Report of the Independent Monitor’s Third Audit of the City of Newark Police Division’s Use of Force
# Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. REVIEWERS</td>
<td>3</td>
</tr>
<tr>
<td>II. INTRODUCTION</td>
<td>3</td>
</tr>
<tr>
<td>III. REVIEW PERIOD</td>
<td>3</td>
</tr>
<tr>
<td>IV. EXECUTIVE SUMMARY</td>
<td>3</td>
</tr>
<tr>
<td>V. METHODOLOGY</td>
<td>5</td>
</tr>
<tr>
<td>VI. ANALYSIS</td>
<td>5</td>
</tr>
<tr>
<td>A. Operational Compliance: Whether NPD is complying with its Use of</td>
<td>5</td>
</tr>
<tr>
<td>Force Policies in Practice</td>
<td></td>
</tr>
<tr>
<td>1. Overall Operational Compliance</td>
<td>6</td>
</tr>
<tr>
<td>2. Substantive Compliance</td>
<td>6</td>
</tr>
<tr>
<td>3. Documentation Compliance</td>
<td>9</td>
</tr>
<tr>
<td>B. Outcome Assessment Data</td>
<td>10</td>
</tr>
<tr>
<td>VII. OBSERVATIONS &amp; RECOMMENDATIONS</td>
<td>11</td>
</tr>
</tbody>
</table>
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 (“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).1 (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.”2

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 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 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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1 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.

2 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, described in this audit as \textit{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 \textit{documentation compliance}. As in the \textit{Second Use of Force Audit}, NPD achieves Overall Operational Compliance only when it satisfies both metrics (\textit{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 (\textit{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 \textit{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.

\textbf{Table 1} presents an overview of NPD’s compliance with the Monitoring Team’s \textit{Third Audit} of NPD’s Use of Force.

<table>
<thead>
<tr>
<th>Audit Subject</th>
<th>Consent Decree Paragraph(s)</th>
<th>Compliance? (Requirement: 95%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Use of Force Policies</td>
<td>Paragraphs 66, 67, 71, 72, 73, 75-84, 88</td>
<td>Yes(^3).</td>
</tr>
<tr>
<td>Substantive Operational Compliance</td>
<td>Paragraphs 66, 67, 71, 72, 76, 77</td>
<td>Yes. 96.7% of Use of Force incidents reviewed by the Monitoring Team complied</td>
</tr>
</tbody>
</table>

\(^3\) 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).

\(^4\) 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.
### Table 1
Overview of Third Use of Force Audit Results

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

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>
<thead>
<tr>
<th>Incidents Reviewed</th>
<th>Overall Operationally Compliant</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>91</td>
<td>77</td>
<td>84.6%</td>
</tr>
</tbody>
</table>

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.

<table>
<thead>
<tr>
<th>Table 3</th>
<th>Summary of Level of Use of Force Incidents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level of Force</td>
<td>Use of Force Incidents</td>
</tr>
<tr>
<td>Low</td>
<td>66</td>
</tr>
<tr>
<td>Intermediate</td>
<td>24</td>
</tr>
<tr>
<td>Serious</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>91</td>
</tr>
</tbody>
</table>

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.

<table>
<thead>
<tr>
<th>Number of Officers Who Used Force in One or More Instances</th>
<th>Total Number of Instances of an Officer Using Force</th>
</tr>
</thead>
<tbody>
<tr>
<td>119 Officers used force once</td>
<td>119</td>
</tr>
<tr>
<td>34 Officers used force twice</td>
<td>68</td>
</tr>
<tr>
<td>10 Officers used force three times</td>
<td>30</td>
</tr>
<tr>
<td>3 Officers used force four times</td>
<td>12</td>
</tr>
<tr>
<td>1 Officer used force five times</td>
<td>5</td>
</tr>
<tr>
<td>Total</td>
<td>234</td>
</tr>
</tbody>
</table>

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.

<table>
<thead>
<tr>
<th>Level of Force</th>
<th>Compliant</th>
<th>Total</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low</td>
<td>66</td>
<td>66</td>
<td>100%</td>
</tr>
<tr>
<td>Intermediate</td>
<td>22</td>
<td>24</td>
<td>91.7%</td>
</tr>
<tr>
<td>Serious</td>
<td>0</td>
<td>1</td>
<td>0%</td>
</tr>
<tr>
<td>Total</td>
<td>88</td>
<td>91</td>
<td>96.7%</td>
</tr>
</tbody>
</table>
Table 6 provides a summary of the substantively non-compliant incidents reviewed by the Monitoring Team, including the circumstances relevant to each incident.

<table>
<thead>
<tr>
<th>Incident Number</th>
<th>Circumstances</th>
</tr>
</thead>
<tbody>
<tr>
<td>22-221</td>
<td>Use of Force – Officer failed to cease using force at proper time</td>
</tr>
<tr>
<td>22-226</td>
<td>Use of Force – Officer used more than minimum force necessary</td>
</tr>
<tr>
<td>22-228</td>
<td>Use of Force – Officer improperly initiated use of force</td>
</tr>
</tbody>
</table>

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.

<table>
<thead>
<tr>
<th>Level of Force</th>
<th>Compliant</th>
<th>Total</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low</td>
<td>59</td>
<td>66</td>
<td>89.4%</td>
</tr>
<tr>
<td>Intermediate</td>
<td>20</td>
<td>24</td>
<td>83.3%</td>
</tr>
<tr>
<td>Serious</td>
<td>1</td>
<td>1</td>
<td>100%</td>
</tr>
<tr>
<td>Total</td>
<td>80</td>
<td>91</td>
<td>87.9%</td>
</tr>
</tbody>
</table>

5 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.

