
MEMORANDUM

FROM: New Jersey Institute for Social Justice
TO: Newark Police Division Consent Decree Planning Unit
RE: Arrests Policy Community Feedback
DATE: May 21, 2018

Introduction

This memorandum provides a summary of community feedback concerning the Newark Police Division's (NPD) draft *Arrests With or Without an Arrest Warrant* policy (the "arrests policy"). All community feedback received is also attached to this memorandum.

Feedback was solicited in two ways. First, NPD held a community policy review forum on May 9, 2018, at the Sport Club Português (55 Prospect St.). At this meeting, the New Jersey Institute for Social Justice (NJISJ) conducted facilitated discussions with community members to receive their input on the draft policy. The community feedback received from this forum is attached to this memorandum.

NPD also requested written feedback on the draft policy. Both NPD and the Independent Monitoring Team placed the policy on their respective websites, with the Monitoring Team also creating a feedback form to receive written comments via its website. The window for written feedback on the draft arrests policy ended on May 18. On May 15, NJISJ also conducted a workshop with the Urban League of Essex County's Young Professionals (ULECYP) group. The group submitted consensus comments on the policy via the online form as well. The ULECYP comments—the only online comments received—are attached to this memorandum.

The community feedback below is grouped by policy section. Space has been provided to aid NPD in providing a response to the public on why certain community feedback will be/will not be incorporated into the finalized policy.

POLICY
(Policy Section II)

1. General Comments

Feedback and Recommendations:

- The policy should speak about how well-invested officers are in their communities.
- A lot of people feel as though NPD's record of effecting arrests is marked by arbitrariness/discrimination and violation of privacy/personal space. The policy should make strong efforts to condemn these practices.
- The ways this (and other) policy is disseminated into the community, plus different languages it is available in, would be useful to residents.
- The policy should have points of cross-reference that point to other sections (or policies) to flesh out and reiterate points that are relevant.
- The policy would benefit from going above the constitutional floor. While the emphasis on the Constitution of the country and state is important, NPD members can rise above and beyond that minimum threshold.

NPD Response:

NPD can add language to state that "The officers of the NPD are invested in their communities and therefore NPD will not tolerate arrests of community members prefaced upon discrimination against any demographic category. NPD will hold all officers accountable for operating within the confines of the law in order to ensure community members' privacy rights are not violated.

NPD will post this policy, along with others on its website to achieve greater transparency.

DEFINITIONS

(Policy Section III)

1. Probable Cause

Draft Policy:

- First, probable cause is defined as “[e]nough information to permit a reasonable person to believe that a subject committed or was committing a violation of the law. Probable cause is a higher standard of evidence than having reasonable suspicion, but is less than then the ‘beyond a reasonable doubt’ standard needed for conviction.”

Feedback and Recommendations:

- It is hard to understand this definition because these terms, though established standards, can come off as legal jargon. Definitions should be aimed at non-experts (including the police and civilians).
- Additionally, beyond the confusion of the definition, the term “probable cause” inherently refers to “gray areas” because it is based on the subjective discretion of a “reasonable person.” Thus, giving examples was a frequent ask among the policy’s community reviewers; however, it is not clear if this should be definitions of what courts have considered probable cause or what officers have considered in determining probable cause.

NPD Response:

The legal standard is what is explained and applied. Any deviation from the exact wording would further complicate the final translation to officers and the public.

2. Reasonable Articulable Suspicion

Draft Policy:

- Reasonable articulable suspicion is “[s]pecific 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.”

Feedback and Recommendations:

- Like probable cause above, community members feel reasonable suspicion inherently refers to “gray areas” because it is based on the discretion of an officer’s reasonable belief. Thus, giving examples was again a frequent ask among the policy’s community reviewers.

NPD Response:

The legal standard is what is explained and applied. Any deviation from the exact wording would further complicate the final translation to officers and the public.

3. *Demographic Category***Draft Policy:**

- Demographic category is “[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.”

Feedback and Recommendations:

- Additional information is necessary. Community members asked what “demographics” means and for the policy to “break [that definition] down.”

NPD Response:

This is a definition of demographic category as it relates to this policy, not the textbook definition. NPD will keep the definition as it stands.

PROHIBITED ACTIONS

(Policy Section IV)

1. General Comments

Feedback and Recommendations:

- There should be a general, clear prohibition on violating people's civil rights, abusing people to get info, using abusive language, and using a discourteous demeanor.
- The main Use of Force policy should be referenced here in some way, because when "a lot of people" think about an arrest (or a stop/search) their minds first go to the fact that "they might get shot."

NPD Response:

On page 2, under the purpose and policy sections the NPD already has done this:

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

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

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

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

Officers shall not consider race, color, ethnicity, national origin, religion, gender, disability, sexual orientation, or gender identity in effecting an arrest, except as part of an actual or apparently credible description of a specific suspect or suspects in any criminal investigation. Such conduct constitutes biased-based policing. Aside from being unlawful, biased-based policing violates Newark Police General Order 17-06.

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

The use of force is a separate topic, which has a separate policy that was approved after implementing community feedback.

2. (E) Evidence Discovered Post-Arrest

Draft Policy:

- NPD is prohibited from "[b]asing an arrest solely on information or evidence discovered after the arrest was executed."

Feedback and Recommendations:

- This part does not make sense, because "[n]o arrest can be based on evidence discovered *after* arrest is executed" (original emphasis). Deleting "solely" from this clause would help.

NPD Response:

NPD agrees with this statement, and will further explain.

If the police legally arrest someone for meeting the probable cause standard, then through their investigation (after the arrest was already initiated) they may discover additional facts or evidence (of sufficient quantity or quality based on the totality of the circumstances or the "whole picture") that further strengthens the original existence of probable cause, then it can be used, but not to justify the lawfulness of the original arrest.

The same holds true for information learned or evidence obtained after an arrest was legally initiated (where the probable cause standard was met, but based on the newly obtained information or evidence, there is no longer probable cause to support the arrest) and the information learned or evidence obtained by the police after the arrest was initiated proves that the person under arrest is not the responsible party.

Because information learned or evidence obtained after an arrest is initiated may contain indicators as to the presence of crime (or lack thereof) and the person responsible, it cannot be excluded from use outright.

3. (G) *First Amendment Protections*

Draft Policy:

- NPD is prohibited from “[d]etaining, arresting, or threatening to detain or arrest, people based on activity protected by the First Amendment. This includes, but is not limited to, verbal criticism, questioning of police actions, electronically recording officers’ actions when they do not interfere with an active investigation, and the display of offensive or uncomplimentary gestures toward the police.”

Feedback and Recommendations:

- This part needs to be fleshed out more, especially considering the “history of police in [Newark].” The language can seem imprecise and unclear in conveying to residents what protections they should enjoy.

NPD Response:

NPD will modify the language used in the policy to make it clearer by using the following passages:

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

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

PROBABLE CAUSE **(Policy Section V)**

1. General Comment

Feedback and Recommendations:

- As alluded to briefly above, the policy would benefit from examples, because its current language is dense. Inclusion of scenario-based examples will help residents understand the contours of evidence standards.

NPD Response:

The current language is reflective of currently used legal standards. The officer applies the “totality of the circumstances” test in determining the existence of probable cause.

INVESTIGATIVE STOP/DETENTION CONVERTED INTO ARREST (DE **FACTO ARREST)** **(Policy Section VI)**

1. General Comments

Feedback and Recommendations:

- More examples are needed to help residents visualize how these situations might unfold.
- The short introductory paragraph (before the list of several factors “courts may consider”) needs more information to describe what Section VI is. Residents are confused about whether this section describes factors of lawful arrests or not.
- There should be more detail about considerations of time, such as how long an investigative stop might go on.

NPD Response:

This is judged based on the totality of the circumstances. This section is only meant to guide officers and the public into understanding of how a “stop” of a person might be inadvertently transformed into an “arrest” if enough of the factors are present.

2. (D) Investigative Methods

Draft Policy:

- Courts have considered, in determining when/if an investigative stop converted into an arrest, “[t]he investigative methods employed to confirm or dispel suspicions.”

Feedback and Recommendations:

- It would be helpful to have an idea of what kinds of investigative methods this could be referring to.

