Report of the Independent Monitor’s First Audit of the City of Newark and Newark Police Division’s Arrests With or Without an Arrest Warrant
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This report presents the findings of the Independent Monitor, Peter C. Harvey, regarding the Independent Monitoring Team’s First Audit of the City of Newark’s (the “City’s”) and Newark Police Division’s (“NPD’s”) compliance with Consent Decree requirements relating to arrest practices with or without an arrest warrant.

I. REVIEWERS

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

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

II. INTRODUCTION

Paragraph 173 of the Consent Decree instructs the Independent Monitoring Team, led by Independent Monitor Peter C. Harvey, to audit the City’s and NPD’s compliance with Consent Decree reforms. Pursuant to Paragraph 180 of the Consent Decree, the Independent Monitor issued notice to the City, NPD, and the United States Department of Justice (“DOJ”) (collectively, the “Parties”), by letter on May 27, 2022, that the Monitoring Team would begin its first audit of NPD’s compliance with certain provisions of the Consent Decree relating to arrests with or without an arrest warrant and specifically, Section VI (Paragraphs 35-37, 42, 51, and 53-62); and Section XVI (specifically, Paragraph 174 (a)).

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

- Prohibit officers from arresting an individual unless the officer has probable cause to do so, and from relying on information they know to be materially false or incorrect when effecting an arrest (Paragraph 35).
- Prohibit officers from considering a subject’s demographic category to justify an arrest, except that officers may rely on a demographic

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1 The Consent Decree defines an “Arrest” as “a seizure of greater scope or duration than an investigatory stop or detention.”

2 Paragraph 174 (a) of the Consent Decree requires NPD to provide the Monitor with data to allow the Monitoring Team to undertake outcome assessments. The Monitoring Team will report on NPD’s Outcome Assessment data separately.
category in a specific suspect description, where the description is from a trustworthy source that is relevant to the locality and time (Paragraph 36).

- Require that an officer notify a supervisor immediately after: effecting an arrest where the officer used force; an incident in which an officer unholstered or pointed a firearm; an arrest for obstructing or resisting an officer; any disorderly conduct type arrest; or a custodial arrest for a vehicle infraction (Paragraph 37).

- Require that officers complete all arrest reports, properly documenting the probable cause for arrests, by the end of their shifts (Paragraph 42).

- Modify its procedures to collect and preserve stop, search, and arrest data sufficient to determine the nature and scope of demographic disparities in stop and search practices, as well as which stop, search, and arrest practices are most effective and efficient (Paragraph 51).

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

- Ensure that all databases comply fully with federal and state privacy standards governing personally identifying information. NPD will restrict database access to authorized, identified users who will be permitted to access the information only for specific, legitimate purposes (Paragraph 54).

- Require that officers respect the legal rights of onlookers or bystanders to witness, observe, record, and comment on or complain about officer conduct, including stops, detentions, searches, arrests, or uses of force. NPD will train officers that the exercise of these rights, secured and protected by the constitution and laws of the United States, serves important public purposes (Paragraph 55). Prohibit officers from detaining, arresting, or threatening to detain or arrest, individuals based on activity protected by the First Amendment, including verbal criticism, questioning police actions, or gestures. NPD will also prohibit officers from using or threatening force in response to mere verbal criticism or gestures that do not give rise to reasonable fear of harm to the officers or others (Paragraph 56).

- Require that officers take no law enforcement action against a bystander unless the bystander: (a) violates the law; (b) incites others to
violate the law; or (c) refuses to comply with an officer’s order to observe or record from an alternate location and the bystander’s presence would jeopardize crime scene integrity or the safety of the officer, the suspect, or others (Paragraph 57).

- Permit individuals observing stops, detentions, arrests, and other incidents to remain in the proximity of the incident unless one of the conditions in paragraph 57 is met (Paragraph 58).

- Permit individuals to record police officer enforcement activities by camera, video recorder, cell phone recorder, or other means, unless one of the conditions in paragraph 57 is met (Paragraph 59). Prohibit officers from threatening, intimidating, or otherwise discouraging an individual from remaining in the proximity of or recording law enforcement activities and from intentionally blocking or obstructing cameras and recording devices (Paragraph 60).

- Prohibit officers from detaining, prolonging the detention of, or arresting an individual for remaining in the proximity of, recording or verbally commenting on officer conduct directed at the individual or a third party, unless one of the conditions in Paragraph 57 is met (Paragraph 61).

- Prohibit officers from destroying, seizing, or otherwise coercing a bystander to surrender recorded sounds or images mad of officers in the course of their duties, without first obtaining a warrant. Nor may officers order a bystander to destroy any such recording. Where an officer has a reasonable belief that a bystander or witness has captured a recording of critical evidence related to a felony crime, the officer may secure such evidence only as long as necessary to obtain a subpoena, search warrant, or other valid legal process or court order (Paragraph 62).

III. REVIEW PERIOD

In this Audit, the Monitoring Team reviewed NPD’s arrests for a two-month time period, specifically from October 1, 2021 up to and including November 30, 2021 (the “Audit Period”).

On May 27, 2022, the Monitoring Team provided NPD with notice of its intent to conduct this audit. The Monitoring Team also informed NPD that this first audit of its arrests with or without an arrest warrant would require in-person activities by members of the Monitoring Team, and that the Monitoring Team’s Subject Matter Experts (SMEs) would observe Centers for Disease Control and Prevention (“CDC”) guidelines while conducting this audit (see Appendix A). The SMEs conducted their activities on-site at NPD’s Municipal Arrest Processing Section (“MAPS”) headquarters on the following dates:

- June 25, 2022 through July 1, 2022
- July 18, 2022 through July 26, 2022
August 11, 2022 through August 12, 2022

The Monitoring Team acknowledges a delay in the issuance of this report, which is attributable to two unforeseen events encountered by the Monitoring Team immediately preceding the first scheduled audit session, and during the course of all three sessions. First, during the weekend preceding the first scheduled audit session, one SME experienced a sudden illness, which (per CDC guidelines) precluded the SME’s ability to travel, as well as to be within social distance of others for a protracted period of time. Second, due to the prevalence of arrest events wherein more than one individual was physically arrested, a greater than expected quantity of reports and body-worn/in-car camera footage required SME review. These circumstances necessitated the return of the SMEs to NPD for the second and third audit sessions.

IV. EXECUTIVE SUMMARY

This report contains the results of the Monitoring Team’s audit of NPD’s arrest practices. The First Arrest audit analyzed whether (1) NPD’s policies that govern these practices contained the Consent Decree required provisions (as listed above), and (2) NPD’s personnel demonstrated routine adherence to NPD’s own Arrest policies in their day-to-day operations, described here as “Overall Compliance.”

On the first component of this audit—NPD’s policies and procedures regarding arrests with or without an arrest warrant—the Monitoring Team determined that NPD’s applicable General Orders, directives, and In-Service Training Bulletins contained each Arrest-related policy requirement specified in the Consent Decree. The Monitoring Team also considered whether data elements required by the Consent Decree and NPD’s General Order 18-16, Arrests With or Without an Arrest Warrant, have been recorded within the incident and/or arrest reports reviewed (see Appendix A). The Monitoring Team also determined that NPD’s protocol for analyzing stop, search and arrest data contained the requirements specified in the Consent Decree.

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

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

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3 In assessing substantive compliance, the Monitoring Team evaluated the actions of the initiating officers, the officers responsible for effectuating the arrests, and all officers appearing on body-worn or in-car camera video.
documentation compliance for 95% of the events in the sample reviewed by the Monitoring Team.4

When separated by substantive and documentation compliance, the audit revealed that NPD attained a score of 99.00% for substantive compliance (200 out of 201 events assessed for substantive compliance were determined to be compliant). NPD’s documentation compliance score was 95.52% (192 out of 201 events assessed for documentation compliance were determined to be compliant). Thus, when assessing for Overall Compliance (i.e., satisfaction of both substantive and documentation requirements), the Monitoring Team found that 95.02% of events reviewed were compliant both substantively and with respect to documentation requirements. In other words, 191 out of 201 events reviewed by the Monitoring Team achieved Overall Compliance.

The Monitoring Team finds that NPD’s performance, particularly on the substantive portion of the audit, demonstrates that NPD has achieved substantive, documentation, and overall compliance.

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

<table>
<thead>
<tr>
<th>Overview of First Arrests Audit Results</th>
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<tbody>
<tr>
<td>Audit Area/Subject</td>
</tr>
<tr>
<td>Arrests With or Without an Arrest Warrant Policy and Related Policies</td>
</tr>
<tr>
<td>Stop, Search and Arrest Analysis Protocol</td>
</tr>
</tbody>
</table>

4 By separately assessing NPD’s substantive compliance and documentation compliance, the Monitoring Team affords NPD the ability to more easily identify areas in which it may focus its resources to address deficiencies, if any, in its Arrests with or without an Arrest Warrant practices.
**Substantive Compliance**

Whether the responsible NPD officer adhered to NPD policy by demonstrating that legal justification for the arrest existed and that the arrest was within legal and policy-related parameters.

Section VI (Opening Statement), and Paragraphs 35-38, and 55-62 (First Amendment)

Yes. NPD was deemed substantively compliant in 99.00% of Arrest events reviewed.

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**Overview of First Arrests Audit Results**

<table>
<thead>
<tr>
<th>Audit Area/Subject</th>
<th>Consent Decree Paragraph</th>
<th>Compliance?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Documentation Compliance</td>
<td>Section VI (Opening Statement), and Paragraphs 39,42, and 55-62 (First Amendment)</td>
<td>Yes. NPD was deemed compliant with respect to documentation in 95.52% of Arrest events reviewed.</td>
</tr>
<tr>
<td>Overall Compliance</td>
<td>Section VI (Opening Statement), and Paragraphs 35-42, 55-62 (First Amendment)</td>
<td>Yes. Overall, 95.02% of Arrest events reviewed were compliant both substantively and with respect to documentation.</td>
</tr>
</tbody>
</table>

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**V. METHODOLOGY**

To assess compliance, the Monitoring Team evaluated whether NPD satisfied the relevant provisions of the Consent Decree. The Monitoring Team also evaluated whether NPD followed its own policy, protocols, procedural guidelines, notifications, and reporting requirements. A comprehensive methodology is included in the 45-day notice for this audit (see Appendix A).

**VI. ANALYSIS**

**A. NPD’s Arrests Policy and Related Policies**

The Consent Decree requires NPD to implement policies directing officers to adhere to certain procedures in their arrest practices. Prior to this audit, the Monitoring Team reviewed and approved NPD’s Arrest policies, as specified in General Order 18-16, *Arrests with or without an Arrest Warrant*, dated December 31, 2018 (see Appendix B), General Order 18-12 *First Amendment Right to Observe, Object to, and Record Police Activity*, dated
June 12, 2019 (see Appendix C), NPD Memorandum 19-18 Implementation of General Order 18-14, 18-15, 18-16 RE: Stop, Search, and Arrest Policies, dated January 11, 2019 (specifically focusing on the paragraphs addressing Arrests) (see Appendix D), General Order 21-04 Protocol for Analyzing Stop, Search, and Arrest Data, dated May 27, 2021 (see Appendix E), as well as related written directives, and related In-Service Training Bulletins.

Before approving these policies, the Monitoring Team conducted a formal review to determine whether the policies contained each requirement relevant to Arrests with or without an Arrest Warrant as specified in the Consent Decree. The Monitoring Team determined that the Consent Decree’s policy requirements in this area were reflected in NPD’s General Orders. (See Appendix F).

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

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

Prior to this audit, the Monitoring Team and DOJ reviewed and approved NPD’s Stop, Search and Arrest Protocol, General Order 21-04, dated May 27, 2021 (see Appendix E). NPD has submitted to the Monitoring Team a preliminary analysis based on its protocol. Some aspects of NPD’s analysis, however, were incomplete when assessed by NPD’s own methodology. In the future, the Monitoring Team expects NPD will be able to adhere strictly to its proposed methodology.

C. Overall Compliance: Substantive and Documentation

The Monitoring Team generated a random sample of 200 events from the Audit Period (October 1, 2021 up to and including November 30, 2021) to analyze for this Audit. This random sample of 200 events was drawn from a total population of 833 events for the Audit Period. The final Audit sample was 201 events after SME review (see Appendix G).

An event was deemed “Overall Compliant” only when responding and reporting officers were compliant with regard to both substantive and documentation requirements for the event assessed. Accordingly, if an officer’s actions relevant to that event were substantively non-compliant, or non-compliant with respect to documentation, or both, that event was deemed “Overall Non-Compliant.”

To assess Substantive Compliance for each arrest event, the Monitoring Team evaluated whether the officer involved had legal justification for the arrest (i.e., “Probable Cause”), and whether the mechanics of the arrest were within legal and policy-related parameters. The Monitoring Team evaluated the actions of the initiating officers, the officers responsible for effectuating the arrests, and all officers appearing on body-worn or in-car camera video.
To assess documentary compliance for each arrest event, the SMEs inspected relevant materials to determine if (1) probable cause was properly articulated on written documents; and (2) BWC/ICC\textsuperscript{5} video footage was submitted, and corroborated information recorded on corresponding police division forms. If probable cause was not clearly articulated on associated forms, or if BWC/ICC footage refuted (or failed to corroborate) information recorded on forms, the arrest event was assessed “documentation non-compliant.”

1. **Substantive Compliance**

In assessing substantive compliance, for each arrest event, the SMEs inspected relevant materials to determine the constitutionality and legal sufficiency of the arrest (i.e., whether the arresting officer established probable cause prior to the effectuation of the arrest.) Arrest events meeting legal and constitutional sufficiency thresholds (as assessed by the SMEs) were deemed “substantively compliant.” Arrest events lacking legal or constitutional sufficiency (again, as assessed by the SMEs) were deemed “substantively non-compliant.”

A breakdown of substantive compliance scores follows.

<table>
<thead>
<tr>
<th>Total Number of Events Reviewed</th>
<th>Number of Events Deemed Substantively Compliant</th>
<th>Compliance Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>201</td>
<td>199</td>
<td>99.00%</td>
</tr>
</tbody>
</table>

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

2. **Documentation Compliance**

To determine whether NPD achieved documentation compliance, the Monitoring Team assessed whether or not the NPD responsible officer for each event had adhered to all relevant reporting and documentation requirements for this audit as defined by NPD policy and Consent Decree requirements. NPD achieved a Documentation Compliance score of 95.52%. In 192 of the 201 events reviewed, the responsible officers completed documentation reporting requirements according to NPD policy.

