

## Feedback Received From the ACLU of NJ Regarding the NPD “Consensual Citizen Contacts and Investigatory Stops” Policy

Conducting investigative stops of people without proper supporting justification is a violation of the 4<sup>th</sup> Amendment to the Constitution, Article 1, Paragraph 7 of the New Jersey Constitution, and a detriment to the positive relationship the Newark Police Division needs to have with the community.

**ACLU:** For clarity, this should be rewritten to: "...4th Amendment to the United States Constitution and Article 1, Paragraph 7, of the New Jersey Constitution. Such violations are a detriment to the positive relationship...."

**NPD:** NPD agrees and this will be changed to reflect the suggested language.

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The U.S. Supreme Court has set the investigative stop case law standard to be *Terry v. Ohio*, 392 U.S. 1 (1968). In *Terry v. Ohio*, an officer can briefly detain a person, based upon reasonable suspicion of criminal activity, long enough to dispel the suspicion or to allow it to rise to the level of probable cause for an arrest. The officer in some circumstances is also permitted to conduct a limited "frisk" search of the person without a warrant. Before the officer can frisk search the subject, the officer must:

1. Have articulable facts that the person **could be** armed with a weapon.

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

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

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**Demographic Category** - A shared common characteristic of a population, including but not limited to, age, race, ethnicity, national origin, gender, gender identity, language ability, disability, political belief or sexual orientation.

**ACLU:** We suggest 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--immigrate from South Korea. It's possible for Person A to be a legal permanent resident and for Person B to be undocumented.

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

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

**NPD:** NPD is aiming to ensure that absolutely no demographic categories are being discriminated against, which is why NPD used the catch all language of “including but not limited to” but based upon recent times and the prevalence of the topic in today’s world, NPD will add the suggested example categories of “immigration status, economic status and housing status” to those already listed.

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**Probable Cause** – **Enough information** 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 more reliable standard of evidence than having reasonable suspicion, but is less than then the beyond a reasonable doubt standard needed for conviction.

**ACLU:** We suggest replacing "Enough information" with "Specific, articulable facts." This change would tie the definition closer to the legal standard for probable cause.

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

**ACLU:** It may be helpful to provide examples of what clearly does and does not constitute probable cause.

**NPD:** As this policy’s main topic is “Consensual Citizen Contacts and Investigatory Stops” reasonable suspicion is the most commonly used standard to justify legal police actions NPD wishes to leave the examples of what may or may not constitute probable cause to the Searches and Arrest policies, where probable cause is necessary level of proof.

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

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

We recommend that presence in a high-crime neighborhood never be given significant weight in developing reasonable suspicion. As currently written, this definition opens the door for officers to inappropriately use a small, trivial fact (for example, counting cash) to supplement presence in a high-crime area in an attempt to justify stopping an individual. We feel this would go against the spirit of the new policy and the intent to prevent officers from unfairly scrutinizing people based on their location.

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

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

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

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Detaining, arresting or threatening to detain or arrest individuals based on activity protected by the First Amendment, including verbal criticism, questioning police actions, or gestures.

Using or threatening force in response to mere verbal criticism or gestures that do not give rise to reasonable fear of a harm to officers or others.

**ACLU:** Items M and N can be combined into one item so that it reads:

"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."

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

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Detaining, prolonging the detention of, or arresting 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.

**ACLU:** We recommend adding the use of force and threats to this list, so that it reads:

"Detaining, prolonging the detention of, arresting, using force against or threatening to detain, prolong the detention of, arrest, or use force against an individual for remaining in the proximity...."

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

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“The Fourth Amendment proscribes unreasonable searches and seizures; it does not proscribe voluntary cooperation”, as noted in *Florida v. Bostick* 501 U.S. 429, 437 (1991). Absent reasonable and articulable suspicion and/or probable cause, people have a constitutional right not to engage the police. **People waive that right when they willfully choose to engage with officers,** but can also decide to end the contact at any point they wish. During any type of voluntary citizen contact, a person may lawfully refuse to speak to officers, refuse to identify themselves, or otherwise not cooperate without consequence.

**ACLU:** This language may inadvertently suggest that people give up rights that still remain. People always have the right to not speak with officers; the right is never waived. We recommend deleting this language and simply stating "People can decide to end the contact at any point."

**NPD:** NPD agrees that the using the current language, "waive that right," may not correctly portray the point attempted to be made. NPD will remove this sentence and replace it with, "People can choose to engage with officers, but can also decide to end the contact at any point."

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**During an investigative stop and where the subject of the stop is not under arrest, an officer may not relocate the subject of an investigative stop / detention a significant distance away from the stop location to conduct a show-up identification for a suspected offense.**

**ACLU:** Having subheadings within this section can help readers find relevant information.

**NPD:** NPD chooses to leave this section the way it stands.

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1. As early in the contact as safety permits, officers shall introduce him or herself to the citizen **(providing name, rank or title, agency affiliation** and that the stop is being recorded, if applicable), and state the reason for the stop. This information shall be provided to the subject prior to requesting their information.

**ACLU:** We recommend including the officer's badge number here. Badge number is mentioned in item #10 below, but there is no reason to not automatically provide an officer's badge number when she is introducing herself at the initiation of contact.

**NPD:** NPD is trying to re-establish bonds with the community and while officers are introducing themselves including a badge number / serial number may portray officers as unemotional and just introducing themselves as a matter of procedure. NPD wishes to keep the policy the way it is written in this instance. Officers have a four or five digit badge number that is not easily remembered in an opening introduction by the public when added to all the other information that will be presented.

