal business hours, the commanding officer must make a follow-up telephone call to the Technology Unit.
6. Supervisors will review investigatory stops and detentions, searches, and arrests for completeness and adherence to law and NPD policy. Supervisors will:
  - Review all written documentation;
  - Review all relevant video recordings for all incidents in which the supervisor suspects, for any reason, that an officer's conduct may not have complied with law or NPD policy; and
  - On an ongoing basis, review a random selection of video recordings of stops and detentions, searches, and arrests amounting to at least 10 percent of all stops and detentions, searches and arrests.





# 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 4<sup>th</sup> degree crime, and members may be subject to internal discipline.

- A. Data uploaded from in-car cameras will be stored on servers located at 480 Clinton Avenue, or any other secure storage location ordered by the Police Director.
- B. Events captured on in-car cameras shall not be released to other law enforcement entities other than the Essex County Prosecutor's Office, New Jersey Division of Criminal Justice or U.S. Department of Justice without the expressed permission of the of the Public Safety Director.
- C. The Technology Unit shall prevent unauthorized access to in-car video recordings and must establish and maintain rules within the system to document:
  - Identity of member who is accessing video;
  - Date and time of access;
  - Specific in-car video that was accessed;
  - Groups of NPD members with specific user privileges.

**BY ORDER OF:**

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**ANTHONY F. AMBROSE  
PUBLIC SAFETY DIRECTOR**

AFA/BO:dd

# **APPENDIX F**





# DEPARTMENT OF PUBLIC SAFETY MEMORANDUM



**TO:** POLICE DIVISION **DATE:** JANUARY 26, 2021

**FROM:** ANTHONY F. AMBROSE  
PUBLIC SAFETY DIRECTOR **NUMBER:** 21-36

**SUBJECT:** BODY-WORN CAMERA PROCEDURES **FILE REF:** PTL 1  
RE: PLAINCLOTHES PERSONNEL

Effective immediately, all Newark Police Division personnel assigned to work street-level enforcement in a plainclothes capacity shall utilize body-worn cameras at all times while assigned to those duties in the field. Said personnel shall be guided by General Order 18-05, Body-Worn Cameras.

The following exceptions shall apply to this requirement:

- Personnel detailed out as liaisons to federal, state, or county agencies shall be guided by the assigned agency's policy.
- Personnel assigned to conduct surveillance only shall not be required to wear a BWC, however, all personnel engaged in a take-down must wear a BWC.
- The only other exception to this requirement shall be after a written request to not wear a BWC when approved by the Public Safety Director. Such requests must explain the operational/safety needs justifying no BWC.

Personnel assigned to work street-level enforcement in a plainclothes capacity shall have the option of wearing their uniform while operating unmarked/unconventional vehicles in the field, as directed by their supervisor.

Further policy changes for investigative and other Division components will follow at a later time.

The Commander of the Consent Decree & Planning Division shall ensure that General Order 18-05, Body-Worn Cameras is updated in consultation with the US Department of Justice and Independent Monitor.

Police Division personnel shall confirm receipt, compliance and understanding by way of electronic signature in the Power Document Management System (Power DMS) no later than **Friday, February 19, 2021**.

BY ORDER OF

ANTHONY F. AMBROSE  
PUBLIC SAFETY DIRECTOR

# **APPENDIX G**

#	Consent Decree Paragraph	NPD Policy
1.	Paragraph 63 (a-h)	The Monitoring Team will review NPD's Bias Free policing materials, including (1) training objectives, (2) instructor guidelines, (3) instructor information, (4) teaching materials, and (5) testing materials.
2.	Paragraph 64	General Order 17-06, <i>Bias-Free Policing</i> , dated 6.19.2017, Section IV (2); Section IV (3) (b-g); Section V.
3.	Paragraph 65	General Order 17-06, <i>Bias-Free Policing</i> , Section VIII.

# **APPENDIX H**

**Complete List of Events for this Audit**

<b>First Bias-Free Policing Audit: Complete List of Events for this Audit</b>	
<b>Count</b>	<b>Event Number</b>
1	P22080189
2	P22217619
3	P22261265
4	P22265430
5	P22265608
6	P22265661
7	P22265746
8	P22267282
9	P22268911
10	P22269615
11	P22270370
12	P22271582
13	P22271768
14	P22271886
15	P22272209
16	P22272331
17	P22272873
18	P22273113
19	P22273120
20	P22273489
21	P22274230
22	P22275244
23	P22275994
24	P22276065
25	P22277131
26	P22277602
27	P22280148
28	P22280450
29	P22281592
30	P22281842
31	P22282396
32	P22282539

33	P22282828
34	P22283022
35	P22283053
36	P22283324
37	P22283342
38	P22283741
39	P22283828
40	P22284082
41	P22284490
42	P22285127
43	P22285830
44	P22285976
45	P22287469
46	P22287566
47	P22288788
48	P22289073
49	P22289318
50	P22289998
51	P22291691
52	P22294645
53	P22295553
54	P22296066
55	P22296139
56	P22296149
57	P22297129
58	P22298569
59	P22299513
60	P22301018
61	P22301239
62	P22301430
63	P22301982
64	P22303071
65	P22305432
66	P22305504
67	P22306198
68	P22306242

69	P22306394
70	P22306614
71	P22307288
72	P22308579
73	P22309024
74	P22309114
75	P22311341
76	P22311440
77	P22312504
78	P22313127
79	P22313526
80	P22314558
81	P22315074
82	P22316376
83	P22316770
84	P22316968
85	P22317707
86	P22318408
87	P22319829
88	P22321178
89	P22322175
90	P22322517
91	P22322537
92	P22322805
93	P22322968
94	P22323520
95	P22323885
96	P22324280
97	P22324488
98	P22325326
99	P22325730
100	P22326424
101	P22326989
102	P22327038
103	P22327100
104	P22328702

105	P22331155
106	P22331291
107	P22331989
108	P22333041
109	P22333114
110	P22333137
111	P22333266
112	P22335211
113	P22335234
114	P22335286
115	P22335612
116	P22335734
117	P22337477
118	P22337697
119	P22337983
120	P22338922
121	P22340040
122	P22341761
123	P22341767
124	P22342746
125	P22342916
126	P22342960
127	P22343075
128	P22343148
129	P22344134
130	P22345235
131	P22346280
132	P22346312
133	P22346494
134	P22347258
135	P22348209
136	P22348481
137	P22349052
138	P22349236
139	P22349332
140	P22349652



141	P22353364
142	P22355596
143	P22355776
144	P22355893
145	P22356195
146	P22356401
147	P22357067
148	P22357085
149	P22359626
150	P22360427
151	P22361019
152	P22361046
153	P22361148
154	P22361898
155	P22362600
156	P22363296
157	P22363340
158	P22363391
159	P22364891
160	P22365647
161	P22367440
162	P22369349
163	P22369719
164	P22370017
165	P22370021
166	P22370083
167	P22370750
168	P22370914
169	P22371584
170	P22371624
171	P22371763
172	P22372603
173	P22372858
174	P22372935
175	P22375529
176	P22376214

177	P22376936
178	P22376962
179	P22377768
180	P22378542
181	P22379428
182	P22381521
183	P22382279
184	P22382373
185	P22382463
186	P22382748
187	P22384231
188	P22385646
189	P22385700
190	P22386284
191	P22388066
192	P22388336
193	P22389830
194	P22390841
195	P22392382
196	P22392616
197	P22393294
198	P22393548
199	P22394255
200	P22394506

# **APPENDIX I**

**List of Events Removed**

<b>First Bias Free Policing Audit: List of Events Removed</b>		
<b>Count</b>	<b>Event Number</b>	<b>Circumstances</b>
1	P22261265	Warrant Pickup
2	P22284082	DV <sup>1</sup>
3	P22298569	Medical call
4	P22305504	Warrant Pickup
5	P22306614	DV
6	P22318408	Miscategorized <sup>2</sup>
7	P22319829	DV
8	P22324488	Miscategorized <sup>3</sup>
9	P22331989	DV
10	P22335286	DV
11	P22335734	DV
12	P22342916	DV
13	P22343075	DV
14	P22349052	DV
15	P22362600	Vehicle Event – vehicle checkpoint
16	P22370750	DV
17	P22372858	DV
18	P22376214	Crime in progress <sup>4</sup>
19	P22376962	DV
20	P22378542	Vehicle Event – An ATV was seized during PR Day Parade
21	P22379428	Vehicle Event – Investigation of fatal motor vehicle accident
22	P22382463	Vehicle Event – Parking problem resolved by towing

<sup>1</sup> Domestic Violence: Summary Arrest in accordance with department policy based on probable cause supplied by complainant at the scene.

<sup>2</sup> Miscategorized: Event did not meet any of the three Objectives in the methodology for this audit.

<sup>3</sup> Miscategorized: Event did not meet any of the three Objectives in the methodology for this audit.

<sup>4</sup> Crime in progress: This event was a Point-out.

# **APPENDIX J**

**List of Non-Compliant Events by Criteria**

<b>First Bias Free Policing Audit: List of Non-Compliant Documentation Events</b>		
<b>Count</b>	<b>Event Number</b>	<b>Circumstances</b>
1	P22217619	MISSING BWC
2	P22281842	MISSING BWC
3	P22296139	MISSING BWC
4	P22297129	MISSING BWC
5	P22299513	MISSING BWC
6	P22317707	MISSING BWC
7	P22333266	MISSING BWC
8	P22335211	MISSING BWC
9	P22346494	MISSING BWC
10	P22361046	MISSING BWC
11	P22363391	MISSING BWC
12	P22367440	MISSING BWC

<b>First Bias Free Policing Audit: List of Non-Compliant Substantive Events</b>		
<b>Count</b>	<b>Event Number</b>	<b>Relevant Non-Discretionary Factors</b>
1	P22270370	Factors (A), (B) Failed to introduce and disclose reason for stop in a timely manner
2	P22275994	Factor (A) Failure to disclose reason for the stop.
3	P22277602	Factors (A), (B) Failure to introduce and disclose reason for stop in a timely manner.
4	P22289318	Factors (A), (B), (D) Failure to introduce, failure for asking citizen to provide knowledge of the reason for the stop, failure to answer all questions asked by citizen.
5	P22308579	Factors (A), (B) Failure to disclose reason for stop.
6	P22322805	Factor (B) Failure to disclose reason for stop in a timely manner.
7	P22333137	Factors (A), (B), (C), (F) Failure to introduce, failure to disclose reason for stop, failure to ensure detention did not take longer than necessary and failure to apologize for unfounded reasonable suspicion.

8	P22335612	Factors (A), (B) Failure to disclose reason for stop in a timely manner.
9	P22343148	Factors (A), (B) Failure to introduce, failure to disclose reason for stop in a timely manner.
10	P22357085	Factors (A), (B) Failure to introduce and failure to disclose reason for stop in a timely manner.
11	P22360427	Factors (A), (B) Failure to introduce, failure to disclose reason for stop in a timely manner.
12	P22365647	Factors (A), (C) Failure to introduce, failure to ensure detention did not take longer than necessary.
13	P22371624	Factors (A), (B) Failure to introduce, failure to disclose reason for stop in a timely manner, failure for asking citizen to provide knowledge of the reason for the stop.
14	P22375529	Factors (A), (B), (D) Failure to introduce, failure to disclose reason for stop, failure to answer citizen questions.
15	P22382373	Factors (A), (B), (D) Failure to introduce, failure to disclose reason for stop, failure to answer citizen questions.
16	P22347258	Factors (B) (D) Failure to provide reason for the stop, failure to answer citizen questions.

**First Bias Free Policing Audit: List of Non-Compliant Substantive and Documentation Events**

<b>Count</b>	<b>Event Number</b>	<b>Relevant Non-Discretionary Factors</b>
1	P22283324	Factors (A), (B), MISSING BWC
2	P22289073	Factors (A), (B), MISSING BWC
3	P22301982	Factors (A), (B), MISSING BWC
4	P22305432	Factors (A), (B), MISSING BWC

**Report of the Independent Monitor's Second Audit of the City of Newark and  
Newark Police Division's Arrests With or Without an Arrest Warrant**



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This report presents the findings of the Independent Monitor, Peter C. Harvey, regarding the Independent Monitoring Team’s *Second* Audit of the City of Newark’s (the “City’s”) and Newark Police Division’s (“NPD’s”) compliance with Consent Decree requirements relating to arrest practices<sup>1</sup> with or without an arrest warrant.

## I. REVIEWERS

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

Sekou Kinebrew – Staff Inspector, Philadelphia Police Department (ret.)

Daniel Gomez – Lieutenant, Los Angeles Police Department (ret.)

Roger Nunez – Sergeant, Los Angeles Police Department

Linda Tartaglia – Associate Director, Rutgers University Center on Policing

Rosalyn Parks, Ph.D. – Rutgers University Center on Policing

Jonathan Norrell – Rutgers University Center on Policing

## 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 14, 2023, that the Monitoring Team would begin its *Second* Audit of NPD’s compliance with certain provisions of the Consent Decree relating to arrests with or without an arrest warrant and specifically, Section VI (Paragraphs 35-37, 42, 51, and 53-62); and Section XVI (specifically, Paragraph 174 (a)).<sup>2</sup> (See **Appendix A and Appendix B**).

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

- Prohibit officers from arresting an individual unless the officer has probable cause to do so, and from relying on information they know to be materially false or incorrect when effecting an arrest (Paragraph 35).
- Prohibit officers from considering a subject’s demographic category to

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<sup>1</sup> The Consent Decree defines an “Arrest” as “a seizure of greater scope or duration than an investigatory stop or detention.” Consent Decree Section II.4.d.

<sup>2</sup> Paragraph 174 (a) of the Consent Decree requires NPD to provide the Monitor with data to allow the Monitoring Team to undertake outcome assessments. The Monitoring Team will report on NPD’s Outcome Assessment data separately.

justify an arrest, except that officers may rely on a demographic category in a specific suspect description, where the description is from a trustworthy source that is relevant to the locality and time (Paragraph 36).

- Require that an officer notify a supervisor immediately after: effecting an arrest where the officer used force; an incident in which an officer unholstered or pointed a firearm; an arrest for obstructing or resisting an officer; any disorderly conduct type arrest; or a custodial arrest for a vehicle infraction (Paragraph 37).
- Require that officers complete all arrest reports, properly documenting the probable cause for arrests, by the end of their shifts (Paragraph 42).
- Modify its procedures to collect and preserve stop, search, and arrest data sufficient to determine the nature and scope of demographic disparities in stop and search practices, as well as which stop, search, and arrest practices are most effective and efficient (Paragraph 51).
- Develop a protocol for comprehensive analysis of stop, search, and arrest data. The protocol will establish steps for determining the nature and scope of demographic disparities in stop and search practices, and whether any such disparities can be decreased or eliminated, as well as steps for determining which stop, search, and arrest practices are most effective and efficient in increasing public safety and police legitimacy within the Newark community. The analysis will include an assessment of the efficacy and any demographic disparities in the use of pretext stops and consent searches. This protocol will be subject to the review and approval of the Monitor and DOJ (Paragraph 53).
- Ensure that all databases comply fully with federal and state privacy standards governing personally identifying information. NPD will restrict database access to authorized, identified users who will be permitted to access the information only for specific, legitimate purposes (Paragraph 54).
- Require that officers respect the legal rights of onlookers or bystanders to witness, observe, record, and comment on or complain about officer conduct, including stops, detentions, searches, arrests, or uses of force. NPD will train officers that the exercise of these rights, secured and protected by the constitution and laws of the United States, serves important public purposes (Paragraph 55).
- Prohibit officers from detaining, arresting, or threatening to detain or arrest, individuals based on activity protected by the First Amendment, including verbal criticism, questioning police actions, or gestures. NPD will also prohibit officers from using or threatening force in response to mere verbal criticism or gestures that do not give rise to reasonable fear of

harm to the officers or others (Paragraph 56).