NPD Response:

Each unique situation warrants an equally unique investigative method so a list of some might make people think that these are the only methods police are able to use in pursuit of the truth. The courts have prescribed that officers must use the least intrusive means available to conduct an on scene investigation in order to protect peoples’ rights.

ARRESTS WITHOUT AN ARREST WARRANT **(Policy Section VIII)**

1. General Comments

Feedback and Recommendations:

- Giving examples, once again, would be helpful in making this part of the policy clearer to residents.
- In discussing case law, make it more attainable/digestible to the public. If officers are not versed in case law, attendees had concerns about how versed the public could be.
- It would benefit the policy to include information on how data will be kept on arrests without (or with) an arrest warrant.

NPD Response:

NPD uses case law examples which are easily searched via the internet to understand the practical application and the legal standard set for portions of the policy. Data is kept on arrests with or without an arrest warrants in done thought the Newark Police Division's Records Management System.

2. (B) Disorderly & Petty Disorderly Persons Offenses

Draft Policy:

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

Feedback and Recommendations:

- The use of “shall” creates a strong incentive for NPD members to arrest, even for petty offenses like shoplifting or petty fighting.
- Relatedly, community members find that theft of library materials and shoplifting seem very unimportant.

NPD Response:

This language is taken directly from the statute N.J.S. 2A:169-3 and cannot be modified.

ENTRY INTO A STRUCTURE TO EFFECT AN ARREST **(Policy Section IX)**

1. General Comments

Feedback and Recommendations:

- More plain language around what “exigencies” are is needed. Real-life case facts and examples will make this very situational term feel more real to community members.

- Having an “air unit” will make people less likely to be hit by police cars when chased in hot pursuit.
- Clarity is needed by community members concerning when NPD uses flashbangs, no-knock entries, and military-grade force pertaining to this section.

NPD Response:

Exigencies are explained in each section. There is an NPD General Order 08-01 “Distraction Devices” policy concerning flashbangs. No-knock entries is not covered in this policy because it is not exclusive to arrests, it could also be used in search warrants and is not done when appropriate, it is explicitly prescribed or prohibited in the warrant issued by the judge.

NPD does have a helicopter. Its use is regulated by maintenance, budgetary, and weather condition constraints.

The term “hot pursuit” as used in this section and as used in case law does not apply to vehicle pursuits. It speaks to the ability of a police officer to follow a fleeing suspect into a house after the officer witnesses a qualifying crime without the need to wait to obtain an arrest warrant or search warrant.

TRAINING **(Policy Section XIV)**

2. General Comments

Feedback and Recommendations:

- The amount of training (sixteen hours, namely) is not enough.
- Community members have concerns about the quality of the trainings, as well as transparency (e.g. knowing ahead of time who will be administering them).
- Community members are particularly interested in knowing how training will enforce that police should get arrest warrants instead of relying on warrantless searches.
- There should be clarity around how training will impact such police discretion as conceptualizing what a “reasonable person” is.

NPD Response:

The Consent Decree requires 16 hours of initial training specifically for the topics of Stop, Search, and Arrest. For all following years, there will be an additional 40 hours of training required by the Consent Decree. Of those 40 hours, a minimum of 4 hours per year of continuing education on stops, searches and arrests is mandated.

“Community members are particularly interested in knowing how training will enforce that police should get arrest warrants instead of relying on warrantless searches.” Arrest warrants are a totally different topic than search warrants (or warrantless searches). In both the search and the arrest policy, it is explicitly explained that the preferred method of operation is obtaining a warrant. The policies detail some typical situations where conducting arrests or searches is permissible without a warrant.

NPD would have no problem posting who will be administering the training and what qualifications he possesses to teach to this topic.

As prescribed by the Consent Decree, training on stops, searches and arrest must incorporate a method to determine officers’ level of retention and/or a need for follow up. This has been achieved in the past through a test given at the beginning of the class and then again at its conclusion. This helps the NPD not only gauge retention, but also the effectiveness of the instructor.

At this moment, NPD believes its will dedicate officers to two back to back 8-hour days to complete the initial 16 hour requirement. NPD believes that because all three topics are so closely related (the possibility of a stop leading to a search or an arrest, and/or the possibility of a search leading to an arrest) they should be delivered together.

De-escalation and sensitivity training are separate topics that are offered by the NPD Training Division, as well as though outside police academies. The training prescribed by the Consent Decree, as well as this policy, focuses on Stop, Search and Arrest.

The training is required by the Consent Decree to be “taught by a qualified legal instructor with significant experience in First and Fourth Amendment issues.”

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

Often officers are in "hot pursuit" of what seem like petty crimes (a teenager ~~with~~ carrying drugs) and speeds through public housing complexes and through highly populated areas, putting everyone in danger. What are priorities? Isn't killing a child in a hot pursuit worse →

· Than a teen w/ drugs getting away?

The term "hot pursuit" as it pertains to the "Arrest With or Without an Arrest Warrant" policy is an example of one of the exigent circumstances which authorize an officer to legally enter any structure to effect the arrest of someone who has committed an indictable offense without an arrest or search warrant.

In the "Arrest With or Without an Arrest Warrant" policy, hot pursuit means that an officer has probable cause to arrest a suspect and the pursuit of the fleeing felon (for an indictable offense) was set in motion in a public place.

In terms of vehicle pursuits, which is when an officer in a vehicle pursues a person who is suspected of committing a crime and is attempting to elude officers in another vehicle, NPD officers are guided by General Order # 94-03 “Vehicle Pursuit Policy” which states:

“The primary purpose of this policy is to secure a balance between the protection of the lives and safety of the public and police officers, and law enforcement's duty to enforce the law and apprehend violators. Since there are numerous situations which arise in law enforcement that are unique, it is impossible for this policy or any standard operating procedure to anticipate all possible circumstances. Therefore, this policy is intended to guide a police officer's discretion in matters of vehicular pursuit.

Deciding whether to pursue a motor vehicle is among the most critical decisions made by law enforcement officers. It is a decision which must be made quickly and under difficult, often unpredictable circumstances. In recognition of the potential risk to public safety created by vehicular pursuits, no officer or supervisor shall be criticized or disciplined for a decision not to engage in a vehicular pursuit or to terminate an ongoing vehicular pursuit based on the risk involved, even in circumstances where this policy would permit the commencement or continuation of the pursuit.”, and

“A police officer has the authority, at all times, to attempt the stop of a person suspected of having committed any criminal offense or traffic violation. The authorization requirement for a vehicle pursuit must exist prior to the initiation of a pursuit. The officer’s decision to pursue should always be undertaken with the awareness of the degree of risk to which the law enforcement officer exposes himself and others. **The supervisor and the officer must weigh the need for immediate apprehension against the risk created by the pursuit.** When believing a pursuit may be imminent, the officer must determine the following:

1. Likelihood of successful apprehension.
2. Whether the identity of the violator is known, to the point where later apprehension is possible.
3. Degree of risk created by the pursuit:

