



NEWARK POLICE DIVISION GENERAL ORDER



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

Related Policies:

General Order 17-06 “Bias Free Policing”

General Order 17-02 “Body-Worn Cameras”

General Order 2002-2 “Strip Search-Body Cavity Search”

This Order contains the following numbered Sections:

- I. PURPOSE**
- II. POLICY**
- III. RESPONSIBILITY FOR COMPLIANCE**
- IV. DEFINITIONS**
- V. PROHIBITED ACTIONS**
- VI. SEARCHES WITH A WARRANT**
- VII. SEARCHES WITHOUT A WARRANT**
- VIII. STRIP SEARCHES AND BODY CAVITY SEARCHES**
- IX. SEARCHES OF ELECTRONIC DEVICES AND WIRETAPPING**
- X. REPORTING REQUIREMENTS**
- XI. SUPERVISOR RESPONSIBILITIES**
- XII. ADMINISTRATIVE REVIEW**
- XIII. TRAINING**



NEWARK POLICE DIVISION GENERAL ORDER



XIV. EFFECT OF THIS ORDER

I. PURPOSE

The purpose of this General Order is to ensure that members of the Newark Police Division engage in lawful practices when conducting searches during the course of their official duties. This policy serves as a guide for Officers as to when they need to obtain a search warrant and when situations may fall within an exception to the search warrant requirement.

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

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

II. POLICY

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

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

The Newark Police Division strictly prohibits officers from considering a person's demographic category in determining whether to conduct a search or to seek a search warrant. Searches of people based solely on a demographic category are illegal. Officers may only use demographic categories to describe a specific person where the description is from a trustworthy source that is relevant to the locality and time. (See Newark Police General Order 17-06 Bias Free Policing)



NEWARK POLICE DIVISION GENERAL ORDER



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

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

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

III. RESPONSIBILITY FOR COMPLIANCE

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

IV. DEFINITIONS

- A. Bias-Based Policing** – The differential treatment of any person by members motivated by the specific characteristics, perceived or actual, of that person. This conduct is specifically prohibited. (See Newark Police General Order 17-06 Bias-Free Policing for more information).
- B. Blue Team** - A computer application extension of IAPro. The application allows users to enter collected data from incidents, such as police pursuits, citizen contacts or stops, events where force is used, complaints on police, police involved accidents and administration of discipline to facilitate the complete capture of activities and allow for tracking.
- C. Community Policing** - a philosophy that promotes organizational strategies that support the systematic use of partnerships with community residents and problem-solving techniques to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime.
- D. Conclusory** – A statement (oral or written) that contains a conclusion without providing the specific facts that explain or justify how the conclusion was reached.
- E. Consensual Citizen Contact** - A voluntary and consensual conversation between a person and the police that can be used to gather information about crime or quality of life issues. Under this type of contact, an officer has no reasonable suspicion or probable cause to stop or detain the person with whom the officer is speaking. Therefore, the officer has no authority to stop or detain an individual who chooses not to participate in the contact.