- Require that officers take no law enforcement action against a bystander unless the bystander: (a) violates the law; (b) incites others to violate the law; or (c) refuses to comply with an officer's order to observe or record from an alternate location and the bystander's presence would jeopardize crime scene integrity or the safety of the officer, the suspect, or others (Paragraph 57).
- Permit individuals observing stops, detentions, arrests, and other incidents to remain in the proximity of the incident unless one of the conditions in paragraph 57 is met (Paragraph 58).
- Permit individuals to record police officer enforcement activities by camera, video recorder, cell phone recorder, or other means, unless one of the conditions in paragraph 57 is met (Paragraph 59).
- Prohibit officers from threatening, intimidating, or otherwise discouraging an individual from remaining in the proximity of or recording law enforcement activities and from intentionally blocking or obstructing cameras and recording devices (Paragraph 60).
- Prohibit officers from detaining, prolonging the detention of, or arresting an individual for remaining in the proximity of, recording or verbally commenting on officer conduct directed at the individual or a third party, unless one of the conditions in Paragraph 57 is met (Paragraph 61).
- Prohibit officers from destroying, seizing, or otherwise coercing a bystander to surrender recorded sounds or images made of officers in the course of their duties, without first obtaining a warrant. Nor may officers order a bystander to destroy any such recording. Where an officer has a reasonable belief that a bystander or witness has captured a recording of critical evidence related to a felony crime, the officer may secure such evidence only as long as necessary to obtain a subpoena, search warrant, or other valid legal process or court order (Paragraph 62).

### III. REVIEW PERIOD

In this Audit, the Monitoring Team reviewed NPD's arrests for a two-month time period, specifically from October 1, 2022, up to and including November 30, 2022 (the "Audit Period").

On July 14, 2023, the Monitoring Team provided NPD with notice of its intent to conduct this Audit. The Monitoring Team also informed NPD that this Second Audit of its arrests with or without an arrest warrant would require in-person activities by members of the Monitoring Team (*see Appendix A*). The SMEs conducted their activities on-site at NPD's headquarters on the following dates:

- August 21, 2023 through August 25, 2023
- September 11, 2023, through September 18, 2023

#### IV. EXECUTIVE SUMMARY

This report contains the results of the Monitoring Team’s Audit of NPD’s arrest practices. The Second Arrest audit analyzed whether (1) NPD’s policies that govern these practices contained the Consent Decree required provisions (as listed above), and (2) NPD’s personnel demonstrated routine adherence to NPD’s own arrest policies in their day-to-day operations, described here as “Overall Compliance.”

On the first component of this Audit—NPD’s policies and procedures regarding arrests with or without an arrest warrant—the Monitoring Team previously determined that NPD’s applicable General Orders, directives, and In-Service Training Bulletins contained each Arrest-related policy requirement specified in the Consent Decree. The Monitoring Team also considered whether data elements required by the Consent Decree and NPD’s General Order 18-16, *Arrests With or Without an Arrest Warrant*, have been recorded within the incident and/or arrest reports reviewed. The Monitoring Team also determined that NPD’s protocol for analyzing stop, search and arrest data contained the requirements specified in the Consent Decree.<sup>3</sup>

For the second component of this Audit—whether NPD had demonstrated routine adherence to its Arrests With or Without a Warrant policy, thereby achieving “Overall Compliance” with the mandates of the Consent Decree—the Monitoring Team considered whether NPD officers conducting an arrest (a) had legal justification for the arrest and whether or not the mechanics of the arrest were within legal and policy-related parameters, described in this audit as substantive compliance,<sup>4</sup> and (b) completed required reports and accurately documented the arrest in the narrative section of the report, described in this audit as documentation compliance. If any Arrest event was deficient, either substantively or with respect to documentation, that Arrest event was deemed “Non-Compliant.”

The Monitoring Team utilized a 95% Arrest event compliance standard for this Audit. NPD achieved “Overall Compliance” when it satisfied both substantive and documentation compliance for 95% of the events in the sample reviewed by the Monitoring Team.<sup>5</sup>

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<sup>3</sup> With respect to review of NPD’s Stop, Search and Arrest Analysis Protocol pursuant to Consent Decree paragraph 53, the Monitoring Team previously approved NPD’s methodology, and NPD has submitted preliminary analyses. Some aspects of those analyses, however, were incomplete when assessed by NPD’s own methodology. In the future, the Monitoring Team expects that NPD will be able to adhere strictly to its proposed methodology.

<sup>4</sup> In assessing *Substantive* compliance, the Monitoring Team evaluated the actions of the initiating officers, the officers responsible for effectuating the arrests, and all officers appearing on body-worn or in-car camera video.

<sup>5</sup> By separately assessing NPD’s *Substantive* compliance and *Documentation* compliance, the Monitoring Team affords NPD the ability to more easily identify areas in which it may focus its resources to address deficiencies, if any, in its Arrests with or without an Arrest Warrant practices.

When separated by *Substantive* and *Documentation* compliance, the Audit revealed that NPD attained a score of 99.1% for *Substantive* compliance (223 out of 225 events assessed for *Substantive* compliance were determined to be compliant).

NPD’s *Documentation* compliance score was 82.7% (186 of 225 events assessed for *Documentation* compliance were determined to be compliant).

One event reviewed by the Monitoring Team failed with respect to both *Substantive* and *Documentation* compliance. Thus, when assessing for Overall Compliance (*i.e.*, satisfaction of **both** substantive **and** documentation requirements), the Monitoring Team found that 81.3% of events reviewed were compliant both substantively and with respect to documentation requirements (183 out of 225 events assessed by the Monitoring Team were determined to be complaint with respect to both substance and documentation).

The Monitoring Team finds NPD’s performance on the substantive portion of the Audit to be compliant with the requirements of the Consent Decree. However, the Monitoring Team also finds NPD to be “non-compliant” with regard to both documentation and its Overall Compliance rating.

The following table presents an overview of NPD’s compliance in the Monitoring Team’s Second Audit of Arrests with or without an Arrest Warrant:

<b>Overview of First Arrests Audit Results</b>		
<b>Audit Area/Subject</b>	<b>Consent Decree Paragraph</b>	<b>Compliance?</b>
<b>Arrests With or Without an Arrest Warrant Policy and Related Policies</b>	Section VI (Opening Statement) and Paragraphs 35-37, 42, 51, 53, 55-62	Yes. <i>See Appendix C</i>
<b>Stop, Search and Arrest Analysis Protocol</b>	Paragraph 53	Yes. The Monitoring Team previously approved NPD’s methodology, and NPD has submitted preliminary analyses. Some aspects of those analyses, 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.

<b>Overview of First Arrests Audit Results</b>		
<b>Audit Area/Subject</b>	<b>Consent Decree Paragraph</b>	<b>Compliance?</b>
<p><b>Substantive Compliance</b></p> <p><i>Whether the responsible NPD officer adhered to NPD policy by demonstrating that legal justification for the arrest existed and that the arrest was within legal and policy-related parameters.</i></p>	<p>Section VI (Opening Statement), and Paragraphs 35-38, and 55-62 (First Amendment)</p>	<p>Yes. NPD was deemed substantively compliant in 99.1% of Arrest events reviewed.</p>
<p><b>Documentation Compliance</b></p> <p><i>Whether the responsible NPD officer adhered to NPD policy by demonstrating that all reporting and related narrative requirements were met as determined by NPD policy and the Consent Decree.</i></p>	<p>Section VI (Opening Statement), and Paragraphs 39,42, and 55-62 (First Amendment)</p>	<p>No. NPD was deemed compliant with respect to documentation in 82.7% of Arrest events reviewed.</p>
<p><b>Overall Compliance</b></p> <p><i>Whether NPD demonstrated overall compliance in its Arrests with or without an Arrest Warrant practices (Substantive and Documentation)</i></p>	<p>Section VI (Opening Statement), and Paragraphs 35-42, 55-62 (First Amendment)</p>	<p>No. Overall, 81.3% of Arrest events reviewed were compliant both substantively and with respect to documentation.</p>

## V. METHODOLOGY

To assess compliance, the Monitoring Team evaluated whether NPD satisfied the relevant provisions of the Consent Decree. The Monitoring Team also evaluated whether NPD followed its own policy, protocols, procedural guidelines, notifications, and reporting

requirements. A comprehensive methodology is included in the 45-day notice for this Audit (see **Appendix B**).

## **V. ANALYSIS**

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

The Consent Decree requires NPD to implement policies directing officers to adhere to certain procedures in their arrest practices. Prior to this Audit, the Monitoring Team reviewed and approved NPD's Arrest policies, as specified in General Order 18-16, *Arrests with or without an Arrest Warrant*, dated December 31, 2018 (see **Appendix D**), General Order 18-12 *First Amendment Right to Observe, Object to, and Record Police Activity*, dated June 12, 2019 (see **Appendix E**), NPD Memorandum 19-18 *Implementation of General Order 18-14, 18-15, 18-16 RE: Stop, Search, and Arrest Policies*, dated January 11, 2019 (specifically focusing on the paragraphs addressing Arrests) (see **Appendix F**), General Order 21-04 *Protocol for Analyzing Stop, Search, and Arrest Data*, dated May 27, 2021 (see **Appendix G**), as well as related written directives, and related In-Service Training Bulletins.

Before approving these policies, the Monitoring Team conducted a formal review to determine whether the policies contained each requirement relevant to arrests with or without an arrest warrant as specified in the Consent Decree. The Monitoring Team determined that the Consent Decree's policy requirements in this area were reflected in NPD's General Orders. (See **Appendix C**).

### **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 (i) the nature and scope of demographic disparities in stop, search, and arrest practices, (ii) whether any such disparities can be decreased or eliminated, and (iii) 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 G**). NPD has submitted to the Monitoring Team preliminary analyses based on its protocol. Some aspects of NPD's analysis, however, were incomplete when assessed by NPD's own methodology. In the future, the Monitoring Team expects NPD will be able to adhere strictly to its proposed methodology.

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

The Monitoring Team generated a random sample of 200 events from the Audit Period (October 1, 2022, up to and including November 30, 2022) to analyze for this Audit. This random sample of 200 events was drawn from a total population of 351 events for the Audit



Period. The final Audit sample was 225 events after SME review following the addition of 34 associated cases and the removal of eight events for various reasons (*see Appendix H*). An event was deemed “Overall Compliant” only when responding and reporting officers were compliant with regard to *both substantive and documentation* requirements for the event assessed. Accordingly, if an officer’s actions relevant to that event were substantively non-compliant, or non-compliant with respect to documentation, or both, that event was deemed “Overall Non-Compliant.”

To assess Substantive Compliance for each arrest event, the Monitoring Team evaluated whether the officer involved had legal justification for the arrest (*i.e.*, “Probable Cause”), and whether the mechanics of the arrest were within legal and policy-related parameters. The Monitoring Team evaluated the actions of the initiating officers, the officers responsible for effectuating the arrests, and all officers appearing on body-worn or in-car camera video.

To assess documentary compliance for each arrest event, the SMEs inspected relevant materials to determine if (1) probable cause was properly articulated on written documents; and (2) BWC/ICC<sup>6</sup> video footage was submitted, and corroborated information recorded on corresponding police division forms. If probable cause was not clearly articulated on relevant forms, or if BWC/ICC footage refuted (or failed to corroborate) information recorded on associated forms, the arrest event was assessed “documentation non-compliant.”

### 1. Substantive Compliance

In assessing substantive compliance, for each arrest event, the SMEs inspected relevant materials to determine the constitutionality and legal sufficiency of the arrest (*i.e.*, whether the arresting officer established probable cause *prior* to the effectuation of the arrest). Arrest events meeting legal and constitutional sufficiency thresholds (as assessed by the SMEs) were deemed “substantively compliant.” Arrest events lacking legal or constitutional sufficiency (again, as assessed by the SMEs) were deemed “substantively non-compliant.”

A breakdown of substantive compliance scores follows.

Total Number of Events Reviewed	Number of Events Deemed Substantively Compliant	Compliance Score
225	223	99.1%

Of the 225 events reviewed by the Monitoring Team, 2 (0.9 %) were non-compliant due to substantive related deficiencies. For a list of events that were determined to be substantively non-compliant, *see Appendix I*.

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<sup>6</sup> “BWC” refers to Body-Worn Cameras and “ICC” refers to In-Car Cameras.

## 2. Documentation Compliance

To determine whether NPD achieved documentation compliance, the Monitoring Team assessed whether or not the responsible NPD officer for each event had adhered to *all* relevant reporting and documentation requirements as defined by NPD policy and Consent Decree requirements. NPD achieved a Documentation Compliance score of 82.7 %. In 186 of the 225 events reviewed, the responsible officers completed documentation reporting requirements according to NPD policy.

Total Number of Events Reviewed	Number of Events Deemed Documentation Compliant	Compliance Score
225	186	82.7%

Of the 225 events reviewed by the Monitoring Team, 39 (17.3%) were non-compliant due to documentation/reporting related deficiencies. For a list of events that were determined to be non-compliant with respect to documentation, *see Appendix I*.

## 3. Overall Compliance

NPD achieved an overall compliance score of 81.3%. In total, 183 of the 225 events reviewed by the Monitoring Team were compliant both substantively and in terms of documentation. Accordingly, 42 events were found to be overall noncompliant (18.7%).

Total Number of Events Reviewed	Number of Events Deemed Overall Compliant	Compliance Score
225	183	81.3%.

For a table showing the distribution of the events that were found to be substantively noncompliant, documentation non-compliant, or both substantively and documentation noncompliant, *see Appendix I*.

## VI. OBSERVATIONS AND RECOMMENDATIONS

For the Second Arrest Audit, the Monitoring Team made four principal observations and corresponding recommendations, as summarized below.

### A. Legality, Constitutionality, and Propriety of Arrests

*Observation:* The majority of the arrests reviewed by the Independent Monitoring Team's Subject Matter Experts (SMEs) were lawful, constitutional, and conducted pursuant to circumstances under which a reasonable police officer would undertake the same course of action. In addition, NPD officers continue to demonstrate a strong understanding of NPD

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 most interactions with members of the community, NPD 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. Unavailability of Written Documents**

*Observation:* During the Second Arrest Audit, the SME’s encountered numerous events for which relevant documents were unavailable. The lack of available documentation resulted from one of the following of the circumstances: (1) the responding officers failed to complete or submit the required documents; or (2) NPD was unable to retrieve the documents at the time of the in-person review session and required additional searching by NPD Consent Decree personnel. Most concerning is that, for the majority of events the Monitoring Team determined to be deficient with respect to documentation, the missing document was the Stop Report that should describe most of facts and circumstances surrounding the arrest.

*Recommendation:* The Monitoring Team recommends that NPD Supervisors adopt a more proactive posture with regard to inspecting events for completeness and compliance with NPD policy. Although the issue of documentation should be prioritized department-wide, it is particularly essential for Desk Supervisors to augment their current level of attentiveness to the preparation and submission of required reports by subordinate personnel.

## **C. Misclassification of Body-Worn Camera Videos**

*Observation:* For many events reviewed by the SMEs, officer Body-Worn Camera (BWC) recordings were improperly classified, or lacked a required Event Number, requiring that SMEs conduct secondary and tertiary queries using differing search parameters. Although, ultimately, NPD was able to locate most of the videos requested by the Monitoring Team, the prevalence of misclassified video created delays in auditing affected events. Additionally, if unresolved, this issue could potentially impede timely and comprehensive internal investigations and could also adversely affect the resolution of criminal and civil proceedings in which body-worn camera video is relevant.