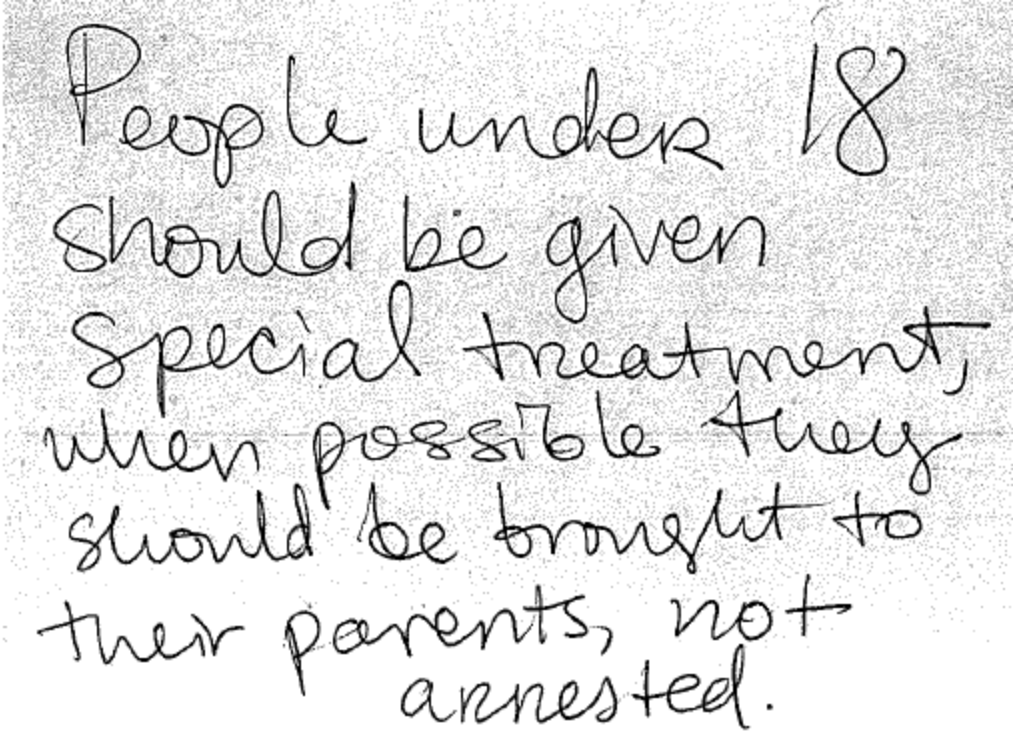
- a. Volume, type, speed, and direction of vehicular traffic.
 - b. Nature of the area: residential, commercial, school zone, open highway, etc.
 - c. Population density and volume of pedestrian traffic.
 - d. Environmental factors such as weather and darkness.
 - e. Road conditions: construction, poor repair, extreme curves, ice, etc.
4. Police Officer characteristics:
- a. Driving skills.
 - b. Familiarity with roads.
 - c. Condition of police vehicle.”, and

“The pursuing officer must terminate the pursuit:

- a. **If the officer believes that the danger to the pursuing officers or the public outweighs the necessity for the immediate apprehension of the violator.**
- b. If instructed to do so by a Supervisor.
- c. If the violator’s identity is established, to the point where later apprehension may be accomplished, and where there is no immediate threat to the safety of the public or police officers.
- d. If the pursued vehicle’s location is no longer known, or the distance traveled between the pursuing vehicles and the violator’s vehicle becomes so great that further pursuit is futile.
- e. If there is a person injured during the pursuit, and there are no police or medical personnel able to render assistance.
- f. **If there is a clear and unreasonable danger to the police officer or the public. A clear and unreasonable danger exists when the pursuit requires that the vehicle be driven at excessive speeds, or in any other manner which exceeds the performance capabilities of the pursuing vehicles, or the police officers involved in the pursuit.**”

The NPD “Vehicle Pursuit Policy” is largely guided by the N.J. Attorney General’s New Jersey Police Vehicular Pursuit Policy, which can be viewed following the below link:

http://www.njdcj.org/agguide/vehpurs_2009.pdf

A handwritten note on lined paper. The text is written in cursive and reads: "People under 18 should be given special treatment, when possible they should be brought to their parents, not arrested." The paper has horizontal lines and a vertical margin line on the left.

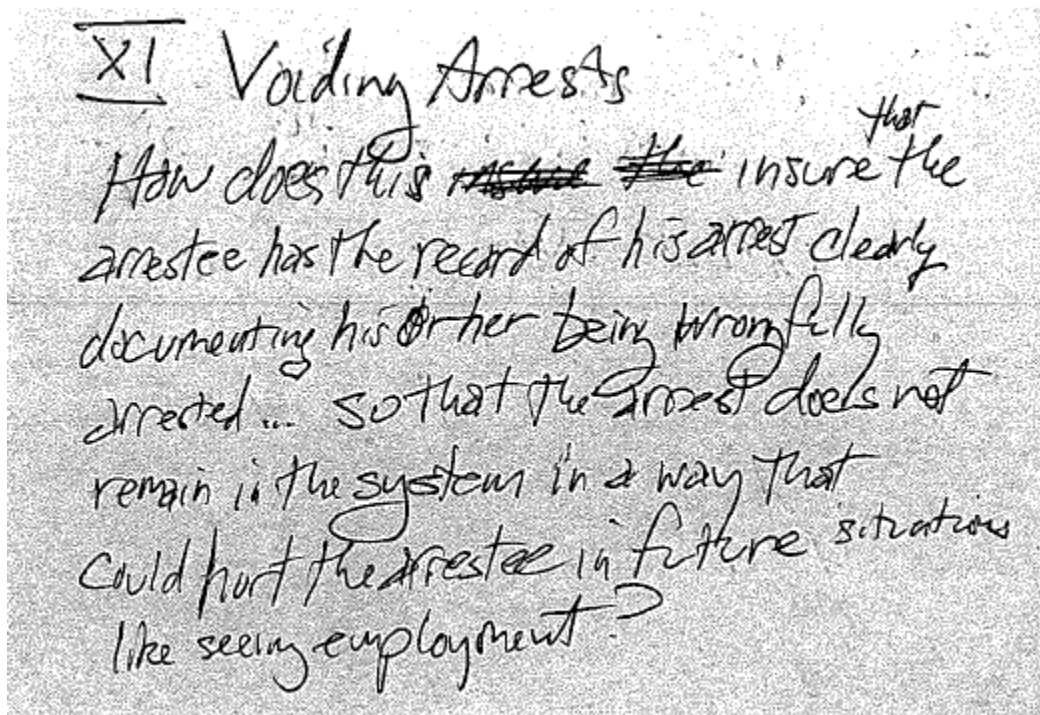
People under 18
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NPD has General Order # 14-16 “Stationhouse Adjustments” which provides general guidelines for Newark Police Division personnel to follow in the handling of stationhouse adjustments for juvenile offenders. In certain situations, the officer has the discretion to handle a juvenile matter either informally or formally. Informal handling occurs when a first-time juvenile offender commits a minor juvenile delinquency offense. Formal handling occurs when the juvenile is brought before the juvenile court or an intake officer for further processing.

Stationhouse adjustments are allowed to the extent that they meet the requirements of New Jersey Attorney General Law Enforcement Directive No. 2008-2 “Attorney General Guidelines for Stationhouse Adjustment of Juvenile Delinquency Offenses”. It can be viewed in its entirety at:

<http://www.njdcj.org/agguide/directives/dir-2008-2.pdf>

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



On page 13 of the “Arrest With or Without an Arrest Warrant” policy, under section “XI. Voiding Arrests” it clearly states in bold:

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

This pertains to instances where the information needed to void the arrest is discovered before charges are filed.

If charges are already filed, the process will be handled by the courts where the case will be adjudicated.

Re Section 13 - 12312 Supervision - Newark
The 2nd and 5th Precincts are already
outfitted with Body Worn and Car Cameras
~~When will the others be?~~
What is the time frame for the entire
department to be fully outfitted with
Body Worn Cameras and Car
Cameras?

The Newark Police Division expects to have the body worn camera program fully implemented before the end of 2018.

Is there a protocol for the arrest of an adult in the presence of children? What about the arrest of a child? Do you receive calls from schools and how do you handle them? I strongly believe that police do not have to be involved in

children behavioral problems.