<table>
<thead>
<tr>
<th>Total Number of Events Reviewed</th>
<th>Number of Events Deemed Documentation Compliant</th>
<th>Compliance Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>201</td>
<td>192</td>
<td>95.52%</td>
</tr>
</tbody>
</table>

Of the 201 events reviewed by the Monitoring Team, 9 (4.48%) were non-compliant due to documentation/reporting related deficiencies. For a list of events that were determined to be non-compliant with respect to documentation, see Appendix J.

3. **Overall Compliance**

NPD achieved an overall compliance score of 95.02%. In total, 191 of the 201

\textsuperscript{5} “BWC” refers to Body-Worn Cameras and “ICC” refers to In-Car Cameras.
events reviewed by the Monitoring Team were compliant both substantively and in terms of documentation. Accordingly, 11 events were found to be overall non-compliant (5.47%). For a table showing the distribution of the 11 events that were found to be substantively noncompliant, documentation non-compliant, or both substantively and documentation noncompliant, see Appendix H.

<table>
<thead>
<tr>
<th>Total Number of Events Reviewed</th>
<th>Number of Events Deemed Overall Compliant</th>
<th>Compliance Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>201</td>
<td>191</td>
<td>95.02%</td>
</tr>
</tbody>
</table>

VII. OBSERVATIONS AND RECOMMENDATIONS

For the First Arrest Audit, the Monitoring Team made four principal observations and corresponding recommendations, as summarized below.

1. **Legality, Constitutionality, and Propriety of Arrests**

*Observation:* The majority of the arrests reviewed by the Subject Matter Experts (SMEs) were lawful, constitutional, and were conducted pursuant to circumstances under which a reasonable police officer would undertake the same course of action. In addition, NPD officers routinely demonstrated a strong understanding of policies and legal principles relating to First Amendment rights and protections for bystanders who observe and record police activity. Finally, video footage captured on body-worn and in-car cameras confirmed that, in the majority of interactions with members of the community, Newark Police Division officers comported themselves in a professional manner, maintained a courteous and respectful demeanor, and exercised restraint during tense situations.

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

2. **Arresting Officer Not Clearly Identified On Written Reports**

*Observation:* The Monitoring Team SMEs reviewed Arrest Events where the officer who effectuated the physical arrest was not specifically identified within the contents of attendant written documentation. Equally deficient, the officer who prepared the Arrest and Stop Reports (for consistency, designated the “primary officer” by the Monitoring Team), was not the officer who effectuated the arrest. These occurrences could expose NPD to skepticism by the public and the courts regarding the accuracy and reliability of NPD’s written documentation.

*Recommendation:* The Monitoring Team recommends that NPD update its policy relating to arrests to include a requirement that either the officer who effectuates the arrest (or initiates the interaction that leads to the arrest) prepare the Arrest and Stop Reports, or, at minimum, that the arresting officer be clearly identified within the contents of the Arrest and Stop Reports.
3. **Inconsistencies Between Written Documentation and Events Captured on Corresponding Video**

*Observation:* The Monitoring Team SMEs reviewed Arrest Events where information recorded on written documents did not match events captured on corresponding BWC or ICC Video. In most instances, the inconsistencies did not materially detract from the establishment of objective probable cause. However, inconsistencies of any type could expose NPD to challenges to the veracity of its written documentation and thereby, serve to diminish agency trust and legitimacy, as perceived by community members and other stakeholders.

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

4. **Unavailability of Body-Worn Camera Footage**

*Observation:* Body-worn camera footage was not always available for each arrest event, which impeded the SME’s ability to fully assess the circumstances for those arrests, as well as the officers’ interactions with bystanders. In addition, BWC videos require officers to *manually* enter the event number for the associated arrest. SMEs noted that this manual process often generates errors and creates delays in finding the correct BWC videos. Though this is inconvenient for the purposes of the audit, it creates a greater concern for supervisors and investigators, who, by policy, are required to review footage for accuracy, adherence to policy, disclosure and staff development.

*Recommendation:* The Monitoring Team recommends that NPD undertake deliberate measures to ensure that, at the conclusion of each tour of duty, supervisors verify that all required BWC recordings are properly uploaded and correctly identified with the appropriate event number. This oversight duty and responsibility may require the institution of specialized training, review of the current BWC/ICC systems and progressive disciplinary protocols.

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

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

DATE: November 3, 2022

Peter C. Harvey
Independent Monitor
APPENDIX A
May 27, 2022

VIA EMAIL

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Newark, NJ 07102

Brian O’Hara
Director
Department of Public Safety
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City of Newark
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Newark, NJ 07108

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

Dear City of Newark and Newark Department of Public Safety’s Newark Police Division (“NPD”):

Pursuant to Consent Decree Paragraphs 173 and 180, I write to provide notice that, starting no sooner than 45 days from the date of this letter, the Independent Monitoring Team will conduct its first Audit of NPD’s Arrests With or Without an Arrest Warrant (also referred to as “Arrests”6). This Audit will cover the period from October 1, 2021 up to and including November 30, 2021 (the “Audit Period”), in a manner to be described in this correspondence. The purpose of this Audit is to assess whether NPD has complied with enumerated sections of

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6 The Consent Decree defines an “Arrest” as: a seizure of greater scope or duration than an investigatory stop or detention.
the Consent Decree, including Section VI (specifically, ¶¶ 35-37, 42, 51, & 53-62); and Section XVI (specifically, ¶ 174 (a)).

This initial Audit of Arrests With or Without an Arrest Warrant will be carried out by the following Monitoring Team Subject Matter Experts: Staff Inspector Sekou Kinebrew (Ret.) of the Philadelphia Police Department, Lieutenant Daniel Gomez (Ret.) of the Los Angeles Police Department, and Sergeant Roger Nunez of the Los Angeles Police Department. The Data Team comprised of Linda Tartaglia, Associate Director, Rutgers University Center on Policing, Wayne Fisher, Ph. D., Rutgers University Center on Policing, Rosalyn Bocker Parks, Ph. D., Rutgers University Center on Policing, Kathryn Duffy, Ph.D., Rutgers University Center on Policing, and Jonathan Norrell, Rutgers University Center on Policing, will work with the SMEs on this audit.

I. SCOPE

As agreed upon by the City of Newark (the “City”), the Newark Police Division (“NPD”) and the United States Department of Justice (“DOJ”) (collectively, the “Parties”) and the Independent Monitor, this Audit will focus on the relevant Consent Decree paragraphs as they pertain to Arrests. The topical areas of Stops and Searches will not be the subject of this Audit, but will be the subject of separate audits.

Paragraph 173 of the Consent Decree requires the Monitor to “conduct reviews and audits as necessary to determine whether the City and NPD have implemented and continue to comply with the requirements” of the Consent Decree. The Monitoring Team must assess whether the City and NPD have “implemented the [Arrest] requirements into practice.” (See Consent Decree ¶ 173).

Additionally, the Monitoring Team will not audit supervisory reviews of Arrests during this first Audit of Arrests. The Monitoring Team intends to complete an audit of supervisory reviews of Arrests in a separate audit. However, for this Audit, the Monitoring Team will inspect Arrests for compliance with Consent Decree Paragraph 37, pertaining to supervisor notification for specified arrests.

II. METHODOLOGY

The data collected in this audit will be the baseline for outcome assessments (Paragraph 174(a)) for Arrests, and will be reported out separately.

A comprehensive methodology has been attached to this document for the Parties’ review.
To assess compliance, the Monitoring Team will evaluate whether NPD has satisfied the relevant provisions of the Consent Decree. The Monitoring Team also will evaluate whether NPD is following its own policy, protocols, procedural guidelines, notifications, and reporting requirements as outlined in the following:

- General Order 18-16, *Arrests with or without an Arrest Warrant*, dated December 31, 2018;
- General Order 21-04 *Protocol for Analyzing Stop, Search, and Arrest Data*, dated May 27, 2021;
- General Order 18-12, *First Amendment Right to Observe, Object to, and Record Police Activity*, dated June 12, 2019;
- Related written directives; and
- Related In-Service Training Bulletins.

The Monitoring Team also will consider whether data elements required by the Consent Decree and NPD’s General Order 18-16, *Arrests with or without an Arrest Warrant*, have been recorded within the incident and/or arrest reports reviewed.

It should be noted that each of the following sections of the General Orders listed above directly correlate to the Consent Decree Paragraph listed below.

1. **Section VI (Opening Statement):** NPD will conduct all investigatory stops, searches, and arrests in accordance with the rights secured or protected by the Constitution and federal and state law. NPD will conduct investigatory stops, searches, and arrests fairly and respectfully as part of an effective overall crime prevention strategy that is consistent with community priorities for enforcement.

**General Order / Policy Assessment (General Order 18-16; Section II - Policy):** It is the policy of the Newark Police Division to conduct all arrests in accordance with both the U.S. Constitution, and Article 1, Paragraph 7 of the New Jersey Constitution, as well as federal, and state law. Arrests are lawful to the extent they meet the requirements of the Fourth Amendment to the Constitution, which safeguards “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

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

Compliance Assessment Method: To assess compliance with the above Consent Decree Section VI, Opening Statement, for each arrest event, the Monitoring Team will review relevant reports, along with corresponding body-worn and in-car camera footage that provide objective evidence of officers’ actions in connection with arrests conducted during the Audit Period. Accordingly, the SME Team shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from Body-Worn and In-Car Cameras. The Monitoring Team will determine whether NPD officers: (i) sufficiently established and articulated probable cause to effectuate the arrest; (ii) adhered to the arrest procedures outlined in General Order 18-16; and, (iii) refrained from using pro forma or conclusory language without supporting detail.

2. **Consent Decree Paragraph 35**: NPD will prohibit officers from arresting an individual unless the officer has probable cause to do so, and from relying on information they know to be materially false or incorrect when effecting an arrest.

**General Order / Policy Assessment (General Order 18-16; Section V (A & D)– Prohibited Actions)**: Arresting an individual unless the officer has probable cause to do so; Relying on information to be materially false or incorrect to justify an arrest or seek an arrest warrant.

**Compliance Assessment Method**: To assess compliance with Consent Decree Paragraph 35, for each arrest event, the Monitoring Team will review relevant reports, along with corresponding body-worn and in-car camera footage that provide objective evidence of officers’ actions in connection with arrests conducted during the Audit Period. Accordingly, the SME Team shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from Body-Worn and In-Car Cameras. The Monitoring Team will consider whether NPD officers: (i) sufficiently established and articulated probable cause to effectuate the arrest; (ii) adhered to the arrest procedures outlined in General Order 18-16; and, (iii) refrained from using pro forma or conclusory language without supporting detail.

3. **Consent Decree Paragraph 36**: NPD will prohibit officers from considering a subject’s demographic category to justify an arrest, except that officers may rely on a demographic category in a specific suspect description, where the description is from a trustworthy source that is relevant to the locality and time.

**General Order / Policy Assessment (General Order 18-16; Section I – Purpose & Section V (B) – Prohibited Actions)**: The Newark Police Division is invested in its communities and, therefore, the Newark Police Division will not tolerate arrests prefaced upon discrimination against any demographic category. The Newark Police Division will hold all officers accountable for when they are found to be operating outside of the confines of the law in order to ensure community members’ rights are not violated.
Considering a subject’s demographic category to justify an arrest or seek an arrest warrant, except that officers may rely on a demographic category in a specific suspect description where the description is from a trustworthy source that is relevant to the locality and time, (e.g. from a victim or a witness) and then only in combination with other detailed descriptors.

**Compliance Assessment Method:** To assess compliance with Consent Decree Paragraph 36, for each arrest event, the Monitoring Team will review relevant reports, along with corresponding body-worn and in-car camera footage that provide objective evidence of officers’ actions in connection with arrests conducted during the Audit Period. Accordingly, the SME Team shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from Body-Worn and In-Car Cameras. The Monitoring Team will determine whether NPD officers: (i) sufficiently established and articulated probable cause to effectuate the arrest; (ii) adhered to the arrest procedures outlined in General Order 18-16; and, (iii) refrained from using pro forma or conclusory language without supporting detail.

4. **Consent Decree Paragraph 37:** NPD will require that an officer notify a supervisor immediately after: effecting an arrest where the officer used force; an incident in which an officer unholstered or pointed a firearm; an arrest for obstructing or resisting an officer; any disorderly conduct type arrest; or, a custodial arrest for a vehicle infraction.

**General Order /Policy Assessment (General Order 18-16; Section XI (G) – Arrest Procedures):** An officer will notify a Supervisor and request their presence immediately after effecting an arrest:

- where the officer used force;
- for obstructing the administration of law;
- for resisting arrest;
- for disorderly conduct;
- for a violation where there is a breach of the peace; or
- for a motor vehicle infraction. (Although N.J.S.A. 39:5-25 authorizes arrests for motor vehicle violations, custodial arrests for motor vehicle violations are limited to only serious infractions (State v. Pierce, 136 N.J. 184 (1994)))

**Compliance Assessment Method:** To assess compliance with Consent Decree Paragraph 37, for each arrest event, the Monitoring Team will review relevant reports, along with corresponding body-worn and in-car camera footage that provide objective evidence of officers’ actions in connection with arrests conducted during the Audit Period. Accordingly, the SME Team shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from Body-Worn and In-Car Cameras. The Monitoring Team will determine whether NPD officers: (i) sufficiently established and articulated probable cause to effectuate the arrest; (ii) adhered to the arrest procedures outlined in General Order 18-16; (iii) refrained from using pro forma or conclusory language without supporting detail.
Moreover, for arrests involving these circumstances or conditions, in addition to reviewing for compliance as described above, the Monitoring Team will specifically inspect for evidence of supervisory notification.

5. **Consent Decree Paragraph 42**: NPD will require that officers complete all arrest reports, properly documenting the probable cause for arrests, by the end of their shifts.