*Recommendation:* The Monitoring Team recommends that NPD undertake deliberate measures to ensure that, at the conclusion of each tour of duty, Supervisors verify that all required BWC recordings are properly uploaded and correctly identified with the appropriate event number. This oversight duty and responsibility may require the institution of specialized training, review of the current BWC/ICC systems and progressive disciplinary protocols. The Monitoring Team also recommends that NPD work with its current BWC vendor or identify a new vendor to find a technical solution that would allow for the Event Number from the Computer Aided Dispatch (CAD) system be auto generated to each BWC and ICC video.

**D. Arresting Officer Not Clearly Identified in Written Reports**

*Observation:* The SMEs reviewed Arrest Events where the officer who effectuated the physical arrest was not specifically identified within the contents of attendant written documentation. Equally deficient, the officer who prepared the Arrest and Stop Reports (for consistency, designated the “primary officer” by the Monitoring Team), was *not* the officer who effectuated the arrest. These occurrences could expose NPD to skepticism by members of the public, the Civilian Complaint Review Board (CCRB) and courts, regarding the accuracy and reliability of NPD’s written documentation.

*Recommendation:* The Monitoring Team maintains its previously offered recommendation: NPD should update its policy relating to arrests to include a requirement that either the officer who effectuates the arrest (or initiates the interaction that leads to the arrest) prepare the Arrest and Stop Reports, **or**, at minimum, that the arresting officer be clearly identified in Arrest and Stop Reports. An emphasis should be placed on training NPD’s specialized units, often plainclothes officers, detectives, and Supervisors who were found to have a significant number of errors within the sample set provided.

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

**DATED:** October 9, 2023

Peter C. Harvey, Independent Monitor

## **List of Appendices:**

**Appendix A:** 45-day Letter

**Appendix B:** Methodology

**Appendix C:** Policy Crosswalk

**Appendix D:** General Order 18-16, *Arrests with or without an Arrest Warrant*, dated December 31, 2018

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

**Appendix F:** NPD Memorandum 19-18 *Implementation of General Order 18-14, 18-15, 18-16 RE: Stop, Search, and Arrest Policies*, dated January 11, 2019 (specifically focusing on the paragraphs addressing Arrests)

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

**Appendix H:** Events Removed and Added to the Audit Sample

**Appendix I:** List of Non-Compliant Events

# **Appendix A**

July 14, 2023

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**VIA Email Attachment**

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Corporation Counsel  
Gary S. Lipschutz, Esq/  
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City of Newark, Department of Law  
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Newark, NJ 07102

Fritz G. Fragé  
Public Safety Director  
Department of Public Safety  
480 Clinton Avenue  
Newark NJ 07108

**Re: Second Arrest Audit 45-day Letter**

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 Independent Monitoring Team will conduct its *second* Audit of NPD's Arrests With or Without an Arrest Warrant (also referred to as "Arrests"). This Audit will cover the period from October 1, 2022, up to and including November 30, 2022 (the "Audit Period"), in a manner to be described in this correspondence. The purpose of this Audit is to assess whether NPD has complied with enumerated sections of the Consent Decree, including Section VI (specifically, Paragraphs 35-37, 42, 51, 53 & 55-62) and Section XVI (specifically, Paragraph 174 (a)).<sup>1</sup>

This *second* Audit of Arrests will be carried out by the following Monitoring Team Subject Matter Experts: Staff Inspector Sekou Kinebrew (Ret.) of the Philadelphia Police Department, Lieutenant Daniel Gomez (Ret.) of the Los Angeles Police Department, and Sergeant Roger Nunez (Ret.) of the Los Angeles Police Department. The Data Team comprised

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<sup>1</sup> The data collected in this audit will be the baseline for outcome assessments (Paragraph 174(a)) for Arrests, and will be reported out separately.

of Linda Tartaglia, Associate Director, Rutgers University Center on Policing, Wayne Fisher, Ph. D., Rutgers University Center on Policing, Rosalyn Bocker Parks, Ph. D., Rutgers University Center on Policing, Kathryn Duffy, Ph.D., Rutgers University Center on Policing, and Jonathan Norrell, Rutgers University Center on Policing, will work with the SMEs on this audit.

## I. SCOPE

As agreed upon by the City of Newark (the “City”), the Newark Police Division (“NPD”) and the United States Department of Justice (“DOJ”) (collectively, the “Parties”) and the Independent Monitor, this Audit will focus on the relevant Consent Decree paragraphs as they pertain to Arrests. The topical areas of Stops and Searches will not be the subject of this Audit, but will be the subject of separate audits.

Paragraph 173 of the Consent Decree requires the Monitor to “conduct reviews and audits as necessary to determine whether the City and NPD have implemented and continue to comply with the requirements” of the Consent Decree. The Monitoring Team must assess whether the City and NPD have “implemented the [Arrest] requirements into practice.” (See Consent Decree Paragraph 173).

Additionally, the Monitoring Team will not audit supervisory reviews of Arrests during this *second* Audit of Arrests. The Monitoring Team intends to complete an audit of supervisory reviews of Arrests in a separate audit. However, for this Audit, the Monitoring Team will inspect Arrests for compliance with Consent Decree Paragraph 37, pertaining to supervisor notification for specified arrests.

## II. METHODOLOGY<sup>2</sup>

To assess compliance, the Monitoring Team will evaluate whether NPD has satisfied the relevant provisions of the Consent Decree. The Monitoring Team also will evaluate whether NPD is following its own policy, protocols, procedural guidelines, notifications, and reporting requirements as outlined in the following:

- General Order 18-16, *Arrests with or without an Arrest Warrant*, dated December 31, 2018;
- General Order 18-14, *Consensual Citizen Contacts and Investigatory Stops*, dated December 31, 2018 (specifically focusing on the paragraphs addressing Arrests);
- General Order 18-15, *Searches with or without a Search Warrant*, dated May 27, 2021 (specifically focusing on the paragraphs addressing Arrests);

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<sup>2</sup> A comprehensive Methodology has been attached to this document for the Parties’ review.



- General Order 21-04, *Protocol for Analyzing Stop, Search, and Arrest Data*, dated May 27, 2021;
- General Order 18-12, *First Amendment Right to Observe, Object to, and Record Police Activity*, dated June 12, 2019;
- General Order 18-05, *Body-Worn Cameras*, dated October 22, 2019;
- General Order 18-06, *In-Car Cameras*, dated April 13, 2018; and
- Related written directives; and related In-Service Training Bulletins.

The Monitoring Team also will consider whether data elements required by the Consent Decree and NPD's General Order 18-16, *Arrests with or without an Arrest Warrant*, have been recorded within the incident and/or arrest reports reviewed.

Each of the below sections of the General Orders listed above directly correlate to the Consent Decree Paragraph listed below. The Monitoring Team will draw a randomized sample from among all arrests conducted by NPD officers during the Audit Period. In so doing, the Monitoring Team will provide NPD with the event numbers for review in a timely manner, in order to inspect for certain indicia of compliance.

#### **Section VI (Opening Statement)**

To assess compliance with Consent Decree Section VI, Opening Statement, for each arrest event, the Monitoring Team will review relevant reports, along with corresponding Body-Worn and In-Car Camera footage that provide objective evidence of officers' actions in connection with arrests conducted during the Audit Period. Accordingly, the SME Team shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from Body-Worn and In-Car Cameras. The Monitoring Team will determine whether NPD officers: (i) sufficiently established and articulated probable cause to effectuate the arrest; (ii) adhered to the arrest procedures outlined in General Order 18-16, Section II; and, (iii) refrained from using pro forma or conclusory language without supporting detail.

#### **Consent Decree Paragraph 35**

To assess compliance with Consent Decree Paragraph 35, for each arrest event, the Monitoring Team will review relevant reports, along with corresponding body-worn and in-car camera footage that provide objective evidence of officers' actions in connection with arrests conducted during the Audit Period. Accordingly, the SME Team shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from Body-Worn and In-Car Cameras. The Monitoring Team will consider whether NPD officers: (i) sufficiently established and articulated probable cause to effectuate the arrest; (ii) adhered to the arrest procedures outlined in General Order 18-16, Section V (A & D); and, (iii) refrained from using pro forma or conclusory language without supporting detail.

#### **Consent Decree Paragraph 36**

To assess compliance with Consent Decree Paragraph 36, for each arrest event, the Monitoring Team will review relevant reports, along with corresponding body-worn and in-car camera footage that provide objective evidence of officers' actions in connection with arrests conducted during the Audit Period. Accordingly, the SME Team shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from Body-Worn and In-Car Cameras. The Monitoring Team will determine whether NPD officers: (i) sufficiently established and articulated probable cause to effectuate the arrest; (ii) adhered to the arrest procedures outlined in General Order 18-16, Section I – Purpose & Section V(B) – Prohibited Actions; and, (iii) refrained from using pro forma or conclusory language without supporting detail.

### **Consent Decree Paragraph 37**

To assess compliance with Consent Decree Paragraph 37, for each arrest event, the Monitoring Team will review relevant reports, along with corresponding body-worn and in-car camera footage that provide objective evidence of officers' actions in connection with arrests conducted during the Audit Period. Accordingly, the SME Team shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from Body-Worn and In-Car Cameras. The Monitoring Team will determine whether NPD officers: (i) sufficiently established and articulated probable cause to effectuate the arrest; (ii) adhered to the arrest procedures outlined in General Order 18-16, Section XI(G); (iii) and refrained from using pro forma or conclusory language without supporting detail.

Moreover, for arrests involving circumstances or conditions that require an officer to notify a supervisor immediately after (i.e., effecting an arrest where the officer used force; an incident in which an officer unholstered or pointed a firearm; an arrest for obstructing or resisting an officer; any disorderly conduct type arrest; or, a custodial arrest for a vehicle infraction), in addition to reviewing for compliance as described above, the Monitoring Team will specifically inspect for evidence of supervisory notification.

Additionally, to assess compliance with Consent Decree Paragraph 37 (requiring supervisory notification for arrests involving the charge of “Disorderly Conduct”), and because of the limited annual rate of occurrence, the SME Team will separately request all arrests made in 2022 for Disorderly Conduct.

### **Consent Decree Paragraph 42**

To assess compliance with Consent Decree Paragraph 42, for each arrest event, the Monitoring Team will review relevant reports, along with corresponding Body-Worn and In-Car Camera footage that provide objective evidence of officers' actions in connection with arrests conducted during the Audit Period. Accordingly, the SME Team shall utilize all provided NPD Reports, published General Orders/Policies, including Section XI (K), XIII(B) and (G) and video imagery/metadata from Body-Worn and In-Car Cameras.

### **Consent Decree Paragraph 51**

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*.

### **Consent Decree Paragraph 53**

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.

### **Consent Decree Paragraph 55**

To assess compliance with Consent Decree Paragraph 55, for each arrest event, the Monitoring Team will review relevant reports, along with corresponding body-worn and in-car camera footage that provide objective evidence of officers' actions in connection with arrests conducted during the Audit Period. Accordingly, the SME Team shall utilize all provided NPD Reports, published General Orders/Policies, including General Order 18-16; Section V(G & H)<sup>3</sup> 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.

### **Consent Decree Paragraphs 56-61**

To assess compliance with Consent Decree Paragraph 56, for each arrest event, the Monitoring Team will review relevant reports, along with corresponding body-worn and in-car camera footage that provide objective evidence of officers' actions in connection with arrests conducted during the Audit Period. Accordingly, the SME Team shall utilize all provided NPD Reports, published General Orders/Policies, including General Order 18-12; Section V (A & B) 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.

### **Consent Decree Paragraph 62**

To assess compliance with Consent Decree Paragraph 62, for each arrest event, the Monitoring Team will review relevant reports, along with corresponding body-worn and in-car camera footage that provide objective evidence of officers' actions in connection with arrests conducted during the Audit Period. Accordingly, the SME Team shall utilize all provided NPD Reports, published General Orders/Policies, including General Order 18-12; Section V(D) and video

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<sup>3</sup> Similar instruction appears in NPD General Order 18-12 "*First Amendment Right to Observe, Object to, and Record Police Activity*" Section V – Procedures.

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.

### **Consent Decree Paragraph 174(a)**

Regarding compliance with Consent Decree Paragraph 174(a), an outcome assessment report will be provided to the Parties in the semi-annual progress reports and will not be included in the second Arrest audit report. It should, however, be noted, that prior to this audit, NPD did craft and implement General Order 21-04 (“*Protocol for Analyzing Stop, Search & Arrest Data*” – Effective 05/27/2021). Drafts of this General Order were reviewed by the Monitoring Team prior to implementation.

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For further information regarding the Monitoring Team’s methodology with respect to the audit of NPD’s Arrests With or Without an Arrest Warrant, *see* **Appendix A**.

### **III. REQUIRED DATA**

In preparation for the audit, the Monitoring Team requires NPD to send CAD data on all Arrests for the Audit Period by August 1, 2023. From this population the Monitoring Team will draw a sample for review and provide this sample to NPD by August 4, 2023. No later than August 18, 2023, the Monitoring Team requires that NPD provide it with the following data and records for the selected sample:

- A. Copies of any and all written directives or training bulletins issued subsequent to the issuance of General Order 18-16, *Arrests with or without an Arrest Warrant* related to the topic of Arrests.
- B. A spreadsheet identifying all events within the specified Audit Period wherein an arrest was made by NPD officers. The spreadsheet should contain the event number (in chronological order); nature/classification of the event; the date and time of the arrest; officer’s badge number, officer’s assignment / precinct / unit / section; and subject’s apparent gender, race, ethnicity or national origin and age.
- C. A separate spreadsheet identifying all arrests made in 2022 for Disorderly Conduct.

The spreadsheet should contain the event number (in chronological order); nature/classification of the incident; the date and time of the arrest; officer’s badge number, officer’s assignment / precinct / unit / section; and subject’s apparent gender, race, ethnicity or national origin and age.

D. The methodology NPD uses to determine (i) the nature and scope of demographic disparities in stop and search practices, (ii) which stop, search, and arrest practices are most effective and efficient, and (iii) a copy of the most recently generated report that used this methodology (Paragraph 51).

E. A record of any arrests made during the Audit Period, where it was determined that an arrest was voided in accordance with General Order 18-16, Section XII, *Voiding Arrests*.

F. The protocol, approved by the Monitor and DOJ, that has been used for comprehensive analysis of stop, search, and arrest data, which includes the steps for determining the nature and scope of demographic disparities in stop and search practices, and whether any disparities can be decreased or eliminated, as well as steps for determining which stop, search, and arrest practices are most effective and efficient in increasing public safety and police legitimacy within the Newark community (Paragraph 53).

G. A copy of the most current NPD annual report that summarizes and analyzes the (i) stop, (ii) search, (iii) arrest, and (iv) use of force data collected, the analysis of that data, and the steps taken to correct problems and build on successes (Paragraph 168).

NPD should also provide the Monitoring Team with data sufficient to enable Monitoring Team to conduct outcome assessments pursuant to Paragraph 174(a). The Monitoring Team understands that the rates referenced in Paragraph 174(a) will be compiled and computed by NPD from IA Pro which is utilized by the Office of Professional Standards<sup>4</sup>.

After receiving the requested information, the Monitoring Team will provide the City and NPD with the event numbers of those cases related to arrests it seeks to review in a timely manner. The Monitoring Team requests that NPD (a) mark all body-worn and in-car camera videos for arrests made during the audit period for indefinite retention so that all videos of events involving an arrest will be available for review by the Monitoring Team; (b) identify all associated videos with the provided event numbers; and (c) organize that content within the Panasonic digital evidence program prior to any onsite auditing activities conducted by the Monitoring Team. In the event that onsite review is not feasible, NPD shall download the identified videos in a non-proprietary format (converted from Panasonic) onto a Monitoring Team-provided secure encrypted drive.

