

## **Feedback Received From a Community Member in an Email Submission Regarding the NPD “Searches With or Without a Search Warrant” Policy**

### Global Issues

1. This document focuses heavily on constitutional rights, but New Jersey offers a wide range of statutory rights for individuals being searched. These statutory restrictions on police conduct are not covered in-depth by the policy. Each comes with its own reporting requirements and potential consequences if violated.
  - a. Strip searches and body cavity searches: Key elements of N.J.S.A. 2A:161A should be included in this document, rather than merely provided in reference. Strip searches and body cavity searches are among the most invasive and humiliating of searches and the extremely strict restrictions on their use should be included in this document.

**NPD:** NPD has a separate policy that covers the topic of strip searches and body cavity searches in depth. There is no need to re-write the same material.

- b. Wiretaps and electronic searches: The New Jersey Wiretapping and Electronic Surveillance Control Act (N.J. Stat. Secs. 2A:156A-1 to 2A:156A-37) govern how wire and electronic communications can be searched and collected in New Jersey. In an interconnected world, these searches are commonplace and searches of electronic materials are part of police investigations. Much of this language is highly technical, so I won't go into detail, but a Search Policy without recognition of electronic surveillance law is incomplete at best. These restrictions must be included in any Search Policy. For example, say that an officer asks a suspect for his or her phone and searches through the contacts and recent calls. Such an action is governed by the state statute, but the scenario is not covered completely by the Search Policy.

**NPD:** NPD added section “VIII. **SEARCHES OF ELECTRONIC DEVICES AND WIRETAPPING**” to the policy. It states:

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

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

2. Consent searches remain a huge blind spot in this policy. The Policy on the one hand states that consent searches should be restricted and recognizes that officer presence is inherently coercive (see the first two paragraphs on p. 7). But then in the nuts and bolts, the Policy goes out of its way to provide exception after exception to allow for consent searches. For example, third-party consent has high odds of violating privacy, because a third party may not have the same privacy interest as the owner. A storage company may consent to search a storage unit in the absence of the owner, although the owner's privacy interest is stronger. The Fernandez example is extremely narrow and very fact specific and at almost direct odds with the Randolph example. Expecting officers or civilians to make these kinds of decisions without clearer guidelines encourages discretion and abuse. Instead, the policy should be clear and avoid these ambiguities and nuances. Consent searches should not be permitted, unless approval has been given and all parties who have an interest in the area to be searched have given consent.

**NPD:** The policy cites case law that applies to each area of concern.

3. As I mentioned in my prior comments on the Stop Policy, these draft policies remain too steeped in the jargon of lawyers and too far removed from the reality of how officers and civilians interact. Lawyers live in a world of penumbras and lines drawn between abstract concepts such as "reasonable suspicion" and "probable cause." Civilians and police officers do not. Whenever possible, this policy should be converted into plain language with clear explanations of terms for laypersons.

**NPD:** The language is dictated by the law. Any deviation from the wording used is just an interpretation of the intent of the law.

4. Again as mentioned in prior comments on the Stop Policy, civilians and defense attorneys should be included in the drafting of this policy rather than waiting for pro forma community meetings to unveil the policies. It is unrealistic to expect civilians to provide meaningful feedback given relatively short periods to do so. Without community engagement in the drafting, very little can be expected of the fig leaf of community engagement after the fact. None of the comments collected from the prior meeting have been disseminated with the public yet. Nor was any meaningful data collected from community members on their level of engagement. Basic questions such as asking the crowd "Do you feel like the average person could understand this policy?" were unasked and unanswered. Community engagement without the community in the room at the inception will remain engagement in name only.

## Specific Issues

II. 4th paragraph: The phrase “that do not compromise officer safety” should be omitted. Officer safety is included in “reasonable” efforts -- no reasonable effort will intentionally place officers in unnecessary danger. By raising the specter that it is officers, not civilians, who need to be protected during personal searches, the policy creates a loophole through which search policy violations can be whitewashed. Invasive or unnecessary searches are almost always explained by police officers as necessary to protect themselves. Yet it is the community, not the police, who require protection in a police stop and search policy.

**NPD:** The lawfulness of the officers’ conduct while conducting detentions depends on two things.

First, they must have restricted their actions to those that are reasonably necessary to:

- a. protect themselves, and
- b. complete their investigation. *Florida v. Royer* 460 U.S. 491, 500 (1983)

Second, even if the investigation was properly focused, a detention will be invalidated if the officers did not pursue their objectives by employing the least intrusive means available. *State v. Davis*, 104 N.J. 490, 504 (1986)

III.I. Pretext stop is defined two different ways. Neither is clear and both seem to be condoned later so long as justification can be provided later or a supervisor has given “approval” (no standards for this approval are given). Lying to individuals about the reason for their stop undermines trust in the community.

**NPD:** The Consent Decree requires specific language to be included in the Stop, Search, and Arrest Polices pertaining to pretext stops. The officer must have probable cause or reasonable suspicion before making the stop. Pretext stops do not remove the level of suspicion required to conduct a stop of someone. Pretext stops are meant for police who are conducting an investigation to further their investigation without revealing that an active investigation is ongoing.

To place this into the correct context, if police are conducting an on-going investigation into illegal narcotics distribution that is occurring within a house and the police see someone who they have not identified leaving the house and get into a car, they may follow him. If the police witness that person commit a motor vehicle violation, the police (with permission from a supervisor) may stop that person and carry out the motor vehicle stop without telling the person who they stopped that they are currently investigating them for illegal narcotics distribution. The police are bound to carry out the motor vehicle stop like any other, with best practices in mind and informing the person stopped of the reason for the traffic stop.

Simply outlawing “pretext stops” as the “Consensual Citizen Contacts and Investigatory Stops” defines as, “An investigatory stop or detention for a violation of law that an officer has reasonable and articulable suspicion for, but the officer's true motivation is to investigate a different offense, for which there is no reasonable suspicion at the outset of the investigatory stop or detention. A pretext stop can also mean the reason an officer presents for conducting a stop of a person is false and the justification is offered to mask the true motivation for conducting the stop” would not allow officers the ability to fully investigate violations of the law.