**General Order /Policy Assessment (General Order 18-06; Section XI (K) – Arrest Procedures & XIII (G) – Supervisor Responsibilities):** All reports relating to lawful arrests will be executed and submitted to the appropriate supervisor for review. An additional entry into Blue Team, or other authorized database, is required if force is used during an arrest. G.O. #18-16 – XIII. Supervisor Responsibilities:

   A. Desk Supervisor Receiving Arrestee (MAPS Supervisor/Desk Supervisor/ Watch Commander) – continued

   • reviewing all officer reports to ensure that officers are not using pro forma or conclusory statements;
   • reviewing all officer reports for information that is not current, authentic or correct;

**Compliance Assessment Method:** To assess compliance with Consent Decree Paragraph 42, for each arrest event, the Monitoring Team will review relevant reports, along with corresponding body-worn and in-car camera footage that provide objective evidence of officers’ actions in connection with arrests conducted during the Audit Period. Accordingly, the SME Team shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from Body-Worn and In-Car Cameras.

6. **Consent Decree Paragraph 51**: NPD will modify its procedures as set out below to collect and preserve stop, search, and arrest data sufficient to determine the nature and scope of demographic disparities in stop and search practices, as well as which stop, search, and arrest practices are most effective and efficient.

Regarding compliance with Consent Decree Paragraph 51, the IMT recognizes that this provision was largely satisfied with the augmentation of the Stop Report, which was acknowledged in the First Stop Audit Report.

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

8. **Consent Decree Paragraph 54**: NPD will ensure that all databases comply fully with federal and state privacy standards governing personally identifying information. NPD will restrict database access to authorized, identified users who will be permitted to access the information only for specific, legitimate purposes.

Consent Decree Paragraph 54 will not be a part of the Monitoring Team review for the purpose of the first Arrest Audit. The Monitoring Team will audit this paragraph when it reviews all the required provisions under the “data and data collection” sections of the Consent Decree.

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

**General Order /Policy Assessment (General Order 18-16; Section V (G & H) – Prohibited Actions):** Detaining, arresting, using force against, or threatening to detain, arrest or use force against individuals in response to activity protected by the First Amendment, including verbal criticism, questioning police actions, or gestures that do not give rise to reasonable fear of harm to officers or others.

Detaining, prolonging the detention of, arresting, using force against or threatening to detain, prolong the detention of, arrest, or use of force against an individual for remaining in the proximity of, recording or verbally commenting on officer conduct unless it violates the law, incites others to violate the law or refuses to comply with an officer’s lawful order to observe or record from an alternate location because the bystander’s presence would jeopardize a crime scene or the safety of an officer, the suspect or others.

Note: Similar instruction appears in NPD General Order 18-12 “First Amendment Right to Observe, Object to, and Record Police Activity” Section V – Procedures.

**Compliance Assessment Method:** To assess compliance with Consent Decree Paragraph 55, for each arrest event, the Monitoring Team will review relevant reports, along with corresponding body-worn and in-car camera footage that provide objective evidence of officers’ actions in connection with arrests conducted during the Audit Period. Accordingly, the SME Team shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from Body-Worn and In-Car Cameras. In so doing, the SME Team will inspect for any indication that an individual was subject to adverse law enforcement action solely for observing, objecting to, or recording police activity.
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10. **Consent Decree Paragraph 56:** NPD will prohibit officers from detaining, arresting, or threatening to detain or arrest, individuals based on activity protected by the First Amendment, including verbal criticism, questioning police actions, or gestures. NPD will also prohibit officers from using or threatening force in response to mere verbal criticism or gestures that do not give rise to reasonable fear of harm to the officers or others.

**General Order /Policy Assessment (General Order 18-12; Section V (A & B)– Procedures):** A bystander has the right under the First Amendment and Article I, Paragraph 6 to witness, observe, record, photograph, audio record and comment on or complain about Newark Police Division officers in the public discharge of their duties. **A. A Bystander’s right to record an Officer’s conduct.**

1. A bystander has the same right to make recordings as a member of the press, as long as the bystander has a legal right to be present where he or she is, such as on a public street or in public settings.

2. Public settings include parks, sidewalks, streets, locations of public protests, common areas of public and private facilities and buildings, and any other public or private facility at which the bystander has a legal right to be present, including a bystander’s home or business.

3. The fact that a bystander has a camera or other recording device does not entitle the bystander to cross a police line, to enter an area that is closed to the public, or to enter any area designated as a crime scene.

4. As long as the recording takes place in a setting in which the bystander has a legal right to be present and does not interfere with an officer’s safety or lawful duties, the officer shall not:

   a. Tell or instruct a bystander that the recording of police officers, police activity, or persons who are the subject of a police action; is not allowed; that recording police activity requires a permit; or that recording requires the officer’s consent.

   b. Subject a bystander to a Terry stop (Terry v. Ohio, 392 U.S. 1 (1968) or arrest solely on the basis that the bystander is recording police conduct;

   c. Order the bystander to cease such activity;

   d. Demand that bystander’s identification;

   e. Demand that the bystander state a reason why he or she is taking photographs or recording;
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f. Detain, arrest, or threaten to arrest bystanders based on activity protected by the First Amendment, including the bystander’s verbal criticism, questioning police actions, or gestures;

g. Intentionally block or obstruct cameras or recording devices; or

h. In any way threaten, intimidate, or otherwise discourage a bystander from remaining in the proximity of, recording or verbally commenting on officer conduct directed at the officer’s enforcement activities

B. If a bystander is recording police activity from a position that materially impedes or interferes with the safety of officers or their ability to perform their duties, or that threatens the safety of members of the public, an officer may direct the bystander to move to a position that will not interfere. However, an officer shall not order the bystander to stop recording.

Compliance Assessment Method: To assess compliance with Consent Decree Paragraph 56, for each arrest event, the Monitoring Team will review relevant reports, along with corresponding body-worn and in-car camera footage that provide objective evidence of officers’ actions in connection with arrests conducted during the Audit Period. Accordingly, the SME Team shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from Body-Worn and In-Car Cameras. In so doing, the SME Team will inspect for any indication that an individual was subject to adverse law enforcement action solely for observing, objecting to, or recording police activity.

11. Consent Decree Paragraph 57: NPD will require that officers take no law enforcement action against a bystander unless the bystander: (a) violates the law; (b) incites others to violate the law; or, (c) refuses to comply with an officer’s order to observe or record from an alternate location and the bystander’s presence would jeopardize crime scene integrity or the safety of the officer, the suspect, or others.

General Order /Policy Assessment (General Order 18-12; Section V (A &B) – Procedures):
A bystander has the right under the First Amendment and Article I, Paragraph 6 to witness, observe, record, photograph, audio record and comment on or complain about Newark Police Division officers in the public discharge of their duties. A. A Bystander’s right to record an Officer’s conduct.

1. A bystander has the same right to make recordings as a member of the press, as long as the bystander has a legal right to be present where he or she is, such as on a public street or in public settings.

2. Public settings include parks, sidewalks, streets, locations of public protests, common areas of public and private facilities and buildings, and any other public or private facility at which the bystander has a legal right to be present, including a bystander’s home or business.
3. The fact that a bystander has a camera or other recording device does not entitle the bystander to cross a police line, to enter an area that is closed to the public, or to enter any area designated as a crime scene.

4. As long as the recording takes place in a setting in which the bystander has a legal right to be present and does not interfere with an officer’s safety or lawful duties, the officer shall not:

   a. Tell or instruct a bystander that the recording of police officers, police activity,  
or persons who are the subject of a police action; is not allowed; that recording police activity requires a permit; or that recording requires the officer’s consent.

   b. Subject a bystander to a Terry stop (Terry v. Ohio, 392 U.S. 1 (1968) or arrest  
solely on the basis that the bystander is recording police conduct;

   c. Order the bystander to cease such activity;

   d. Demand that bystander’s identification;

   e. Demand that the bystander state a reason why he or she is taking photographs or recording;

   f. Detain, arrest, or threaten to arrest bystanders based on activity  
protected by the First Amendment, including the bystander’s verbal criticism, questioning police actions, or gestures;

   g. Intentionally block or obstruct cameras or recording devices; or  
h. In any way threaten, intimidate, or otherwise discourage a  
bystander from remaining in the proximity of, recording or verbally commenting  
on officer conduct directed at the officer’s enforcement activities.

B. If a bystander is recording police activity from a position that materially impedes or interferes with the safety of officers or their ability to perform their duties, or that threatens the safety of members of the public, an officer may direct the bystander to move to a position that will not interfere. However, an officer shall not order the bystander to stop recording.

**Compliance Assessment Method:** To assess compliance with Consent Decree Paragraph 57, for each arrest event, the Monitoring Team will review relevant reports, along with corresponding body-worn and in-car camera footage that provide objective evidence of officers’ actions in connection with arrests conducted during the Audit Period. Accordingly, the SME Team shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from Body-Worn and In-Car Cameras. In so doing, the SME Team will inspect for any indication that an individual was subject to adverse law enforcement action solely for observing, objecting to, or recording police activity.
12. **Consent Decree Paragraph 58**: NPD will permit individuals observing stops, detentions, arrests, and other incidents to remain in the proximity of the incident unless one of the conditions in Paragraph 57 is met.

**General Order /Policy Assessment (General Order 18-12; Section V (A &B) – Procedures):**

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

1. A bystander has the same right to make recordings as a member of the press, as long as the bystander has a legal right to be present where he or she is, such as on a public street or in public settings.

2. Public settings include parks, sidewalks, streets, locations of public protests, common areas of public and private facilities and buildings, and any other public or private facility at which the bystander has a legal right to be present, including a bystander’s home or business.

3. The fact that a bystander has a camera or other recording device does not entitle the bystander to cross a police line, to enter an area that is closed to the public, or to enter any area designated as a crime scene.

4. As long as the recording takes place in a setting in which the bystander has a legal right to be present and does not interfere with an officer’s safety or lawful duties, the officer shall not:

   a. Tell or instruct a bystander that the recording of police officers, police activity, or persons who are the subject of a police action; is not allowed; that recording police activity requires a permit; or that recording requires the officer’s consent.

   b. Subject a bystander to a Terry stop (Terry v. Ohio, 392 U.S. 1 (1968) or arrest solely on the basis that the bystander is recording police conduct;

   c. Order the bystander to cease such activity;

   d. Demand that bystander’s identification;

   e. Demand that the bystander state a reason why he or she is taking photographs or recording;

   f. Detain, arrest, or threaten to arrest bystanders based on activity protected by the First Amendment, including the bystander’s verbal criticism, questioning police actions, or gestures;

   g. Intentionally block or obstruct cameras or recording devices; or

   h. In any way threaten, intimidate, or otherwise discourage a bystander from
remaining in the proximity of, recording or verbally commenting on officer conduct
directed at the officer’s enforcement activities

B. If a bystander is recording police activity from a position that materially impedes or interferes
with the safety of officers or their ability to perform their duties, or that threatens the safety of
members of the public, an officer may direct the bystander to move to a position that will not
interfere. However, an officer shall not order the bystander to stop recording.

Compliance Assessment Method: To assess compliance with Consent Decree Paragraph 58, for
each arrest event, the Monitoring Team will review relevant reports, along with corresponding
body-worn and in-car camera footage that provide objective evidence of officers’ actions in
connection with arrests conducted during the Audit Period. Accordingly, the SME Team shall
utilize all provided NPD Reports, published General Orders/Policies, and video
imagery/metadata from Body-Worn and In-Car Cameras. In so doing, the SME Team will
inspect for any indication that an individual was subject to adverse law enforcement action solely
for observing, objecting to, or recording police activity.

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

General Order / Policy Assessment (General Order 18-12; Section V (A &B) – Procedures):
A bystander has the right under the First Amendment and Article I, Paragraph 6 to witness,
observe, record, photograph, audio record and comment on or complain about Newark Police
Division officers in the public discharge of their duties. A. A Bystander’s right to record an
Officer’s conduct.

1. A bystander has the same right to make recordings as a member of the press, as
long as the bystander has a legal right to be present where he or she is, such as on a public street
or in public settings.

2. Public settings include parks, sidewalks, streets, locations of public protests,
common areas of public and private facilities and buildings, and any other public or private
facility at which the bystander has a legal right to be present, including a bystander’s home or
business.

3. The fact that a bystander has a camera or other recording device does not entitle
the bystander to cross a police line, to enter an area that is closed to the public, or to enter any
area designated as a crime scene.

4. As long as the recording takes place in a setting in which the bystander has a legal
right to be present and does not interfere with an officer’s safety or lawful duties, the officer shall
not:

a. Tell or instruct a bystander that the recording of police officers,
police activity,
or persons who are the subject of a police action; is not allowed; that recording police activity requires a permit; or that recording requires the officer’s consent.

b. Subject a bystander to a Terry stop (Terry v. Ohio, 392 U.S. 1 (1968) or arrest solely on the basis that the bystander is recording police conduct;

c. Order the bystander to cease such activity;

d. Demand that bystander’s identification;

e. Demand that the bystander state a reason why he or she is taking photographs or recording;

f. Detain, arrest, or threaten to arrest bystanders based on activity protected by the First Amendment, including the bystander’s verbal criticism, questioning police actions, or gestures;

g. Intentionally block or obstruct cameras or recording devices; or

h. In any way threaten, intimidate, or otherwise discourage a bystander from remaining in the proximity of, recording or verbally commenting on officer conduct directed at the officer’s enforcement activities.

B. If a bystander is recording police activity from a position that materially impedes or interferes with the safety of officers or their ability to perform their duties, or that threatens the safety of members of the public, an officer may direct the bystander to move to a position that will not interfere. However, an officer shall not order the bystander to stop recording.

Compliance Assessment Method: To assess compliance with Consent Decree Paragraph 59, for each arrest event, the Monitoring Team will review relevant reports, along with corresponding body-worn and in-car camera footage that provide objective evidence of officers’ actions in connection with arrests conducted during the Audit Period. Accordingly, the SME Team shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from Body-Worn and In-Car Cameras. In so doing, the SME Team will inspect for any indication that an individual was subject to adverse law enforcement action solely for observing, objecting to, or recording police activity.

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

General Order / Policy Assessment (General Order 18-12; Section V (A & B) – Procedures): A bystander has the right under the First Amendment and Article I, Paragraph 6 to witness,
observe, record, photograph, audio record and comment on or complain about Newark Police Division officers in the public discharge of their duties. \(A\). A Bystander’s right to record an Officer’s conduct.

1. A bystander has the same right to make recordings as a member of the press, as long as the bystander has a legal right to be present where he or she is, such as on a public street or in public settings.

2. Public settings include parks, sidewalks, streets, locations of public protests, common areas of public and private facilities and buildings, and any other public or private facility at which the bystander has a legal right to be present, including a bystander’s home or business.