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<sup>4</sup> The data collected in this audit will be the baseline for outcome assessments (Paragraph 174(a)) for Arrests, and will be reported out separately.

Mr. Stewart and Director Fragé  
July 14, 2023  
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**NOTE: For instances wherein relevant body-worn and/or in-car camera footage are not present and viewable on the dates of the on-site or remote audit, the Monitoring Team will presume that the footage does not exist, and will score compliance accordingly.**

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

A Pre-Audit meeting will be scheduled for this audit no later than August 30, 2023.

Best Regards,

Peter C. Harvey

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# **Appendix B**

## METHODOLOGY

### SECOND AUDIT OF ARRESTS WITH OR WITHOUT AN ARREST WARRANT

The Independent Monitoring Team's Second Audit of Newark Police Division's (NPD) Arrests with or without an Arrest Warrant is scheduled to be conducted during the Summer of 2023. It is anticipated that the entire audit will be conducted on-site at NPD Headquarters. The following methodology will guide this audit.

For the purpose of the audit, an "arrest" shall be defined as follows<sup>1</sup>:

An **arrest** occurs when:

- Upon establishing probable cause, a police officer takes (or attempts to take) custodial control of an individual for the purpose of instituting criminal charges, or;
- An officer, on behalf of an issuing authority, executes a lawfully obtained arrest warrant. In such cases, probable cause would have been established to a satisfactory degree by the issuing authority prior to the police-citizen contact; or
- When an individual is already in lawful police custody (e.g., municipal police holding facility, county jail, state or federal prison, etc.), and is charged with additional statutory violations related or unrelated to the event which led to the initial custodial detention.

Additionally, **probable cause**<sup>2</sup> shall be defined as a set of facts and circumstances which would lead a reasonable person to believe that criminal activity is afoot, and that the subject of the detainment is responsible for, or participated in, the criminal activity.

- It should be noted that, while there are no technical elements of probable cause, the establishment of probable cause requires a higher standard of proof than that of reasonable suspicion.

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

- Objective probable cause existed prior to the effectuation of arrest.
- Probable cause is properly and sufficiently articulated within the contents of the appropriate police department documents.

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<sup>1</sup> The Consent Decree defines an "Arrest" as: a seizure of greater scope or duration than an investigatory stop or detention.

<sup>2</sup> The Consent Decree defines "Probable cause" as: reasonably trustworthy facts and circumstances that, within the totality of the circumstances, lead an officer to reasonable believe that there is a fair probability that an individual has committed or is committing a crime.



- Required forms were completed in accordance with department policy (e.g., NPD G.O. #18-16), **with specific regard to fields and narrative sections related to the arrest.**
- Body-worn and/or in-car camera footage corroborate information memorialized on police division documents.
- The involved officers adhered to relevant case law, criminal procedure provisions, and tenets of the Consent Decree. Examples include, but are not limited to, the following:
  - Warrant requirement for arrests for misdemeanor offenses not committed in the presence of police (exceptions to this requirement include arrests for theft, DUI, and domestic violence-related offenses).
  - Supervisory notification for arrests for DUI, Disorderly Conduct, Motor Vehicle Violations where the arrestee is taken into physical custody; and arrests which involve the application of force.

In assessing the legal sufficiency for an arrest, the SME will not consider dispositions reached (and determinations made) after the arresting officer established probable cause, and the officer's clear intent was to effectuate an arrest. For example, consider the following scenario:

- An officer establishes probable cause and takes (or clearly intends to take) custodial control of a person. A field or desk supervisor later determines that the defendant should be issued a summons and released. The subsequent supervisory decision will not be considered in evaluating whether the arrest was legally and constitutionally sound.

For each arrest event, in determining overall compliance, the SME will evaluate both "substantive" and "documentary" compliance.

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

- The constitutionality and legal sufficiency of the arrest.
  - i.e., whether the arresting **officer established probable cause prior to the effectuation of the arrest.**
  - Arrest events meeting legal and constitutional sufficiency thresholds (as assessed by the SME) will be deemed "substantively compliant".
  - Arrest events lacking legal or constitutional sufficiency (as assessed by the SME) will be deemed "substantively non-compliant".

In assessing documentary compliance, for each arrest event, the SME will inspect relevant materials to determine if:

- Probable cause is properly articulated on written document; and
- Body-worn camera/In-car camera video footage has been submitted, and corroborates information recorded on corresponding police division forms.
  - If Probable cause is not clearly articulated on relevant forms, or if body-worn camera/in-car camera 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.

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As detailed within the contents of the 45-day notice, to assess compliance with Consent Decree Section VI (Opening Statement), as well as Paragraphs 35-37, 42, 51, and 53-62, for each arrest event, the Monitoring Team will review relevant reports, along with corresponding body-worn camera and in-car camera footage that provide objective evidence of officers’ actions in connection with arrests conducted during the Audit Period.

Accordingly, the SMEs shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from body-worn and in-car cameras. The Monitoring Team will determine whether NPD officers (i) sufficiently established and articulated probable cause to effectuate the arrest, (ii) adhered to the arrest procedures outlined in Section XI of General Order 18-16, and (iii) refrained from using pro forma or conclusory language without supporting detail.

For instances wherein relevant body-worn camera and in-car camera footage is not present and viewable on the dates of the on-site audit, the Monitoring Team will presume that the footage does not exist, and will score compliance accordingly.

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The IMT recognizes that the large majority of arrests will require the preparation of “Stop Reports” and “Arrest Reports”. The IMT also acknowledges that multiple “Stop” and “Arrest” Reports may correspond to a given “arrest event”. Accordingly, the “unit of measure” for this audit will be “unique event numbers” (as opposed to individual Stop or Arrest Reports).

In order to conduct a comprehensive audit, **for each arrest event identified in the sample**, the Monitoring Team will require that NPD provide all relevant documents and materials, including but not limited to:

- Stop Report
- Arrest Report
- Incident Report (NPD Form 802)
- Body-Worn Camera footage
- In-Car Camera footage

With specific regard to the production and submission of body-worn camera footage, the following tenets of NPD GO 18-05 should be particularly observed:

- Members shall activate the body-worn camera 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 body-worn camera 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 Monitoring Team 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 C**

#	Consent Decree Paragraph	NPD Policy
1.	Section VI Opening Statement	General Order 18-16, <i>Arrests with or without an Arrest Warrant</i> : Section II.
2.	35	General Order 18-16, <i>Arrests with or without an Arrest Warrant</i> : Section V (A & D)
3.	36	General Order 18-16, <i>Arrests with or without an Arrest Warrant</i> : Section I; Section V (B)
4.	37	General Order 18-16, <i>Arrests with or without an Arrest Warrant</i> : Section XI (G)
5.	42	General Order 18-16, <i>Arrests with or without an Arrest Warrant</i> : Section XI (K); Section XIII (G)
6.	51	The Independent Monitoring Team recognizes that NPD satisfied this Consent Decree provision by augmenting its Stop Report, which was acknowledged in the Monitoring Team's <i>First Stop Audit</i> .
7.	53	General Order 21-04, <i>Protocol for Analyzing Stop, Search, and Arrest Data</i>
8.	55	General Order 18-16, <i>Arrests with or without an Arrest Warrant</i> : Section V (G & H); General Order 18-12, <i>First Amendment Right to Observe, Object to, and Record Police Activity</i> : Section V
9.	56	General Order 18-12, <i>First Amendment Right to Observe, Object to, and Record Police Activity</i> ; Section V (A & B)
10.	57	General Order 18-12, <i>First Amendment Right to Observe, Object to, and Record Police Activity</i> ; Section V (A & B)
11.	58	General Order 18-12, <i>First Amendment Right to Observe, Object to, and Record Police Activity</i> ; Section V (A & B)
12.	59	General Order 18-12, <i>First Amendment Right to Observe, Object to, and Record Police Activity</i> ; Section V (A & B)
13.	60	General Order 18-12, <i>First Amendment Right to Observe, Object to, and Record Police Activity</i> ; Section V (A & B)
14.	61	General Order 18-12, <i>First Amendment Right to Observe, Object to, and Record Police Activity</i> ; Section V (A & B)
15.	62	General Order 18-12, <i>First Amendment Right to Observe, Object to, and Record Police Activity</i> ; Section V (D)
16.	174 (a)	General Order 21-04, <i>Protocol for Analyzing Stop, Search, and Arrest Data</i>

# **Appendix D**



# NEWARK POLICE DIVISION GENERAL ORDER



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

**Related policies:**

General Order 17-06 “Bias-Free Policing”

General Order 14-16 “Stationhouse Adjustments”

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

General Order 87-03 “Administrative Reporting Unusual Events”

This Order contains the following numbered Sections:

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



# NEWARK POLICE DIVISION GENERAL ORDER



## **XIII. SUPERVISOR RESPONSIBILITIES**

## **XIV. ADMINISTRATIVE REVIEW**

## **XV. TRAINING**

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

### **I. PURPOSE**

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

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

### **II. POLICY**

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

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

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





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

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

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

### III. RESPONSIBILITY FOR 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.



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

## V. PROHIBITED ACTIONS

Newark Police Officers are prohibited from:

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



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

## VI. PROBABLE CAUSE

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



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



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

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

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

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

## VIII. ARREST WITH AN ARREST WARRANT



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

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

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

## IX. ARRESTS WITHOUT AN ARREST WARRANT

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



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2. New Jersey strictly follows the common law of arrest that allows a police officer to effect a warrantless arrest upon probable cause that a crime has been or is being committed by the person being arrested.
  3. New Jersey law grants municipal police officers the authority to effect an arrest anywhere in the state for a crime that is committed in his or her presence. N.J.S.A. 40A:14-152.1 provides: "Notwithstanding the provisions of N.J.S.A. 40A:14-152 or any other law to the contrary, any full-time, permanently appointed municipal police officer shall have full power of arrest for any crime committed in said officer's presence and committed anywhere in the territorial limits of the State of New Jersey."
- B.** When dealing with disorderly persons and petty disorderly persons offenses, state statute (N.J.S.A. 2A:169-3) provides: "[w]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:



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

AND

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

## X. ENTRY OF STRUCTURE TO EFFECT AN ARREST

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

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

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

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

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

1. **Hot pursuit** - This means that an officer has probable cause to arrest a suspect and the pursuit of the fleeing felon (for an indictable offense) was set in motion in a public place.
2. **Threat to Public Safety** – This is a situation where officers have probable cause to arrest a Suspect because (a) the suspect is reasonably believed to be armed or dangerous, (b) the suspect is inside a structure, (c) the suspect has injured or threatened to injure themselves or others; and (d) the suspect has refused to surrender to authorities or is in the process of causing bodily harm to someone. (*Ryburn v. Huff*, 132 S.Ct. 987 (2012))
3. **Destruction of Evidence** – Officers are authorized to enter a structure to effect an arrest, absent any type of warrant, if there is a serious threat that incriminating evidence on the premises being





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entered would be destroyed if officers take the time to obtain a search warrant and/or arrest warrant.

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

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

## **XI. ARREST PROCEDURES**

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



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(“EMS”) for evaluation. Upon evaluation by a medical professional, if warranted, the arrestee will be transported to a proper medical facility to receive further treatment or appropriate evaluation.

- G.** An officer will notify a Supervisor and request their presence immediately after effecting an arrest:
- where the officer used force;
  - for obstructing the administration of law;
  - for resisting arrest;
  - for disorderly conduct;
  - for a violation where there is a breach of the peace; or
  - for a motor vehicle infraction.
    - Although N.J.S.A. 39:5-25 authorizes arrests for motor vehicle violations, custodial arrests for motor vehicle violations are limited to only serious infractions (*State v. Pierce*, 136 N.J. 184 (1994)).
- H.** An arrestee shall be secured with handcuffs behind their back, unless a physical or medical condition precludes it, at the earliest practical opportunity. When faced with an unusual situation that makes it unfeasible or impossible to employ accepted handcuffing practices, officers should rely on common sense and good judgment to determine the most practical means for securing the individual.
- I.** The arrestee will be transported to the processing facility dictated by Newark Police Division orders without unnecessary delay so the arrestee may be processed.
- J.** A Preliminary Arrest Report, (DP1:2036), will be executed prior to escorting an arrestee into a police building for processing, unless exigent circumstances prevent the officer from doing so.
- K.** All reports relating to lawful arrests will be executed and submitted to the appropriate supervisor for review. An additional entry into Blue Team, or other authorized database, is required if force is used during an arrest.
- L.** Officers are required to make all reasonable efforts to safely secure all arrestees in NPD transport vehicles.

## **XII. VOIDING ARRESTS**

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

If an officer’s immediate Field Supervisor is not available, officers will exhaust all other measures to contact another Supervisor from their command to make the determination. If a Supervisor from the



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officer's command is not able to be reached, the officer continue to pursue all other logical means to obtain input of an on-duty Newark Police Division Supervisor for final determination.

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

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

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

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

**In all instances the arresting officer shall document the entire incident on an Incident Report (DP1:802), indicating everything learned in a clearly explained chronological order of events. The report will include the probable cause that was initially believed to authorize the arrest, and the circumstances of the investigation that led to the probable cause being debunked.**

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

### **XIII. SUPERVISOR 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;



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

## **B. Desk Supervisor Receiving Arrestee (MAPS Supervisor/Desk Supervisor/Watch Commander)**

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

- visually inspecting each arrested person for injury;
  - ask the arrestee if he or she has complaints of pain;
  - ensuring that the arrestee receives medical attention from an appropriate medical provider, if necessary;
  - documenting the results of the visual inspection in the desk blotter;
  - reviewing all officer reports for completeness and the proper documentation of the necessary probable cause for arrests;
- 
- reviewing all officer reports to ensure that officers are not using *pro forma* or conclusory statements;
  - reviewing all officer reports for information that is not current, authentic or correct;



# 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 E**



# NEWARK POLICE DIVISION GENERAL ORDER



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

## **Related Policies:**

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

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

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



# NEWARK POLICE DIVISION GENERAL ORDER



## I. PURPOSE

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

## II. POLICY

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

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



# NEWARK POLICE DIVISION GENERAL ORDER



### III. RESPONSIBILITY FOR COMPLIANCE

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

### IV. DEFINITIONS

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



# NEWARK POLICE DIVISION GENERAL ORDER



## V. PROCEDURES

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

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

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



# NEWARK POLICE DIVISION GENERAL ORDER



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

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

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

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

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



# NEWARK POLICE DIVISION GENERAL ORDER



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



# NEWARK POLICE DIVISION GENERAL ORDER



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

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

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





# NEWARK POLICE DIVISION GENERAL ORDER



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



# NEWARK POLICE DIVISION GENERAL ORDER



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

## VI. RESPONSIBILITIES OF THE FIELD SUPERVISOR

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



# NEWARK POLICE DIVISION GENERAL ORDER



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



# NEWARK POLICE DIVISION GENERAL ORDER



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

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

## VII. RESPONSIBILITIES OF THE INVESTIGATIVE SUPERVISOR

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



# NEWARK POLICE DIVISION GENERAL ORDER



## VIII. EFFECT OF THIS ORDER

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

BY ORDER OF

A handwritten signature in blue ink, consisting of stylized, overlapping letters, likely representing the initials "AFA".