NEWARK POLICE DIVISION GENERAL ORDER



- F. Demographic Category** - A shared common characteristic of a population, including but not limited to, age, race, ethnicity, national origin, gender, gender identity, language ability, disability, political belief, sexual orientation, immigration status, economic status, or housing status.
- G. Exigent Circumstances** – A compelling urgency or true emergency that a member can specifically describe not using vague terms or boilerplate language. Circumstances that cause a reasonable person to believe that prompt action is necessary can be an immediate threat to public safety, an active attempt by a suspect to destroy evidence of a crime or escape, or in instances of community caretaking.
- H. Express Consent** – When a person makes an affirmative statement to convey to officers that they are willing to grant officers consent for a search. This consent or statement usually occurs orally and/or in writing. A person may choose to withdraw consent to search or the person granting consent may state that he or she wishes to change the conditions under which the search is to be conducted. A person may withdraw consent at any time prior to the conclusion of a search.
- I. Investigatory Stop / Detention** - A seizure of a person for investigative purposes. This seizure occurs when a police officer stops a citizen from moving about freely, by means of physical force or show of authority, in order to investigate a matter. The seizure may also occur if an officer uses words, actions or demeanor that would make a reasonable person believe that he or she is not free to leave. Stops of this manner need to be based on reasonable and articulable suspicion that a violation of law has occurred, is occurring or is about to occur. An investigatory stop can come in different forms (i.e. pedestrian, motor vehicle, bicycle, etc.). Also known as a “Terry Stop.”
- J. Pretext Stop** – An investigatory stop or detention for a violation of law that an officer has reasonable and articulable suspicion for, but the officer's true motivation is to investigate a different offense, for which there is no reasonable suspicion at the outset of the investigatory stop or detention. A pretext stop also can mean that reason an officer presents for conducting a stop of a person is false and the justification is offered to mask the true motivation for conducting the stop.
- K. Pro Forma** – A standard use of wording, document or form used to justify an action that does not tie to the underlying events.
- L. Probable Cause** – Specific, and articulable facts to permit a reasonable person to believe that a subject committed a violation of the law or that evidence of a crime would be found in a search. Probable cause is a higher standard of evidence than having reasonable suspicion, but is less than the beyond a reasonable doubt standard needed for conviction. Probable cause is a practical, non-technical probability.



NEWARK POLICE DIVISION

GENERAL ORDER



- M. Reasonable Suspicion** – Specific, and articulable facts that, within the totality of the circumstances, would lead an officer to reasonably believe that a person has, is in the process of, or is about to engage in criminal activity. A person’s mere presence in an identified high crime neighborhood or area taken alone, does not rise to the level of reasonable suspicion. Reasonable suspicion is a lower standard than probable cause.
- N. Terry Frisk** - A limited frisk or pat-down of the outer clothing of legally stopped subjects to determine whether the subjects possess weapons if officers reasonably suspect the subject(s) is armed and presently dangerous. It is not a generalized search of the entire person. The frisk for weapons is strictly limited to what is necessary to discover weapons that might be used to harm the officer or others nearby. **The frisk must be limited to a pat-down of outer clothing.** Once the officer ascertains that no weapon is present after the frisk is completed, the officer’s limited authority to frisk is completed and the frisk must stop.
- O. Vehicles** - in the context of probable cause searches are cars, SUVs, vans, motorcycles, bicycles, boats, recreational vehicles (“RVs”) and other motor homes—except those that are being used solely as residences (e.g. on blocks).

V. PROHIBITED ACTIONS

Newark Police Officers are prohibited from:

- A.** Conducting a search of a person, dwelling or personal belonging when an officer lacks probable cause to believe that the person has committed, is about to commit, or is in the process of committing a violation of law and evidence of a crime will be found.
- B.** Using pro forma or conclusory language, such as wording which makes claims without supporting evidence, or has little true meaning or importance. All supporting details shall be clearly documented for all investigatory stops or detentions. Examples of pro forma or conclusory language are “the suspect was frisked for officer safety,” or “the suspect was detained based upon reasonable suspicion;”
- C.** Using or relying on information known to be materially false or incorrect to justify a warrantless search or to seek a search warrant, and in stating the reason for the search to the person who has an expectation of privacy over the area searched,”
- D.** Seeking consent to search a motor vehicle unless the officer has a reasonable and articulable suspicion that the search will reveal evidence of a crime. Officers will document in writing the basis for this suspicion or other legal authority;
- E.** Conducting a search of an individual or home based upon consent without first obtaining the approval of a Supervisor;



NEWARK POLICE DIVISION GENERAL ORDER



- F. Considering any demographic category (i.e., using biased criteria) in determining whether to conduct a search or seek a search warrant, except that officers may rely on a demographic category in a specific suspect description, from a victim or a witness, where the description is from a trustworthy source that is relevant to the locality and time, and then only in combination with other detailed descriptors;
- G. Basing searches solely on an individual being in the company of other people suspected of criminal activity;
- H. Taking any steps, through words or conduct, that would make a person feel he/she is required to authorize consent to search;
- I. Officers shall not search or physically examine any person for the sole purpose of determining which genitalia they possess. If the person's gender or status is unknown, it may be determined during conversations with the person, and/or by reviewing other available records in order to make a good faith determination.