3. The fact that a bystander has a camera or other recording device does not entitle the bystander to cross a police line, to enter an area that is closed to the public, or to enter any area designated as a crime scene.

4. As long as the recording takes place in a setting in which the bystander has a legal right to be present and does not interfere with an officer’s safety or lawful duties, the officer shall not:

   a. Tell or instruct a bystander that the recording of police officers, police activity, or persons who are the subject of a police action; is not allowed; that recording police activity requires a permit; or that recording requires the officer’s consent.

   b. Subject a bystander to a Terry stop (Terry v. Ohio, 392 U.S. 1 (1968) or arrest solely on the basis that the bystander is recording police conduct;

   c. Order the bystander to cease such activity;

   d. Demand that bystander’s identification;

   e. Demand that the bystander state a reason why he or she is taking photographs or recording;

   f. Detain, arrest, or threaten to arrest bystanders based on activity protected by the First Amendment, including the bystander’s verbal criticism, questioning police actions, or gestures;

   g. Intentionally block or obstruct cameras or recording devices; or

   h. In any way threaten, intimidate, or otherwise discourage a bystander from remaining in the proximity of, recording or verbally commenting on officer conduct directed at the officer’s enforcement activities
B. If a bystander is recording police activity from a position that materially impedes or interferes with the safety of officers or their ability to perform their duties, or that threatens the safety of members of the public, an officer may direct the bystander to move to a position that will not interfere. However, an officer shall not order the bystander to stop recording.

**Compliance Assessment Method:** To assess compliance with Consent Decree Paragraph 60, for each arrest event, the Monitoring Team will review relevant reports, along with corresponding body-worn and in-car camera footage that provide objective evidence of officers’ actions in connection with arrests conducted during the Audit Period. Accordingly, the SME Team shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from Body-Worn and In-Car Cameras. In so doing, the SME Team will inspect for any indication that an individual was subject to adverse law enforcement action solely for observing, objecting to, or recording police activity.

15. **Consent Decree Paragraph 61:** NPD will prohibit officers from detaining, prolonging the detention of, or arresting an individual for remaining in the proximity of, recording or verbally commenting on officer conduct directed at the individual or a third party, unless one of the conditions in paragraph 57 is met.

**General Order / Policy Assessment (General Order 18-12; Section V (A &B) – Procedures):**
A bystander has the right under the First Amendment and Article I, Paragraph 6 to witness, observe, record, photograph, audio record and comment on or complain about Newark Police Division officers in the public discharge of their duties. 

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

1. A bystander has the same right to make recordings as a member of the press, as long as the bystander has a legal right to be present where he or she is, such as on a public street or in public settings.

2. Public settings include parks, sidewalks, streets, locations of public protests, common areas of public and private facilities and buildings, and any other public or private facility at which the bystander has a legal right to be present, including a bystander’s home or business.

3. The fact that a bystander has a camera or other recording device does not entitle the bystander to cross a police line, to enter an area that is closed to the public, or to enter any area designated as a crime scene.

4. As long as the recording takes place in a setting in which the bystander has a legal right to be present and does not interfere with an officer’s safety or lawful duties, the officer shall not:

   a. Tell or instruct a bystander that the recording of police officers, police activity, or persons who are the subject of a police action; is not allowed; that recording police activity requires a permit; or that recording requires the officer’s consent.
b. Subject a bystander to a Terry stop (Terry v. Ohio, 392 U.S. 1 (1968) or arrest solely on the basis that the bystander is recording police conduct;

c. Order the bystander to cease such activity;

d. Demand that bystander’s identification;

e. Demand that the bystander state a reason why he or she is taking photographs or recording;

f. Detain, arrest, or threaten to arrest bystanders based on activity protected by the First Amendment, including the bystander’s verbal criticism, questioning police actions, or gestures;

g. Intentionally block or obstruct cameras or recording devices; or

h. In any way threaten, intimidate, or otherwise discourage a bystander from remaining in the proximity of, recording or verbally commenting on officer conduct directed at the officer’s enforcement activities

B. If a bystander is recording police activity from a position that materially impedes or interferes with the safety of officers or their ability to perform their duties, or that threatens the safety of members of the public, an officer may direct the bystander to move to a position that will not interfere. However, an officer shall not order the bystander to stop recording.

Compliance Assessment Method: To assess compliance with Consent Decree Paragraph 61, for each arrest event, the Monitoring Team will review relevant reports, along with corresponding body-worn and in-car camera footage that provide objective evidence of officers’ actions in connection with arrests conducted during the Audit Period. Accordingly, the SME Team shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from Body-Worn and In-Car Cameras. In so doing, the SME Team will inspect for any indication that an individual was subject to adverse law enforcement action solely for observing, objecting to, or recording police activity.

16. **Consent Decree Paragraph 62:** NPD will prohibit officers from destroying, seizing, or otherwise coercing a bystander to surrender recorded sounds or images made of officers in the course of their duties, without first obtaining a warrant. Nor may officers order a bystander to destroy any such recording. Where an officer has a reasonable belief that a bystander or witness has captured a recording of critical evidence related to a felony crime, the officer may secure such evidence only as long as necessary to obtain a subpoena, search warrant, or other valid legal process or court order.

**General Order / Policy Assessment (General Order 18-12; Section V (D) – Procedures):**
D. Seizure of a Bystander’s Recording Device or Medium

1. An officer’s seizure of a recording device, without a warrant, is not permitted and is presumed to be illegal under the Fourth Amendment, except in the narrowly defined exceptions outlined below.

2. An officer may seize a bystander’s recording device incident to the lawful arrest of the bystander. However, the seizure of a recording device incident to a lawful arrest does not allow an officer to search or view the contents of the recording device without a warrant (e.g., Communications Data Warrant).

3. If an officer has probable cause to believe that a recording device contains images or sounds that are evidence of a crime (i.e., First, Second, and Third degree), the officer shall immediately notify a Field Supervisor and request that the recording bystander, where possible and practical, and in the presence of the officer, voluntarily consent to transmitting the recording via electronic mail to the officer’s official city electronic mail account. If the bystander cannot or will not transmit the recording via electronic mail, the officer should request that the recording party voluntarily consent to providing the device or recording medium (e.g., the memory chip) to the officer.

Compliance Assessment Method: To assess compliance with Consent Decree Paragraph 62, for each arrest event, the Monitoring Team will review relevant reports, along with corresponding body-worn and in-car camera footage that provide objective evidence of officers’ actions in connection with arrests conducted during the Audit Period. Accordingly, the SME Team shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from Body-Worn and In-Car Cameras. In so doing, the SME Team will inspect for any indication that an individual was subject to adverse law enforcement action solely for observing, objecting to, or recording police activity.

17. Consent Decree Paragraph 174(a): In addition to compliance reviews and audits to determine whether the specific requirements of this Agreement have been met, the Monitor will assess whether implementation of this Agreement is resulting in the desired outcomes (i.e., policing that is consistent with the Constitution and that engenders effective cooperation and trust between NPD and the community it serves). These outcome assessments will include collecting and analyzing the following data to establish a baseline and assess change over time: A. Stop, Search, and Arrest:

   i. Stop rates by subject(s) race or ethnicity, gender, and age per sector, precinct, shift, and unit;

   ii. post-stop activity rates, such as frisks, searches, requests for consent to search; in-car detentions, citations issued, by subject(s) race or ethnicity, gender and age per sector, precinct, shift, and unit; and
iii. analyses of the frequency and effectiveness of stop and post-stop activities, including rates at which contraband is discovered pursuant to a search, by type of search, race or ethnicity, gender, and age per sector, precinct, shift, and unit.

Regarding compliance with Consent Decree Paragraph 174(a), an outcome assessment report will be provided to the Parties in the semi-annual progress reports and will not be included in the first Arrest audit report. It should, however, be noted, that prior to this audit, NPD did craft and implement General Order 21-04 (“Protocol for Analyzing Stop, Search & Arrest Data” – Effective 05/27/2021). Drafts of this General Order were reviewed by the Monitoring Team prior to implementation.

* * * *

To these ends, the Monitoring Team will draw a randomized sample from among all arrests conducted by NPD officers during the Audit Period. In so doing, the Monitoring Team will provide NPD with the event numbers for review in a timely manner, in order to inspect for certain indicia of compliance.

Additionally, to assess compliance with Consent Decree Paragraph 37 (requiring supervisory notification for arrests involving the charge of “Disorderly Conduct”), and because of the limited annual rate of occurrence, the IMT will separately request all seventeen (17) arrests made in 2021 for Disorderly Conduct.

For further information regarding the Monitoring Team’s methodology with respect to the audit of NPD’s Arrests With or Without an Arrest Warrant (see Appendix A).

I. III. REQUIRED DATA

In preparation for the audit, at least one month prior to the start of the Audit, and no later than June 17, 2022, the Monitoring Team requires that NPD provide it with the following data and records for the audit period:

A. Copies of any and all written directives or training bulletins issued subsequent to the issuance of General Order 18-16, Arrests with or without an Arrest Warrant related to the topic of Arrests.

B. A spreadsheet identifying all events within the specified Audit Period wherein an arrest was made by NPD officers. The spreadsheet should contain the event number (in chronological order); nature/classification of the event; the date and time of the arrest; officer’s badge number, officer’s assignment / precinct / unit / section; and subject’s apparent gender, race, ethnicity or national origin and age.

C. A separate spreadsheet identifying all seventeen (17) arrests made in 2021 for Disorderly Conduct.
The spreadsheet should contain the event number (in chronological order); nature/classification of the incident; the date and time of the arrest; officer’s badge number, officer’s assignment / precinct / unit / section; and subject’s apparent gender, race, ethnicity or national origin and age.

D. The methodology NPD uses to determine (i) the nature and scope of demographic disparities in stop and search practices, (ii) which stop, search, and arrest practices are most effective and efficient, and (iii) a copy of the most recently generated report that used this methodology (¶ 51).

E. A record of any arrests made during the Audit Period, where it was determined that an arrest was voided in accordance with General Order 18-16, Section XII, Voiding Arrests.

F. The protocol, approved by the Monitor and DOJ, that has been used for comprehensive analysis of stop, search, and arrest data, which includes the steps for determining the nature and scope of demographic disparities in stop and search practices, and whether any disparities can be decreased or eliminated, as well as steps for determining which stop, search, and arrest practices are most effective and efficient in increasing public safety and police legitimacy within the Newark community (¶ 53).

G. A copy of the most current NPD annual report that summarizes and analyzes the (i) stop, (ii) search, (iii) arrest, and (iv) use of force data collected, the analysis of that data, and the steps taken to correct problems and build on successes (¶ 168).

NPD should also provide the Monitoring Team with data sufficient to enable Monitoring Team to conduct outcome assessments pursuant to ¶ 174(a). The Monitoring Team understands that the rates referenced in ¶ 174(a) will be compiled and computed by NPD from IA Pro which is utilized by the Office of Professional Standards.

After receiving the requested information, the Monitoring Team will provide the City and NPD with the event numbers of those cases related to arrests it seeks to review in a timely manner. The Monitoring Team requests that NPD (a) mark all body-worn and in-car camera videos for arrests made during the audit period for indefinite retention so that all videos of events involving an arrest will be available for review by the Monitoring Team; (b) identify all associated videos with the provided event numbers; and (c) organize that content within the Panasonic digital evidence program prior to any onsite auditing activities conducted by the Monitoring Team. In the event that onsite review is not feasible, NPD shall download the identified videos in a non-proprietary format (converted from Panasonic) onto a Monitoring Team-provided secure encrypted drive.
NOTE: For instances wherein relevant body-worn and/or in-car camera footage are not present and viewable on the dates of the on-site or remote audit, the Monitoring Team will presume that the footage does not exist, and will score compliance accordingly.

Additionally, upon the Monitoring Team’s request, NPD will provide the Monitoring Team with secure remote access to the requested materials.

Best regards,

Peter C. Harvey

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APPENDIX A:

METHODOLOGY
FOR
FIRST ARREST AUDIT
(Nomenclature & Guidelines)

The Independent Monitoring Team’s (IMT) First Arrest Audit is projected to be conducted during Spring and Summer 2022. It is expected that the entire audit will be conducted on-site at Newark Police Division (NPD) Headquarters. For the purpose of the audit, an “arrest” shall be defined as follows:

An arrest occurs when:

• Upon establishing probable cause, a police officer takes (or attempts to take) custodial control of an individual for the purpose of instituting criminal charges, or;

• An officer, on behalf of an issuing authority, executes a lawfully obtained arrest warrant. In such cases, probable cause would have been established to a satisfactory degree by the issuing authority prior to the police-citizen contact; or

• When an individual is already in lawful police custody (e.g., municipal police holding facility, county jail, state or federal prison, etc.), and is charged with additional statutory violations related or unrelated to the event which led to the initial custodial detention.

9 The Consent Decree defines an “Arrest” as: a seizure of greater scope or duration than an investigatory stop or detention.
Additionally, **probable cause** shall be defined as a set of facts and circumstances which would lead a reasonable person to believe that criminal activity is afoot, and that the subject of the detainment is responsible for, or participated in, the criminal activity.

- It should be noted that, while there are no technical elements of probable cause, the establishment probable cause requires a higher standard of proof than that of reasonable suspicion.

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

- Objective probable cause existed prior to the effectuation of arrest.

- Probable cause is properly and sufficiently articulated within the contents of the appropriate police department documents.

- Required forms were completed in accordance with department policy (e.g., NPD G.O. #18-16), **with specific regard to fields and narrative sections related to the arrest.**

- Body-worn and/or in-car camera footage corroborate information memorialized on police division documents.

- The involved officers adhered to relevant case law, criminal procedure provisions, and tenets of the Consent Decree. Examples include, but are not limited to, the following:

  - Warrant requirement for arrests for misdemeanor offenses not committed in the presence of police

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10 The Consent Decree defines “Probable cause” as: reasonably trustworthy facts and circumstances that, within the totality of the circumstances, lead an officer to reasonably believe that there is a fair probability that an individual has committed or is committing a crime.
(exceptions to this requirement include arrests for theft, DUI, and domestic violence related offenses).

- Supervisory notification for arrests for DUI, Disorderly Conduct, Motor Vehicle Violations where the arrestee is taken into physical custody; and arrests which involve the application of force.