---

ANTHONY F. AMBROSE  
PUBLIC SAFETY DIRECTOR

AFA:BO/lc

# **Appendix F**



# 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



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

**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 4<sup>th</sup> Amendment to the United States Constitution and Article 1, Paragraph 7 of the New Jersey Constitution. Such violations are a detriment to the positive relationship the Newark Police Division needs to have with the community.

## II. POLICY

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

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

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

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

The U.S. Supreme Court has set the 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.



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

## VI. REPORTING REQUIREMENTS

- A. Documentation of an interaction between a person and the police is **required when the person stopped does not feel free to leave**. Because a stopped person's perception should be considered in determining what must be reported, it is incumbent on the officer to make sure that people know that they are free to leave, or are being stopped / detained.
- B. Information for each person stopped must be documented by completing a "Stop Report" (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 crossed 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.



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

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

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

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

Supervisor reviews will also identify the following:

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

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

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



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

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

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

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

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

## VIII. ADMINISTRATIVE REVIEW

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

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

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

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



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- 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, appearing to be "Anthony F. 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)



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	
<b>SELECT SCHOOL</b>						
<b>PHYSICAL DESCRIPTION (PERCEIVED OR ACTUAL)</b>						
AGE	SEX <b>M</b>	RACE <b>A</b>	COMPLEXION <b>LIGHT</b>	EYES <b>BRN</b>	HEIGHT	WEIGHT
HAIR COLOR <b>BROWN</b>		HAIR LENGTH <b>BALD</b>	HAIR STYLE <b>SHAVED</b>	SCARS, DISTINGUISHING FEATURES, TATTOOS		FACIAL HAIR <b>SHAVEN</b>
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:				<b>CITIZEN CONTACT</b>
<input type="checkbox"/> WARRANT CHECK CONDUCTED		RESULTS OF WARRANT CHECK OR REASON FOR NOT CONDUCTING WARRANT CHECK		
NAME OF PERSON CONDUCTING WARRANT CHECK		ID#	COMMAND	SBI # - <input type="checkbox"/> NONE FOUND
INDICATE THE NUMBER OF PERSONS IN COMPANY OF SUBJECT:				
NAME(S) OF PERSON(S) IN COMPANY OF SUBJECT LAST NAME, FIRST NAME, MIDDLE NAME		D.O.B.	AGE	ADDRESS, CITY, STATE, ZIP
				F.I. <input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>

INQUIRY INFORMATION

MUST BE COMPLETED

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

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: <b>N/A</b>			
<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	

VEHICLE

OUTSIDE AGENCY OFFICER INVOLVED	RANK	ID#	AGENCY	REASON PRESENT?
REPORT SUBMITTED BY:	RANK	ID #	GENDER <b>M</b>	RACE <b>A</b>
SUPERIOR APPROVING REPORT		RANK	ID #	COMMAND
				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
------	-----------	---------	-----------------

SUPERVISOR WITNESSING CONSENT

SUPERVISOR RANK	SUPERVISOR SIGNATURE	SUPERVISOR COMMAND	DATE
-----------------	----------------------	--------------------	------



# NEWARK POLICE DIVISION GENERAL ORDER



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

**Related Policies:**

General Order 17-06 "Bias Free Policing"

General Order 17-02 "Body-Worn Cameras"

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

This Order contains the following numbered Sections:

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



# NEWARK POLICE DIVISION GENERAL ORDER



## XIV. EFFECT OF THIS ORDER

### I. PURPOSE

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

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

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

### II. POLICY

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

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

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



# NEWARK POLICE DIVISION

## GENERAL ORDER



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

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

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

### 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 LAPro. 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

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



# NEWARK POLICE DIVISION

## GENERAL ORDER



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

### V. PROHIBITED ACTIONS

Newark Police Officers are prohibited from:

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



# NEWARK POLICE DIVISION GENERAL ORDER



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

## VI. SEARCHES WITH A WARRANT

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

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

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

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





# NEWARK POLICE DIVISION GENERAL ORDER



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

## VII. SEARCHES WITHOUT A WARRANT

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

### A. Consent Searches

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

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

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

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



# NEWARK POLICE DIVISION GENERAL ORDER



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

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

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

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

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

Examples of implied withdrawal of consent:

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

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



# NEWARK POLICE DIVISION

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Types of consent searches include:

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

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

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

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

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



# 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

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

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

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

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

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



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

### E. Vehicle Searches

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

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

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

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

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



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

## **G. Custodial Search**

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

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

## **H. Probation and Parole Searches**

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

## **VIII. STRIP SEARCHES AND BODY CAVITY SEARCHES**

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

## **IX. SEARCHES OF ELECTRONIC DEVICES AND WIRETAPPING**

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



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

## X. REPORTING REQUIREMENTS

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





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



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

For every search or arrest involving the recovery of contraband evidence, the arresting officer's Desk Lieutenant or Unit Commander will review the circumstances of the encounter, including video from body-worn cameras alongside the corresponding Incident Report (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 4<sup>th</sup> Amendment of the U.S. Constitution, New Jersey Constitution Article 1, Paragraph 7, and NPD policies regarding investigatory stops and detentions, searches and seizures, including:
  1. the differences between the scope and degree of intrusion of various police contacts; between probable cause, reasonable suspicion and mere speculation; and between voluntary consent and mere acceptance to police authority;
  2. the types of facts and circumstances that may be considered in initiating, conducting, terminating, and expanding an investigatory stop or detention;
  3. the level of permissible intrusion when conducting searches, such as "pat-downs" or "frisks;"
  4. the permissible nature and scope of other pre-arrest searches, including those conducted pursuant to probation or parole release provisions; and
  5. the permissible nature and scope of searches incident to arrest.



# 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 read "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)

<b>GENERAL</b>	SECTOR	LOCATION	DATE	TIME START	TIME END	CC#	EVENT #	
	<input type="checkbox"/> ISSUED WARNING <input type="checkbox"/> ISSUED SUMMONS <input type="checkbox"/> ARRESTED		NAME (LAST, FIRST, MIDDLE)	<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 <b>SELECT SCHOOL</b>		
	<b>PHYSICAL DESCRIPTION (PERCEIVED OR ACTUAL)</b>							
	AGE	SEX <b>M</b>	RACE <b>A</b>	COMPLEXION <b>LIGHT</b>	EYES <b>BRN</b>	HEIGHT	WEIGHT	FACIAL HAIR <b>SHAVEN</b>
HAIR COLOR <b>BROWN</b>		HAIR LENGTH <b>BALD</b>	HAIR STYLE <b>SHAVED</b>	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**

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

**MUST BE COMPLETED**

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

**MUST BE COMPLETED**

<b>VEHICLE</b>	VEHICLE MATCHED:	<input type="checkbox"/> GENERAL BROADCAST <input type="checkbox"/> BULLETIN / FLYER	<input type="checkbox"/> TELETYPE <input type="checkbox"/> OTHER:	DESCRIBE OTHER ALERT:	
	REASON FOR MOTOR VEHICLE STOP: <b>N/A</b>				
	<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?	

<b>REVIEW</b>	REPORT SUBMITTED BY:	RANK	ID #	GENDER <b>M</b>	RACE <b>A</b>	COMMAND	DATE & TIME COMPLETED
	SUPERIOR APPROVING REPORT		RANK	ID #			DATE & TIME COMPLETED

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.	QUANTITY	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



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

**Related policies:**

General Order 17-06 "Bias-Free Policing"

General Order 14-16 "Stationhouse Adjustments"

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

General Order 87-03 "Administrative Reporting Unusual Events"

This Order contains the following numbered Sections:

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



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

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

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

### III. RESPONSIBILITY FOR COMPLIANCE

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

### IV. DEFINITIONS

- A. **Arrest** - the exercise of control or custody over a person by restricting that person's liberty of movement for a significant period of time. Arrests can be made "actually" or "constructively." Actual arrests take place when an officer has physically restrained a person's ability to leave. Constructive arrests occur when an officer's words or actions prevent a person from leaving. All arrests must be based upon probable cause.
- B. **Bias-Based Policing** - The differential treatment of any person by members motivated by the specific characteristics, perceived or actual, of that person. This conduct is specifically prohibited. (See Newark Police General Order 17-06 Bias-Free Policing for more information).
- C. **Blue Team** - A computer application extension of 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.



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

### V. PROHIBITED ACTIONS

Newark Police Officers are prohibited from:

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



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

## VI. PROBABLE CAUSE

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



# 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
		<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
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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      -1<sup>ST</sup> COPY-MAPS      -2<sup>ND</sup> COPY-LIVE SCAN      -3<sup>RD</sup> COPY-INTAKE SUPERVISOR

# Appendix G



# 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.



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## IV. PROSPECTIVE DATA POINTS TO BE EXAMINED

### A. Event

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

### B. Subject

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

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

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

### D. Reason for the interaction

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

### E. Searches

1. Was consent to search requested?
2. Was consent to search granted?
  - Was contraband recovered as a result of the consent search?
  - What type of contraband was recovered as a result of the consent search?
3. Was a protective pat down conducted?
  - Was contraband recovered as a result of the protective pat down?
  - What type of contraband was recovered as a result of the protective pat down?



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4. Was a probable cause search conducted?
  - Was contraband recovered as a result of the probable cause search?
  - What type of contraband was recovered as a result of the probable cause search?

## F. Disposition

1. Was summons issued?
2. Was arrest made?
3. Was warning issued?

Dispositions will be further analyzed in relation to offense, charge, and violation data to help discover, detect and determine any stop, search and arrest disparities, best practices, and opportunities to enhance training. Particular focus will be given to events where an individual is charged with obstruction of the administration of law, resisting arrest, disorderly conduct, and aggravated assault on a police officer.

## V. ANALYSES TO BE CONDUCTED

The Supervisor assigned to the Technology Unit shall be responsible for ensuring the data necessary to conduct the analysis required by this General Order is collected, preserved, and provided to the Commander of the Consent Decree and Planning Division in electronic format.

The Commander of the Consent Decree and Planning Division, or their designee, shall ensure that the **biannual** analysis required by this General Order is conducted for the following data collection periods:

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

The analysis report will highlight any significant disparities. It shall also contain graphs and/or charts with numerical values depicting the following comparisons for the current period, as well as a comparison to the cumulative data collected during the previous twelve months:

### A. Stops Analysis

1. Aggregate data of stops analysis
  - Pedestrian
    - Compute the number of pedestrian stops categorized by gender, age, and race.
    - Compare by command assigned, precinct and sector of occurrence, common police work shifts, and stop disposition.



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- Motor Vehicle
    - Compute the number of motor vehicle stops categorized by gender, age, and race.
    - Compare by command assigned, precinct and sector of occurrence, common police work shifts, and stop disposition.
  - 2. Aggregate data of protective pat down analysis
    - Compute the number of protective pat downs categorized by gender, age, and race.
    - Compare by command assigned, precinct and sector of occurrence, common police work shifts, and discovery of contraband.
  - 3. Reasonable suspicion to stop audit
    - Conducted under the guidance of U.S. Government Accountability Office, Generally Accepted Government Auditing Standards (2018 Revision) with a sample size obtained using the one-tail test with a 95 percent confidence level and error rate of five percent
  - 4. Reasonable suspicion to conduct protective pat down audit
    - Conducted under the guidance of U.S. Government Accountability Office, Generally Accepted Government Auditing Standards (2018 Revision) with a sample size obtained using the one-tail test with a 95 percent confidence level and error rate of five percent
- B. Searches Analysis
- 1. Aggregate data of searches analysis
    - Compute the number of searches categorized by gender, age, and race.
    - Compare by command assigned, precinct and sector of occurrence, common police work shifts, and discovery of contraband.
  - 2. Probable cause to search audit
    - Conducted under the guidance of U.S. Government Accountability Office, Generally Accepted Government Auditing Standards (2018 Revision) with a sample size obtained using the one-tail test with a 95 percent confidence level and error rate of five percent





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## C. Arrests Analysis

1. Aggregate data of arrests analysis
  - Compute the number of arrests categorized by gender, age, and race.
  - Compare by command assigned, precinct and sector of occurrence, and common police work shifts.
2. Probable cause to arrest audit
  - Conducted under the guidance of U.S. Government Accountability Office, Generally Accepted Government Auditing Standards (2018 Revision) with a sample size obtained using the one-tail test with a 95 percent confidence level and error rate of five percent

## D. Consent to Search aggregate data analysis

- Compute the number of consents to search categorized by gender, age, and race.
- Compare by command assigned, precinct and sector of occurrence, common police work shifts, and discovery of contraband.

## E. Pretext Stops aggregate data analysis

- Compute the number of pretext categorized stops by gender, age, and race.
- Compare by command assigned, precinct and sector of occurrence, and common police work shifts.

## VI. ADMINISTRATIVE REVIEW OF ANALYSIS OUTCOMES

Upon completing the analyses contained in this General Order, the Commander of the Consent Decree and Planning Division shall provide the Public Safety Director and the Chief of Police with the report for review and approval.

Upon approval, the report shall be forwarded to the Comstat/UCR Unit, and all other Newark Police Division Command Rank Supervisors will be provided the finalized Analysis of Stop, Search, and Arrest Data Report.

A 30-calendar day review period will commence immediately following the issuance of the report. All Command Rank Supervisors shall scrupulously examine all relevant analyses, shall be prepared to discuss the contents during the subsequent Comstat meeting, and shall provide recommendations and strategies to eliminate or reduce any identified disparities within their commands, as well as throughout the Newark Police Division.



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Command Rank Supervisors shall attempt to determine which stop, search, and arrest practices are **most** effective and efficient. They shall also attempt to determine which stop, search and arrest practices are the **least** effective and efficient, in order to increase public safety and promote police legitimacy within the Newark community.

Command Rank Supervisors will use the analysis outcomes to **explore, modify, employ, or require police practices that focus on reducing or eliminating unwarranted disparities**, as well as **reduce, deemphasize, or abandon the use of police practices that may be creating unwarranted disparities** to the greatest extent legally possible.

Command Rank Supervisors shall explore the possibility that the existence of a disparity may be beyond the control of law enforcement (e.g., based on crime trends and community priorities for enforcement to which the Police Division may have been reacting during the time period analyzed.)

## **VII. STOP, SEARCH, AND ARREST ANALYSIS OUTCOME COMMITTEE**

The Public Safety Director, or his/her designee, shall incorporate the Analysis of Stop, Search, and Arrest Data Report in the Comstat meeting following the report review period. During this Comstat meeting, **all attendees** shall discuss the contents of the report and provide recommendations and strategies designed to reduce any identified disparities throughout the Newark Police Division.

The Public Safety Director, or his/her designee, shall delegate tasks, such as, but not limited to:

- Potential policy changes
- Additional or changes in training methods
- Modification of field deployment
- Changes in police practices
- Modification of supervision techniques

These measures will serve to further our efforts in reducing disparities, optimizing stop, searches, and arrests practices, and ultimately increasing public safety and police legitimacy.

Any outcomes stemming from this portion of the Comstat meeting shall be recapped during the following Comstat session, wherein the next Analysis of Stop, Search, and Arrest Data Report will be discussed. All modifications will be examined by Command Rank Supervisors to determine if the changes resulted in a decrease or elimination of any unintended demographic disparity.