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

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
March 20, 2023

VIA EMAIL

Kenyatta Stewart, Esq.
Corporation Counsel

Gary S. Lipshutz, Esq.
First Assistant Corporation Counsel
City of Newark – Department of Law
Room 316 – City Hall
Newark, NJ 07102

Fritz Fragé
Public Safety Director
Department of Public Safety
480 Clinton Avenue
Newark, NJ 07108

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).¹

¹ 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 “Police 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.2

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., 4th 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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2 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).³

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

³ 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
Page 6

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

CC: Jeffrey R. Murray, Esq.
Corey M. Sanders, Esq.
Patrick Kent, Esq.
Trial Attorneys
Special Litigation Section
Civil Rights Division
United States Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

Philip R. Sellinger, Esq.
United States Attorney
Caroline Sadowksi, Esq.
Counsel to the U.S. Attorney
Kristin Vassallo, Esq.
Deputy Chief – Civil Division
Kelly Horan Florio
Civil Rights Unit – Civil Division
Office of the United States Attorney
District of New Jersey
Rodino Federal Building
970 Broad Street
Newark, NJ 07102
APPENDIX B
**NEWARK POLICE DIVISION**

**GENERAL ORDER**

<table>
<thead>
<tr>
<th>SUBJECT:</th>
<th>GENERAL ORDER NO.</th>
</tr>
</thead>
<tbody>
<tr>
<td>USE OF FORCE</td>
<td>18-20</td>
</tr>
<tr>
<td>SUPERSEDES:</td>
<td></td>
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<td>G.O. 63-2</td>
<td></td>
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<tr>
<td>DATED:</td>
<td>November 8, 2018</td>
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</tbody>
</table>

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
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
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.
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**.
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
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
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:
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.
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
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
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
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
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;
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.
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).
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.
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. #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

SUBJECT: USE OF FORCE REPORTING, INVESTIGATION AND REVIEW

SUPERSEDES: NEW

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
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.
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);
NEWARK POLICE DIVISION
GENERAL ORDER

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.
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.
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.
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.
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,
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.
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.
NEWARK POLICE DIVISION
GENERAL ORDER

- 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).
• 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:1005).

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).
NEWARK POLICE DIVISION
GENERAL ORDER

- 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.
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.
• 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.
NEWARK POLICE DIVISION
GENERAL ORDER

- 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:
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
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.
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
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
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
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.


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.
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
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.
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.
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.
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.
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.
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.
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.
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.


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
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 10th of January in order to be sent prior to the January 15th 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.
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.
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.
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.
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.
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.
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).
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.
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:
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.
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.
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.
VIII. 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. #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
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
• 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.
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.


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.
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<tr>
<th>#</th>
<th>Consent Decree Paragraph</th>
<th>NPD Policy</th>
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<td>General Order 18-20, <em>Use of Force</em>: Sections II, III.D.2 and VII.A.2</td>
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<td>General Order 18-20, <em>Use of Force</em>: Section III.B.4</td>
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<td>General Order 18-20, <em>Use of Force</em>: Section XII</td>
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<td>General Order 18-22, <em>Firearms and Other Weapons</em>: Section IV.A</td>
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<td>General Order 18-20, <em>Use of Force</em>: Section VI.D</td>
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<td>General Order 18-21, Reporting, Investigation and Review: Sections VII.A.3, VII.B.3 and VII.C.3</td>
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<td>General Order 18-21, Reporting, Investigation and Review: Sections VII.B.1, VII.B.3, VII.C.1 and VII.C.3</td>
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<td>General Order 18-21, Reporting, Investigation and Review: Sections VII.B.3 and VII.C.3</td>
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<td>General Order 18-21, Reporting, Investigation and Review: Sections VII.B.3 and VII.C.3</td>
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<td>General Order 18-21, Reporting, Investigation and Review: Sections VII.B.3 &amp; VII.C.4</td>
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<td>General Order 18-21, Reporting, Investigation and Review: Section VII.C.4</td>
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<td>General Order 18-21, Reporting, Investigation and Review: Section VII.C.3</td>
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</tr>
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<td>Consent Decree Paragraph</td>
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</tr>
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<td>94(h)</td>
<td>General Order 18-21, <em>Reporting, Investigation and Review</em>: Section VII.C.4</td>
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<td>95</td>
<td>General Order 18-21, <em>Reporting, Investigation and Review</em>: Section VIII.B</td>
</tr>
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<td>97</td>
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<td>102</td>
<td>General Order 18-21, <em>Reporting, Investigation and Review</em>: Section VIII.B</td>
</tr>
</tbody>
</table>
APPENDIX F
<table>
<thead>
<tr>
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<td>General Order 18-20, <em>Use of Force</em>: Sections II, III.D.2 and VII.A.2</td>
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<td>General Order 18-20, <em>Use of Force</em>: Section XII</td>
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<td>71</td>
<td>General Order 18-22, <em>Firearms and Other Weapons</em>: Section IV.A</td>
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<td>General Order 18-20, <em>Use of Force</em>: Section VI.D</td>
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<td>General Order 18-20, <em>Use of Force</em>: Section VI.C.1.d</td>
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<td>75</td>
<td>General Order 18-21, <em>Reporting, Investigation and Review</em>: Sections II and VII</td>
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<td>General Order 18-21, <em>Reporting, Investigation and Review</em>: Section VI</td>
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<td>General Order 18-21, <em>Reporting, Investigation and Review</em>: Sections IV and VII</td>
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<td>General Order 18-21, <em>Reporting, Investigation and Review</em>: Sections VII.A.3, VII.B.3 and VII.C.3</td>
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