~~The Bureau of State~~

I'd like to receive the answers to the following address:

mariaerad@gmail.com
* Last year I handed in a ~~for~~ written protocol (created by Allegheny police department (PA)) to Lieutenant Mathew Milton)

The “Arrests With or Without an Arrest Warrant” policy under section “II. Policy”, on page 2 it states:

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

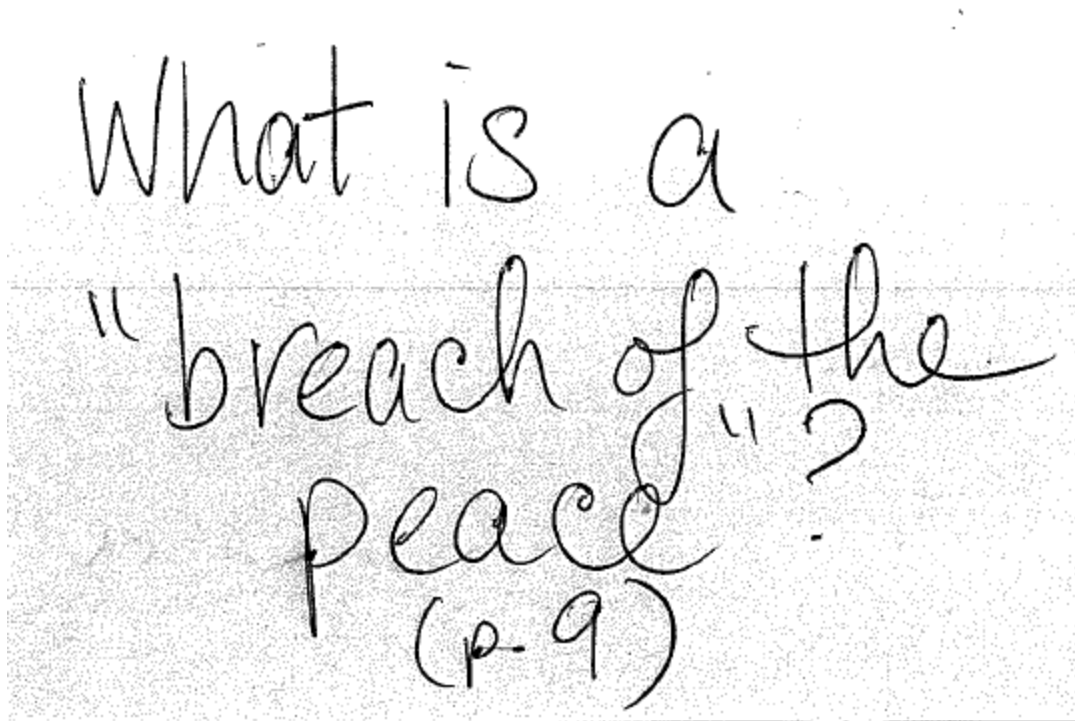
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Officers are regularly called to schools to intervene in situations deemed as police matters, such as maintaining peace and safety, protection of life, and to conduct investigations into potential violations of the law. NPD dedicates officers to be available to the schools within the City of Newark. Behavioral problems are handled by the children’s parents, guardians, school officials, and/or the proper qualified medical professionals.



In case law, *State v. Hurtado*, 113 N.J. 1 (1988), "breach of the peace" has been described as anything that disrupts "the tranquility enjoyed by citizens of a community where good order reigns among its members." When determining if a given act amounts to a breach of the peace is decided by considering the time, place, and the circumstances under which, the act was committed. It has also been said that violence is not a vital part of the offense.

Acts amounting to a breach of the peace are, but are not limited to:

- public fighting;
- challenging or provoking another to fight;
- engaging in an commotion;
- discharging a firearm on a public street;
- unlawfully possessing or selling liquor;
- being intoxicated and yelling on a public street;
- entering the dwelling house of another with weapons in such manner as to cause terror and alarm to the occupants.

(pp. 16-17)
How will collected
data be publicized
and made transparent?

Discipline administered has been publically available on the Newark Police Division website at:

<https://npd.newarkpublicsafety.org/statistics/transparency>

There are several light blue colored tabs that speak to different categories of transparency, but to examine the information regarding discipline from violations in substance, click on the “Printable Version” tab, pick a monthly report and examine the last page of the document titled, “Professional Standards Data”

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 6 states:

“Each agency must periodically 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.”

Starting 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.”

Page 48 states:

“An annual report summarizing the types of complaints received and the dispositions of the complaints shall be made available to the public. The names of complainants and subject officers shall not be published in this report.”

When will (or should)
an officer issue a
summons instead of
conduct an arrest?
(p.8-9)

Officers should issue a summons (a.k.a. *Special Form of Complaint and Summons* or Blue Summons), shall be used for any action, as prescribed by the Administrative Director of the Courts, in place of any other form of complaint and summons. R.7:2-1(f),

<https://www.judiciary.state.nj.us/attorneys/assets/rules/r7-2.pdf>

On September 29, 1998, the Administrative Office of the Courts directed that the new “Special Form of Complaint and Summons” (the “Special Form”) may be used, as of January 1, 1999, for any of the following non-indictable offense venued in the municipal courts:

- Disorderly/petty disorderly persons offenses, except for (a) those involving domestic violence, and (b) those with a companion indictable matter
- Local ordinance violations
- Code enforcement actions
- Penalty enforcement actions (R.7:2-1(g))
- Boating offenses
- Parking and traffic offenses where a private citizen is the complaining witness

Under R.7:2-2(a)(2), a summons on a complaint made by a law enforcement officer charging any offense may be issued by a law enforcement officer or by any person authorized to do so by statute without a finding by a judicial officer of probable cause for issuance. A law enforcement officer may personally serve the summons on the defendant without making a custodial arrest.

Have you incorporated the
Criminal Justice Reform
Act's mandates about when
a summons or warrant will
be issued? See Rule 3:3
+ AG Guidelines

The Newark Police Division complied with the tenets of the Criminal Justice Reform Act's mandates to when a summons or warrant are to be issued. General Order # 16-04 "Bail Reform" states:

"On August 11, 2014 Governor Chris Christie signed the Bail Reform Act (S946) as part of the Criminal Justice Reform. The State of New Jersey will shift from a system that relies principally on setting monetary bail as a condition of release to a "risk-based" system that considers objective factors unrelated to a defendant's ability to pay monetary bail.

The Criminal Justice Reform will change the procedures judges use to set conditions of release and how quickly a criminal defendant is tried. It will have a positive impact on thousands of people who would otherwise be detained until trial because they cannot afford even a modest bail amount. This unprecedented reform initiative will take effect on January 1, 2017 and requires prosecutors to be available to provide legal advice and charging instructions to police before a criminal complaint is filed.",

and

"The purpose of this order is to establish operational procedures and responsibilities for both police officers and supervisors, after an individual has been arrested based on probable cause and determining if the criminal charges will be prepared on a Complaint-Summons form (eCDR 1) or on a Complaint-Warrant (eCDR 2). The

summons or warrant will only be prepared after the prisoner has been fingerprinted. All officers shall be required to comply with the provisions outlined in this procedure.”

Officers are guided by “Rules Governing the Courts of the State of New Jersey R. 3:3 Summons or Warrant Upon Complaint”

(<https://www.judiciary.state.nj.us/attorneys/assets/rules/r3-3.pdf>) when deciding to place a complaint on a warrant or a summons. Furthermore, an Assistant Prosecutor from the Essex County Prosecutor’s Office is responsible for reviewing the facts of each case, authorizing the charges to be filed, and deciding whether the charges will be placed on a summons or a warrant for each arrest the Newark Police Division currently makes.

p. 11 ~~at G.~~
How will arrestee
safety be safeguarded
during transport?

Arrestee safety will be safeguarded during transport by securing them in the portion of the patrol car where they can safely travel and securing their seatbelt in accordance with Title 39:3-76.2f

39:3-76.2f Seat belt usage requirements; driver's responsibility.

2. a. Except as provided in P.L.1983, c.128 (C.39:3-76.2a et al.) for children under eight years of age and weighing less than 80 pounds, all passengers under eight years of age and weighing more than 80 pounds, and all passengers who are at least eight years of age but less than 18 years of age, and each driver and front seat passenger of a passenger automobile operated on a street or highway in this State shall wear a properly adjusted and fastened safety seat belt system as defined by Federal Motor Vehicle Safety Standard Number 209.

b. The driver of a passenger automobile shall secure or cause to be secured in a properly adjusted and fastened safety seat belt system, as defined by Federal Motor Vehicle Safety Standard Number 209, any passenger who is at least eight years of age but less than 18 years of age.

c. All rear seat passengers 18 years of age or older of a passenger automobile operated on a street or highway in this State shall wear a properly adjusted and fastened safety seat belt system as defined by Federal Motor Vehicle Safety Standard Number 209.

For the purposes of the "Passenger Automobile Seat Belt Usage Act," the term "passenger automobile" shall include vans, pick-up trucks, and utility vehicles.

L.1984, c.179, s.2; amended 1999, c.422, s.1; 2001, c.244, s.2; 2009, c.318, s.1.

NPD will add language to the "Arrests With or Without an Arrest Warrant" policy on page 11, under section X. Arrest Procedures to reflect that officers are required to safely secure arrestees in NPD transport vehicles with a properly adjusted and fastened safety seat belt system as defined by Federal Motor Vehicle Safety Standard Number 209.