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## 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 H

**Initial Sample Pull of Events**

Initial Sample Pull of Events <sup>1</sup>	
Count	Central Compliance Number
1	C15046685*
2	C19062990
3	C22000793*
4	C22001277
5	C22005939
6	C22007443*
7	C22009918*
8	C22012855*
9	C22016757*
10	C22018935*
11	C22019903
12	C22020049
13	C22021072*
14	C22022359*
15	C22025001
16	C22025534*
17	C22028302*
18	C22031753
19	C22032316
20	C22032727*
21	C22033083*
22	C22035381
23	C22036017*
24	C22038328
25	C22040840
26	C22042174
27	C22042229
28	C22042751
29	C22042761
30	C22043763
31	C22043781
32	C22043795
33	C22043839

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<sup>1</sup> All disorderly conduct events for the audit period were included in the sample and marked with “\*”

Initial Sample Pull of Events <sup>1</sup>	
34	C22043846
35	C22043869
36	C22043874
37	C22043880
38	C22043900
39	C22043950
40	C22044005
41	C22044025
42	C22044032
43	C22044037
44	C22044170
45	C22044178
46	C22044275
47	C22044277
48	C22044374
49	C22044384
50	C22044515
51	C22044524
52	C22044582
53	C22044586
54	C22044598
55	C22044693
56	C22044772
57	C22044773
58	C22044804
59	C22044831
60	C22044843
61	C22044866
62	C22044918
63	C22044957
64	C22044991
65	C22045068
66	C22045086
67	C22045096
68	C22045124
69	C22045136
70	C22045249
71	C22045258

Initial Sample Pull of Events <sup>1</sup>	
72	C22045397
73	C22045401-A
74	C22045401-B
75	C22045582
76	C22045583
77	C22045588
78	C22045590
79	C22045591
80	C22045709
81	C22045759
82	C22045793
83	C22045803
84	C22045807
85	C22046020
86	C22046234
87	C22046253
88	C22046260
89	C22046299
90	C22046332
91	C22046478
92	C22046621*
93	C22046629-A
94	C22046629-B
95	C22046729
96	C22046731
97	C22046805
98	C22046808
99	C22046809
100	C22046852
101	C22046935
102	C22046969-A
103	C22046969-B
104	C22046973
105	C22047094-A
106	C22047094-B
107	C22047098
108	C22047115
109	C22047173

Initial Sample Pull of Events <sup>1</sup>	
110	C22047293
111	C22047299
112	C22047306
113	C22047308
114	C22047407
115	C22047415
116	C22047418
117	C22047518*
118	C22047566
119	C22047606
120	C22047610
121	C22047686
122	C22047731
123	C22047809
124	C22047891
125	C22047939
126	C22048035
127	C22048067
128	C22048078
129	C22048085
130	C22048204*
131	C22048333
132	C22048345
133	C22048358
134	C22048376
135	C22048389
136	C22048396
137	C22048419
138	C22048437
139	C22048455
140	C22048465
141	C22048539
142	C22048844
143	C22048850
144	C22048905
145	C22048914
146	C22049001
147	C22049033



Initial Sample Pull of Events <sup>1</sup>	
148	C22049137
149	C22049181
150	C22049256
151	C22049540
152	C22049580
153	C22049621
154	C22049636
155	C22049652
156	C22049667
157	C22049697
158	C22049766
159	C22049784
160	C22049790
161	C22049810
162	C22049836
163	C22049906
164	C22049915
165	C22050033
166	C22050066
167	C22050106
168	C22050118
169	C22050220
170	C22050263
171	C22050285
172	C22050299
173	C22050404
174	C22050452
175	C22050467
176	C22050468
177	C22050486
178	C22050624
179	C22050687
180	C22050726
181	C22050789
182	C22050798
183	C22050872
184	C22051154
185	C22051201

Initial Sample Pull of Events <sup>1</sup>	
186	C22051403
187	C22051420
188	C22051421
189	C22051431
190	C22051445
191	C22051488
192	C22051601
193	C22051643
194	C22051713
195	C22051722
196	C22051885
197	C22052047
198	C22052228
199	C22052331
200	C22052504*
201	C22052516
202	C22052550
203	C22052560
204	C22052615
205	C22052675
206	C22052708
207	C22052926
208	C22052997
209	C22053167
210	C22053210
211	C22053233
212	C22053236
213	C22053331
214	C22053417
215	C22053448
216	C22053521
217	C22053586
218	C22057370*

**Events Removed from Sample**

Events Removed from Sample		
<b>Count</b>	<b>Central Compliance Number</b>	<b>Removal Criteria</b>
1	C22043874	Warrant
2	C22044032	Warrant
3	C22044374	Warrant
4	C22044772	C22044693 Duplicate
5	C22045591	Warrant
6	C22045807	Inter-Agency Task Force by US Attorney Office
7	C22048844	Special Officer Transport
8	C22050106	Warrant

**Events Reviewed and Scored**

Events Reviewed and Scored <sup>2</sup>	
Count	Central Compliance Number
1	C15046685*
2	C19062990
3	C22000793*
4	C22001277
5	C22005939
6	C22007443*
7	C22009918*
8	C22012855*
9	C22016757*
10	C22018935*
11	C22019903
12	C22020049
13	C22021072*
14	C22022359*
15	C22025001
16	C22025534*
17	C22028302*
18	C22031753-A
19	C22031753-B
20	C22032316
21	C22032727*
22	C22033083*
23	C22035381
24	C22036017*
25	C22038328
26	C22040840
27	C22042174
28	C22042229
29	C22042751
30	C22042761
31	C22043763
32	C22043781
33	C22043795

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<sup>2</sup> All disorderly conduct events for the audit period were included in the sample and marked with “\*”

Events Reviewed and Scored <sup>2</sup>	
34	C22043839-A
35	C22043839-B
36	C22043839-C
37	C22043846
38	C22043869
39	C22043880
40	C22043900
41	C22043950
42	C22044005
43	C22044025
44	C22044037
45	C22044170-A
46	C22044170-B
47	C22044178
48	C22044275-A
49	C22044275-B
50	C22044275-C
51	C22044275-D
52	C22044277
53	C22044384
54	C22044515
55	C22044524
56	C22044582
57	C22044586
58	C22044598
59	C22044693
60	C22044773-A
61	C22044773-B
62	C22044804
63	C22044831
64	C22044843
65	C22044866
66	C22044918
67	C22044957
68	C22044991
69	C22045068
70	C22045086-A
71	C22045086-B

Events Reviewed and Scored <sup>2</sup>	
72	C22045086-C
73	C22045096
74	C22045124
75	C22045136-A
76	C22045136-B
77	C22045249
78	C22045258
79	C22045397
80	C22045401-A
81	C22045401-B
82	C22045582-A
83	C22045582-B
84	C22045583
85	C22045588
86	C22045590
87	C22045709
88	C22045759
89	C22045793
90	C22045803
91	C22046020
92	C22046234
93	C22046253
94	C22046260
95	C22046299
96	C22046332
97	C22046478
98	C22046621*
99	C22046629-A
100	C22046629-B
101	C22046729
102	C22046731
103	C22046805
104	C22046808
105	C22046809
106	C22046852
107	C22046935
108	C22046969-A
109	C22046969-B

Events Reviewed and Scored <sup>2</sup>	
110	C22046973
111	C22047094-A
112	C22047094-B
113	C22047098
114	C22047115
115	C22047173
116	C22047293
117	C22047299
118	C22047306
119	C22047308
120	C22047407
121	C22047415
122	C22047418
123	C22047518*
124	C22047566
125	C22047606
126	C22047610
127	C22047686
128	C22047731
129	C22047809
130	C22047891
131	C22047939
132	C22048035
133	C22048067
134	C22048078
135	C22048085
136	C22048204*
137	C22048333
138	C22048345
139	C22048358
140	C22048376
141	C22048389
142	C22048396
143	C22048419
144	C22048437
145	C22048455
146	C22048465
147	C22048539

Events Reviewed and Scored <sup>2</sup>	
148	C22048850
149	C22048905
150	C22048914
151	C22049001
152	C22049033
153	C22049137
154	C22049181
155	C22049256
156	C22049540
157	C22049580
158	C22049621
159	C22049636
160	C22049652
161	C22049667
162	C22049697
163	C22049766
164	C22049784
165	C22049790
166	C22049810
167	C22049836
168	C22049906
169	C22049915
170	C22050033
171	C22050066
172	C22050118
173	C22050220
174	C22050263
175	C22050285
176	C22050299
177	C22050404
178	C22050452
179	C22050467
180	C22050468
181	C22050486
182	C22050624
183	C22050687
184	C22050726
185	C22050789



Events Reviewed and Scored <sup>2</sup>	
186	C22050798
187	C22050872
188	C22051154
189	C22051201
190	C22051403
191	C22051420
192	C22051421
193	C22051431
194	C22051445
195	C22051488
196	C22051601
197	C22051643
198	C22051713
199	C22051722
200	C22051885
201	C22052047
202	C22052228
203	C22052331
204	C22052504*
205	C22052516
206	C22052550
207	C22052560-A
208	C22052560-B
209	C22052560-C
210	C22052560-D
211	C22052615
212	C22052675
213	C22052708
214	C22052926
215	C22052997
216	C22053167
217	C22053210
218	C22053233
219	C22053236
220	C22053331
221	C22053417
222	C22053448
223	C22053521

Events Reviewed and Scored <sup>2</sup>	
224	C22053586
225	C22057370*

# **Appendix I**

**Non-Compliant Events (Documentation)**

List of Non-Compliant Events (Documentation)		
Count	Central Compliance Number	Non-Compliance Criteria
1	C19062990	No Stop Report
2	C22000793*	No Stop Report
3	C22012855*	No BWC
4	C22019903	No BWC
5	C22031753-B	No BWC
6	C22035381	Missing BWC video(s), Number of officers present on scene greater than available BWC video(s)
7	C22038328	No Stop Report
8	C22040840	Documentation discrepancies
9	C22042174	No BWC
10	C22042229	Late report continuation approval
11	C22042751	Late report continuation approval
12	C22043763	No BWC
13	C22043839-A	No BWC
14	C22043839-B	No BWC
15	C22043839-C	No BWC
16	C22043846	No Stop Report, No BWC
17	C22043880	No Stop Report
18	C22044005	No Stop Report
19	C22044693	BWC does not capture arrest
20	C22044773-A	No BWC
21	C22044773-B	No BWC
22	C22044831	No stop report, No BWC
23	C22045068	No BWC
24	C22045249	No BWC
25	C22046020	No Stop Report
26	C22046260	No BWC
27	C22047306	No BWC
28	C22049001	No video(s) found
29	C22049580	No BWC
30	C22049652	No video(s) found
31	C22049667	No video(s) found
32	C22050285	No video(s) found
33	C22050726	No video(s) found
34	C22050872	No video(s) found
35	C22052550	BWC does not capture arrest

List of Non-Compliant Events (Documentation)		
Count	Central Compliance Number	Non-Compliance Criteria
36	C22052615	No video(s) found
37	C22052675	No video(s) found
38	C22052926	No video(s) found
39	C22053521	Missing UOF report

**Non-Compliant Events (Substantive)**

List of Non-Compliant Events (Substantive)		
Count	Central Compliance Number	Non-Compliance Criteria
1	C22044957	Failure to establish probable cause
2	C22048389	Failure to establish probable cause

**Non-Compliant Events (Documentation & Substantive)**

List of Non-Compliant Events (Documentation & Substantive)		
Count	Central Compliance Number	Non-Compliance Criteria
1	C22007443*	No Stop Report, Violation of first amendment

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

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This report presents the findings of the Independent Monitor, Peter C. Harvey, regarding the Independent Monitoring Team's *Second* Audit of the City of Newark's (the "City'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:

Roger Nunez, Sergeant, Los Angeles Police Department (ret.)

Dan Gomez, Lieutenant, Los Angeles Police Department (ret.)

Linda Tartaglia, Director, Rutgers University Center on Policing

Rosalyn Parks, Ph.D., Rutgers University Center on Policing

Jonathan Norrell, Rutgers University Center on Policing

## **II. Introduction**

Paragraph 173 of the Consent Decree instructs the Independent Monitoring Team, led by Independent Monitor Peter C. Harvey, to audit the City's and NPD's compliance with Consent Decree reforms. Pursuant to Paragraph 180 of the Consent Decree, the Independent Monitor issued notice to the City, NPD, and the United States Department of Justice ("DOJ") (collectively, the "Parties"), by letter on April 11, 2023, 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).<sup>1</sup> See Appendix A (April 11, 2023 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).

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<sup>1</sup> 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.



- Conduct periodic audits and inspections of the property room and immediately correct any deficiencies (Paragraph 111).

### 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, 2022, up to and including June 30, 2022 (the “Audit Period”).

On April 11, 2023, the Monitoring Team provided NPD with notice of its intent to conduct this Audit. The Monitoring Team also informed NPD that this Second 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 *Second* 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,<sup>2</sup> 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, the Monitoring Team deemed that item “Non-Compliant.” If the Monitoring team deemed an item non-compliant for *both* substantive and documentation

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

reasons, the Monitoring Team only marked the item non-compliant *substantively*. 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.<sup>3</sup>

The Monitoring Team found 53.2% of items reviewed were compliant *both* substantively and with respect to documentation. In other words, 76 out of 143 items reviewed by the Monitoring Team achieved *Overall Compliance*.

When further separated by substantive and documentation compliance, the audit revealed that NPD reached perfect compliance score of 100% (143 of 143 items assessed were compliant) for NPD’s System-to-Shelf procedure.

Regarding NPD’s Accountability/Property Intake procedures, 86.7% (124 of 143 items assessed) were compliant.

NPD’s documentation compliance score was 61.5% (88 of 143 items assessed were compliant).

As NPD moves on from this Second 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) administering Roll Call refresher training, (ii) implementing other methods of reinforcing procedures relevant to chain-of-custody for Property and Evidence, (iii) issuing a Memorandum to remind all sworn employees how to properly complete and receive supervisor approval for documentation, and (iv) issuing a Memorandum to Supervisors reminding them of their obligation to thoroughly review submitted documents for completeness and accuracy.

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

<b>Overview of First Property &amp; Evidence Audit Results</b>		
<b>Audit Subject</b>	<b>Consent Decree Paragraph(s)</b>	<b>Compliance?</b>
<b>Property &amp; Evidence Policies</b>	Paragraphs 110(a)-(h)	Yes.
<b>Overall Compliance</b>  <i>Whether NPD demonstrated overall compliance in its Property &amp; Evidence Management practices (Substantive and Documentation)</i>	Paragraphs 105, 110, 111	No (53.2%).

<sup>3</sup> 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?
<p><b>Substantive Compliance</b></p> <p><i>Whether the responsible NPD officer adhered to NPD policy specific to NPD’s System-to-Shelf procedures and Accountability/Property Intake procedures</i></p>	Paragraph 110	<p>System to Shelf procedure: Yes (100%).</p> <p>Accountability/Property Intake procedure: No (86.7%).</p>
<p><b>Documentation Compliance</b></p> <p><i>Whether NPD adhered to all necessary documentation and reporting requirements as required by policy, including periodic audits and correction of deficiencies</i></p>	Paragraph 105, 111	No (61.5%).

**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 NPD 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, 2022, up to and including June 30, 2022) to analyze for this Audit. The Monitoring Team drew this random sample of 150 items from a total population of 1,015 incident numbers entered into NPD’s inventory management system for the Audit Period.<sup>4</sup>

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<sup>4</sup> By 2007, NPD implemented its current inventory management system, *i.e.*, the Computerized Evidence Management System (CEMS) and the Barcode Evidence Analysis Statistic Tracking (BEAST). Both systems 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

Of the 150 items in the random sample, the Monitoring Team removed eight from the final audit sample and consolidated eleven more items during onsite review. The Monitoring Team added three items to the review by the SMEs during their onsite review. As a result, the final audit sample contained 143 items (*see Appendix E* for the complete list of items included in the audit sample).

The final audit sample yielded a total of 302 Property and Evidence Receipts that were associated with 143 total pieces of reported evidence. The Monitoring Team traced all 143 pieces of reported evidence in NPD's records management system to determine whether NPD had booked the items into the Property & Evidence Division and accurately documented them in CEMS/BEAST.