There are further safeguards in the “Consensual Citizen Contacts and Investigatory Stops” under section “IV. Prohibited Actions” section (located on page 5). Item I. states, “Using any demographic category as a factor to any degree in establishing reasonable suspicion or probable cause during an unplanned enforcement activity. This conduct will be considered bias-based policing. The only exception to this is in circumstances where the specific suspect’s description from a trustworthy source relevant to place and time” which overrides all other described actions in the policy to prohibit discrimination.

III. (generally). See above comments on need for definitions of strip search, body cavity search, and wiretap or electronic searches.

**NPD:** Both concerns, “strip search / body cavity search” and “wiretap or electronic searches” were answered above.

IV.F. The exception here threatens to swallow the rule. “Circumstances where the specific suspect’s description from a trustworthy source relevant to place and time.” What is a “trustworthy source”? A 911 call? An anonymous tip from a confidential informant? What is “relevant to place and time”? If a 911 call reports, “bearded black man running down the street with a gun,” does that justify stopping a bearded black man one block away? Two blocks away? A mile away? Again, the more vagueness there is in the policy, the more it can be abused. Needs clarification.

**NPD:** “The only exception to this is in circumstances where the specific suspect’s description [is] from a trustworthy source relevant to place and time.” A “trustworthy source” could be a victim or witness to a crime, or it could be a reliable confidential informant.

Also, in terms of reliability of information or “trustworthy source,” the information must be weighted on the totality of the circumstances. Information received from a 911 caller who does not leave a return number is inherently less reliable than someone who a first person victim of the crime, is cooperating with a police investigation and is willing to give a statement with identification concerning the information.

There is no exact formula, but all cases must be judged on the totality of the circumstances (the “whole picture” perspective) and less desirable or less reliable information must be corroborated with additional components of reasonable suspicion or probable cause before police may act on it.

IV.I. Why is this limited to trans persons? This implies that officers may simply examine a non-trans person for genital status. See earlier comments on strip searches. This type of search is inappropriate in all circumstances. Although it is particularly humiliating and dehumanizing for trans persons, a strip search should be heavily restricted for all persons.

**NPD:** No, the policy does not insinuate an officer can search a non-trans person for genital status. Strip searches have their own policy and are heavily restricted for all persons, as stated the NPD strip search policy.

V. (generally): The search warrant section does not discuss different kinds of warrants or the conduct of officers in executing a warrant. No-knock warrants often have tragic results and the element of surprise may heighten rather than lessen the risk of harm to officers and civilians alike. Although officers may feel more in control of the search, a surprise intrusion into a home or private space may make residents more likely to respond in unexpected or dangerous ways. Although the knock-and-announce rule has been weakened by courts over the years, the rise in no-knock warrants puts the public in jeopardy. The Policy leaves unanswered basic questions such as:

- Should police announce themselves when executing a warrant?
- When is a no-knock warrant appropriate? (In my view, it should be extremely rarely used.)
- Even when a no-knock warrant has been issued, when is breaking down a door necessary?
  - As an aside, who is responsible for damage caused by a no-knock warrant execution? See <http://www.trentonian.com/article/TT/20170516/NEWS/170519815>
- Should police be in uniform or in plainclothes?
- When is a SWAT team necessary?
- How does this policy interact with the Use of Force policy? When is force justified during the search?
- What impact should ownership of a legally registered firearm have on warrant issuance and execution?

**NPD:** These are all concerns that are stated in case law and officers cannot simply write their own warrants and prescribe whether they are knock or no knock warrants. There is an assistant prosecutor who reviews all search warrant requests and then finally a judge who makes the final determination as to what is legal and necessary.

The execution of a search warrant is often a dangerous encounter for police and civilians alike. The Search Policy provides no guidance on when alternatives to execution of a search warrant should be explored, as well as any evaluation of the effectiveness of execution of search warrants. The Policy also provides no guidance on de-escalation techniques during execution of a search warrant or the amount of investigation that officers should pursue prior to obtaining a search warrant.

**NPD:** This policy is a general guide to searches, not the execution of search warrants, or investigative techniques.

Language concerning de-escalation will be added.

V. (on the question of information in the affidavit). Search warrant affidavits have become increasingly routinized by police departments. Boilerplate language and quick review by judges have become commonplace in criminal justice nationwide. The same kind of restrictions that are placed on the language used in justifications for stops, searches or seizures must be placed on the language used in these affidavits. Search warrants should elaborate on the methods of investigation used and information being used to justify the warrant. In particular, the use of confidential informants as the justification for search warrants has increased dramatically. In one study in San Diego, roughly 64% of search warrants were based on CI tips, while another 24% came from anonymous tips. Often the CIs were not even known by the officers applying for search warrants, who were merely relaying information from other officers. These so-called “phantom CIs” are not verified by the magistrate or the applying officer. The same research found that a small number of judges issued the overwhelming majority of warrants. See Laurence A. Berner & Charles T Samarkos, Searching for Narcotics in San Diego: Preliminary Findings from the San Diego Search Warrant Project, 36 Cal. W. L. Rev. 221 (2000). Without true specificity and particularity in the warrant process, the risk of unnecessary warrants increases.

**NPD:** NPD has a separate policy for handling of confidential informants. This policy prohibits boilerplate language, clearly stating no pro forma or conclusory language.

VI.A. Regarding consent searches, I noted many general concerns up-front. What follow are additional more specific issues:

- The policy does not describe the consent of minors to searches. If an officer has any suspicion that the person answering the door of a home is a minor, the officer should not ask for consent to search and consent given by a child should be viewed as per se invalid.

**NPD:** Although NJ case law is not settled on this issue, NPD will make all reasonable efforts to obtain consent from a knowing and intelligent parent, guardian, or person who has an expectation of privacy over the area to be searched. Language will be added to policy to reflect this intent.

- Once an officer has entered a protected space or enacted a stop, the officer should be forbidden from asking for consent to search. That is, once the officer has demonstrated by some other means (protective sweep, Terry frisk, etc.) that he has control over the person, he cannot then ask for permission to search. No reasonable person would feel free to refuse this request. For example, if an officer has already frisked a suspect’s

pockets and person, the officer should not be able to then ask if he has the suspect's permission to put his hands in the suspect's pockets. Similarly if an officer has performed a protective sweep of a house, he cannot then ask for permission to search. The officer already demonstrated that he has control over the suspect's body or home in these cases. Although legally the officer may be justified in asking for consent to search depending on the circumstances, the average layperson would have almost no power to say no. This would also include the classic "just one more thing" consent search question, which occurs after a traffic stop and a driver is nominally "free to leave" but asserts the officer's authority nonetheless.