VI. SEARCHES WITH A WARRANT

The 4th Amendment to the U.S. Constitution reads, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Article 1, Paragraph 7 of the New Jersey Constitution states: "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized."

Searches of all kinds generally require a valid search warrant, however searches without a warrant, coupled with exigent circumstances to believe that evidence may be lost or destroyed, can be legally permissible. Search warrants require that an officer is able to articulate probable cause to believe that evidence of a crime exists, that the evidence sought was once located at the place to be searched and that the evidence is still there.

Search warrants generally require an affidavit explaining the probable cause supporting the search, prosecutorial review of the facts of the case, and a judge's authorization. Search warrants contain limitations as to time, place and manner of execution that officers must adhere to, as explained in the warrant. According to NJ Court Rule 3:5-5(a) a search warrant "must be executed within 10 days after its issuance and within the hours fixed therein by the judge issuing it". A judge may, however, authorize the execution of a search warrant "at any time of the day or night" by entering such authorization on the face of the warrant "for good cause shown".



NEWARK POLICE DIVISION GENERAL ORDER



While a valid search warrant grants officers authorization to search a particular structure for evidence of a crime, they are limited in scope. Once within the authorized area to be searched, an officer must have a reasonable belief that the type of evidence sought in the warrant could be present in the area of the structure where the officer searches (i.e., if an officer obtains a search warrant for an apartment specifically believed to house stolen window air conditioners, a search of the medicine cabinet, although within the apartment allowed access by the warrant, may not be permissible unless supported by a reasonable belief that evidence of stolen air conditioners can be contained within).

VII. SEARCHES WITHOUT A WARRANT

There are some situations when searches and seizures can be conducted lawfully without a warrant. In these instances, the officer bears the burden of properly articulating the facts, with sufficient detail, so that is clear which exception to the search warrant requirement applies. Exceptions to the search warrant requirement include:

A. Consent Searches

Consent to search a structure must be given knowingly and voluntarily, without threat of force or intimidation from others. The party granting consent must have actual, or common authority over the area to be searched. If an officer wishes to obtain consent to search a motor vehicle, the officer needs reasonable and articulable suspicion that a search will yield evidence of a crime (as outlined in *State vs. Carty*, 170 N.J. 632 (2002)).

Officers should carefully weigh the choice between applying for a search warrant and obtaining legal consent to search. Officers need to keep in mind that although someone may be willfully granting consent at the moment of the search, she or he has the option of withdrawing consent during the search or challenging the legality of the search in court, based on whether s/he was properly informed of their rights or that they felt intimidated or threatened at the moment, even if it was not true.

Additionally, under New Jersey law, the burden is on the officer to show that the individual giving consent to the search knows that she or he had a choice not to consent to the search. Also, for consent to search an automobile or its occupants to be valid, before seeking consent to search, an officer must have reasonable and articulable suspicion of criminal wrongdoing, beyond the initial valid motor vehicle stop. (*State vs. Carty*)

The Newark Police Division requires that an officer seeking consent for a search affirmatively inform the consenting party of the right to refuse and to revoke consent at any time. The officer must use the Consent to Search form (DP1:1493-10M) and explain its terms to the consenting party. The officer will have the consenting party, if the person granting consent wishes, sign the Consent to Search form only if the party understands the waiver of their rights.



NEWARK POLICE DIVISION GENERAL ORDER



The officer will record this notification and the consenting party's grant or denial of consent on an available body-worn camera, in vehicle camera or other authorized electronic recording device. For additional information on Body Worn Camera recordings, refer to the Newark Police Division's General Order on Body Worn Cameras (General Order 17-02).