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.<sup>5</sup>

An item was only compliant for purposes of determining *Overall Compliance* if the responsible officer's actions were 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 Monitoring Team deemed the item non-compliant for purposes of determining *Overall Compliance*. If the Monitoring Team deemed an item non-compliant for both substantive and documentation reasons, the Monitoring Team only assessed the item 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 NPD stored the evidence 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 NPD correctly documented the chain-

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and evidence within the police division. The computer program provides complete chain-of-custody, release, and history records.

<sup>5</sup> The Monitoring Team did not insert itself into the chain-of-custody in any manner. The SMEs viewed and inspected all property/evidence *via* sealed property/evidence containers. Some items were clearly visible through transparent plastic, while others were obscured by sealed containers. SMEs did not open forensic analysis property due to potential hazard of exposure and to maintain the continuity of evidence within NPD.

of-custody for all items that entered the property room. To evaluate the completeness of those records, the Monitoring Team traced all 143 property/evidence items associated with the Item Numbers in the sample in NPD's Record Management System to ensure NPD booked the items into the Property & Evidence Division and accurately documented them 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 NPD was storing the item. The Monitoring Team then performed a Shelf-to-System test to verify that NPD properly labeled the items on the shelf and described them 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.

To assess NPD's adherence to its Accountability/Property Intake procedures, the Monitoring Team considered whether 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 NPD maintained all property and evidence stored by the Division in a designated secure area and, to ensure accountability, that access to the property and evidence location was restricted to personnel assigned to that division. The SMEs visited all operating temporary storage and property rooms to observe whether NPD restricted entry/access to authorized officers and their supervisors.<sup>6</sup>

The Monitoring Team issued a separate substantive compliance score for each component (*i.e.*, a compliance score for system to shelf and a compliance score for accountability/property intake procedure). 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.

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<sup>6</sup> During NPD's testing of currency, jewelry, and firearms, an NPD Property Officer accompanied members of the Monitoring Team to the lockers, cages, safes, and cabinets where items were stored.

1. *Overall Compliance*

NPD achieved an Overall Compliance score of 53.2 %. In total, 76 of the 143 items reviewed by the Monitoring Team were compliant both substantively and in terms of documentation. Accordingly, the Monitoring Team deemed 67 items to be non-compliant (46.8 %).

<b>Items Reviewed</b>	<b>Overall Compliance Items</b>	<b>Compliance Score</b>
143	76	53.2 %

Below is a summary of the 67 items that the Monitoring Team deemed substantively non-compliant, documentation non-compliant, or both substantively and documentation non-compliant.

<b>Summary of Non-Compliant Items</b>		
<b>Compliance</b>	<b>Number of Non-Compliant Items</b>	<b>Percentage</b>
Non-Compliant (Substantive)	12	17.9 %
Non-Compliant (Documentation)	48	71.6 %
Non-Compliant (Both Substantive and Documentation)	7	10.5 %
Total	67	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. The Monitoring Team gave each component a separate substantive compliance score. If the Monitoring Team determined that the responsible officer had not followed correct procedure, the Monitoring Team assessed the item to be substantively non-compliant. A breakdown of substantive compliance scores follows.

a) *System-to-Shelf procedure*

In total, 143 of the 143 items reviewed were substantively compliant in terms of System-to-Shelf Procedure.

<b>Items Reviewed</b>	<b>Substantively Compliant (System to Shelf Procedure)</b>	<b>Percentage Compliant</b>
143	143	100%

Of 143 items reviewed, the Monitoring Team deemed no items substantively non-compliant with respect to NPD’s System-to-Shelf procedure.

b) *Accountability/Property Intake*

In total, 124 of the 143 items reviewed were substantively compliant in terms of Accountability/Property Intake procedures.

Items Reviewed	Substantively Compliant (Accountability/Property Intake)	Percentage Compliant
143	124	86.7 %

Of 143 items reviewed, the Monitoring Team deemed 19 substantively non-compliant in terms of Accountability/Property Intake procedures.

The Monitoring Team observed that these 19 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 61.5%. In 88 of the 143 items reviewed, the responsible officer completed documentation/reporting requirements according to NPD policy.

Items Reviewed	Documentation Compliant	Compliance Score
143	88	61.5 %

Of the 143 items reviewed by the Monitoring Team, 55 (38.5 %) were non-compliant due to documentation/reporting related deficiencies. For a list of the items that were determined to be non-compliant with respect to Documentation, see **Appendix F**.

## VI. **Observations and Recommendations**

The Monitoring Team made five (5) principal observations and four (4) recommendations regarding the Property and Evidence audit.

### 1. *Observations*

*First*, the Monitoring Team commends NPD for Substantive Compliance in System to-Shelf Procedure, for which it achieved a score of 100%. This score translates to all 143 pieces of evidence assessed being located in a secure area where they belong.

*Second*, NPD personnel achieved a substantive compliance score of 86.7% with respect to NPD’s Accountability/Property Intake procedure. This is a significant increase (double) from the previous substantive compliance score of 42.95% in the first Audit. This increase can be attributed to the adjustment made by NPD command to ensure that officers and Supervisors adhere to NPD’s policy of requiring two people to sign off when processing property. However,

the timely entry of data into the inventory management system (*i.e.*, within 24 hours) remains a gap in NPD achieving compliance. Further, a lack of documentation indicating the reason(s) for such a delay continues to concern the Monitoring Team because of its negative impact on compliance with chain-of-custody requirements.

*Third*, NPD did not demonstrate significant compliance in its documentation practices, scoring only 61.5%. This is a decrease from the previous audit (65.77%). Sworn personnel continue to omit relevant information regarding recovery of property and evidence, and fail to complete sections of the documentation required to clearly demonstrate an officer's specific actions.

Moreover, failure on behalf of Supervisors to ensure the timely completion of reports associated with property and evidence remains a concern of the Monitoring Team.

*Fourth*, during the physical Audit of NPD's facilities, including its security and safeguards, the Monitoring Team observed that NPD continues to make several requests to city officials to complete building repairs. The City did not complete the requested repairs in a timely manner. The City's delay caused NPD employees to adjust procedures within the Property and Evidence Division storage facility, including taking time away from normal duties to trim the brush surrounding the property facility.

*Fifth*, during its review and evaluation of NPD's documentation, the Monitoring Team observed that some command units were experiencing *higher levels of errors* than other units. Specifically, the SMES identified the Third and Fifth Precincts and, collectively, NPD's Specialized Units as experiencing a higher frequency of error as compared to other precincts and command units.

## 2. *Recommendations*

As NPD moves on from this Second Audit, the Monitoring Team continues to strongly recommend 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 (and, perhaps, explains to them) how to properly complete an Evidence and Property Receipt Report and all associated documentation* - This memorandum should include an instruction for Supervisors' approval of all reports before submission into the CEMS system. Although the Monitoring Team will further evaluate this area in the upcoming Supervisor Property Audit, it is clear that supervisors, at all levels, need to scrutinize reports more intensely for completeness and content prior to digitally approving the reports. NPD should also issue a memorandum specific to supervisors reminding them of their obligation to thoroughly review submitted documents for completeness and accuracy.
- 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 as well requiring officers to specifically identify who recovered property*



*and/or evidence by name and employee number* - This effort should not be limited to uniformed officers or Supervisors in patrol, but should include detectives and specialized units with field enforcement duties.

- 3 *Study and consider modifying NPD's policy and practice as well as identify staffing needs to make the Property and Evidence Division the primary entity responsible for verifying property that is stored/released by NPD and stored in the CEMS/BEAST system* – NPD has delegated the responsibility for entering property into NPD's evidence management system to Desk/Section Supervisors. In practice, line-level officers also 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. The Monitoring Team observed no change in this NPD practice during this Second Audit.
- 4 *Create an escalation protocol to escalate repairs to the appropriate City Managers/Department for a timelier resolution of repairs* - The Monitoring Team acknowledges that a new facility is under construction, but this does not alleviate the need to maintain the current facility. The Monitoring Team further recommends that NPD provide the Monitoring Team with details of its transition plan, procedures and/or policy modifications that will result from the impending transition from the current property and evidence facility to the new facility.

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

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

DATED: November 2, 2023

Peter C. Harvey

/s/ Peter C. Harvey

Independent Monitor

# **Appendix A**

April 11, 2023

Peter Harvey  
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**Re: Second Property and Evidence Audit: 45-day Notice**

Dear Dear Mr. Stewart and Director Fragé:

Pursuant to Consent Decree Paragraphs 173 and 180, this letter provides the 45-day Notice of the Monitoring Team's intent to conduct its *Second* 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

April 11, 2023

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practices.<sup>1</sup> Upon NPD's receipt of this 45 day notice, a pre-audit meeting will be scheduled to discuss the methodology that will guide this audit.

Section X of the Consent Decree provides, among other things, that NPD "shall take comprehensive efforts to prevent theft of property by officers" and that NPD "will conduct and document periodic audits and inspections of the property room and immediately correct any deficiencies."<sup>1</sup>

In this Audit, the Monitoring Team will review NPD's records and information for a two-month period, specifically, from May 1, 2022 up to and including June 30, 2022 (the "Audit Period"). This Audit of NPD's Property Division will be conducted by the following Monitoring Team Subject Matter Experts: Linda Tartaglia, Associate Director of the Rutgers University Center on Policing, Sgt. Roger Nunez of the Los Angeles Police Department, Lieut. Dan Gomez (Ret.) of the Los Angeles Police Department, Rosalyn Bocker Parks, Ph.D., Rutgers University Center on Policing, Kathryn Duffy, Ph.D., Rutgers University Center on Policing, and Jonathan Norrell, Rutgers University Center on Policing.

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 Monitoring Team will evaluate compliance with the above-cited Consent Decree paragraphs. For further information regarding the Monitoring Team's methodology for this audit, *see* **Appendix A**.

### **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." (emphasis added).

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

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<sup>1</sup> 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.

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<sup>2</sup> for Property/Evidence
  - (a) Evaluation of Completeness of Records for Property/Evidence. This includes any reports, logs, system printouts, or any other materials showing the Chain of Custody for Property/Evidence
  - (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.

### **Required Data**

Within 14 days of receipt of this letter, NPD shall produce from its systems of records all reports associated with the property items received, found, recovered or otherwise taken in by NPD during the Audit Period, as well as information sufficient to show proper handling, reporting, chain of custody as well as compliance with the Consent Decree.

On the day(s) that 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, 18-24), and New Jersey State Police, Office of Forensic Science's Evidence Field Manual.

### **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 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

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<sup>2</sup> General Order 18-23, Section III, Definition of Terms, 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.

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
  - (a) Evaluation of Whether Command Officer is conducting and submitting a Property & Evidence Monthly Report (Administrative Submission Report – DP1: 10001 06/2016)
  - (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 both 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 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 any NPD Precinct (escorted) to review the storage and maintenance areas of any property and evidence.
- 6 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 been concluded.

Sincerely,

A handwritten signature in blue ink, appearing to read "Peter C. Harvey", enclosed within a large, loopy blue scribble.

Peter C. Harvey

April 11, 2023

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# Appendix A\*

\* This Appendix was originally attached to the Independent Monitoring Team's April 11, 2023 letter

# **NEWARK POLICE DEPARTMENT PROPERTY AND EVIDENCE AUDIT**

## **METHODOLOGY**

The Independent Monitoring Team's (IMT) First Property and Evidence Audit is scheduled to commence on April 18th, 2023. The IMT will use the following methodology to guide this audit. The units of review for the audit are Central Complaint (CC) Numbers for physical property and Event Numbers for all associated reports.

## **PURPOSE**

The Monitoring Team will conduct this audit under the guidance of generally accepted government auditing standards, specifically pertaining to conducting the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for the findings and conclusions based on the objectives.

## **BACKGROUND**

### **Organizational Placement and Staffing**

The Property Division is staffed with nine (9) individuals (sworn and civilians included). The mission of the Property & Evidence Division is to serve all the diverse entities of the City of Newark by receiving, documenting, safeguarding, preparing for release, releasing and destroying items booked into the custody of the Department in accordance with Department policies.

### **Facilities**

The Newark Police Department Property Room serves as the main location for the Property & Evidence Division and is located at 104 Arlington St., Newark, NJ 07102. The Property & Evidence Division is responsible for receiving, booking, storing, maintaining continuity, releasing items from custody, and reviewing the work from the previous watch.

Additional temporary property storage facilities are located at:

- 2<sup>nd</sup> Precinct: 1 Lincoln Ave., Newark, NJ
- 3<sup>rd</sup> Precinct: 649 Market St., Newark, NJ
- 4<sup>th</sup> Precinct: 247 16<sup>th</sup> Ave., Newark, NJ
- 5<sup>th</sup> Precinct / MAPS: 480 Clinton Ave., Newark, NJ
- 6<sup>th</sup> Precinct: 191 Irvington Ave., Newark, NJ
- 7<sup>th</sup> Precinct: 159 N. 10<sup>th</sup> St., Newark, NJ
- Major Crimes: 31 Green St., Newark, NJ
- Crime Scene Unit: 22 Franklin St., Newark, NJ
- Special Victims Unit: 300 Clinton Ave., Newark, NJ
- Robbery: 31 Green St., Newark, NJ

### **Computer System**

The current inventory management system, i.e.: the Computerized Evidence Management System (CEMS) and the Barcode Evidence Analysis Statistics Tracking (BEAST), was implemented in 2007 and is completely controlled by the Property & Evidence Division. The BEAST system was installed in the Precincts and corresponding training began on a rollout basis in April, 2019. Training on the system is ongoing, with over 977 Division Personnel trained to date.

There were 2,795 items entered in BEAST for the audit period of May 1<sup>st</sup>, 2022 through June 30<sup>th</sup>, 2022.

## **PRIOR AUDIT**

A prior Property and Evidence Audit was conducted for the period covering May 1, 2021 up to and including June 30, 2021.

## **SCOPE AND METHODOLOGY**

This audit will focus on all property, excluding forensic DNA and narcotics. The audit scope is limited to the key controls necessary to carry out the Property & Evidence Division functions from recovery, storage, to disposition. To this end, a random sample will be selected.

In order to conduct a comprehensive audit, for each item identified in the sample, the IMT will require that NPD provide the following documents and materials associated with the events within the sample 14-days prior to the IMT arriving to conduct the audit. The requested items include but not limited to<sup>1</sup>:

1. Chain of Custody Documentation
  - a. Arrest Reports
  - b. Incident reports
  - c. Incident Detail Report (CAD Printout)
2. BEAST inventory
  - a. NPD Item Type Listing
  - b. Chain of Custody Reports
3. Property receipts
  - a. Property & Evidence Receipt Reports
4. Records Management System
  - a. RMS Data Logs for Property Reports (for verification of missing electronic signatures)

Various tests will be conducted for each objective and further described within the Audit Procedures. Furthermore, the Audit Team will review Department policies and

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<sup>1</sup> Note: No items should be submitted for review that are in “draft” form. If such documents are required to be considered, NPD shall address these items in writing at the time the report(s) are submitted to the Monitor’s Office.

procedures, Property & Evidence Division Operation Procedures, the New Jersey State Police, Office of Forensic Science's Evidence Field Manual, standards established by the International Association of Property and Evidence, and the Newark Police Department Federal Consent Decree. The Audit Team will interview Property & Evidence personnel, Property Disposition Coordinators, and system specialists from the Information Technology section, to gain an understanding of the operation of the Property & Evidence Division.