**NPD:** A protective sweep ("Terry Frisk" of a residential space) is not a search. Protective sweeps are intended to protect officers who have reason to believe that there is a weapon or person present that can harm them. It is not search for evidence.

A consent search occurs when the police ask a person for permission to search for evidence.

- On p. 8 top of the page, the approval of a supervisor should be obtained prior to conducting a consent search of any protected space, not just an individual or a home. This should include vehicles, storage lockers, or any other protected space. The officer should also have to detail to the supervisor the specific and articulable facts that lead them to request permission to search.

**NPD:** Supervisor approval prior to conducting a consent to search is not required by law, and the additional instances mentioned are not required by the Consent Decree. Officers are bound by case law to have reasonable suspicion (that needs to be explained in reports) prior to asking for consent to search a vehicle (*State v. Carty*).

- The Fernandez example is confusing and should be omitted. The Fernandez example *only* applies when the officers removed a person with ownership of the property with good cause and not simply as a pretext for asking the other person for consent. Contrast Fernandez with *State v. Coles*, 218 N.J. 322. Because these circumstances are rare and the law continues to evolve in this area, I would recommend that whenever any party who has ownership interest in the item or space is not present that consent not be used as the justification for search. Why not wait for a warrant in these cases, rather than raise the possibility of an unconstitutional search?

**NPD:** Policy simply states the general and most common legal options. The policy cannot cover in detail exactly what officers should do in every unique case they are involved.

NPD will add the following sentence to the "Searches With or Without a Search Warrant" policy on page nine, under section "VI. Searches Without a Warrant", "A. Consent Searches", "2. Third-party consent" to where it applies:

"Police may not unlawfully detain a person to prevent the person from objecting to a co-tenant's provision of consent. *State v. Coles*, 218 N.J. 322, 340 (2014)."

VI.C. Plain view seems straightforward but may be abused when not clarified. For instance, say the officer knocks on a door for a quality-of-life check-up and sees on the table some contraband. The mere presence of the contraband does not allow him to enter the house to seize it if no other exception to the warrant requirement exists. Yet the wording of this section makes it appear as though such a seizure would be permissible. The policy seems to rest much of these analysis on "the officer has a legal right to enter the place" but this statement must be further clarified in order to be helpful for civilians and police alike. Say that an officer, in pursuing an investigation of a robbery, tries a number of doors on a street to see if the suspect is hiding in them, opens one and finds contraband on the ground. Does this fall into plain view? Does the officer have a "legal right to enter the place"? These are complicated questions that are not guided by this cursory explanation of plain view.

**NPD:** Policy simply states the general and most common legal options. The policy cannot cover in detail exactly what officers should do in every unique case they are involved.

VI.D.b. The justification for protective sweeps (that some third party lies in wait to ambush the police) is not borne out by evidence. In a study of fatal assaults against the police during a ten-year period, "there was no evidence to support a conclusion that unknown third parties present a serious threat to police." Ilya Lichtenberg, *The Dangers of Warrant Execution in a Suspect's Home: Does an Empirical Justification Exist for the Protective Sweep Doctrine?* 54 Santa Clara L. Rev. 623 (2014). I would recommend a more restricted view of protected sweeps to be used only if a warrant is not feasible. Protective sweeps should require the higher probable cause standard. Additionally protective sweeps performed with consent should be subject to all the requirements of consent searches detailed above.

**NPD:** This policy was not guided by studies, it is in accordance with case law guidance.

VI.D.b.iii. Typo: in the parenthetical, it should read "a gym bag **that** happens to be situated . . . ."

**NPD:** Thanks, it will be fixed.

VI.D.e. Although the policy generally outlines various justifications for searches that are likely to be abused and therefore disfavored, the "protective vehicle search" policy throws most of that reasoning out the window. If the threat being protected against is the possibility of a weapon, many of these "totality" factors are irrelevant:

- The time of day does not magically make weapons more likely. **NPD:** Time of day can be relevant for potential for crime based on crime trends and statistics in connection with other indicators.

- Nor does the neighborhood the car is in (cars can come from many places!). **NPD:** A neighborhood can be plagued by violence. Thus, the neighborhood is relevant in connection with other indicators.
- “High crime area” is as vague here as it is in other situations. See my comments in the Stop Policy. What’s high? What’s crime? What’s an area? **NPD:** NPD defines “high crime area” based upon crime statistics from a particular area or grid in Newark. This is relevant in connection with other indicators.
- Erratic driving doesn’t make it any more likely that a person has a gun. **NPD:** Erratic driving in conjunction with other circumstances, could create reasonable suspicion that a person is armed.
- Nor does “unreasonable delay” in stopping. Would “unreasonable delay” in answering my front door permit the officer to sweep my home for weapons? **NPD:** This would depend on the totality of the circumstances.
- Nor does the number of occupants in a car. **NPD:** The number of occupants, connected with other circumstances, could create reasonable suspicion. Moreover, the number of occupants is relevant to the safety of the officer.
- Nor does the absence of a driver’s license. I’ve forgotten my wallet at home and driven places. Does that make me more likely to have a firearm in the car? **NPD:** Again, the absence of a driver’s license must be connected with other circumstances.
- “Furtive movement” is among the vaguest of descriptions. Almost all movements can be “furtive.” “The phrase ‘furtive movement’ is remarkably subjective and vague. What is a furtive movement may well differ when the person making the movement is a member of a suspected group -- such as young African-American males.” The Hon. Shira J. Scheindlin, A Chance to Reflect: Thoughts from the Author of Floyd v. City of New York, 15 Ohio St. J. Crim. L. 35 (2017). This term has no definition in the policy. **NPD:** On page 5, under section “IV. Prohibited Actions” the policy prohibits “using pro forma or conclusory language (boilerplate language), such as wording which makes claims without supporting evidence, or has little true meaning or importance. All supporting details shall be clearly documented for all investigatory stops or detentions. Examples of pro forma or conclusory language are “the suspect was frisked for officer safety”, or “the suspect was detained based upon reasonable suspicion”
- Prior knowledge that the driver or occupant is a “substantial dealer in narcotics” is vague and subjective. How much knowledge? What if the person was acquitted? What is “substantial”? **NPD:** This policy prohibits boilerplate language, clearly stating no pro forma or conclusory language.