In assessing the legal sufficiency for an arrest, the SME will not consider dispositions reached (and determinations made) after the arresting officer established probable cause, and the officer’s clear intent was to effectuate an arrest. For example, consider the following scenario:

- An officer establishes probable cause and takes (or clearly intends to take) custodial control of a person. A field or desk supervisor later determines that the defendant should be issued a summons and released. The subsequent supervisory decision will not be considered in evaluating whether the arrest was legally and constitutionally sound.

For each arrest event, in determining overall compliance, the SME will evaluate both “substantive” and “documentary” compliance.

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

- The constitutionality and legal sufficiency of the arrest.
  - i.e., whether the arresting officer established probable cause prior to the effectuation of the arrest.
  - Arrest events meeting legal and constitutional sufficiency thresholds (as assessed by the SME) will be deemed “substantively compliant.”
o Arrest events lacking legal or constitutional sufficiency (as assessed by the SME) will be deemed “substantively non-compliant.”

In assessing documentary compliance, for each arrest event, the SME will inspect relevant materials to determine if:

- Probable cause is properly articulated on written documents; and
- BWC/ICC video footage has been submitted, and corroborates information recorded on corresponding police division forms.

o If Probable cause is not clearly articulated on relevant forms, or if BWC/ICC footage refutes (or fails to corroborate) information recorded on associated forms, the arrest event will be assessed “documentarily noncompliant.”

An arrest event will be assessed “overall compliant” only when both “substantive” and “documentary” compliance thresholds have been met.

***

As detailed within the contents of the 45-Day Letter, to assess compliance with Consent Decree Section VI (Opening Statement), as well as Paragraphs 35-37, 42, 51, & 53-62, for each arrest event, the Monitoring Team will review relevant reports, along with corresponding body-worn and in-car camera footage that provide objective evidence of officers’ actions in connection with arrests conducted during the Audit Period.

Accordingly, the SME Team shall utilize all provided NPD Reports, published General Orders/Policies, and video imagery/metadata from Body-Worn and In-Car Cameras. The Monitoring Team will determine whether NPD officers (i) sufficiently established and articulated probable cause to effectuate the arrest, (ii) adhered to
the arrest procedures outlined in Section XI of General Order 1816, and (iii) refrained from using pro forma or conclusory language without supporting detail.

For instances wherein relevant body-worn and in-car camera footage is not present and viewable on the dates of the on-site audit, the Monitoring Team will presume that the footage does not exist, and will score compliance accordingly.

***

The IMT recognizes that the large majority of arrests will require the preparation of “Stop Reports” and “Arrest Reports.” The IMT also acknowledges that multiple “Stop” and “Arrest” Reports may correspond to a given “arrest event.” Accordingly, the “unit of measure” for the audit will be “unique event numbers” (as opposed to individual Stop or Arrest Reports).

In order to conduct a comprehensive audit, for each arrest event identified in the sample, the IMT will require that NPD provide all relevant documents and materials, including but not limited to:

- Stop Report
- Arrest Report
- Incident Report (NPD Form 802)
- Body-Worn Camera Footage
- In-Car Camera Footage

With specific regard to the production and submission of BWC footage, the following tenets of NPD GO #18-05 should be particularly observed:

- Members shall activate the BWC to record police-related interactions with citizens in the performance of their duties. Activation is required immediately upon receiving a dispatched assignment or the initiation of a police action.
When activation is required upon entering any residence, members shall notify the subject(s) that the camera is recording at the earliest opportunity that is safe and feasible.

• The following circumstances require the BWC to be activated:
  
  o Motor vehicle stop, from the time the violation is observed until the stop is concluded, to include:  
    Car/truck inspection  
    Motor vehicle pursuit  
    Motor Vehicle Safety Checkpoint
  
  o During a search (consensual or otherwise, including a protective frisk for weapons). The member must record the notification to the subject of the right to allow or refuse a consent to search.
  
  o Pedestrian stop, which includes a stop that falls short of a Terry stop because the pedestrian is free to walk away, such as a “mere inquiry” (e.g. asking where someone is going).
  
  o When the member is involved in any police action/encounter where departmental policy requires a report and/or notation on a log sheet is required.

Additionally, NPD shall mark (i.e., preserve) all body-worn and incar camera videos for arrests made during the audit period for indefinite retention, so that all videos of events involving an arrest will be available for review by the SME.

Finally, for each event, the body-worn and in-car camera footage shall be submitted to the IMT alongside the corresponding Stop / Arrest Report (and any other relevant documentation associated with that specific event); and must be available for SME review at the time of the on-site audit session(s).
NEWARK POLICE DIVISION
GENERAL ORDER

<table>
<thead>
<tr>
<th>SUBJECT: Arrests With or Without an Arrest Warrant</th>
<th>GENERAL ORDER NO. 18-16</th>
</tr>
</thead>
<tbody>
<tr>
<td>SUPERCEDES: New</td>
<td>DATED: 12/31/2018</td>
</tr>
</tbody>
</table>

Related policies:

General Order 17-06 “Bias-Free Policing”

General Order 14-16 “Stationhouse Adjustments”


General Order 87-03 “Administrative Reporting Unusual Events”

This Order contains the following numbered Sections:

I. PURPOSE

II. POLICY

III. RESPONSIBILITY FOR COMPLIANCE

IV. DEFINITIONS

V. PROHIBITED ACTIONS

VI. PROBABLE CAUSE

VII. INVESTIGATIVE STOP/DETENTION CONVERTED INTO ARREST / DEFACTO ARREST

VIII. ARRESTS WITH AN ARREST WARRANT

IX. ARRESTS WITHOUT AN ARREST WARRANT

X. ENTRY INTO A STRUCTURE TO EFFECT AN ARREST

XI. ARREST PROCEDURES

XII. VOIDING ARRESTS
NEWARK POLICE DIVISION
GENERAL ORDER

XIII. SUPERVISOR RESPONSIBILITIES

XIV. ADMINISTRATIVE REVIEW

XV. TRAINING

XVI. EFFECT OF THIS ORDER

I. PURPOSE

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

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

II. POLICY

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

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

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

Page 2 of 18
Officers shall not consider age, race, ethnicity, national origin, gender, gender identity, language ability, disability, political belief, sexual orientation, immigration status, economic status, or housing status in effecting an arrest, except as part of a credible description of a specific suspect or suspects in any investigation into a violation of the law, and then only in combination with other detailed descriptors. Such conduct constitutes biased-based policing. Aside from being unlawful, biased-based policing violates Newark Police General Order 17-06.

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

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

III. RESPONSIBILITY FOR COMPLIANCE

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

IV. DEFINITIONS

A. Arrest - the exercise of control or custody over a person by restricting that person's liberty of movement for a significant period of time. Arrests can be made "actually" or "constructively." Actual arrests take place when an officer has physically restrained a person’s ability to leave. Constructive arrests occur when an officer’s words or actions prevent a person from leaving. All arrests must be based upon probable cause.

B. Bias-Based Policing - The differential treatment of any person by members motivated by the specific characteristics, perceived or actual, of that person. This conduct is specifically prohibited. (See Newark Police General Order 17-06 Bias-Free Policing for more information).

C. Blue Team - A computer application extension of IA-Pro. The application allows users to enter collected data from incidents, such as police pursuits, citizen contacts or stops, events where force is used, complaints on police, police-involved accidents, and administration of discipline to facilitate a complete capture of activities and allow for tracking.

D. Conclusory – A statement (oral or written) that contains a conclusion without providing the specific facts that explain or justify how the conclusion was reached.
E. **Demographic Category** - A shared common characteristic of a population, including but not limited to, age, race, ethnicity, national origin, gender, gender identity, language ability, disability, political belief, sexual orientation, immigration status, economic status, or housing status.

F. **Exigent Circumstances** – A compelling urgency or true emergency that a member can specifically describe not using vague terms or boilerplate language. Circumstances that cause a reasonable person to believe that prompt action is necessary can be an immediate threat to public safety, an active attempt by a suspect to destroy evidence of a crime or escape, or in instances of community caretaking.

G. **Investigatory Stop / Detention** - A seizure of a person for investigative purposes. This seizure occurs when a police officer stops a citizen from moving about freely, by means of physical force or show of authority, in order to investigate a matter. The seizure may also occur if an officer uses words, actions or demeanor that would make a reasonable person believe that he or she is not free to leave. Stops of this manner need to be based on reasonable and articulable suspicion that a violation of law has just occurred, is occurring or is about to occur. An investigatory stop can come in different forms (i.e. pedestrian, motor vehicle, bicycle, etc.). Also known as a “Terry Stop.”

H. **Pro Forma** – A standard use of wording, document or form used to justify an action that does not tie to the underlying events.

I. **Probable Cause** – Specific, and articulable facts to permit a reasonable person to believe that a subject committed a violation of the law or that evidence of a crime would be found in a search. Probable cause is a higher standard of evidence than having reasonable suspicion, but is less than the beyond a reasonable doubt standard needed for conviction. Probable cause is a practical, nontechnical probability.

J. **Reasonable Suspicion** – Specific, and articulable facts that, within the totality of the circumstances, would lead an officer to reasonably believe that a person has, is in the process of, or is about to engage in criminal activity. A person’s mere presence in an identified high crime neighborhood or area taken alone, does not rise to the level of reasonable suspicion. Reasonable suspicion is a lower standard than probable cause.

**V. PROHIBITED ACTIONS**

Newark Police Officers are prohibited from:

A. Arresting an individual unless the officer has probable cause to do so;

B. Considering a subject’s demographic category to justify an arrest or seek an arrest warrant, except that officers may rely on a demographic category in a specific suspect description where the description is from a trustworthy source that is relevant to the locality and time, (e.g. from a victim or a witness) and then only in combination with other detailed descriptors;
C. Using pro forma or conclusory language, such as wording that makes claims without supporting evidence, or has little true meaning or importance. All supporting details, which combined add up to probable cause, shall be clearly documented for all arrests. Examples of pro forma or conclusory language are “the suspect was frisked for officer safety” or “the suspect was detained based upon reasonable suspicion”;

D. Relying on information known to be materially false or incorrect to justify an arrest or seek an arrest warrant;

E. Basing an arrest solely on information or evidence discovered after the arrest was executed;

F. Basing an arrest solely on an individual’s presence with or near other people suspected of criminal activity;

G. Detaining, arresting, using force against, or threatening to detain, arrest or use force against individuals in response to activity protected by the First Amendment, including verbal criticism, questioning police actions, or gestures that do not give rise to reasonable fear of harm to officers or others; and

H. Detaining, prolonging the detention of, arresting, using force against or threatening to detain, prolong the detention of, arrest, or use of force against an individual for remaining in the proximity of, recording or verbally commenting on officer conduct unless it violates the law, incites others to violate the law or refuses to comply with an officer’s lawful order to observe or record from an alternate location because the bystander’s presence would jeopardize a crime scene or the safety of an officer, the suspect or others.

VI. PROBABLE CAUSE

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

“The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the places to be searched, and the persons or things to be seized.”

B. Although the word “arrest” does not appear in the Fourth Amendment to the United States Constitution, courts have consistently equated “arrest” with "seizure." The United States Supreme Court has stated: "it is the command of the Fourth Amendment that no warrants either for searches or arrests shall issue except upon probable cause."
C. All arrests also must be made in accordance with Article 1, Paragraph 7 of the New Jersey State Constitution which states: “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized.”

D. Probable cause may be obtained by collecting facts of sufficient quantity and quality to determine that there is a well-grounded suspicion that an individual has committed a crime, is about to commit a crime, or is in the process of committing a crime.

   1. Vague hunches or suspicions are not enough.

   2. A well-grounded suspicion must be supported by articulable facts.

   3. An officer's training and experience can be one factor that can support probable cause.

E. Before making the arrest, the officer must be able to articulate the facts forming the basis for probable cause.

F. The actions of an arrestee, words expressed by an arrestee, or evidence obtained after the arrest cannot form the original basis for probable cause, although these actions or words may be used to support the arrest in later reports.

G. Officers have established probable cause when they can point to a sufficient number of facts that could convince a neutral and detached magistrate that it is reasonable to believe, that there is a fair probability, the person under arrest has committed or is committing an offense.

H. There is no limit to the types of information that can be used to support probable cause, but the information must be credible, not be vague, and must be able to be documented. Officers can rely upon:

   1. observed facts surrounding a specific incident, such as but not limited to the behavior, appearance and location of the suspect, or the suspect's height and weight.

   2. familiarity with the suspect, such as but not limited to, knowledge of the suspect's prior record, or prior observation and contacts with the suspect.

   3. reports from others, such as but not limited to, accounts given by witnesses or reliable informants.

I. Multiple sources of information can lead to a determination of probable cause, but some may require corroboration by other facts if they are to be given due consideration; the information will be judged on the totality of the circumstances.
J. Each additional piece of incriminating evidence that an officer can point to increases the officer’s ability to obtain reasonable suspicion and probable cause. When basing reasonable suspicion and probable cause on the totality of the circumstances, the whole is greater than the sum of its parts.

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

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

A. Whether contact with the police was consensual or non-consensual;

B. The basis for an investigative stop and whether the officer had reasonable and articulable suspicion to believe a criminal offense had occurred, including the grounds for that belief;

C. The duration of the encounter;

D. The investigative methods employed to confirm or dispel suspicions;

E. Whether the officer informed the person that he or she is the subject of an investigation;

F. Whether the officer informed the person that he or she is not free to leave;

G. Whether the officer blocked the person's path or impeded their progress;

H. Whether police weapons were displayed or officers used force in any other way to threaten a person;

I. The number of police personnel on the scene and their demeanor;

J. The location of the encounter; whether it occurred in a public or private space;

K. The level to which the officer controlled the individual, physically or constructively;

L. Whether the person was moved to another location without their consent, how far the person was moved, and/or the reason for moving them;

M. Whether the person was free to choose between continuing or ending the encounter with the police; and

N. Whether the person was handcuffed or confined in a police vehicle.
VIII. ARREST WITH AN ARREST WARRANT

Page 7 of 18
A. An arrest warrant is a court order directing officers to bring a certain person in front of the court to answer to charges. Officers have an obligation, not an option, to effect arrest warrants (NJ Court Rule 3:2-3).

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

B. Arrest warrants require that an officer is able to articulate probable cause to believe that a person has committed or intends to commit a crime and that an impartial magistrate or judge who hears the facts relied on by the officer agrees and affirms that probable cause exists. The arrest warrant serves to protect individuals from unreasonable seizures.