If the officer is unable to capture interaction in a recording then the officer shall articulate, in writing or on camera, all the reasons why they were unable to record the event. The officer must also record this information when completing the required "Stop Report" (DP1:1388) within the Newark Police Division Records Management System, and/or in the corresponding incident report, if one is applicable.

Officers will ensure that the Consent to Search form is properly filled out, with separate signature lines completed by officers to certify that they have advised the subject of the right to refuse a search and for the subject to affirm that they understand that right, if they are willing to sign it.

The Newark Police Division requires that officers obtain the approval of a Supervisor prior to conducting the actual search of an individual or a home based upon consent. The approving Supervisor's name and approval shall be noted on the Consent to Search form.

The consenting person may modify the scope of consent or withdraw consent altogether at any time. If evidence is found before the withdrawal or modification of consent, the legality of the seizure will be upheld and a search warrant may be required to continue to search. A withdrawal or restriction of consent may be express or implied. Withdrawal or restriction of consent does not amount to reasonable suspicion or probable cause.

Examples of implied withdrawal of consent:

- Where a suspect consented to a search of his home and the officer went outside to call for backup; while the officer was outside on the police radio, the suspect shut and locked the front door.
- When asked for the keys to the trunk of his car, a suspect who had consented to a search of it threw the keys into some bushes.
- Where an officer was conducting a consent search of an apartment was about to enter a bedroom when the consenting person "raced in front of the officer and started to close the partially open door."

During a consensual search officers will allow the person who granted consent to be present during the actual search. The consenting party is free to waive their right to be present during the search, if they wish.



NEWARK POLICE DIVISION GENERAL ORDER



Types of consent searches include:

1. **First party / Owner Consent** – The person who holds legal authority over the area to be searched.
2. **Third-Party Consent** – Absent a nonconsenting owner who is not present, a third party may grant consent to search a place or thing for which they share common authority, through:
 - a. Joint ownership;
 - b. Joint use; or
 - c. Joint access or control.

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

A landlord generally lacks authority to consent to the search of a tenant's home. *Chapman v. United States*, 365 U.S. 610, 616-17 (1961). Even if the landlord has the right to access the tenant's room for "limited purposes," that circumstance does not give the landlord the power to consent to a search by police. *State v. Coyle*, 119 N.J. 194, 574 A.2d 951 (1990).

If there are **multiple people with common authority** over a place where the police wish to obtain consent to search, even if one party wishes to grant officers consent to search, it will not override an objection to search made by the other person present with common authority (*Georgia v. Randolph* 547 U.S. 103, 106 (2006)).

Consent can be given by a remaining third party with common authority after an objecting party has been removed by the police for good cause. The U.S. Supreme Court ruled in *Fernandez v. California*, 571 U.S. 292 (2014), that even if an objection was made by one spouse or one half of an unmarried couple, the consent given by the other half overrides the objection if the following circumstances existed. First, the consent was given after the officers had removed the objecting spouse from the premises and secondly, they had good cause to remove him. Police may not unlawfully detain a person to prevent the person from objecting to a co-tenant's provision of consent. See *State v. Coles*, 218 N.J. 322, 339-340, 95 A.3d 136, 146 (2014).



NEWARK POLICE DIVISION GENERAL ORDER



B. Exigent Circumstances

Exigent circumstances exist where there is an immediate threat to public safety, an active attempt by a suspect to destroy evidence or escape, or in instances of community caretaking (e.g. an objectively reasonable basis to believe there is a need to protect or preserve life or avoid serious injury) where an immediate response is required. **Officers cannot create the exigent circumstances to permit a warrantless search.**

C. Open View and Plain View Doctrines

Officers can seize evidence that is found to be in plain view, with no expectation of privacy if:

- a. The officer can see it from a place where they are permitted to be;
- b. The officer knows that what is seen is in fact evidence of a crime; and/or
- c. The officer has a legal right to enter the place where the evidence was located.