This policy essentially permits officers to search a vehicle just because they are scared, with so many possible justifications that almost any stop can be retroactively justified. To quote Judge Posner, “Whether you stand still or move, drive above, below, or at the speed limit, you will be described by the police as acting suspiciously should they wish to stop or arrest you. Such subjective, promiscuous appeals to an ineffable intuition should not be credited.” U.S. v. Broomfield, 417 F.3d 654, 655 (7th Cir. 2005).

**NPD:** There is case law permitting officer protective searches of the passenger compartment of cars. The policy follows established case law, Michigan v. Long 463 U.S. 1032 (1983), which applied the “Terry Stop” and “Terry Frisk” standard to automobiles.

Furthermore, possession of a firearm is not per se illegal in New Jersey. Indeed legally registered firearms are permissible and do not necessarily mean that a person is more suspicious or dangerous to a police officer. The person may well be as intent on protecting the public as the officer. Escalating an interaction with a lawful firearms holder by searching her car unnecessarily increases the risk of harm for both officer and civilian, and also erodes trust between lawful firearms owners and law enforcement in charge of regulating those firearms.

**NPD:** NPD officers are trained to de-escalate interactions with the community. Officers are also only allowed to search a vehicle based upon the necessary legal standards, the most common of which are highlighted in this policy.

Page 2, under section “I. Purpose” states:

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

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

Page 2, under section “II. Policy” states:

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

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

VI.E. Although the “unforeseen and spontaneous” test is the law after State v. Witt, it remains a vague standard to include as a matter of policy. Officer pulls over driver for motor vehicle

violation. When the window comes down the officer smells alcohol from the car. Is that “unforeseen and spontaneous” enough to enter the vehicle and search? What kind of event would be “unforeseen and spontaneous” but nonetheless not rise to an emergency context? As discussed in general, the more vagueness exists in the policy, the more room there is for abuse.

**NPD:** Unforeseen and spontaneous, as it is described in the case law *State v. Witt* (2015), means that officers cannot have planned the stop. The stop happens spontaneously, not as a result of an investigation where officers had time to obtain a search warrant. Moreover, the officer must have probable cause or reasonable suspicion to employ a stop.

VIII. (generally) It is unclear how the public and civilians encountering the police can access these documents. All reports should be made public with appropriate redaction of relevant information in an easily searchable format. Individuals should be able to easily identify their own records of interactions with the police. Reporting without public oversight is simply repeating the failed experiment of Internal Affairs all over again. Absent public accountability and accessibility of report-level data for every stop and search, abuses will continue.

**NPD:** Because reports generated for investigative stops / detentions may contain people’s personal identifying information it would not be responsible for NPD to allow this information to be accessed through an online dashboard and search function. The technology infrastructure that is currently in place at NPD does not provide the option to scrub the personal identifying information from the reports before making it available.

NPD will keep this idea in mind. NPD is in the process of conducting an independent technology assessment to achieve a greater level of transparency, and become more efficient in delivering police services. NPD will explore the legality and feasibility of employing such an accountability tool.

VIII.D. See my comments to the Stop Policy: More information needed for all stops include:

- Whether any of the prohibited categories was used as part of reasonable suspicion determinations
- Whether the stop evolved from a “consensual citizen interaction”
- Distance a person is transferred after being detained

**NPD:** Supervisors are required to review, reject or approve all reports. As stated on pages 16-18, under section, “X. Supervisor Responsibilities”:

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

If a situation gives rise to transform a consensual citizen contact into investigative stop / detention and/or if a person was “transferred after being detained” are both covered in the

above passage which requires supervisors to check reports for accuracy, completeness and adherence to law and division policy (which lists the prohibited actions).

IX. second paragraph. Every rejection of a report should be noted and publicly available, attached with the original report. Permitting the supervisor to return the form to the officer for “corrections” will simply encourage the whitewashing of bad stops and searches by citing the correct talismanic words, rather than encourage better police practice and fewer bad stops. There should be no opportunity for “correction” of reports. Either the officer had contemporaneous information to support the stop or search or she did not. Allowing retroactive changes of suddenly remembered facts omitted from the first report will encourage fraud. Along these lines, any “corrected” information should be highlighted and all versions of reports should be made available for public review, including by the person(s) targeted by the search or stop.

**NPD:** See above comment on “Supervisor Responsibilities” and technology infrastructure, technology assessment, and future upgrades.

IX. third paragraph. A supervisor may not be able to catch evolutions in euphemism. As a result, all reasons for stops and seizures should be entered into a database which can be queried for similar phrases, and reviewed for boilerplate language. Only with robust data-keeping and analysis can abuses and misuses be caught. For example, say that 40% of searches are being justified by using “high crime area” as part of the totality of the circumstances. One supervisor will not know the rate at which this justification is being used without deeper data analysis.

**NPD:** See above comment on technology infrastructure, technology assessment, and future upgrades.

IX. p. 15. As with my comment above, what will be entered into the BlueTeam database? The violations that a supervisor catches in the first draft of the officer’s report? Or the violations only found in the “corrected” second version? For example, an officer submits a stop report in which he states that the suspect was frisked because the officer knew he was up to no good. The supervisor flags this as insufficient and sends it back to the officer. The officer resubmits the form, with corrected information that the officer had personal information that the suspect frequently carried a gun on him and had multiple convictions for unregistered or illegal firearms. Would BlueTeam flag this as a violation? Or would there be no violation due to correction?

Clean, accurate data will be essential to evaluating any reform efforts. As the saying goes with data collection and analysis, garbage in, garbage out.

**NPD:** The violation would occur when the officer is unable to articulate the level of suspicion needed to conduct the police action taken. Officers will be given a reasonable opportunity to explain the factual basis for the action. If the officer cannot adequately explain the factual basis then the software will aide supervisors in determining if the officer has either malicious intent, or there is a training deficiency that needs to be rectified and addressed accordingly.