Why aren't repeat offenders
kept in jail after arrest?

(Many times there are often repeat
crimes: shootings, homicides,
armed robberies, burglaries, while
out on bail.)

The Newark Police Division must comply with the tenets of the Criminal Justice Reform Act's mandates to when a summons or warrant are to be issued upon arrest. General Order # 16-04 "Bail Reform" states:

"On August 11, 2014 Governor Chris Christie signed the Bail Reform Act (S946) as part of the Criminal Justice Reform. The State of New Jersey will shift from a system that relies principally on setting monetary bail as a condition of release to a "risk-based" system that considers objective factors unrelated to a defendant's ability to pay monetary bail.

The Criminal Justice Reform will change the procedures judges use to set conditions of release and how quickly a criminal defendant is tried. It will have a positive impact on thousands of people who would otherwise be detained until trial because they cannot afford even a modest bail amount. This unprecedented reform initiative will take effect on January 1, 2017 and requires prosecutors to be available to provide legal advice and charging instructions to police before a criminal complaint is filed.",

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How have criminal defense attorneys and public defenders in particular been consulted in designing this policy?

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.

The subject matter experts hired by the Independent Monitoring Team can be found on the following website for review:

<https://www.newarkpdmonitor.com/monitor-team/>

The community of Newark, NJ, as a whole, was invited to participate in community input forums in an effort to consider recommendations from all. The forums were advertised on the NPD website, on social media, through community groups the NPD had been working with and became aware during while participating in community outreach programs. At the forums, among others in attendance, were employee(s) from the the N.J. Office of the Public Defender who have submitted comments for consideration for the final version of this and other NPD policies.

Although the forum on the one topic of Arrests was one day, there were multiple weeks in which the community, including criminal defense attorneys, public defenders, the Newark Civilian Complaint Review Board and the ACLU of NJ, were able to submit input (at subsequent forums, and/or over the internet via the independent monitoring

team's website and the NPD Consent Decree Planning Unit's website). NPD did get those comments back and incorporated ideas where it felt valuable additions could be made.

Can the captain speak to the changing parameters of training & how the new policies will be explicitly used in training procedures, etc.?

The Stop, Search, and Arrest policies will be used as the skeleton for the required Stop, Search, and Arrest training. It will guide many of the topics that will be expanded upon when presented to all NPD officers. Some topics will be deemed more sensitive and require more detail and time and others will require less. Scenarios will be created from community input and real life circumstances, like case law and identified NPD deficiencies.

As prescribed by the consent decree, training on stops, searches and arrests must incorporate a method to determine officers' level of retention and/or a need for follow up. This has been achieved in the past through a test given at the beginning of the class and then again at its conclusion. This helps the NPD not only gauge retention, but also the effectiveness of the instructor.

The Consent Decree requires 16 hours of initial Stop, Search and Arrest training for all, and at least four hours annually thereafter, taught by a qualified legal instructor. 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.

At this moment, NPD believes its will dedicate officers to two back to back 8-hour days to complete the initial 16 hour requirement. NPD believes that because all three topics are so closely related (the possibility of a stop leading to a search or an arrest, and/or the possibility of a search leading to an arrest) they should be delivered together.

The Consent Decree requires that training must be “taught by a qualified legal instructor with significant experience in First and Fourth Amendment issues.”

The new policies will be used to guide the topics of training for the initial 16 hours of training delivered. Following training lesson plans will be dependent on topics that are shaped by new laws, fresh case law decisions, and identified training deficiencies.

Are you sharing the
Case law in the 16 hr
training.

Many, if not all, of the case law decisions cited in this policy will be part of the initial 16 hours of mandatory training on Stop, Search, and Arrest and NPD will highlight cases that need to be reiterated during the subsequent four hours of required yearly training.

• Key
Article 1, Paragraph 7

Will citizenship status be a consideration for arrest. If not, how will undocumented persons be protected in compliance with Newark's sanctuary city status

Citizenship will not be considered by officers when seeking to make an arrest or whether to seek an arrest warrant.

The rights of a person not legally in the country are the same as every other person. Officers are guided by N.J. Attorney General Law Enforcement Directive No. 2007-3 when interacting with someone they may suspect are in the United States illegally. Please follow the below link to the N.J. Attorney General Law Enforcement Directive No. 2007-3:

http://www.njdcj.org/agguide/directives/dir-le_dir-2007-3.pdf

NPD General Order 13-04 "Notification to Immigration & Customs Enforcement" states:

"The following procedures are in accordance with New Jersey Attorney General Directive 2007-3:

1. Members of the Newark Police Division who are arresting a person for an indicatable offense
2. or driving while intoxicated, as part of the arrest process, shall inquire about the arrestee's citizenship, nationality and immigration status. If the officer has reason to believe that the person may not be lawfully present in the United States, the officer shall notify ICE during the arrest process. 2. The only exception to this requirement shall be if the County Prosecutor or the Director

of the Division of Criminal Justice determines, in writing, that good cause exists to refrain from notifying ICE during the arrest process.”

And,

“Detainers are only requests made by ICE; compliance is voluntary, therefore should a member of the Newark Police Division receive a detainer request from ICE, the detainer shall not be accepted and the following procedure shall be adhered:

1. **All division personnel shall decline ICE detainer requests.**
2. **There shall be no expenditure of any divisional resources or effort by on-duty personnel to comply with an ICE detainer request.**
3. **Any person who alleges a violation of this general order may file a written complaint for investigation with the Office of Professional Standards.**
4. **4. Nothing in the general order shall be construed to alter the Newark Police Division’s obligations to report information to ICE (in compliance with NJ AG Directive 2007-3) upon the arrest of an individual.”**

When an arrest is not justifiable a
② "non-disciplinary corrective action" may
be recommended for arresting officer
(Pg 14). Do we currently have an
understanding of corrective actions that
would be enforced?



"Recommending non-disciplinary corrective action for the involved officer" is only one of possible outcomes when a field supervisor needs to take appropriate actions to address a violation or deficiencies in an officer's arrest recommendation. The supervisor's recommendation will be based on the totality of the circumstances and the facts discovered during an investigation into whether a violation of policy or the law has occurred.

Also, just because someone was arrested for a "mistake of the law" doesn't automatically make the arrest unconstitutional. The United States Supreme Court has ruled in, *Devenpeck v. Alford*, 152 S.Ct. 588 (2004), that as long as the facts of the case give rise to probable cause, a mistake of the law (e.g. charging someone with the wrong statute) does not invalidate an arrest.

An arrest is not rendered unlawful simply because an arresting officer's subjective reason for making an arrest is not the precise criminal offense as to which the known facts provide probable cause. Were the law otherwise, an arrest made by a knowledgeable, veteran officer would be valid, whereas an arrest made by a rookie in precisely the same circumstances might not.

What exactly are the officers' objections to the establishment of the Civilian Complaint Review Board when it ~~was~~ is a provision of the Consent Decree?

Page 10, paragraph 13 of the Consent Decree
(<https://www.justice.gov/opa/file/836901/download>) states:

“A. Civilian Oversight

13. During the term of this Agreement, and to the extent permitted by law, including civil service rules and any collective bargaining agreements, the City will fund and maintain a civilian oversight entity for NPD, the structures and protocols of which adhere to the principles of this Agreement. To facilitate this civilian oversight entity's ability to address the needs and concerns of Newark's residents and increase confidence in the NPD, within 90 days of the Effective Date, the City will establish a mechanism to work with a broad spectrum of Newark community stakeholders, including police unions and DOJ, to determine the appropriate form and scope of oversight, within the parameters of this Agreement. The civilian oversight entity will include elements to assist NPD in adhering to the principles of this Agreement and foster positive relations between NPD and the Newark community. The Monitor will evaluate and report on the City's establishment and ongoing implementation of this civilian oversight entity to determine if it is achieving the goals of this Agreement.”

The officers of the Newark Police Division did not challenge the legality of the Civilian Complaint Review Board in court. The Fraternal Order of Police (Lodge #12), one of the several unions which many (but not all) Newark Police Division officers may be members of, challenged the legality of some of the powers which were endowed upon the Civilian Complaint Review Board by the City of Newark, NJ.