D. Protective Searches

- a. **Terry Frisk** – an officer must have reasonable and articulable suspicion that the person they lawfully stopped is in possession of a weapon and is a danger to him/herself or the public. This is usually conducted by the officer running their hands over the outermost garments of a subject in order to ensure the person is not in possession of anything that could be used as a weapon. During the course of the Terry Frisk, if an officer feels something that becomes immediately recognizable as a specific type of contraband, the officer may seize the contraband as evidence. An officer may also search any area where the subject has immediate control of and could produce a weapon.
- b. **Protective Sweeps** – Officers may conduct protective sweeps of an area for people, limited to places where a person can hide.
 - i. **General Protective Sweep** (see *State v. Davila*, 203 N.J. 97 (2010):
 - police officers are lawfully within private premises for a **legitimate purpose**, including situations in which they have been given **consent to enter**; and
 - the officers on the scene **have a reasonable and articulable suspicion** that the area to be swept harbors an individual posing a danger.
 - The sweep will be upheld only if it is conducted quickly and it is restricted to places or areas where the person posing a danger could hide.



NEWARK POLICE DIVISION

GENERAL ORDER



ii. **Protective Sweep Incident to Arrest** (see *State v. Cope*, 224 N.J. 530(2016)):

- This is a quick and limited search of premises, **incident to an arrest**, conducted to protect the safety of police officers or others.
- The permissible scope of the sweep depends on the range of danger facing the officers.
- Officers may look in closets and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched
- The search can be **conducted without probable cause or reasonable suspicion**.
- The sweep must be narrowly limited to a brief visual inspection of those places in which a person could be hiding.
- The sweep should last no longer than is necessary to dispel the possibility of danger or to complete the arrest and leave the premises.

iii. **Immediate Area Searches** - Officers are permitted to search areas where, under all circumstances, there is a **reasonable possibility** that the arrestee could access a weapon or destructible evidence in the container or area being searched. This requires more than a mere theoretical possibility (i.e. a gym bag that happens to be situated at the feet of a handcuffed subject **may not be enough** to justify the search). *U.S. v Shakir*, 616 F.3d 315, 321 (3d Cir.2010)

c. **Protective Vehicle Searches** - Officers who have detained an occupant of a vehicle may conduct a protective frisk of the vehicle if the officers reasonably believe that there is a weapon inside of the vehicle and the detainee or arrestee had potential access to the passenger compartment (*State v. Lund*, 119 N.J. 35 (1990)). Such factors either alone, or in the totality of the circumstances which could give rise to the reasonable belief of the presence of a weapon could be, but are not limited to:

- The hour of the stop (very early in the morning or very late at night);
- The absence of other traffic in the area leading to the isolation of the officer;
- Knowledge that the area of the stop is a “high crime” area;
- Highly erratic driving before the stop;
- Additional evasive action of part of the motorist, such as an unreasonable delay in stopping the vehicle upon being signaled to do so by the officer;



NEWARK POLICE DIVISION GENERAL ORDER



- Other evasive action on the part of the driver or a passenger, including a full unobstructed view of the driver or a passenger reaching under the seat in an attempt to grab something or hide something (i.e., a “very pronounced” threatening gesture);
- The occupants of the vehicle outnumbering the officer(s) present;
- The plain-view observation of a weapon, ammunition or holster;
- The plain-view observation of a large and suspicious or threatening bulge protruding from the driver’s or passenger’s clothing;
- The absence of a driver’s license or satisfactory identification, either for the motorist or the vehicle;
- Lying to the police, such as when asked about a witnessed “furtive movement” the occupant denies making such a movement;
- Prior knowledge that the driver or occupant is armed;
- Prior knowledge that the driver or an occupant is a “substantial dealer in narcotics”;
- An affirmative reason the investigating officer that he feared he was in danger.