## Questions Received from Individuals in Attendance at the Community Input Forum for the NPD Searches Policy

To the officers on the panel:  
Define "exigency."

(hint: the right answer isn't  
just "emergency")

ANSWERED  
BY AD

Page 6, under section "V. Searches With a Warrant" states:

Searches of all kinds generally require a valid search warrant, however searches without a warrant, coupled with exigent circumstances to believe that evidence may be lost or destroyed, can be legally permissible.

Exigency can be defined as: an urgent need or demand.

The term exigency or "exigent circumstances" when used in the context of the law can be defined as: An emergency state of affairs necessitating quick action to prevent imminent danger to life or serious damage to property, or to predict the looming escape of a suspect, or destruction of evidence.

With the intelligence available to identify high crime areas can the police identify the illegal drugs and guns entering the city?

The intelligence available to identify high crime areas is gathered after crimes reported to the police occur. This intelligence is obtained from victims reporting crimes.

The intelligence needed to identify illegal drugs and guns entering the city needs to be obtained in real time or during the planning stages of a crime (prior to the illegal trafficking of drugs and weapons actually being brought into the city). This intelligence needs to be obtained from informants or co-conspirators with intimate knowledge of the criminal activity.

The two types of intelligence are drastically different in quantity and quality.

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Is the 16hr training a one time training or is it reoccurring training after a certain amount of yrs?

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What is CAB?

NPD has been mandated by the Consent Decree to administer a minimum of 16 hours of training specific to the topic of Stop, Search and Arrest for the first year. Thereafter, NPD is mandated to administering an additional four hours of training specific to the topic of Stop, Search, and Arrest annually. These hourly requirements are only a component of a mandatory 40 hour yearly training requirement for all officers for the first year and every year thereafter.

Would it be more of an incentive  
for Police Union to pay for their  
insurance coverage rather than  
Tax payers picking up the cost  
of Police Misbehavior - False  
Arrest, intimidation, <sup>violation of Civil Rights</sup> etc - in the  
form of litigation + settlements

Police officers are hired, paid, and supervised by the City of Newark, NJ as employees to perform the duties of a police officer. Conversely, officers can choose to join a police union and pay dues to the union (or not). The union is meant to protect the occupational rights of its members, but does not dictate the day to day operations or supervision of officers. Employers assume the responsibility of their employees' actions, as long as they fall within their scope of duty and the actions are consistent with prescribed policy.

What is the protocol to intervene  
in schools, how do you proceed  
when you receive a call from  
a school to ~~solve a problem~~  
intervene in a situation with a  
student?

Do the NPD receive calls from  
schools?

Officers are regularly called to schools to intervene in situations deemed as police matters, such as maintaining peace and safety, protection of life, and to conduct investigations into potential violations of the law. NPD dedicates officers to be available to the schools within the City of Newark.

IS NEWARK PD pushing All it's officers to CARD/check All occupants OF A vehicle in a traffic stop. Even if the driver isn't ticketed All of the occupants are made to exit the vehicle and background checked.

NPD follows the case law standard (State v. Bacome) whereas officers cannot order all of the occupants out of the vehicle or conduct a background check unless they have individualized reasonable suspicion for the particular passenger.

What is being done to STOP  
The NPD Internal Affairs  
From blocking Civilian Complaints?  
I.A is known for doing that  
to protect the officers and the  
City from potential Law Suits  
ETC.

The Consent Decree mandates that NPD re-write its Internal Affairs complaint intake policy and create a disciplinary matrix, and NPD is in the process of doing so. Community members are able to lodge complaints on behalf of themselves or a third party with the NPD in person, in writing, over the phone, by mail, by facsimile, over the internet, after requesting a radio car come to their location, and via the NPD app. Community members can remain anonymous, if they choose, and the Office of Professional Standards is still obligated to investigate the complaint, no matter how limited the information they receive may be.

↳ How would officers communicate with  
a hearing impaired person, at a stop  
site?  
or Blind person?

NPD could communicate with a hearing impaired person by making all reasonable accommodations necessary, such as through written words or attempting to locate a sign language interpreter (who may be a family member, caretaker, or local hospital staff. A blind person could be spoken to normally, using whatever language the person fluently speaks.

pg. 10 b. iii

defining or give  
AN EXAMPLE THAT THE ARRESTEE  
COULD ACCESS A WEAPON OR DESTRUCTIBLE  
EVIDENCE IN THE CONTAINER OR  
AREA BEING SEARCHED... = = =

An example of this is the basis for the case law ruling, *U.S. v Shakir*, 616 F.3d 315, 321 (3d Cir.2010). Please see the following link for more information:

<https://caselaw.findlaw.com/us-3rd-circuit/1534419.html>

How does the general  
order address safety  
of officer against  
a criminal who is  
armed and is  
while committed to  
making sure the  
Constitutional Rights  
of the Criminal  
is not violated



The censored area (the black box) was placed over the bottom of the comment card to hide the submitting person's name (which they provided).

Page 2, under section "I. Purpose" states:

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

Case law stated the lawfulness of the officers' conduct while conducting detentions depends on two things.

First, they must have restricted their actions to those that are reasonably necessary to:

- a. protect themselves, and
- b. complete their investigation. *Florida v. Royer* 460 U.S. 491, 500 (1983)

Second, even if the investigation was properly focused, a detention will be invalidated if the officers did not pursue their objectives by employing the least intrusive means available. *State v. Davis*, 104 N.J. 490, 504 (1986)

What is a knock warrant?

What is a regular warrant at homes

Where is the community? How is police getting out to the public.

A "knock warrant" is a search warrant where the judge (who authorized the warrant) prescribed that officers must alert the occupants of the structure that the police are at the door and they have a search warrant for the premises. Officers must give the occupants a reasonable opportunity to open the door and provide an orderly transfer of control of the area to be searched from residents to officers.

The United States Supreme Court ruled, in *Wilson v. Arkansas* 514 U.S. 927 (1995), "At the time of the framing, the common law of search and seizure recognized a law enforcement officer's authority to break open the doors of a dwelling, but generally indicated that he first ought to announce his presence and authority. In this case, we hold that this common-law "knock and announce" principle forms a part of the reasonableness inquiry under the Fourth Amendment."