C. Whenever an officer possesses an arrest warrant for an individual, the officer has the right to serve the warrant anywhere in this state. The officer who established the probable cause necessary to obtain an arrest warrant need not be the actual arresting officer. Any officer who discovers a person has a valid arrest warrant is compelled to bring that person to court to answer to the charges.

D. Arrest warrants are issued for offenses for which probable cause is established and are unique to an individual. Thus, before arresting someone based on an arrest warrant officers must:

1. Make sure the warrant is valid on its face. They may not ignore information that reasonably indicates the warrant was invalid because it has been executed or recalled, or because probable cause no longer existed to support the charges contained in the arrest warrant;

   AND

2. Attempt to ensure the person in front of them is the person the arrest warrant was issued for.

IX. ARRESTS WITHOUT AN ARREST WARRANT

A. The United States Constitution permits an officer to arrest a person in any public place without a warrant if there is probable cause to believe that the person has committed or is committing a criminal offense.

1. The Fourth Amendment permits such warrantless criminal arrests even if the officer had sufficient time to obtain an arrest warrant. (United States v. Watson (1976) 423 U.S. 411, 423 (1976))
2. New Jersey strictly follows the common law of arrest that allows a police officer to effect a warrantless arrest upon probable cause that a crime has been or is being committed by the person being arrested.

3. New Jersey law grants municipal police officers the authority to effect an arrest anywhere in the state for a crime that is committed in his or her presence. N.J.S.A. 40A:14-152.1 provides: “Notwithstanding the provisions of N.J.S.A. 40A:14-152 or any other law to the contrary, any full-time, permanently appointed municipal police officer shall have full power of arrest for any crime committed in said officer's presence and committed anywhere in the territorial limits of the State of New Jersey.”

B. When dealing with disorderly persons and petty disorderly persons offenses, state statute (N.J.S.A. 2A:169-3) provides: "[w]henever an offense is committed in his presence, any constable or police officer shall, and any other person may, apprehend without warrant or process any disorderly person and take him before any magistrate of the county where apprehended."

1. This statute clearly dictates that in order for a police officer to effect a warrantless arrest of a disorderly person, the offense must be committed in the officer's presence.

   a. In State of New Jersey v. Morse 54 N.J. 32(1969), 252 A.2d.723, the New Jersey Supreme Court held that a defendant's admission to a police officer of the facts that establish the alleged offense satisfied the requirement that the officer knew of the event by use of his senses.

2. State statutes also permit a police officer to effect the warrantless arrest of a person who the officer has probable cause to believe has committed certain specific disorderly or petty disorderly persons offenses, even though the offense did not take place in the officer's presence. The offenses are:


   c. Domestic Violence -- N.J.S.A. 2C:25-21

   d. Driving While Intoxicated -- N.J.S.A. 39:5-25

C. With respect to municipal ordinance violations, N.J.S. 40A:14-152 states: "The officers of a police department and force, within the territorial limits of the municipality, shall have all the powers of peace officers and upon view may apprehend and arrest any disorderly person or any person committing a breach of the peace."

This statute imposes two requirements before an officer may arrest: Page 9 of 18
1. The offense must have occurred "upon view" of the officer

   AND

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

X. ENTRY OF STRUCTURE TO EFFECT AN ARREST

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

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

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

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

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

   1. Hot pursuit - This means that an officer has probable cause to arrest a suspect and the pursuit of the fleeing felon (for an indictable offense) was set in motion in a public place.

   2. Threat to Public Safety – This is a situation where officers have probable cause to arrest a Suspect because (a) the suspect is reasonably believed to be armed or dangerous, (b) the suspect is inside a structure, (c) the suspect has injured or threatened to injure themselves or others; and (d) the suspect has refused to surrender to authorities or is in the process of causing bodily harm to someone. (Ryburn v. Huff, 132 S.Ct. 987 (2012))

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

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

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

XI. ARREST PROCEDURES

A. To effect any arrest, officers must identify themselves as police officers and clearly advise the subject to be arrested that he or she is under arrest.

1. Officers dressed in uniform effecting an arrest do not need to verbally identify themselves if it is plainly evident to a reasonable person that they are members of the police department.

2. Non-uniformed officers **must** verbally identify themselves as police officers and exhibit their department-issued identification and badge as evidence of their authority.

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

C. As soon as practicable, officers shall inform the arrestee of the reason for the arrest. If a situation arises where the safety of officers or the public is an issue, the person to be arrested does not need to be advised of the reason for arrest until the safety of all is no longer in jeopardy.

D. Officers shall advise subjects of their Miranda Rights at the time of arrest or before any custodial interrogation.

E. After effecting an arrest, officers shall immediately notify central communications of the arrest. In most situations it is preferable that this notification be made over police radio.

F. If the arrestee has a visible injury or complains of pain, the officer will immediately request, over the police radio or otherwise, medical assistance from an appropriate Emergency Medical Service.
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(“EMS”) for evaluation. Upon evaluation by a medical professional, if warranted, the arrestee will be transported to a proper medical facility to receive further treatment or appropriate evaluation.

G. An officer will notify a Supervisor and request their presence immediately after effecting an arrest:
   • where the officer used force;
   • for obstructing the administration of law;
   • for resisting arrest;
   • for disorderly conduct;
   • for a violation where there is a breach of the peace; or
   • for a motor vehicle infraction.
   o Although N.J.S.A. 39:5-25 authorizes arrests for motor vehicle violations, custodial arrests for motor vehicle violations are limited to only serious infractions (State v. Pierce, 136 N.J. 184 (1994)).

H. An arrestee shall be secured with handcuffs behind their back, unless a physical or medical condition precludes it, at the earliest practical opportunity. When faced with an unusual situation that makes it unfeasible or impossible to employ accepted handcuffing practices, officers should rely on common sense and good judgment to determine the most practical means for securing the individual.

I. The arrestee will be transported to the processing facility dictated by Newark Police Division orders without unnecessary delay so the arrestee may be processed.

J. A Preliminary Arrest Report, (DP1:2036), will be executed prior to escorting an arrestee into a police building for processing, unless exigent circumstances prevent the officer from doing so.

K. All reports relating to lawful arrests will be executed and submitted to the appropriate supervisor for review. An additional entry into Blue Team, or other authorized database, is required if force is used during an arrest.

L. Officers are required to make all reasonable efforts to safely secure all arrestees in NPD transport vehicles.

XII. VOIDING ARRESTS

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

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

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

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

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

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

**In all instances the arresting officer shall document the entire incident on an Incident Report (DP1:802), indicating everything learned in a clearly explained chronological order of events. The report will include the probable cause that was initially believed to authorize the arrest, and the circumstances of the investigation that led to the probable cause being debunked.**

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

**XIII. SUPERVISOR RESPONSIBILITIES**

**A. Field Supervisors**

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

   • where the officer used force;

   • for obstructing the administration of law;
• for resisting arrest;
• for disorderly conduct;
• for a violation where there is a breach of the peace;
• for a custodial arrest for a motor vehicle infraction

2. If the officer’s immediate Supervisor is unable to respond to the scene to approve the arrest, the officer will notify the Central Communications Unit. The Central Communications Unit will attempt to locate another available supervisor from the field to respond to the incident scene for arrest approval.

3. If a Field Supervisor is unable to respond to the incident scene, the Supervisor who is unable to respond will document the circumstances preventing his or her presence in the case file. This documentation can be done by executing an Administrative Report (D.P.I. 1001) under the specific event number and/or central complaint number in the Records Management System for the incident.

4. The Field Supervisor will approve or disapprove the officer’s arrest recommendation, based on existence of justifiable probable cause and NPD policy.

5. The Field Supervisor will take appropriate actions to address a violation or deficiencies in the officer’s arrest recommendation, including:
   • immediately releasing the subject;
   • recommending non-disciplinary corrective action for the involved officer and/or;
   • referring the incident for administrative or criminal investigation.

B. Desk Supervisor Receiving Arrestee (MAPS Supervisor/Desk Supervisor/Watch Commander)

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

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

   • reviewing all officer reports to ensure that officers are not using pro forma or conclusory statements;
   • reviewing all officer reports for information that is not current, authentic or correct;
• reviewing the available video and written documentation of consent prior to approving an arrest based on evidence obtained via a consent search;
• For every search or arrest involving the recovery of contraband evidence, the arresting officer’s Desk Lieutenant or Unit Commander will review the circumstances of the encounter, including video from body-worn cameras alongside the corresponding Incident Report (DP1:802), to assess the appropriateness of the seizure. The Supervisor will memorialize that review in writing and will include an assessment of the circumstances under which the search was conducted, the evidence was recovered and/or the probable cause for the arrest was ascertained.
• On an on-going basis, Supervisors will also review a random selection of video recordings of stops and detentions, searches and arrests amounting to a minimum of 10 percent of all stops and detentions, searches, and arrests.
• Upon reviewing videos of investigatory stops and detentions, searches, and arrests, Supervisors shall submit an administrative report (DP1:1001) filed under the event number for the corresponding video reviewed by the end of their tour of duty, listing:
  o The event number;
  o The name(s) of the officer(s) who recorded the video(s) and type of video they recorded (e.g. body worn camera video, in-car video, or both);
  o The reason for reviewing the video (e.g. random review, recovery of contraband, stop, search, detention, arrest, suspected non-compliance with NPD policy or law);
• approving or disapproving the officer’s arrest recommendation, based on existence of justifiable probable cause and NPD policy; and
• taking appropriate actions to address violation or deficiencies in the officer’s arrest recommendation, including:
  o releasing the subject; o recommending non-disciplinary corrective action for the involved officer; or o referring the incident for administrative or criminal investigation.

C. Unit Commander

1. The Unit Commander, or their Supervisor Designee, will review each arrest report by officers under their command and will memorialize the review in writing within 24 hours of the arrest absent exceptional circumstances. The deadline for review will be extended for an objectively reasonable amount of time dictated by the initial reason(s) for delay.

2. The Unit Commander will review reports and forms for deficiencies including:

   • pro forma or conclusory language;
   • inconsistent information;
   • insufficient articulation of the factual and/or legal basis for the police action;
• any indications that the information in the reports or forms is not correct or complete;

• arrests following stops based solely on information or evidence discovered after the stop was initiated (e.g., open warrants);

• arrests made without plausible justification for the initial stop or search; and

• arrests that are unsupported by probable cause, or are otherwise in violation of federal or state law, or NPD policy.

3. The Unit Commander will document for review by their chain of command:

• investigatory stops and detentions that appear unsupported by reasonable and articulable suspicion, or that are otherwise in violation of NPD policy;

• searches that appear to be without legal justification or are in violation of NPD policy; and

• stops or searches that, while comporting with law and policy, indicate a need for corrective action or review of agency policy, strategy, tactics or training to support effective and legitimate policing principles.

4. For every search or arrest involving the recovery of contraband evidence, the Desk Lieutenant or Unit Commander will review the circumstances of the encounter, including video from body-worn cameras, to assess the appropriateness of the seizure. The Supervisor will memorialize that review in writing and will include an assessment of the circumstances under which the search was conducted, the evidence was recovered and/or the probable cause for the arrest was ascertained.

D. Command-Level Supervisors

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

• was not supported by probable cause;

• was in violation of Newark Police Division policy;

• a possible need for corrective action; and

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

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

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

E. All Police Supervisors

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

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

XIV. ADMINISTRATIVE REVIEW

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

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

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

a) Misconduct complaints;

b) Stop, detention and arrest data;

c) Use of force analysis; and

d) Enforcement practices based on community input.

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

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

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

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

A. the requirements of Fourth Amendment, the New Jersey Constitution, and related law and NPD policies regarding investigatory stops and detentions, searches and seizures;

B. the differences among the scope and degree of intrusion of various police contacts; between probable cause, reasonable suspicion and mere speculation; and between voluntary consent and mere deference to police authority; and

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

XVI. EFFECT OF THIS ORDER

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

BY ORDER OF

ANTHONY F. AMBROSE
PUBLIC SAFETY DIRECTOR

AFA/BO/jg

Attachment A – Preliminary Arrest Report (DP1:2036)
APPENDIX C
NEWARK POLICE DIVISION
GENERAL ORDER

SUBJECT:
FIRST AMENDMENT RIGHT TO OBSERVE, OBJECT TO, AND RECORD POLICE ACTIVITY

SUPERSEDES:
NEW

GENERAL ORDER NO.
18-12

DATED:
JUNE 12, 2019

Related Policies:

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

This order contains the following numbered Sections:

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

2. I. PURPOSE

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

3. II. POLICY

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

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

4. **III. RESPONSIBILITY FOR COMPLIANCE**

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

5. **IV. DEFINITIONS**

A. **Bystander:** a member of the public who is present but not taking part in a situation or event.

B. **Exigent Circumstances:** A compelling urgency or true emergency that a member can specifically describe not using vague terms or boilerplate language. Circumstances that cause a reasonable person to believe that prompt action is necessary which can be an immediate threat to public safety, an active attempt by a suspect to destroy evidence of a crime or escape, or in instances of community caretaking.

C. **Field Supervisor:** A Lieutenant or Sergeant assigned to the field to supervise field personnel.

D. **Investigative Supervisor:** A Lieutenant or Sergeant assigned to an investigative unit to supervise investigative personnel.

E. **Medium:** The storage source for visual and/or audio recordings, whether by film, analog, or digital means.
F. **PROBABLE CAUSE:** Specific, and articulable facts to permit a reasonable person to believe that a subject committed a violation of the law or that evidence of a crime would be found in a search. Probable cause is a higher standard of evidence than having reasonable suspicion, but is less than the beyond a reasonable doubt standard needed for conviction. Probable cause is a practical, non-technical probability.

G. **PUBLIC SETTING:** An indoor or outdoor area, whether privately or publicly owned, to which the public has access by right or by invitation, expressed or implied, whether by payment of money or not.

H. **RECORDING:** Capturing of images, audio and/or video by means of a camera, cell phone, audio recorder, or other device.

6. **V. PROCEDURES**

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

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

1. A bystander has the same right to make recordings as a member of the press, as long as the bystander has a legal right to be present where he or she is, such as on a public street or in public settings.

2. Public settings include parks, sidewalks, streets, locations of public protests, common areas of public and private facilities and buildings, and any other public or private facility at which the bystander has a legal right to be present, including a bystander’s home or business.