E. Vehicle Searches

Officers may search a vehicle without a warrant if they have probable cause to believe that the vehicle contains evidence of a crime and the circumstances giving rise to the probable cause were unforeseen and spontaneous. This is commonly known as the “automobile exception” or a “probable cause search” of a vehicle. In the context of probable cause searches vehicles are defined as cars, SUVs, vans, motorcycles, bicycles, boats, recreational vehicles (“RVs”) and other motor homes, except those that are being used solely as residences (e.g. on blocks). (*State v. Witt*, 223 N.J. 409, 414, 447-48 (2015).

Officers are prohibited from seeking consent to search a motor vehicle unless the officer has a reasonable and articulable suspicion that the search will reveal evidence of a crime. Officers will document in writing the basis for this suspicion or other legal authority. (*State v. Carty* 170 N.J. 632 (2002) (New Jersey Supreme Court).

F. Search Incident to Arrest of a Person or Area

As a matter of officer safety, as dictated by case law, officers may lawfully search a person and the areas that are reasonably accessible to the arrestee at the time of the search, as long as the following conditions are met:

- a. The arrest is lawfully supported by probable cause;
- b. The officer will be required to transport the suspect due to the arrest; and
- c. The arrest and search take place within a substantially short time period



NEWARK POLICE DIVISION GENERAL ORDER



G. Custodial Search

Once it is determined that the arrestee will be transported to a custodial setting officers shall search the arrestee for safety, to prevent escape and to prevent the destruction of evidence. If the arrestee is transported by a second or subsequent officer, every officer responsible for handling or transporting the arrestee shall conduct an independent search of the arrestee.

The search of the arrestee can be a full search. Any type of strip or body cavity searches requires additional levels of suspicion or a court order. The officer can search the arrestee's clothing and containers the arrestee was carrying when the search occurs. If an arrestee wishes to take an item with them and officers permit it, the officers may search that item also. Officers may not compel the arrestee to take a certain item in order to be allowed to search it thereafter.

H. Probation and Parole Searches

Unlike parole officers, police officers are not granted the same search warrant exemptions for individuals who are on probation or parole. Police searches of people or property of individual who are on probation or parole require the same amount of justification that would be needed for anyone else the officer comes in contact with.

VIII. STRIP SEARCHES AND BODY CAVITY SEARCHES

Strip searches and body cavity searches will be conducted in accordance with General Order 2002-2 "Strip Search – Body Cavity Search" and N.J.S.A. 2A:161A-8b "New Jersey Attorney General's Strip Search and Body Cavity Search Requirement and Procedures for Police Officers."

IX. SEARCHES OF ELECTRONIC DEVICES AND WIRETAPPING

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



NEWARK POLICE DIVISION GENERAL ORDER



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

X. REPORTING REQUIREMENTS

- A. Documenting the incident is required for all events where a search and/or frisk occurs. Officers shall clearly articulate the appropriate level of suspicion established to conduct the search and/or frisk. At a minimum, a Field Inquiry Report (D.P.I. 1388) will be executed for all incidents where a search occurs. If contraband is seized or found property is recovered from a search and/or frisk the proper reports will be executed to coincide with the required enforcement action.
- B. Information for each person searched must be documented by completing a report into the “Stop Report” (DP1:1388) within the Newark Police Division Records Management System, and/or in the corresponding incident report, if one is applicable. **A separate record shall be generated for each person that was searched.** The entries shall be cross referenced under the same Event Number if multiple people were searched during or surrounding one specific incident. If a motor vehicle was searched, the registration, make, model and vehicle identification number information shall be included in the entry.
- C. All data entries of search information must have a corresponding Event Number. If an officer is on a dispatched assignment and conducts a search, the officer will use the Event Number from the dispatched assignment; otherwise, the officer will generate a new Event Number for the appropriate type of police action taken in order to complete the entry of the search data.
- D. The following information is required to be entered in an officer’s report for all stops:
 1. date and time of the stop;
 2. the officer’s name and badge number;
 3. location of the stop;
 4. start time, end time and duration of the stop;
 5. clearly articulated reasonable suspicion justifying the investigative stop;
 6. if a vehicle stop results in a search, the presence and number of any passengers and the officer’s perception of the gender, race, ethnicity, national origin, and age of each passenger, unless such data collection creates an undue delay by prolonging the stop (i.e. passenger bus filled with people);