Officers can also seek authorization to enter without knocking or making an announcement. This is referred to as a no knock search warrant. The Supreme Court stated, "The practice of allowing magistrates to issue no-knock warrants seems entirely reasonable when sufficient cause to do so can be demonstrated ahead of time" (*Richards v. Wisconsin* (1997) 520 U.S. 385, 394, 399, fn.7). "Sufficient cause" exists if the affidavit demonstrates reasonable suspicion to believe that if the police execute a knock search warrant it would:

- (1) result in violent resistance from the occupants,
- (2) result in the destruction of evidence, or
- (3) be futile (*United States v. Banks* (2003) 540 U.S. 31, 36, 37, fn.3).

Can any officer on the panel  
define "strip search"?

Newark follows the New Jersey Attorney General's Strip Search and Body Cavity Search Requirements and Procedures for Police Officers, which defines "strip search" as:

The removal or rearrangement of clothing to permit visual inspection of a person's

- undergarments
- buttocks
- anus
- genitals
- breasts

The following does not constitute a strip search:

- removal or rearranging of clothing reasonably required to render medical treatment or assistance, or
- removal of articles of outer clothing, such as coats, ties, belts or shoelaces.

What will be the public availability of these reports, reviews, corrections to reports, and disciplinary reports?

Because reports generated for investigative stops / detentions may contain people's personal identifying information it would not be responsible for NPD to allow this information to be accessed through an online dashboard and search function.

The technology infrastructure that is currently in place at NPD does not provide the option to scrub the personal identifying information, or retrieve past edits/versions of a report from the database.

NPD will keep this idea in mind. NPD is in the process of conducting an independent technology assessment to achieve a greater level of transparency, and become more efficient in delivering police services. NPD will explore the legality and feasibility of employing such an accountability tool.

The AG Guideline for "Internal Affairs Policy & Procedures" (<http://www.state.nj.us/lps/dcj/agguide/internal.pdf>) dictates the release of disciplinary reports.

Page 5 states:

"Each agency must annually release reports to the public summarizing the allegations received and the investigations concluded for that period. These reports shall not contain the identities of officers or complainants. In addition, each agency shall periodically release a brief synopsis of all complaints where a fine or suspension of 10 days or more was assessed to an agency member. The synopsis shall not contain the identities of the officers or complainants."

Stating on page 46 it states:

### **“Confidentiality**

The nature and source of internal allegations, the progress of internal affairs investigations, and the resulting materials are confidential information. The contents of the internal investigation case files shall be retained in the internal affairs unit and clearly marked as confidential. The information and records of an internal investigation shall only be released under the following limited circumstances:

- In the event that administrative charges have been brought against an officer, and a hearing will be held, a copy of those internal investigation reports to be used as evidence in the administrative hearing shall be provided to the officer.
- In the event that the subject officer, agency or governing jurisdiction has been named as a defendant in a lawsuit arising out of the specific incident covered by an internal investigation, a copy of the internal investigation reports may be released to the attorney representing the subject officer, agency or jurisdiction.
- Upon the request or at the direction of the county prosecutor or Attorney General.
- Upon a court order.

The law enforcement executive officer may authorize access a particular file or record for good cause. The request and the authorization should be in writing, and the written authorization should specify who is being granted access, to which records access is being granted, and for what time period access is permitted. The authorization should also specify any conditions, such as one in which the files may be reviewed only at the internal affairs office and may not be removed. The law enforcement executive should grant such access sparingly, keeping in mind the purpose of the internal affairs process and the nature of many of the allegations against officers.

Agencies may receive subpoenas directing the production of internal affairs investigative records. Before responding to the subpoena, the police executive or internal affairs investigator should consult with the agency's legal counsel to determine whether the subpoena is valid and reasonable. Invalid or unreasonable subpoenas may be modified or quashed by the court. However, the court will require the agency seeking to modify or quash the subpoena to file the appropriate motion with the court.

If the release of internal affairs documents is appropriate, the agency should inventory the reports they are releasing and obtain a signed receipt.

Search warrant execution is one of the most dangerous encounters for officers & civilians. However, the policy provides next to no guidance on how to perform search warrants. What steps are needed to ensure safety and reliability of search warrants & execution?

The topic of this policy is not search warrant execution. It is limited to conducting constitutional searches with or without a search warrant.

How is a 2-week period for comment on a highly technical policy enough time for "community engagement" and feedback

There were numerous civilian subject matter experts who were included in this process. These include the U.S. Department of Justice (Civil Rights Division in Washington D.C. and District of N.J.) as well as the Newark, NJ Consent Decree Independent Monitoring Team. All helped craft the policy that was disseminated for community input.

Although the forum on the one topic of Stops was one day, there were multiple weeks of in which the community was able to submit input (at subsequent forums or over the internet via the independent monitoring team's website) and NPD did get those comments back and incorporated them where it felt it was a valuable addition.

How will you define a "high-crime area?" High relative to what? Which crimes? How big is the area? How will you make sure the term isn't just thrown around to justify searches the way it is now?

There needs to be statistical evidence or intelligence (i.e. intelligence reports or crime bulletins citing a higher occurrence of the specific crime(s) occurring recently based on reports or calls to NPD from the public in NPD logs) that are listed as one written component of reasonable suspicion.

NPD will make sure that the term "high crime area" will not be used as boilerplate language to justify searches.

Supervisors are required to review, reject or approve all investigative stops / detention reports. As stated on page 16, under section X. Supervisor Responsibilities:

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

Can you explain why the time of day or absence of traffic would make a weapon more likely to be in a car?

The lawfulness of the officers' conduct while conducting detentions depends on two things.

First, they must have restricted their actions to those that are reasonably necessary to:

- a. **protect themselves**, and
- b. complete their investigation. *Florida v. Royer* 460 U.S. 491, 500 (1983)

Second, even if the investigation was properly focused, a detention will be invalidated if the officers did not pursue their objectives by employing the least intrusive means available. *State v. Davis*, 104 N.J. 490, 504 (1986)

There is case law permitting officer protective searches of the passenger compartment of cars. The policy follows established case law, *Michigan v. Long* 463 U.S. 1032 (1983) and *State v. Lund*, 119 N.J. 35 (1990), which applies the "Terry Stop" and "Terry Frisk" standard to automobiles.