This challenge was based upon N.J. State law (4A:14-181 Internal Affairs and 40A:14-118 Authority of Chief of Police) and the current collective bargaining agreement between the City of Newark and the Newark Police Division officers.

On March 15, 2018 Superior Court Judge Donald Kessler ruled that the Newark Civilian Complaint Review Board did not legally have the ability to subpoena or investigate police. The ruling does not prevent the City of Newark from establishing a Civilian Complaint Review Board or allowing it to act in other legal capacities.

The ruling has been appealed by the City of Newark, which governs the Newark Department of Public Safety and oversees the Newark Police Division. The appeal remains in litigation as of July 17, 2018.

Intensity of use of force -
 what is the policy as to when
 you shoot, tazer and is
 shooting as last resort pushed in
 training.
 Important community aware what police
 are there initiatives to get
 info out to community rather
 than leaders. Billboards, signs
~~at the police station~~
~~with the police~~

The Newark Police Division has an established use of force policy (General Order # 63-02 "Use of Force by Police Officers") which covers the topic of use of force by officers in all situations, not just arrests.

In accordance with the Consent Decree, NPD will be updating its use of force policy and will be training officers on the topic for a minimum of eight hours initially, and then four hours per year thereafter. The draft version of the new NPD use of force policy can be viewed by following the "Use of Force Policy Draft" link under the "Draft Policies" section of the below website:

<https://www.npdconsentdecree.org/policies>

NPD's use of force policy is largely guided by the N.J. Attorney General's Use of Force Policy:

<http://www.nj.gov/oag/dcj/agguide/useofforce2001.pdf>

The NPD also has a policy guiding the use of Tasers, a.k.a. Conducted Energy Devices, or Conducted Energy Weapons, (General Order # 14-06 "Conducted Energy Devices").

The policy is largely guided by the N.J. Attorney General's Revised Supplemental Policy on Conductive Energy Devices:

http://www.njdcj.org/agguide/pdfs/2010-1007_AG-Conducted-Energy-Devices_Revised-Supplemental-Policy.pdf

The NPD Consent Decree and Planning Division has created a website to meet the needs of the Consent Decree, one of which is transparency of policies. Some of the NPD policies which are required to be re-written have been posted to this website, either in draft and approved forms. Another goal that needs to be achieved is access by the community to all NPD policies, which NPD hopes to accomplish in the near future.

CONSENT DECREE WILL BE
SUCCESSFUL
IF AND ONLY IF
CRIME GOES DOWN;
OTHERWISE,
IT'S A FAILURE!!

Keeping the public, both residents and visitors, safe has always been and will continue to be one of the top priorities of the NPD.

Almost half of Newark homes
speak a language other
than English. How have
these policies been
communicated ~~to~~ to them?
How have they been engaged?

NPD is in the process of translating the content found on the Consent Decree and Planning Division's website into the most commonly spoken languages in the city. As this is achieved, NPD will do its best to move on to other languages spoken in the city so it can be understood by all.

Are there different types
of Warrant one that allow
you to search the house
& one that allow you
to search the person.

Search warrants are issued by an independent judge who examines the facts of the case to determine if probable cause exists for a search. The warrant authorizes an officer to search an area if probable cause to believe a violation of law has been, is about to be, or is in the process of being committed and probable cause to believe evidence of that specific violation of law exists within the area listed on the search warrant.

Can we talk about
the ~~defendant~~
Eluding and why
is a high percent of
defendants charged with
this offense.

N.J.S.2C:29-2 is the N.J. charge for eluding. It is charged when probable cause exists to believe the below criteria has been met.

2C:29-2. Resisting arrest, eluding officer

2C:29-2. Resisting Arrest; Eluding Officer. a. (1) Except as provided in paragraph (3), a person is guilty of a disorderly persons offense if he purposely prevents or attempts to prevent a law enforcement officer from effecting an arrest. (2) Except as provided in paragraph (3), a person is guilty of a crime of the fourth degree if he, by flight, purposely prevents or attempts to prevent a law enforcement officer from effecting an arrest. (3) An offense under paragraph (1) or (2) of subsection a. is a crime of the third degree if the person:

(a) Uses or threatens to use physical force or violence against the law enforcement officer or another; or

(b) Uses any other means to create a substantial risk of causing physical injury to the public servant or another.

It is not a defense to a prosecution under this subsection that the law enforcement officer was acting unlawfully in making the arrest, provided he was acting under color of his

official authority and provided the law enforcement officer announces his intention to arrest prior to the resistance.

b. Any person, while operating a motor vehicle on any street or highway in this State or any vessel, as defined pursuant to section 2 of P.L.1995, c.401 (C.12:7-71), on the waters of this State, who knowingly flees or attempts to elude any police or law enforcement officer after having received any signal from such officer to bring the vehicle or vessel to a full stop commits a crime of the third degree; except that, a person is guilty of a crime of the second degree if the flight or attempt to elude creates a risk of death or injury to any person. For purposes of this subsection, there shall be a permissive inference that the flight or attempt to elude creates a risk of death or injury to any person if the person's conduct involves a violation of chapter 4 of Title 39 or chapter 7 of Title 12 of the Revised Statutes. In addition to the penalty prescribed under this subsection or any other section of law, the court shall order the suspension of that person's driver's license, or privilege to operate a vessel, whichever is appropriate, for a period of not less than six months or more than two years.

In the case of a person who is at the time of the imposition of sentence less than 17 years of age, the period of the suspension of driving privileges authorized herein, including a suspension of the privilege of operating a motorized bicycle, shall commence on the day the sentence is imposed and shall run for a period as fixed by the court. If the driving or vessel operating privilege of any person is under revocation, suspension, or postponement for a violation of any provision of this Title or Title 39 of the Revised Statutes at the time of any conviction or adjudication of delinquency for a violation of any offense defined in this chapter or chapter 36 of this Title, the revocation, suspension, or postponement period imposed herein shall commence as of the date of termination of the existing revocation, suspension, or postponement.

Upon conviction the court shall collect forthwith the New Jersey driver's licenses of the person and forward such license or licenses to the Director of the Division of Motor Vehicles along with a report indicating the first and last day of the suspension or postponement period imposed by the court pursuant to this section. If the court is for any reason unable to collect the license or licenses of the person, the court shall cause a report of the conviction or adjudication of delinquency to be filed with the director. That report shall include the complete name, address, date of birth, eye color, and sex of the person and shall indicate the first and last day of the suspension or postponement period imposed by the court pursuant to this section. The court shall inform the person orally and in

writing that if the person is convicted of personally operating a motor vehicle or a vessel, whichever is appropriate, during the period of license suspension or postponement imposed pursuant to this section the person shall, upon conviction, be subject to the penalties set forth in R.S.39:3-40 or section 14 of P.L.1995, c.401 (C.12:7-83), whichever is appropriate. A person shall be required to acknowledge receipt of the written notice in writing. Failure to receive a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of violation of R.S.39:3-40 or section 14 of P.L.1995, c.401 (C.12:7-83), whichever is appropriate. If the person is the holder of a driver's or vessel operator's license from another jurisdiction, the court shall not collect the license but shall notify the director who shall notify the appropriate officials in the licensing jurisdiction. The court shall, however, in accordance with the provisions of this section, revoke the person's non-resident driving or vessel operating privileges, whichever is appropriate, in this State.

For the purposes of this subsection, it shall be a rebuttable presumption that the owner of a vehicle or vessel was the operator of the vehicle or vessel at the time of the offense.

L.1978, c.95; amended 1979, c.178, s.57; 1981, c.290, s.28; 1989, c.84; 1991, c.341, s.3; 1993, c.219, s.5; 1995, c.401, s.54; 2000, c.18, s.2.

I know we are going
over the proposed changes
but having any of these
changes start happening.

Officers of the Newark Police Division have been trained in what the Consent Decree is and are aware that changes will need to be made and new standards met in order to better serve the community it serves. Until policies are finalized and training is administered, NPD cannot establish an accurate account if the reforms are being received by the officer and achieved.