NEWARK POLICE DIVISION GENERAL ORDER



7. if a vehicle stop, whether the driver or any passenger was required to exit the vehicle, and the reason for doing so, unless such data collection creates an undue delay by prolonging the stop (i.e. passenger bus filled with people);
8. if a non-vehicle stop such as a pedestrian or bicycle, the number of individuals stopped and the officer's perception of the gender, race, ethnicity, national origin, and age of each person;
9. reason for the stop, including a description of the facts creating reasonable suspicion and whether it was a pretext stop;
10. whether any individual was asked to consent to a search and whether such consent was given; whether a pat-down, frisk or other search was performed on any individual, including a description of the facts justifying the action;
11. a full description of any contraband or evidence seized for any individual;
12. whether a probable cause search was performed on any individual, including a brief description of the facts creating probable cause; and
13. disposition of the stop, including whether a citation or summons was issued to or an arrest was made of any individual;
14. If a person has been stopped lawfully refuses to identify him/herself, the officer will still attempt to confirm the reasonable and articulable suspicion for which the stop was originally based upon. If probable cause is not established within a reasonable amount of time, officers will allow the person to depart and will document the stop in a "Stop Report (DP1: 1388)" just as any other. The officer reporting the information about the stop shall then enter "REFUSED" in the appropriate spaces of the report generated for the subject's information that this officer could not obtain. The officer will record the subject of the report's physical description information.

XI. SUPERVISOR RESPONSIBILITIES

All reports generated from an incident where an officer searches and/or conducts a frisk will be reviewed and approved by the appropriate desk, MAPS, or specialized Unit Supervisor by the end of the submitting officer's tour of duty, who will ensure that the entry is properly completed. The entry must show sufficient facts exist to justify the search and/or protective frisk.

Reports failing to meet the appropriate suspicion standard shall be rejected and returned to the officer so the reporting person can include all necessary factual information from the search and/or frisk. The Supervisor will ensure the officer(s) who conducted the search and/or frisk and are completing the required report(s) fully understand the legal standards and reporting requirements surrounding such an action.



NEWARK POLICE DIVISION GENERAL ORDER



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

For every search or arrest involving the recovery of contraband evidence, the arresting officer's Desk Lieutenant or Unit Commander will review the circumstances of the encounter, including video from body-worn cameras alongside the corresponding Incident Report (DP1:802), to assess the appropriateness of the seizure. The Supervisor will memorialize that review in writing and will include an assessment of the circumstances under which the search was conducted, the evidence was recovered and/or the probable cause for the arrest was ascertained.

Supervisors will also review all relevant view recordings for all incidents where the Supervisor suspects that the officers' conduct may not have complied with law and Division policy.

On a continuous basis, Supervisors will also review a random selection of video recordings of stops and detentions, searches and arrests amounting to a minimum of 10 percent of all stops and detentions, searches, and arrests.

Upon reviewing videos of investigatory stops and detentions, searches, and arrests, Supervisors shall submit an administrative report (DP1:1001) filed under the event number for the corresponding video reviewed by the end of their tour of duty, listing:

- The event number
- The name(s) of the officer(s) who recorded the video(s) and type of video they recorded (e.g. body worn camera video, in-car video, or both)
- The reason for reviewing the video (e.g. random review, recovery of contraband, stop, search, detention, arrest, suspected non-compliance with NPD policy or law)

Supervisor reviews will also identify the following:

- searches and/or frisks that appear to be without legal justification or are in violation of Division policy;
- stops or searches that, while comporting with law and policy, indicate a need for corrective action or review of agency policy, strategy, tactics, or training to support effective and legitimate policing principles.