### **Objective No. 1 – Evaluation of Chain of Custody for Property/Evidence**

For the purposes of this audit, Chain of Custody refers to the chronological documentation of the seizure, custody, control, transfer, and disposition of property and evidence. Once NPD takes control of any property and evidence, it must be stored and secured in a manner which protects it from loss, contamination, or destruction.

Various property reports and computerized systems are used to document the chain of custody. Property reports record data pertaining to the recovery, handling, tracking, storage and disposition of property/evidence. Computerized systems organize data, and provide accurate and complete records and reports.

### **Objective No. 1(a) – Evaluation of the Completeness of Records for Property/Evidence**

#### **Criteria:**

The International Association of Property and Evidence Section A, Property Room Glossary, states:

*“Chain of custody is a record of the seizure or receipt, transport, storage, access, transfer, analysis and ultimate disposition of property, documents and items pertinent to criminal investigations. The chain of evidence must be properly maintained to provide the legal custodial linkages of permissible evidentiary handling in order to avoid missing, mishandled or tainted evidence that will jeopardize a criminal investigation.”*

The International Association of Property and Evidence Section 4, Standard 4.1 Documentation – Property Report, states:

*“A property report is the basis for documenting the chain of custody of all items that enter the property room.”*

#### **Audit Procedures:**

As the Property Division's chain of custody begins with taking custody of property that has already been seized by an officer or officers, the Monitoring Team will review whether NPD properly documented how property officers receive incoming property and how they record those items. To further test the controls for chain of custody, the Audit Team will conduct the following test.

To assess the completeness of records for property, the Audit Team will obtain data from NPD consisting of items in the BEAST, listed by incident and case numbers, from May 1, 2022 to June 30, 2022 (the “Audit Period”). A random sample will be drawn from this list.

The items from the Property Evidence Receipts and Chain of Custody Reports shall include the scope of all property, excluding forensic DNA and narcotics.

**Objective No. 1(b) – Evaluation of the Existence and Accuracy of Records for Property/Evidence**

**Criteria:**

Property and Evidence Division – General Order 18-23-24, Section VI Property & Evidence Handling Process, Subsection B Data Entry, states:

*“The CEMS/BEAST System is a commercially licensed customized software computer program used to electronically track and monitor the status, type of location of property and evidence within the Police Department. It provides complete chain-of-custody, release, and history records.”*

**Audit Procedures:**

To test the existence of the property/evidence and the accuracy of records for chain of custody, the Audit Team will perform two tests. The first test will be a system-to-shelf test, and the second, a shelf-to-system test. For the system-to-shelf test, the Audit Team will look at the randomly selected incidents and trace them from CEMS/BEAST to the shelf in the Property & Evidence Division. This will be accomplished with the aid of the Chain of Custody Report and Property/Evidence Receipts.

For the shelf-to-system test, the Audit Team will verify that the randomly selected items on the shelf are properly stored, labeled, and described correctly in CEMS/BEAST (match the information against provided NPD reports).

**Objective No. 2 – Evaluation of Safeguarding of Property/Evidence**

Internal controls should be in place restricting access to property rooms. These controls include, but are not limited to: key control, changing of locks or access codes with changes of personnel, access logs, after-hours procedures, use of surveillance cameras and alarms. Enforceable policies are needed to compel employees to adhere to security requirements that, if violated, can jeopardize the integrity of the property room and interfere with the chain of custody.

**Objective No. 2(a) – Evaluation of Whether Internal Controls are in Place for the Safeguarding of Property/Evidence**

**Criteria:**

The International Association of Property and Evidence Section 8, Standard 8.2 Security – Access, states:

*“Entry into restricted storage areas should be closely controlled to prevent accusations of alteration, unauthorized removal, theft, or tampering with property or evidence stored by the*

*Department. Access restriction protects the proper chain of custody. Those permitted access should include the property officer(s), and the supervisor.”*

Department of Public Safety 20-208, Property & Evidence Divisional Manual - Sections III – V, states:

*“To ensure accountability, all property and evidence stored by the Division shall be maintained in a designated secure area. Access to the property and evidence building shall be restricted to personnel assigned to the Property & Evidence Division.”*

**Audit Procedures:**

The Audit Team shall visit all operating temporary storage and property rooms and make observations to ensure that entry/access is restricted to authorized officers and their supervisors. Officers arriving to book property are required to transfer items through the front window. They are not allowed in the storage area. Anyone entering the property room on official business, e.g., auditors, must sign in and out of the logbook. They are always accompanied by a property officer.

In the case of currency, jewelry, and firearms, auditors will be accompanied by a property officer to the lockers, cages, safes, and cabinets.

# **Appendix B**



**DEPARTMENT OF PUBLIC SAFETY  
MEMORANDUM**



**TO:** POLICE DIVISION  
**FROM:** ANTHONY F. AMBROSE  
PUBLIC SAFETY DIRECTOR  
**SUBJECT:** IMPLEMENTATION OF GENERAL ORDER 18-23  
RE: PROPERTY & EVIDENCE MANAGEMENT

**DATE:** April 12, 2019  
**NUMBER:** 19-76  
**FILE REF:** PUB 4 x PTL 1-6  
x PTL 1-5

General Order 18-23, Property & Evidence Management, is hereby effective immediately. This Order establishes a uniform property and evidence management system, which standardizes procedural guidelines and responsibilities to ensure safety, accountability, and uncompromised evidentiary integrity.

General Order 18-23 specifically delineates the procedures for the handling of prisoner personal property, arrest evidence, found property and crime scene evidence and the responsibilities of Division personnel.

All Division personnel shall become familiar with and comply with the tenets of this General Order and shall acknowledge receipt and compliance via PowerDMS, no later than May 10, 2019.

BY ORDER OF:

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ANTHONY F. AMBROSE  
PUBLIC SAFETY DIRECTOR





# NEWARK POLICE DIVISION GENERAL ORDER



<b>SUBJECT:</b> <b>PROPERTY &amp; EVIDENCE MANAGEMENT</b>	<b>GENERAL ORDER NO.</b> <b>18-23</b>
<b>SUPERSEDES:</b> <b>G.O. 64-2, 97-03 &amp; 00-02</b>	<b>DATED:</b> <b>April 12, 2019</b>
<b>RELATED POLICIES:</b> <i>Property &amp; Evidence Division (G.O. 18-24)</i> <i>Municipal Arrest Processing Section (G.O. 16-03)</i> <i>Crime Scene Evidence (G.O. 99-05)</i>	

**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:



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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).



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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.



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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:



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- 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:



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- 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.



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## **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.





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- 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.



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#### 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/BD:mc

# Appendix C



DEPARTMENT OF PUBLIC SAFETY  
MEMORANDUM



TO: POLICE DIVISION DATE: APRIL 3, 2019  
FROM: ANTHONY F. AMBROSE NUMBER: 19 - 175  
PUBLIC SAFETY DIRECTOR  
SUBJECT: IMPLEMENTATION OF GENERAL ORDER 18-24 FILE REF: PUB 4 x PTL 1-6  
RE: PROPERTY & EVIDENCE DIVISION

*General Order 18-24, Property & Evidence Division* has been implemented as a policy and procedure for all matters involving the Property & Evidence Division. This General Order shall supersede *General Order 2000-02, Property & Evidence Management* which is hereby rescinded.

*General Order 18-24* generally applies to the members of the Property & Evidence Division and concerns all procedures for the retrieval, intake, tracking, maintenance, auditing and disposition of all property and evidence within the Newark Police Division.

The Commander of the Property & Evidence Division shall ensure personnel assigned to the Property & Evidence Division become familiar and comply with the tenets of this general order.

All Police Division personnel shall confirm receipt, compliance and understanding way of electronic signature in the Power Document System (PowerDMS) by Tuesday, April 30, 2019.

BY ORDER OF:

ANTHONY F. AMBROSE  
PUBLIC SAFETY DIRECTOR

AFA/BO/jjc

c: Darnell Henry, Chief of Police Division

Attachment: General Order 18-24 Property & Evidence Division



# NEWARK POLICE DIVISION GENERAL ORDER



<b>SUBJECT:</b> <b>PROPERTY AND EVIDENCE DIVISION</b>		<b>GENERAL ORDER NO.</b> <b>18-24</b>
<b>SUPERCEDES:</b> <b>2000-02 Property &amp; Evidence Management</b>	<b>DATED:</b> <b>April 3, 2019</b>	
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		

**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



- g. Location where the item will be stored within the Property & Evidence Division; and
      - h. Type of property;
        - i. Arrest Evidence;
        - ii. Found Property;
        - iii. Personal Property; and
        - iv. Safe Keeping.
    2. For items that have already been entered into the CEMS at their originating command:
      - a. **Scan** the item in with the "Received at Property Room" code;
      - b. **Enter** the storage location within the Property Room; and
      - c. **Store** all property/evidence in its designated location.
  3. Money and jewelry shall immediately be given to a Supervisor for storage in the Command vault after entry into the CEMS. If a Supervisor is not available at the time of intake, the money or jewelry will be deposited into the Temporary Storage Locker. The appropriate code, "Vault" or "Temporary Locker" will be then scanned. The Temporary Storage Locker shall be maintained and secured on the main staging floor of the Command.
  4. A Temporary Evidence/Property Ledger documenting the above information shall be used when the CEMS is out of service. Once the CEMS returns to service, all entries will be placed into the CEMS. The Ledger shall be annotated as such indicating the input into CEMS.
  5. When entering information in the CEMS, all Division personnel shall:
    - i. Enter all pertinent information into the CEMS including the date, Central Complaint Number, Envelope Control Number, item description and location stored;
    - ii. Print and affix a barcode label to the item;





# 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;



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- 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



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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



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## **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;



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- 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.





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## 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*.



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## **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:

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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**

**List of Final Sample**

<b>Count</b>	<b>Central Compliance Number</b>
1	C22022759
2	C22026875
3	C22021365
4	C20001426
5	C22021449
6	C22018446
7	C22009193
8	C22025154
9	C22025845
10	C22028500
11	C22022500
12	C22025898
13	C22021383
14	C22021852
15	C22023395
16	C22016649
17	C22020513
18	C21021062
19	C22020774
20	C22019681
21	C22022082
22	C22027386
23	C22021422
24	C22026707
25	C22019469
26	C22019314
27	C22020646
28	C22025193
29	C22028494
30	C22025918
31	C22026549
32	C22020035
33	C22017635
34	C22024594
35	C22025826
36	C22025297

<b>Count</b>	<b>Central Compliance Number</b>
37	C22026536
38	C22020307
39	C22024968
40	C22025550
41	C22016553
42	C22021315
43	C22022272
44	C22024528
45	C22018852
46	C22020832
47	C22026390
48	C22026201
49	C22025169
50	C22025173
51	C22027228
52	C22025409
53	C22020862
54	C22005728
55	C22020242
56	C22027574
57	C22021163
58	C22022039
59	C22023571
60	C22022349
61	C22025010
62	C22017934
63	C22023426
64	C22028175
65	C22019803
66	C22019630
67	C22019358
68	C21022677
69	C22027697
70	C22019392
71	C22026982
72	C22017741
73	C22023898
74	C22024683

<b>Count</b>	<b>Central Compliance Number</b>
75	C22016278
76	C22020110
77	C22021885
78	C22025609
79	C22028279
80	C22023664
81	C22016853
82	C22027990
83	C22026249
84	C22019601
85	C22022625
86	C22021288
87	C22023530
88	C22019957
89	C22025188
90	C22025961
91	C22020273
92	C22022052
93	C22027673
94	C22024189
95	C22023629
96	C22025992
97	C22026309
98	C22025482
99	C22019512
100	C22025580
101	C22019477
102	C22020336
103	C22019553
104	C22016490
105	C22028443
106	C22020306
107	C22025127
108	C22027209
109	C22021452
110	C22020960
111	C22023059
112	C22019525

<b>Count</b>	<b>Central Compliance Number</b>
113	C22025798
114	C22023387
115	C22014296
116	C22021469
117	C22022752
118	C22026678
119	C22027562
120	C22019241
121	C22019941
122	C22025147
123	C22026027
124	C22022597
125	C22026617
126	C22021276
127	C22025228
128	C22028433
129	C22013224
130	C22023806
131	C22025394
132	C22019080
133	C22024690
134	C22022763
135	C22023085
136	C22024092
137	C22022038
138	C22022093
139	C22019294
140	C22022878
141	C22023523
142	C22014495
143	C22024365

# **Appendix F**

**List of Non-Compliant Events (Documentation)**

<b>Count</b>	<b>Central Compliance Number</b>	<b>Non-Compliance Criteria</b>
1	C20001426	Incomplete Report(s)
2	C22009193	Incomplete Report(s)
3	C22025845	Incomplete Report(s)
4	C22028500	Incomplete Report(s)
5	C22022500	Officer Identification
6	C22021383	Officer Identification
7	C21021062	Incomplete Report(s)
8	C22022082	Incomplete Report(s)
9	C22027386	Officer Identification
10	C22021422	Incomplete Report(s)
11	C22026707	Incomplete Report(s)
12	C22020035	Incomplete Report(s)
13	C22026536	Officer Identification
14	C22020307	Officer Identification
15	C22021315	Incomplete Report(s)
16	C22024528	Incomplete Report(s)
17	C22026390	Officer Identification
18	C22027228	Officer Identification
19	C22020862	Officer Identification
20	C22005728	Officer Identification
21	C22027574	Officer Identification
22	C22022349	Officer Identification
23	C22025010	Officer Identification
24	C22028175	Incomplete Report(s)
25	C22019803	Incomplete Report(s)
26	C22019630	Officer Identification
27	C21022677	Officer Identification, Incomplete Report
28	C22019392	Officer Identification
29	C22017741	Officer Identification
30	C22028279	Officer Identification
31	C22023629	Officer Identification
32	C22025992	Officer Identification
33	C22026309	Incomplete Report(s)
34	C22025482	Incomplete Report(s)
35	C22016490	Officer Identification
36	C22020306	Officer Identification

Count	Central Compliance Number	Non-Compliance Criteria
37	C22020960	Officer Identification
38	C22023059	Officer Identification, Incomplete Report
39	C22019525	Officer Identification
40	C22023387	Officer Identification
41	C22021469	Officer Identification
42	C22022752	Incomplete Report(s)
43	C22019241	Officer Identification
44	C22021276	Officer Identification, Incomplete Report
45	C22025228	Incomplete Report(s)
46	C22028433	Officer Identification
47	C22025394	Officer Identification
48	C22022878	Incomplete Report(s)

**List of Non-Compliant Events (Substantive)**

Count	Central Compliance Number	Non-Compliance Criteria
1	C22016649	Prolonged delay of property intake
2	C22025918	Prolonged delay of property intake
3	C22017635	Missing Report; Break in Chain of Custody
4	C22025826	Officer Identification; Prolonged delay of property intake
5	C22018852	Prolonged delay of property intake
6	C22022039	Prolonged delay of property intake
7	C22016853	Prolonged delay of property intake
8	C22024189	Prolonged delay of property intake
9	C22027209	Prolonged delay of property intake
10	C22014296	Prolonged delay of property intake
11	C22019080	Prolonged delay of property intake
12	C22014495	Prolonged delay of property intake

**List of Non-Compliant Events (Documentation & Substantive)**

Count	Central Compliance Number	Non-Compliance Criteria
1	C22020513	Incomplete Report(s); Prolonged delay of property intake
2	C22025550	Missing Report(s); Prolonged delay of property intake
3	C22016553	Officer Identification; Prolonged delay of property intake
4	C22026249	Officer Identification; Prolonged delay of property intake
5	C22022625	Officer Identification; Prolonged delay of property intake
6	C22026678	Officer Identification; Prolonged delay of property intake
7	C22022093	Officer Identification; Prolonged delay of property intake