3. The fact that a bystander has a camera or other recording device does not entitle the bystander to cross a police line, to enter an area that is closed to the public, or to enter any area designated as a crime scene.

4. As long as the recording takes place in a setting in which the bystander has a legal right to be present and does not interfere with an officer’s safety or lawful duties, the officer shall **not**:
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a. Tell or instruct a bystander that the recording of police officers, police activity, or persons who are the subject of a police action; is not allowed; that recording police activity requires a permit; or that recording requires the officer’s consent.

b. Subject a bystander to a Terry stop (Terry v. Ohio, 392 U.S. 1 (1968) or arrest solely on the basis that the bystander is recording police conduct;

c. Order the bystander to cease such activity;

d. Demand that bystander’s identification;

e. Demand that the bystander state a reason why he or she is taking photographs or recording;

f. Detain, arrest, or threaten to arrest bystanders based on activity protected by the First Amendment, including the bystander’s verbal criticism, questioning police actions, or gestures;

g. Intentionally block or obstruct cameras or recording devices; or

h. In any way threaten, intimidate, or otherwise discourage a bystander from remaining in the proximity of, recording or verbally commenting on officer conduct directed at the officer’s enforcement activities.

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

1. Nothing in this General Order prohibits officers from questioning or detaining for a reasonable period of time any individual they reasonably suspect has committed, is committing, or is about to commit a crime or incite others to violate the law.

2. Officers are reminded that a person commits an offense under N.J.S.A. 2C:29-1 if the person purposely (a) obstructs, impairs or perverts the administration of law or other governmental function, or (b) prevents or attempts to prevent a public servant from lawfully performing an official function by means of flight, intimidation, force, violence, or physical interference or obstacle, or by means of any independently unlawful act.
3. If a bystander is recording police activity from a position that materially impedes or interferes with the safety of officers or their ability to perform their duties, or that threatens the safety of members of the public, an officer may direct the bystander to move to a position that will not interfere. However, an officer shall not order the bystander to stop recording.

4. Credentialed media personnel may be granted closer access to incident scenes or be allowed to cross police lines with the approval of the public information officer and the highest investigative supervisor on the scene, refer to General Order 65-14 - Department Press Relations and Issuance of Press Cards. This right does not extend to a bystander.

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

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

D. Seizure of a Bystander’s Recording Device or Medium

1. An officer’s seizure of a recording device, without a warrant, is not permitted and is presumed to be illegal under the Fourth Amendment, except in the narrowly defined exceptions outlined below.

2. An officer may seize a bystander’s recording device incident to the lawful arrest of the bystander. However, the seizure of a recording device incident to a lawful arrest does not allow an officer to search or view the contents of the recording device without a warrant (e.g. Communications Data Warrant).

3. If an officer has probable cause to believe that a recording device contains images or sounds that are evidence of a crime (i.e., First, Second, and Third degree), the officer shall immediately notify a Field Supervisor and request that the recording bystander, where possible and practical, and in the presence of the officer, voluntarily consent to transmitting the recording via electronic mail to the officer’s official city electronic mail account. If the bystander cannot or will not transmit the recording via
electronic mail, the officer should request that the recording party voluntarily consent to providing the device or recording medium (e.g., the memory chip) to the officer.

4. Consent to take possession of a recording device or medium must be given voluntarily. A Field Supervisor must be present and a Consent to Search form must be completed. For additional information on Consent to Search forms, refer to General Order 18-15 - Searches with or without a Search Warrant (Section VI).

5. If the person voluntarily consents to providing the recording device to the officer, the officer shall:
   a. Contact the On-Call Detective responsible for the highest charge (i.e., most serious crime) and the Field Supervisor and notify them of the evidence; and
   b. Submit the recording device into evidence, consistent with General Order 18-24 – Property and Evidence Division and General Order 18-23 – Property and Evidence Management.
   c. Absent the exigent circumstances outlined below in VI.E.3, officers shall not attempt to download, or otherwise access any material contained within the device without a warrant.

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

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

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

E. Searching a Bystander’s Recording Device or Medium

1. An officer’s search of a recording device or medium is not permitted and presumed to be illegal under the warrant requirement of the Fourth Amendment to the U.S. Constitution and Article I, Paragraph 7 of the New Jersey Constitution, except in the narrowly defined exceptions outlined below.

2. If an officer has probable cause to believe that a recording device contains images or sounds that are evidence of a Crime (First, Second, and Third
degree), the officer shall immediately notify a Field Supervisor and request that the recording bystander, where possible and practical, and in the presence of the officer, voluntarily consent to transmitting the recording via electronic mail to the officer’s official city electronic mail account. If the bystander cannot or will not transmit the recording via electronic mail, the officer should request that the recording party voluntarily consent to providing the device or recording medium (e.g., the memory chip) to the officer.

3. Recordings obtained by consent shall be viewed by the Detective responsible for investigating the crime believed to be captured on the device. Otherwise, an officer shall obtain a search warrant before viewing photographs or listening to recordings on a camera or memory chip that has been seized as evidence.

4. However, if it is objectively reasonable for an officer to believe information contained in a recording device or medium could prevent imminent death or serious bodily harm, an officer shall contact the highest ranking Investigative Supervisor available to receive authorization to immediately review recordings that have been seized without a warrant. If the Investigative Supervisor grants authorization, the officer may immediately search the recording device or medium for photographs and recordings that are related to the exigent purpose.

5. Recordings that have been seized as evidence and are not directly related to the exigent purpose shall not be reviewed until a warrant has been secured.

6. Recordings that have been seized as evidence that are not directly related to the exigent purpose shall be reviewed by the Detective responsible for investigating the crime believed to be on the device after a warrant has been secured.

7. Any recording devices or recording medium taken into custody shall be returned as soon as practicable.

F. Safekeeping and Preservation of Recording Device or Recording Medium contained therein
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1. Officers shall not under any circumstances intentionally damage or destroy, or instruct any other person to damage or destroy any recording device or medium being used to record police activity.

2. Officers shall not, under any circumstances, intentionally erase or delete, or instruct any other person to erase or delete, any recorded images or sounds from any camera or other recording.

G. Recordings that may contain evidence of Police misconduct.

1. It is the policy of the Newark Police Division to accept and investigate all complaints of alleged Police misconduct from any individual or organization including complaints that have accompanying recorded evidence. Refer to General Order 18-25 Complaint Intake and Investigation Process (Section IX-F), for more information on the handling of recordings that may contain evidence of police misconduct.

2. If a complainant expresses fear or concerns about turning over recordings that may contain evidence of Police misconduct when making a complaint about a member of the Newark Police Division directly to the Newark Police Division, he or she should be referred to the Essex County Prosecutor’s Office, Professional Standards Bureau. Refer to General Order 18-25 Complaint Intake and Investigation Process (Section IX-O), for more information on complaint referrals.

7. VI. RESPONSIBILITIES OF THE FIELD SUPERVISOR

A. A Field Supervisor shall respond to the scene where any bystander recording of police officers engaged in the public discharge of their duties:

1. has become confrontational, provoking, or otherwise adversarial with the officers;

2. may possess evidentiary material;
NEWARK POLICE DIVISION
GENERAL ORDER

3. has her/his recording or recording device or medium seized by officers based upon probable cause; or

4. has jeopardized the safety of the officer, the suspect or others in the immediate vicinity, violated the law, incited others to violate the law, or actually obstructed an officers official duties.

B. Once on scene, the Field Supervisor shall:

1. Consult with the on-scene officers and gather all available facts.

2. Attempt to de-escalate or otherwise intercede to prevent the incident from escalating.

3. If it was necessary to detain the recording party before the Field Supervisor’s arrival, review the facts and circumstances to determine if the detention was appropriate in that the officers reasonably believed the recording party has committed, is committing, or is about to commit any crime or incite others to violate the law.

4. If responding to the scene because an officer believes exigent circumstances require that the recording device or medium be seized without a warrant, the Field Supervisor shall:

   a. In consultation with the highest-ranking Investigative Supervisor available at that time, determine whether exigent circumstances permit the seizure of the device without a warrant. A warrantless seizure is permissible only when there is:

      i. probable cause to believe that a serious crime involving violence that may result in serious bodily harm or death has been committed;

      ii. a good faith belief that there is evidence of that crime on the recording device or medium; and

      iii. a good faith belief that evidence will be lost or destroyed absent seizure.
b. If there is no immediate law enforcement need to view the recording device and/or media, ensure that the recording device and/or media is not viewed by officers until a search warrant has been obtained.

c. If the immediate seizure was not based upon the narrowly defined exigent circumstances outlined above in VI.B.4., immediately return the recording device and/or media to the owner. The Field Supervisor shall contact the Detective responsible for the highest charge (most serious crime) and his or her Supervisor (i.e., Investigative Supervisor) with all pertinent information for the assigned detective to begin an application for a search warrant.

5. If responding to a scene where any media or recording device or medium was voluntarily provided to the police, the Field Supervisor shall review the circumstances of any consent provided confirming that the consent to search was made voluntarily and that the proper documentation of such consent was completed by the officer in accordance with General Order 18-15 Searches with or without a Search Warrant.

6. Ensure officers do not copy and/or disseminate any information or images from seized or provided devices or media that are not evidence of a crime or otherwise required for any official purpose.

8. VII. RESPONSIBILITIES OF THE INVESTIGATIVE SUPERVISOR

A. Upon being notified that possible evidence of a crime was captured on a recording device and/or medium, which was voluntarily provided to police, the Investigative Supervisor shall assign a Detective to take the necessary actions to copy/preserve the evidence and return the recording device and/or media to the owner as soon as possible. While the evidence was voluntarily provided, it shall be at the discretion of the Investigative Supervisor, based on the facts and circumstances, whether a search warrant (e.g. Communications Data Warrant) will also be obtained.

B. Upon being notified by a Field Supervisor that probable cause exists that evidence of a crime was captured on a recording device and/or media and the evidence was properly seized by Police, the Investigative Supervisor, shall nonetheless, assign a Detective to apply for a search warrant (e.g. Communications Data Warrant).
C. Ensure Detectives do not copy and/or disseminate any information or images from such devices or media seized or provided, that is not evidence of a crime or otherwise required for any official purpose.

9. VIII. EFFECT OF THIS ORDER

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

BY ORDER OF

ANTHONY F. AMBROSE
PUBLIC SAFETY DIRECTOR

AFA:BO/lc
NEWARK POLICE DIVISION
GENERAL ORDER

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

SUPERCEDES: New

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

This Order contains the following numbered Sections:

I. PURPOSE

II. POLICY

III. RESPONSIBILITY FOR COMPLIANCE

IV. PROSPECTIVE DATA POINTS TO BE EXAMINED

V. ANALYSES TO BE CONDUCTED

VI. ADMINISTRATIVE REVIEW OF ANALYSES OUTCOMES

VII. STOP, SEARCH, AND ARREST OUTCOME COMMITTEE

VIII. POLICY AND TRAINING RECOMMENDATIONS

IX. EFFECT OF THIS ORDER
NEWARK POLICE DIVISION
GENERAL ORDER

I. PURPOSE

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

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

II. POLICY

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

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

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

III. RESPONSIBILITY FOR COMPLIANCE

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

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

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

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

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

E. Searches
   1. Was consent to search requested?
   2. Was consent to search granted?
      • Was contraband recovered as a result of the consent search?
      • What type of contraband was recovered as a result of the consent search?
   3. Was a protective pat down conducted?
      • Was contraband recovered as a result of the protective pat down?
      • What type of contraband was recovered as a result of the protective pat down?
4. Was a probable cause search conducted?
   • Was contraband recovered as a result of the probable cause search?
   • What type of contraband was recovered as a result of the probable cause search?

F. Disposition

1. Was summons issued?
2. Was arrest made?
3. Was warning issued?

Dispositions will be further analyzed in relation to offense, charge, and violation data to help discover, detect and determine any stop, search and arrest disparities, best practices, and opportunities to enhance training. Particular focus will be given to events where an individual is charged with obstruction of the administration of law, resisting arrest, disorderly conduct, and aggravated assault on a police officer.

V. ANALYSES TO BE CONDUCTED

The Supervisor assigned to the Technology Unit shall be responsible for ensuring the data necessary to conduct the analysis required by this General Order is collected, preserved, and provided to the Commander of the Consent Decree and Planning Division in electronic format.

The Commander of the Consent Decree and Planning Division, or their designee, shall ensure that the biannual analysis required by this General Order is conducted for the following data collection periods:

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

The analysis report will highlight any significant disparities. It shall also contain graphs and/or charts with numerical values depicting the following comparisons for the current period, as well as a comparison to the cumulative data collected during the previous twelve months:

A. Stops Analysis

1. Aggregate data of stops analysis
   ☐ Pedestrian  o  Compute the number of pedestrian stops categorized by gender, age, and race.
   o  Compare by command assigned, precinct and sector of occurrence, common police work shifts, and stop disposition.
NEWARK POLICE DIVISION
GENERAL ORDER

Motor Vehicle

Compute the number of motor vehicle stops categorized by gender, age, and race. Compare by command assigned, precinct and sector of occurrence, common police work shifts, and stop disposition.

2. Aggregate data of protective pat down analysis
   • Compute the number of protective pat downs categorized by gender, age, and race.
   • Compare by command assigned, precinct and sector of occurrence, common police work shifts, and discovery of contraband.

3. Reasonable suspicion to stop audit
   • Conducted under the guidance of U.S. Government Accountability Office, Generally Accepted Government Auditing Standards (2018 Revision) with a sample size obtained using the one-tail test with a 95 percent confidence level and error rate of five percent

4. Reasonable suspicion to conduct protective pat down audit
   • Conducted under the guidance of U.S. Government Accountability Office, Generally Accepted Government Auditing Standards (2018 Revision) with a sample size obtained using the one-tail test with a 95 percent confidence level and error rate of five percent

B. Searches Analysis

1. Aggregate data of searches analysis
   • Compute the number of searches categorized by gender, age, and race.
   • Compare by command assigned, precinct and sector of occurrence, common police work shifts, and discovery of contraband.

2. Probable cause to search audit
   • Conducted under the guidance of U.S. Government Accountability Office, Generally Accepted Government Auditing Standards (2018 Revision) with a sample size obtained using the one-tail test with a 95 percent confidence level and error rate of five percent
C. Arrests Analysis

1. Aggregate data of arrests analysis
   • Compute the number of arrests categorized by gender, age, and race.
   • Compare by command assigned, precinct and sector of occurrence, and common police work shifts.