As prescribed by the Consent Decree, training on stops, searches and arrests must incorporate a method to determine officers' level of retention and/or a need for follow up. This has been achieved in the past through a test given at the beginning of the class and then again at its conclusion. This helps the NPD not only gauge retention, but also the effectiveness of the instructor. The Consent Decree requires 16 hours of initial Stop, Search and Arrest training for all, and at least four hours annually thereafter, taught by a qualified legal instructor with significant experience in First and Fourth Amendment issues.

The launch date for all new policies depends on development time, multiple review periods (Internal NPD, City of Newark Law Department, Independent Monitor, Department of Justice, Community Review and Input, and the Civilian Complaint Review Board) before policies prescribed by the Consent Decree can be fully implemented.

The changes pertaining to the new stop policy will be measured through analysis of enforcement activities (Early Warning System), which will compare NPD officers against other NPD officers who are placed in similar working conditions to ensure that any one officer is not operating outside of the normal range.

The overall changes will be measured through community feedback and satisfaction surveys.

The policy referenced on pg. 11, section 2, how often would you say in practice is that followed? Do you believe that supervisors are actually called when officers find themselves in situations that are referenced in the bullet points.

This policy has not been approved yet, but once it is approved and published all NPD members will be required to follow it. This section states:

An officer will notify a supervisor and request their presence immediately after effecting an arrest:

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

Starting on page 13, under section “XII. Supervisor Responsibilities” and “A. Field Supervisors” the policy reads:

1. Field supervisors will respond to the incident scene, absent exceptional circumstances, to approve arrests made by officers:
 - where the officer used force;
 - where an officer unholstered or pointed a firearm in response to a perceived human threat;
 - for obstructing the administration of law;
 - for resisting arrest;
 - for disorderly conduct;
 - for a violation where there is a breach of the peace;
 - for a custodial arrest for a motor vehicle infraction
2. If the officer’s immediate supervisor is unable to respond to the scene to approve the arrest, the officer will notify the Central Communications Unit. The Central Communications Unit will attempt to locate another available supervisor from the field to respond to the incident scene for arrest approval.
3. If a field supervisor is unable to respond to the incident scene, the supervisor who is unable to respond will document the circumstances preventing his or her presence in the case file. This documentation can be done by executing an Administrative Report (D.P.I. 1001) under the specific event number and/or central complaint number in the Records Management System for the incident.
4. The field supervisor will approve or disapprove the officer’s arrest recommendation, based on existence of justifiable probable cause and NPD policy.

5. The field supervisor will take appropriate actions to address a violation or deficiencies in the officer's arrest recommendation, including:

- immediately releasing the subject;
- recommending non-disciplinary corrective action for the involved officer and/or;
- referring the incident for administrative or criminal investigation.

All arrests need to be reviewed by a prosecutor, who authorizes charges, and a NPD supervisor, who reviews the facts of the case and the reports generated. If an officer arrests someone for one of the above mentioned charges, then the officer will not be able to process the arrestee without going through the review process and a supervisor identifying that a violation of NPD policy had occurred.

The demographic
description → How close
to the physical area
is the description relevant.
What's the time period
where a description is
still relevant? What is a
trustworthy source?

This policy prohibits officers from using demographic categories to generally profile based on demographics (which is illegal), but allows officers to use fresh intelligence to investigate crimes that occurred nearby based on a description of the suspect given from victims and/or witnesses.

In general terms when using "Be On the Look Out" (BOLO) as an investigative tool, there needs to be a ratio applied. The closer in proximity to the scene of the crime and the more immediate the timeframe in which the possible the suspect was discovered, the more weight this factor holds in the totality of the circumstances (police would also need to consider other independent factors such as a clothing, height, weight, perceived gender, skin complexion in this analysis).

Equally so, if it is impossible that a potential suspect could have reached a certain location within the time period that has elapsed since the crime was committed, it is obviously impossible that the person the police may be viewing is the suspect in question.

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 in-person victim of a

crime, is cooperating with a police investigation and is willing to give a statement with identification as to where the police received the information from.

There is no exact formula, but all circumstances must be judged on the totality of the circumstances 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.

A “trustworthy source” could be a victim or witness to a crime, or it could be a reliable confidential informant.

What happens when
an officer is arresting
someone who doesn't
speak English?
What are their rights?
How do you make sure they
know what's going on?

The rights of someone who does not speak English are the same as everyone else's rights. NPD officers regularly encounter language barriers and can either call for another officer working in the field who is fluent in the same language as the person who came in contact with the police, or officers can call a “language line” telephone translator who is contracted by the city of Newark to translate for the NPD to ensure all understand each other.

Need more information about
warrants executed in a home.
What is governing the use of
flashbangs? smoke grenades?
Other displays of military
force?

The topic of this policy is "Arrests With or Without an Arrest Warrant". NPD has a separate policy, General Order # 08-01 "Distraction Devices" which governs the use of distraction devices (a.k.a. flashbangs), and a separate policy, General Order # 68-02 "Use of Chemical Agents and Non-Lethal Aerosol Incapacitating Agent" which governs the use of smoke grenades.

~~What~~ What will happen
to officers who make
multiple wrongful
arrests? Training is
not effective w/o
consequences for
violating protocol.

This policy "Arrests With or Without an Arrest Warrant" states, "Members, including supervisors found to have violated this Order will be subject to disciplinary action (including counseling, mediation and training) up to and including termination."

The discipline will be guided by the outcome of an investigation conducted by the Office of Professional Standards and the disciplinary matrix being developed pursuant to the Consent Decree.

V. Probable ^{Definitions} Causes

V

Reasonable Suspicion

- Could be improved with greater ~~precision~~ specificity ... with more clear examples

NPD wishes to keep the definitions the same, as they are consistent with commonly cited case law on the topics.

III. Definitions
Not included is the 'Breach of Peace'

Exigent Circumstances
Too legalese in language.
needs clear language and clear examples

The "Arrest With or Without an Arrest Warrant" policy defines exigent circumstances as 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 to prevent injury to themselves or others.

The heart of the listed definition, a compelling urgency or true emergency to believe that prompt action is necessary to prevent injury to themselves or others, is clear and not legalese.

Breach of the peace describes itself, but has been suggested to mean when one disrupts "the tranquility enjoyed by citizens of a community where good order reigns among its members" in case law, *State v. Hurtado*, 113 N.J. 1 (1988).

XII Supervisor Responsibilities

B. Reviewing the available video...

What is the timetable for the entire
department to be fully outfitted
with Body Cameras and Car
Cameras?

The Newark Police Division expects to have the body worn camera program fully implemented before the end of 2018.

~~IV~~ Prohibited Actions

The ~~use of~~ absence of the question
of the use of force

What are the prohibited actions
that come with ~~Prohibited Actions~~
the use of force? (Can't shoot
someone in handcuffs are fully subdued, etc.)

The Newark Police Division has an established use of force policy (General Order # 63-02 "Use of Force by Police Officers") which covers the topic of use of force by officers in all situations, not just arrests.

In accordance with the Consent Decree, NPD will be updating its use of force policy and will be training officers on the topic for a minimum of eight hours initially, and then four hours per year thereafter. The draft version of the new NPD use of force policy can be viewed by following the "Use of Force Policy Draft" link under the "Draft Policies" section of the below website:

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NPD's use of force policy is largely guided by the N.J. Attorney General's Use of Force Policy:

<http://www.nj.gov/oag/dcj/agguide/useofforce2001.pdf>

MEMORANDUM

TO: Newark Police Division
FROM: ACLU-NJ
DATE: June 2018
RE: 18-XX Arrests Policy

Introduction

This memo is a summary of the ACLU of New Jersey's recommendations to the Newark Police Division's draft General Order 18-XX relating to arrests with or without a warrant. The ACLU-NJ has reviewed the policy and respectfully submits the following recommendations. If you have any questions about our comments, our thought process, or anything else about this policy, please feel free to reach out to ACLU-NJ Policy Counsel Dianna Houenou at dhoudenou@aclu-nj.org or ACLU-NJ Executive Director Amol Sinha at asinha@aclu-nj.org. Thank you very much for your time and consideration.