All Supervisors, in consultation with the Unit Commander (or command-level official) of the officer who submitted an inadequate report, will take appropriate action to address all apparent violations or deficiencies in investigatory stops or detentions, searches, and arrests. The nature of some errors may require retraining while others may warrant initiating disciplinary action. Appropriate action may include recommending non-disciplinary corrective action for the involved officers, or referring the incident for administrative or criminal investigation.



NEWARK POLICE DIVISION GENERAL ORDER



For each subordinate, the Supervisor will maintain a record of each violation or deficiency and any corrective action taken in BlueTeam. The Supervisor will document each violation or deficiency in the officer's performance evaluations and Newark Police Division's Early Warning System to identify officers needing repeated corrective action. Supervisors shall submit their reviews to the unit commander for additional review.

The approving Supervisor will document for review by her or his chain of command in an Administrative Report (D.P.I. 1001) and in BlueTeam for:

- searches and/or frisks that appear to be without legal justification or are in violation of Division policy;
- stops or searches that, while comporting with law and policy, indicate a need for corrective action or review of agency policy, strategy, tactics, or training to support effective and legitimate policing principles.

Within seven days of receipt, a Command-Level Official will confirm in writing that he or she has reviewed any stop or detention, search, and arrest conducted by the officer under their command that another Supervisor determined were: (i) not supported by probable cause; (ii) were in violation of NPD policy or this Agreement; or (iii) that indicated a need for corrective action or review of agency policy, strategy, tactics, or training.

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

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

Supervisor and Commander performance evaluations will take into account the quality and completeness of supervisory and commander reviews of officer stops, searches, and arrests.

XII. ADMINISTRATIVE REVIEW

Cumulative and quarterly demographic analyses of the enforcement activities of Newark Police Division officers will be conducted by the Commander of the Office of Professional Standards, or her/his designee, to ensure that the tenets of this General Order are implemented and adequately monitored.

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



NEWARK POLICE DIVISION GENERAL ORDER



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

- a) Misconduct complaints;
- b) Stop, detention and arrest data;
- c) Use of force analysis; and
- d) Enforcement practices based on community input.

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

XIII. TRAINING

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

Newark Police Division will ensure that all members initially receive at least sixteen (16) hours of comprehensive and interdisciplinary training on stops, searches and arrests, which includes voluntary police citizen contacts and investigatory stops.

Thereafter, a minimum of four (4) hours of training shall be given **annually** based on New Jersey law, federal law and/or NPD policy. Training will include:

- A. the requirements of the 4th Amendment of the U.S. Constitution, New Jersey Constitution Article 1, Paragraph 7, and NPD policies regarding investigatory stops and detentions, searches and seizures, including:
 1. the differences between the scope and degree of intrusion of various police contacts; between probable cause, reasonable suspicion and mere speculation; and between voluntary consent and mere acceptance to police authority;
 2. the types of facts and circumstances that may be considered in initiating, conducting, terminating, and expanding an investigatory stop or detention;
 3. the level of permissible intrusion when conducting searches, such as “pat-downs” or “frisks;”
 4. the permissible nature and scope of other pre-arrest searches, including those conducted pursuant to probation or parole release provisions; and
 5. the permissible nature and scope of searches incident to arrest.



NEWARK POLICE DIVISION GENERAL ORDER



- B. procedures for executing searches, and the handling, recording, and taking custody of seized property or evidence; and
- C. the effect that differing approaches to stops, searches, and arrests can have on community perceptions of police legitimacy and public safety.

XIII. EFFECT OF THIS ORDER

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

BY ORDER OF

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

**ANTHONY F. AMBROSE
PUBLIC SAFETY DIRECTOR**

AFA/BO/jg

Attachment A – Stop Report (DP1:1388)

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