When considering the factors used to justify a "protective" vehicle search or "frisk" of a vehicle, the time of day (and lack of sunlight) gives officers less time to see a weapon and react for their own protection.

The second half of the sentence pertaining to the "absence of traffic" is omitted, which reads:

"The absence of other traffic in the area leading to the isolation of the officer." The portion of the sentence which is omitted on the comment card clearly states "the isolation of the officer" is the critical factor which could be used in the totality of the circumstances to justify a "frisk" of vehicle for weapons.

① search  
What is the protocol for  
searching children, women/  
pregnant women  
and those who might be  
mentally disable such as  
autistic people? →

Page 2, under section "I. Purpose" states:

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

Page 3, under section "II. Policy" states:

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

During searches officers should keep in mind and utilize de-escalation techniques during all situations where appropriate to assist agitated or anxious people understand, manage, and resolve their concerns.

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

Although NJ case law is not settled regarding whether and the degree to which a minor may give consent to a search, NPD will make all reasonable efforts to obtain consent from a knowing and intelligent parent, guardian, or person who has an expectation of privacy over the area to be searched. **The language from the previous sentence will be added to policy to reflect this intent.**

↳ Besides the policies being published in Newark Police Dept. website ~~are~~ are there any other forms to disseminate them within the public? or to our youth

At this time NPD's only medium to disseminate all of its policies is through the website. NPD will continue to improve its efforts to advertise that its policies are accessible through the website for all to see.

## Feedback Received From the ACLU

**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 or sexual orientation.

**ACLU:** As we suggested for the policy on investigatory stops, we recommend adding immigration status, economic status, and housing status to this list.

Many Newark residents have long-suspected that they are being targeted or treated differently based on their perceived or actual immigration status. We are pleased to see that language ability and national origin are included in the definition of "demographic category," but immigration status is not captured by either of these categories. For example, imagine two people--Person A and Person B--immigrant from South Korea. It's possible for Person A to be a legal permanent resident and for Person B to be undocumented.

Especially in a city with a large immigrant population, prohibiting officers from using perceived or actual immigration status in their decisions whether to stop or detain individuals can help residents feel more secure in interacting with police and other law enforcement officials.

With countless individuals in Newark struggling with poverty and/or housing insecurity, economic status and housing status should also be included in the list of protected characteristics.

**NPD:** NPD is aiming to ensure that absolutely no demographic categories are being discriminated against, which is why NPD used the catch all language of "including but not limited to." NPD has no objection to adding the suggested example categories of "immigration status, economic status and housing status" to those already listed.

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**Reasonable and Articulate Suspicion** - Specific 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 is not sufficient cause to arise to the level of reasonable suspicion.

**ACLU:** This is correct, and we are pleased to see this specifically mentioned in the policy.

We recommend that presence in a high-crime neighborhood never be given significant weight in developing reasonable suspicion. As currently written, this definition opens the door for officers to inappropriately use a small, trivial fact (for example, counting cash) to supplement presence in a high-crime area in an attempt to justify stopping an individual. We feel this would go against

the spirit of the new policy and the intent to prevent officers from unfairly scrutinizing people based on their location.

If the totality of the circumstances would not justify a stop in South Orange or Maplewood, they cannot justify a stop in high-crime area in Newark. Counting cash alone doesn't give rise to reasonable suspicion. By prohibiting using presence in a high-crime area as a significant factor to get to reasonable suspicion, Newarkers can feel more secure that where they live, work, or stand won't unfairly be used against them.

**NPD**: NPD contends that when looking at the justification for an investigative stop / detention, the totality of the circumstances (or looking at the “entire picture”) is what will be considered by the courts. NPD agrees that the presence of a person in a high crime neighborhood is only one component of what is needed to collectively establish any level of suspicion. Based upon our current public safety climate, officers are commonly deployed to areas of the city for this exact reason.

Although as some have mentioned “high crime” and “area” are also variables that can be changed to reflect different things, officers will be guided in policy and training to point to specific facts that identify areas of high crime (such as NPD crime reports, BOLOs, criminal intelligence reports, or factual documented statistics already captured NPDs records management system from previous reports and citizen calls for service) that guide officers in acting based upon factual data instead of mere hunches.

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**Terry Frisk** - A limited frisk or pat-down of the outer clothing of legally stopped subjects to determine whether the subjects possess weapons if officers reasonably suspect the subject(s) may be armed and presently dangerous. It is not a generalized search of the entire person. The frisk for weapons is strictly limited to what is necessary to discover weapons that might be used to harm the officer or others nearby. The frisk must be limited to a pat-down of outer clothing.

**ACLU**: The law requires officers to have articulable facts that the person is armed with a weapon. The phrase "could be" opens the door to speculation.

**NPD**: NPD will modify the language as per the ACLU suggestion. We do not want to guide officers into thinking frisking a person for a weapon is a guessing game, but NPD wants officers to understand that based upon the reasonable suspicion standard to conduct a frisk (for officer and public safety) they need not be correct in their initial assessment and their beliefs are legally allowed to be disproven if the frisk does not reveal the presence of a weapon.

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## Prohibited Actions

- A. Conducting a search of a person, dwelling or personal belonging when an officer lacks probable cause that the person has committed, is about to commit, or is in the process of committing a violation of law.

**ACLU:** Officers cannot search people or their belongings unless they have probable cause that a person has been involved in criminal activity AND evidence of a crime will be found.

To enter a home, officers need a warrant or an exception to the warrant requirement.

**NPD:** Later in this policy it states: “Searches of all kinds generally require a valid search warrant, however searches without a warrant, coupled with exigent circumstances to believe that evidence may be lost or destroyed, can be legally permissible. Search warrants require that an officer is able to articulate probable cause to believe that evidence of a crime exists, that the evidence sought was once located at the place to be searched and that the evidence is still there.” The NPD has no objection to this comment and will modify the language used to reflect the suggestion of the ACLU.