2. Probable cause to arrest audit
   • Conducted under the guidance of U.S. Government Accountability Office, Generally Accepted Government Auditing Standards (2018 Revision) with a sample size obtained using the one-tail test with a 95 percent confidence level and error rate of five percent

D. Consent to Search aggregate data analysis
   • Compute the number of consents to search categorized by gender, age, and race.
   • Compare by command assigned, precinct and sector of occurrence, common police work shifts, and discovery of contraband.

E. Pretext Stops aggregate data analysis
   • Compute the number of pretext categorized stops by gender, age, and race.
   • Compare by command assigned, precinct and sector of occurrence, and common police work shifts.

VI. ADMINISTRATIVE REVIEW OF ANALYSIS OUTCOMES

Upon completing the analyses contained in this General Order, the Commander of the Consent Decree and Planning Division shall provide the Public Safety Director and the Chief of Police with the report for review and approval.

Upon approval, the report shall be forwarded to the Comstat/UCR Unit, and all other Newark Police Division Command Rank Supervisors will be provided the finalized Analysis of Stop, Search, and Arrest Data Report.

A 30-calendar day review period will commence immediately following the issuance of the report. All Command Rank Supervisors shall scrupulously examine all relevant analyses, shall be prepared to discuss the contents during the subsequent Comstat meeting, and shall provide recommendations and strategies to eliminate or reduce any identified disparities within their commands, as well as throughout the Newark Police Division.
NEWARK POLICE DIVISION
GENERAL ORDER

Command Rank Supervisors shall attempt to determine which stop, search, and arrest practices are **most** effective and efficient. They shall also attempt to determine which stop, search and arrest practices are the **least** effective and efficient, in order to increase public safety and promote police legitimacy within the Newark community.

Command Rank Supervisors will use the analysis outcomes to **explore, modify, employ, or require police practices that focus on reducing or eliminating unwarranted disparities**, as well as **reduce, deemphasize, or abandon the use of police practices that may be creating unwarranted disparities** to the greatest extent legally possible.

Command Rank Supervisors shall explore the possibility that the existence of a disparity may be beyond the control of law enforcement (e.g., based on crime trends and community priorities for enforcement to which the Police Division may have been reacting during the time period analyzed.)

**VII. STOP, SEARCH, AND ARREST ANALYSIS OUTCOME COMMITTEE**

The Public Safety Director, or his/her designee, shall incorporate the Analysis of Stop, Search, and Arrest Data Report in the Comstat meeting following the report review period. During this Comstat meeting, **all attendees** shall discuss the contents of the report and provide recommendations and strategies designed to reduce any identified disparities throughout the Newark Police Division.

The Public Safety Director, or his/her designee, shall delegate tasks, such as, but not limited to:

- Potential policy changes
- Additional or changes in training methods
- Modification of field deployment
- Changes in police practices
- Modification of supervision techniques

These measures will serve to further our efforts in reducing disparities, optimizing stop, searches, and arrests practices, and ultimately increasing public safety and police legitimacy.

Any outcomes stemming from this portion of the Comstat meeting shall be recapped during the following Comstat session, wherein the next Analysis of Stop, Search, and Arrest Data Report will be discussed. All modifications will be examined by Command Rank Supervisors to determine if the changes resulted in a decrease or elimination of any unintended demographic disparity.
VIII. POLICY AND TRAINING RECOMMENDATIONS

Modifications to General Orders, Memoranda, proscribed police practices, or the creation of pilot programs shall be made at the discretion of the Public Safety Director. The Commander of the Consent Decree and Planning Division shall modify existing General Orders, Memoranda, or proscribed police practices as ordered by the Public Safety Director.

Modifications to training schedules, required classes, class content, and examination of student feedback shall be the responsibility of the Commander of the Training Division, at the direction and approval of the Public Safety Director.

IX. EFFECT OF THIS ORDER

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

By Order of:

BRIAN A. O’HARA
PUBLIC SAFETY DIRECTOR

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

ALL THREE GENERAL ORDERS WILL BECOME EFFECTIVE IMMEDIATELY.

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

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

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

The new Consensual Citizen Contacts and Investigatory Stops General Order #18-14 encompasses most of the provisions contained in the old Procedures for the Execution, Distribution and Storage of Field Inquiry Reports General Order #97-8, however, there are data collection limitations caused by the current version of the Stop Report (DP1:1388), formerly known as the Field Inquiry Report.

Officers will continue to collect only the data allowed by the fields contained within the current version of the Stop Report (DP1:1388). An updated version of the Stop Report (DP1:1388) has been developed and is awaiting Department of Justice and Independent Monitoring Team approval based on the reporting requirements dictated by the Consent Decree, which were incorporated into the new policy. Once the Stop Report (DP1:1388) has been updated, it will be made available in the Newark Police Division Records Management System (RMS), and officers will begin to collect all the data fields available to them which are required by the new policy.
The new *Searches With or Without a Search Warrant General Order #18-15* encompasses most of the provisions contained in the old Search & Seizure General Order #14-12 and Consent to Search Form General Order # 63-26, however, the new general order contains updated case law guidance and mandatory Consent Decree provisions.

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

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

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

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

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

**BY ORDER OF:**

[Signature]

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

AFA/BOjjg

Attachment:

c: Darnell Henry, Chief of Police
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<tr>
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<td>1.</td>
<td>Section VI Opening Statement</td>
<td>General Order 18-16, <em>Arrests with or without an Arrest Warrant</em>: Section II.</td>
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<td>2.</td>
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<td>General Order 18-16, <em>Arrests with or without an Arrest Warrant</em>: Section V (A &amp; D)</td>
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<td>General Order 18-16, <em>Arrests with or without an Arrest Warrant</em>: Section I, Section V (B)</td>
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<td>4.</td>
<td>37</td>
<td>General Order 18-16, <em>Arrests with or without an Arrest Warrant</em>: Section XI (G)</td>
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<td>5.</td>
<td>42</td>
<td>General Order 18-16, <em>Arrests with or without an Arrest Warrant</em>: Section XI (K); Section XIII (G)</td>
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<td>6.</td>
<td>51</td>
<td>The Independent Monitoring Team recognizes that NPD satisfied this Consent Decree provision by augmenting its Stop Report, which was acknowledged in the Monitoring Team’s <em>First Stop Audit</em>.</td>
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<tr>
<td>7.</td>
<td>53</td>
<td>General Order 21-04, <em>Protocol for Analyzing Stop, Search, and Arrest Data</em></td>
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<td>8.</td>
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<td>General Order 18-16, <em>Arrests with or without an Arrest Warrant</em>: Section V (G &amp; H); General Order 18-12, <em>First Amendment Right to Observe, Object to, and Record Police Activity</em>: Section V</td>
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<td>General Order 18-12, <em>First Amendment Right to Observe, Object to, and Record Police Activity</em>: Section V (A &amp; B)</td>
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<td>General Order 18-12, <em>First Amendment Right to Observe, Object to, and Record Police Activity</em>: Section V (A &amp; B)</td>
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<td>General Order 18-12, <em>First Amendment Right to Observe, Object to, and Record Police Activity</em>: Section V (A &amp; B)</td>
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<td>General Order 18-12, <em>First Amendment Right to Observe, Object to, and Record Police Activity</em>: Section V (D)</td>
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**List of Events Removed and Added to Sample**

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<td>C21-049194B</td>
<td>More than one arrest made during the event</td>
</tr>
<tr>
<td>35</td>
<td>C21-049194C</td>
<td>More than one arrest made during the event</td>
</tr>
<tr>
<td>36</td>
<td>C21-049613A</td>
<td>More than one arrest made during the event</td>
</tr>
<tr>
<td>37</td>
<td>C21-049613B</td>
<td>More than one arrest made during the event</td>
</tr>
<tr>
<td>38</td>
<td>C21-049737A</td>
<td>More than one arrest made during the event</td>
</tr>
<tr>
<td>39</td>
<td>C21-049737B</td>
<td>More than one arrest made during the event</td>
</tr>
<tr>
<td>40</td>
<td>C21-049737C</td>
<td>More than one arrest made during the event</td>
</tr>
<tr>
<td>41</td>
<td>C21-050300B</td>
<td>More than one arrest made during the event</td>
</tr>
<tr>
<td>42</td>
<td>C21-051786B</td>
<td>More than one arrest made during the event</td>
</tr>
<tr>
<td>43</td>
<td>C21-051786C</td>
<td>More than one arrest made during the event</td>
</tr>
<tr>
<td>44</td>
<td>C21-051786D</td>
<td>More than one arrest made during the event</td>
</tr>
<tr>
<td>45</td>
<td>C21-052528B</td>
<td>More than one arrest made during the event</td>
</tr>
</tbody>
</table>
### List of Events Removed from Sample

<table>
<thead>
<tr>
<th>Count</th>
<th>Event Number</th>
<th>Removal Criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>C21-022474</td>
<td>Arrest Warrant Only / Defendant Arrested inside Police Facility</td>
</tr>
<tr>
<td>2</td>
<td>C21-031051</td>
<td>Arrest Warrant Only / Defendant Arrested inside Police Facility</td>
</tr>
<tr>
<td>3</td>
<td>C21-031168</td>
<td>Defendant Arrested by Warrant While Already in Custody for an Unrelated Offense</td>
</tr>
<tr>
<td>4</td>
<td>C21-032215</td>
<td>Defendant Arrested by Warrant While in Custody in Hackensack NJ</td>
</tr>
<tr>
<td>5</td>
<td>C21-034702</td>
<td>Warrant arrest from Essex County Sheriff's Department</td>
</tr>
<tr>
<td>6</td>
<td>C21-038835</td>
<td>Defendant Arrested by Warrant by Fugitive Team</td>
</tr>
<tr>
<td>7</td>
<td>C21-040139</td>
<td>Task Force Arrest</td>
</tr>
<tr>
<td>8</td>
<td>C21-042040</td>
<td>Warrant Arrest (Other Jurisdiction)</td>
</tr>
<tr>
<td>9</td>
<td>C21-044299</td>
<td>Warrant Arrest (Other Jurisdiction)</td>
</tr>
<tr>
<td>10</td>
<td>C21-044705</td>
<td>Arrest number found to be a typo by NPD and ARR or RPTS are associated with this event.</td>
</tr>
<tr>
<td>11</td>
<td>C21-044750</td>
<td>Arrest Warrant Only / Defendant Arrested inside Private Residence - i.e., No Bystanders</td>
</tr>
<tr>
<td>12</td>
<td>C21-045069</td>
<td>Incident did not involve an arrest</td>
</tr>
<tr>
<td>13</td>
<td>C21-049246</td>
<td>Transposition error by NPD, confirmed by supplied on-site documentation</td>
</tr>
<tr>
<td>14</td>
<td>C21-050540</td>
<td>Warrant arrest made by detectives assigned to Fugitive Squad</td>
</tr>
<tr>
<td>15</td>
<td>C21-050805</td>
<td>Arrest warrant for outside jurisdiction</td>
</tr>
<tr>
<td>16</td>
<td>C21-051042</td>
<td>Warrant arrest from Essex County Sheriff's Department</td>
</tr>
<tr>
<td>17</td>
<td>C21-051786A</td>
<td>Task Force Arrest- removed post exit conference</td>
</tr>
<tr>
<td>18</td>
<td>C21-051786B</td>
<td>Task Force Arrest</td>
</tr>
<tr>
<td>19</td>
<td>C21-051786C</td>
<td>Task Force Arrest</td>
</tr>
<tr>
<td>20</td>
<td>C21-051786D</td>
<td>Task Force Arrest</td>
</tr>
<tr>
<td>21</td>
<td>C21-052167</td>
<td>Task Force Arrest</td>
</tr>
<tr>
<td>22</td>
<td>C21-052733</td>
<td>This Disorderly Conduct arrest was replaced with C21-015746</td>
</tr>
<tr>
<td>Non-Compliance Type</td>
<td>Number of Non-Compliant Events</td>
<td>Percentage</td>
</tr>
<tr>
<td>---------------------------</td>
<td>--------------------------------</td>
<td>------------</td>
</tr>
<tr>
<td>Non-Compliant (Substantive)</td>
<td>1</td>
<td>9.09%</td>
</tr>
<tr>
<td>Non-Compliant (Documentation)</td>
<td>9</td>
<td>81.82%</td>
</tr>
<tr>
<td>Non-Compliant (Both)</td>
<td>1</td>
<td>9.09%</td>
</tr>
<tr>
<td>Total</td>
<td>11</td>
<td>100%</td>
</tr>
<tr>
<td>Count</td>
<td>Arrest Incident</td>
<td>Non-Compliance Criteria</td>
</tr>
<tr>
<td>-------</td>
<td>----------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>1</td>
<td>C21-051891</td>
<td>No probable cause established</td>
</tr>
</tbody>
</table>
| 2     | C21-047647     | No reasonable suspicion or Probable Cause established. BWC does not support narrative.  

11 The Monitoring Team determined that Arrest Incident C21-047647 was non-compliant both substantively and with respect to documentation.
<table>
<thead>
<tr>
<th>Count</th>
<th>Arrest Incident</th>
<th>Non-Compliance Criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>C21-038047</td>
<td>BWC does not support narrative</td>
</tr>
<tr>
<td>2</td>
<td>C21-042464</td>
<td>(3) BWC were discovered, (2) were labeled under a different C#. However, none of the (3) videos showed the arrest or the circumstances leading up to the arrest.</td>
</tr>
<tr>
<td>3</td>
<td>C21-044710</td>
<td>No BWCs found for officers at scene. (1) BWC at MAPS only.</td>
</tr>
<tr>
<td>4</td>
<td>C21-045329</td>
<td>BWC does not support narrative</td>
</tr>
<tr>
<td>5</td>
<td>C21-046678</td>
<td>No BWC or ICC found</td>
</tr>
<tr>
<td>6</td>
<td>C21-048385</td>
<td>No BWC or ICC found</td>
</tr>
<tr>
<td>7</td>
<td>C21-049075</td>
<td>No BWC or ICC found</td>
</tr>
<tr>
<td>8</td>
<td>C21-051897</td>
<td>No BWC or ICC found</td>
</tr>
</tbody>
</table>