Recommendations

Section II, unnumbered paragraph 4 (page 2)

Comment: Add italicized language to the end of the following sentence: "Officers shall not consider race, color, ethnicity, national origin, religion, gender, disability, sexual orientation, or gender identity in effecting an arrest, except as part of an actual or apparently credible description of a specific suspect or suspects in any criminal investigation, *and then only in combination with other detailed descriptors.*" As we suggested for the policy on investigatory stops and explained in more detail under "Demographic Category" below, we also recommend adding immigration status, economic status, and housing status to this list.

NPD: NPD has no objection to modifying the language in the definition to reflect the suggestion made by the ACLU.

Section III, paragraph A (page 3)

Comment: Change to "make a person reasonably believe they are not free to leave" and add: "All arrests must be based upon probable cause."

NPD: NPD has no objection to adding the language "All arrests must be based upon probable cause." Arrests can occur when officers "make a person reasonable believe they are not free to leave", but so can investigative detentions. NPD would like to leave the other parts of the definition of arrest the same.

Section III, paragraph E (page 3)

Comment: As we suggested for the policies on investigatory stops and searches, 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—emigrated from South Korea. It is 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.

Section III, paragraph G (page 3)

Comment: Add italicized word: “Stops of this manner need to be based on reasonable and articulable suspicion that a violation of law has *just* occurred.” This addition should be made globally in all descriptions of reasonable suspicion.

NPD: NPD has no objection to modifying the language in the definition of all three NPD policies governing Stop, Search, and Arrest to reflect the suggestion made by the ACLU.

Section III, paragraph J (page 4)

Comment: As noted in our comments to the search policy: 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.

Section IV, paragraph B (page 4)

Comment: Add italicized language: "except that officers may rely on a demographic category in a specific suspect description, where the description is from a trustworthy source that is relevant to the locality and time, *and then only in combination with other detailed descriptors.*"

NPD: NPD has no objection to modifying the language to reflect the suggestion made by the ACLU.

Section IV, paragraph F (page 4)

Comment: We are glad to see this language. We note further that this is likewise an impermissible ground for reasonable suspicion to detain or conduct a pat-down search; in other words, that it is not merely impermissible as a basis for probable cause to arrest.

NPD: The NPD's draft of its new policy for "Consensual Citizen Contacts and Investigatory Stops" contains in the "Prohibited Actions" section the following language which speaks to the point the ACLU wishes to emphasize:

"Basing investigatory stops / detentions solely on information or evidence discovered after the stop was initiated (e.g. open warrants) or the fact that the individual was ultimately arrested. Information learned during the stop can lead to additional reasonable suspicion or probable cause that a crime has occurred and may lengthen the legally allowed time for the stop, but cannot provide justification for the original stop."

NPD will inject similar language into the draft version of the "Searches With or Without a Search Warrant" policy to reflect the same intent for searches.

Section V, paragraph D.2 (page 5)

Comment: Add italicized word: “A well-grounded suspicion must be supported by *articulable* facts.”

NPD: NPD has no objection to modifying the language to reflect the suggestion made by the ACLU.

Section V, paragraph E (page 5)

Comment: Change “know the facts” to “be able to articulate the facts”

NPD: NPD has no objection to modifying the language to reflect the suggestion made by the ACLU.

Section V, paragraph F (page 5)

Comment: The clause beginning “although” is vague and unclear. We recommend deleting the clause and ending the sentence after “probable cause.”

NPD: NPD aimed to use the clause beginning “although” to assist officers in understanding that the actions of an arrestee, words expressed by an arrestee, or evidence obtained after the arrest is valuable to prosecution. These facts need to be collected and documented to move the level of suspicion established beyond the original basis found to establish probable cause. NPD aims to ensure officers are not using such items obtained after an arrest has already been made to establish the probable cause needed to affect it.

Section V, paragraph H (page 5)

Comment: The following clause is vague, overbroad, and invites misapplication: “There is no limit to the types of information that can be used to support probable cause.” We recommend deleting this clause and beginning the sentence with “The information.” We also recommend adding the following italicized language: “[T]he information must *be credible*, not be vague and must be able to be documented.”

As to the enumerated factors in paragraph H, we make the following comment: We do not believe any of these factors alone or necessarily in combination would be sufficient to establish probable cause, if they do not specifically and credibly point to criminal activity.

NPD: NPD will keep the clause “There is no limit to the types of information that can be used to support probable cause, but the information must not be vague and must be able to be documented,” because any information can add to the totality of the circumstances.

Being in possession of a roll of duct tape is completely legal. Wearing a ski mask is completely legal. Sitting in a parked car on a hot day is completely legal. Writing down notes in a notebook about your observations is completely legal. Being located across the street from a bank is completely legal. All these things are meaningless when looked at independently.

If all these completely legal seemingly unrelated behaviors happen together, they add up to more than the sum of their parts. The chance that they are all happening together randomly is much smaller than the likelihood that the person sitting inside of a parked car on a hot day across the street from a bank writing notes about their observation wearing a ski mask with a roll of duct tape would give rise to a level of suspicion that warrants police investigation.

NPD contends that when examining the justification for an arrest, the totality of the circumstances (or looking at the “entire picture”) is what will be considered by the courts. NPD agrees that many facts can be singular small components of what is needed to collectively establish probable cause, but maintains that when looked at in the totality of the circumstances, facts that seem to be unrelated may establish probable cause.

NPD has no objection to adding the words “be credible” to the description of the information needed to establish probable cause.

Section V, paragraph J (page 6)

Comment: We do not agree that the whole is necessarily greater than the sum of its parts and recommend deleting this sentence.

NPD: NPD will keep the language from the original draft. NPD contends that when examining the justification for an arrest, the totality of the circumstances (or looking at the “entire picture”) is what will be considered by the courts.

Individual components, which may seem to be totally unrelated, will be looked at together.

Section VI (page 6)

Comment: We do not adopt or otherwise agree with each of these enumerated factors. As a general comment, we note that some of the factors appear to be relevant to the question of whether a field inquiry versus an investigative detention has occurred, not an investigative detention versus an arrest. We further note that many of the factors, individually, are confusing or otherwise problematic, including but not limited to: B (investigative stops always require reasonable and articulable suspicion), E (it is unclear in which direction this factor weighs), and M (the inquiry is whether a reasonable person would have felt free to leave). This section should explicitly note the underlying principle that a de facto arrest occurs when the officer’s conduct is more intrusive than necessary for an investigative stop.

NPD: NPD will keep the language from the original draft, which is used to illustrate the case law established in *State v. Dickey*, 152 N.J. 468, 478, 706, A.2d 180, 185 (1998). The listed factors are components that can be used by a judge in determining if a person was actually under arrest based on the totality of the circumstances.

If enough factors simultaneously occur, then a person may inadvertently be arrested. Officers need to understand how factors need to be looked at collectively to ensure that they do not convert a consensual citizen contact or investigative detention into a de facto arrest.

NPD will add the ACLU suggested language “that a de facto arrest occurs when the officer’s conduct is more intrusive than necessary for an investigative stop” to further emphasize the point.

Section VIII, paragraph C.2 (page 9)

Comment: We recommend defining “breach of the peace.”

NPD: NPD will add language to explain that in the established case law, *State v. Hurtado*, 113 N.J. 1 (1988), "breach of the peace" has been described as anything that disrupts "the tranquility enjoyed by citizens of a community where good order reigns among its members." When determining if a given act amounts to a breach of the peace it will be decided by considering the time, place, and the circumstances under which, the act was committed.

Section X, paragraph J (page 11)

Comment: We recommend that paragraph J be moved up significantly higher in the list to emphasize its importance, for example between the current paragraphs B and C.

NPD: NPD will move the placement of paragraph J between current paragraphs B and C, as suggested by the ACLU.

Section XII, paragraph B, unnumbered bullet point 2 (page 14)

Comment: The phrase "interviewing the arrestee" may raise *Miranda* concerns. We recommend changing the language to "recording any complaints of pain made by the arrestee" or similar revisions.

NPD: NPD will change the language used to "interviewing the arrestee specifically concerning complaints of pain". NPD wants to ensure that supervisors do not limit the complaints of pain they record to ones that are voluntarily raised to them. NPD needs supervisors to proactively interview people who will be in their custody for injuries so NPD can ensure that injured or ill arrestees receive medical attention when necessary.