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## Prohibited Actions

- I. Officers shall not search or physically examine a transgender or intersex person for the sole purpose of determining the person’s genital status. If the person’s genital status is unknown, it may be determined during conversations with the person, and/or by reviewing other available records in order to make a good faith determination.

**ACLU:** "Genital status" is not the proper language to use. This should be replaced with "gender." Making this change would be more accurate, as body parts are not what determines a person's gender identity. Current medical consensus dictates that surgery is not appropriate or necessary for every transgender person, and can result in an unreasonable burden on members of the transgender community.

**NPD:** This prohibited action will bar officers from searching or physically examining a transgender or intersex person for the sole purpose of determining which genitalia the person possesses, which officers (if left open to interpretation) might use in determining whether a male or female officer will conduct a lawful frisk, or lawful search, or when determining where is the safest place to house someone who was lawfully arrested.

The intent of this prohibited action is not focused on determining gender or gender identity, which can be easily ascertained by asking a transgender or intersex person what pronoun they

wish to be addressed by. As the ACLU correctly states, “body parts are not what determines a person’s gender identity.”

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The consenting person may modify the scope of consent or withdraw consent altogether at any time. If evidence is found before the withdrawal or modification of consent, the legality of the seizure will be upheld and a search warrant may be required to continue to search. A withdrawal or restriction of consent may be express or implied.

**ACLU:** We recommend adding a note that withdrawal of consent does not amount to reasonable suspicion or probable cause.

**NPD:** NPD has no objection to this comment and will modify the language used to reflect the suggestion of the ACLU.

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

**ACLU:** Given the significant number of rental units in Newark, it may be helpful to specifically mention landlords & tenants. We recommend adding the following:

"A landlord generally lacks authority to consent to the search of a tenant's home. *Chapman v. United States*, 365 U.S. 610, 616-17 (1961). Even if the landlord has the right to access the tenant's room for "limited purposes," that circumstance does not give a landlord the power to consent to a search by police. *State v. Coyle*, 119 N.J. 194, 216 (1990)."

**NPD:** NPD has no objection to this comment and will modify the language used to reflect the suggestion of the ACLU.

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Consent can be given by a remaining third party with common authority after an objecting party has been removed by the police for good cause. The U.S. Supreme Court ruled in *Fernandez v. California* U.S.\_[134S.Ct. 1126,1136] (2014) that even if an objection was made by one spouse or one half of an unmarried couple, the consent given by the other half overrides the objection if the following circumstances existed. First, the consent was given after the officers had removed the objecting spouse from the premises and secondly, they had good cause to remove him.

**ACLU:** We recommend adding the following sentence at the end of this paragraph:  
"Police may not unlawfully detain a person to prevent the person from objecting to a cotenant's provision of consent. *State v. Coles*, 218 N.J. 322, 340 (2014)."

**NPD:** NPD has no objection to this comment and will modify the language used to reflect the suggestion of the ACLU.

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## **Exigent Circumstances**

Exigent circumstances exist where there is an immediate threat to public safety, an active attempt by a suspect to destroy evidence or escape, or in instances of community caretaking where an immediate response is required. Officers cannot create the exigent circumstances to permit a warrantless search.

**ACLU:** It may be helpful to add an example of community caretaking.

**NPD:** NPD will add an example of community caretaking using the language, "An example of community caretaking is, but is not limited to, an objectively reasonable basis to believe there is a need to protect or preserve life or avoid serious injury"

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## **Protective Searches**

- a. **Terry Frisk** – an officer must have reasonable and articulable suspicion that the person they lawfully stopped may be in possession of a weapon and is a danger to him/herself or the public. This is usually conducted by the officer running their hands over the outermost garments of a subject in order to ensure the person is not in possession of anything that could be used as a weapon. During the course of the Terry Frisk, if an officer feels something that becomes immediately recognizable as a specific type of contraband, the officer may seize the contraband as evidence. An officer may also search any area where the subject has immediate control of and could produce a weapon.

**ACLU:** The legal standard is that a person is armed, not "may be" armed.

**NPD:** NPD has no objection to this comment and will modify the language used to reflect the suggestion of the ACLU.

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In addition, supervisors will also review a random selection of video recordings of stops and detentions, searches and arrests amounting to at least 10 percent of all stops and detentions, searches and arrests.

**ACLU**: How frequently is this random review going to take place? Weekly? Monthly?

**NPD**: NPD desk supervisors are required to do this on every tour of duty.

NPD General Order # 18-05 “Body Worn Cameras” requires this on page 10, under section X. Responsibilities / B. Supervisor Responsibilities / number 6: “On a daily basis, the supervisors shall randomly select two videos of officers and/or the supervisor from their tour of duty, pertaining to Stops, Detentions and Searches. The supervisors shall review the Arbitrator Back-End Client “Main” page and view video to determine if the member complied with law and NPD policy. The “Main” page will provide a list of all uploaded video (body-worn and in-car video).”

This can be viewed on the Consent Decree and Planning Division’s website at:

[https://docs.wixstatic.com/ugd/582c35\\_1fc80385845241a9bb78567fb41f464c.pdf](https://docs.wixstatic.com/ugd/582c35_1fc80385845241a9bb78567fb41f464c.pdf)

NPD General Order # 18-06 “In-Car Camera” also requires this on page 4, under section VII. Responsibilities / B. Supervisor Responsibilities / number 2: “On a daily basis, supervisors shall randomly select two videos of officers and/or the supervisor from their tour of duty pertaining to Stops, Searches and Detentions. Supervisors shall review the Arbitrator Back-End Client “Main” page and view video to determine if the members complied with law and NPD policy. The “Main” page will provide a list of all uploaded video (body-worn and in-car video).”

This can be viewed on the Consent Decree and Planning Division’s website at:

[https://docs.wixstatic.com/ugd/582c35\\_2f5a31fb1d034ae98bf3b8a3e727be2e.pdf](https://docs.wixstatic.com/ugd/582c35_2f5a31fb1d034ae98bf3b8a3e727be2e.pdf)

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

**ACLU**: This important provision is currently listed under the Administrative Review section. But, the provision applies to the entire Order. It should be moved to either Section XII (Responsibility for Compliance) or Section II (Policy).

**NPD**: Section XII. (Responsibility for Compliance) states: “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.” so NPD choses to leave it here, also.