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Request identification. If the person does not have available identification or refuses to provide identification, the officer shall obtain all the available information necessary to complete a BlueTeam entry and/or other reports designated by the Newark Police Division.

**ACLU:** It may be helpful to include reference to the subsequent provisions that guide officers in completing forms when they haven't been given identification information.

**NPD:** NPD can remove the final words of "the Newark Police Division" from the sentence. NPD will replace them with "section "VI. Reporting Requirements" of this general order."

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

**ACLU:** There's no information in this policy on how frequently this random sampling must be done.

**NPD:** ACLU is correct, the specific language of how often this will occur is missing. NPD will do this on a continuous basis so we are always up to date on "10 percent" review requirement. NPD will add the language "On an ongoing basis" to the beginning of the sentence and remove "In addition". "On an ongoing basis" is the language used in the Consent Decree and NPD wishes to mirror what the intent of the Consent Decree in this matter.

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- The reason for reviewing the video (e.g. recovery of contraband, stop, search, detention, arrest, suspected non-compliance with NPD policy or law)

**ACLU:** Because recordings will sometimes be reviewed as part of the required random sampling, we recommend adding "random review" to this list.

**NPD:** NPD agrees with the ACLU and will add "random review" to the examples of reason for reviewing the video.

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

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

**NPD:** Section X. (Responsibility for Compliance) states: "All Division personnel are responsible for complying with this Order. Supervisory and Command Officers shall ensure that subordinates are aware of, understand, and comply with this Order. All sworn officers will be

subject to discipline for a violation of the contents of this Order.” so NPD choses to leave it here, also.

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## MEMORANDUM

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**FROM: New Jersey Institute for Social Justice**  
**TO: Newark Police Division Consent Decree Planning Unit**  
**RE: Stops Policy Community Feedback**  
**DATE: May 9, 2018**

### **Introduction**

This memorandum provides a summary of community feedback concerning the Newark Police Division's (NPD) draft *Consensual Citizen Contacts and Investigatory Stops* policy (the "stops policy"). All community feedback received is also attached to this memorandum.

Feedback was received in two ways. First, NPD held a community policy review forum on April 25, 2018 at Jehovah Jireh Praise & Worship Church Center (505 S. 15th 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 policies on their respective websites, with the Monitoring Team also creating a feedback form to receive written comments via its website. These written comments are also 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.

## **DEFINITIONS** **(Policy Section III)**

### ***1. Pretext Stops***

#### **Draft Policy:**

- First, a pretext stop is defined as “[a]n 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.” Second, a pretext stop is defined as “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.”

#### **Feedback and Recommendations:**

- This definition is too legalistic and “should be written so that a 5th grader understands it” and “in everyday plain English.”
- An example of a pretext stop should be provided.

#### **NPD Response:**

Pretext stops do not remove the level of suspicion required to conduct a stop of someone. Pretext stops are meant for police who are conducting an investigation to further their investigation without revealing that an active investigation is ongoing.

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

The police are bound to carry out the motor vehicle stop like any other, with best practices in mind and informing the person stopped of the violation justifying the traffic stop.

“Pretext stops” in the “Consensual Citizen Contacts and Investigatory Stops” policy is defined as, “An investigatory stop or detention for a violation of law that an officer has reasonable and articulable suspicion for, but the officer’s true motivation is to investigate a different offense, for which there is no reasonable suspicion at the outset of the investigatory stop or detention. A pretext stop can also mean 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.”



Simply outlawing pretext stops would not allow officers the ability to fully investigate violations of the law. There are further safeguards in the “Consensual Citizen Contacts and Investigatory Stops” under section “IV. Prohibited Actions” section (located on page 5). Item I. states, “Using any demographic category as a factor to any degree in establishing reasonable suspicion or probable cause during an unplanned enforcement activity. This conduct will be considered bias-based policing. The only exception to this is in circumstances where the specific suspect’s description from a trustworthy source relevant to place and time.”

An example of this could be:

Police are conducting an on-going investigation into illegal narcotics distribution that is occurring within a house. Police see someone who they have not identified leaving the house and get into a car and follow them. If the police witness that person commit a motor vehicle violation, the police (with permission from a supervisor) may stop that person and carry out the motor vehicle stop. In this instance police do not need to tell the person who they stopped that they are currently investigating them for illegal narcotics distribution. The police are bound to inform the person stopped of the violation which justifies the traffic stop.

## ***2. Reasonable Suspicion***

### **Draft Policy:**

- Reasonable 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 taken alone, does not rise to the level of reasonable suspicion.”

### **Feedback and Recommendations:**

- This definition should be written in a clearer and less legalistic fashion.
- The phrase “high crime neighborhood or area” should be further defined or eliminated as a factor at all because it is “so vague that it could be anything.” This vagueness means it is not a sufficient standard to be used as part of a reasonable suspicion analysis without (1) statistical evidence of the level of crime, (2) the specificity of the crime being investigated, or (3) specific reports that can support the allegation of “high crime.”
  - “High”: It is unclear what rubric is being used to determine what “high” means.
  - “Crime”: What types of crimes are being included in this determination?
  - “Area”: How large is the area (blocks, whole neighborhoods)?
- “Totality of the circumstances” should be further defined, including what factors are included in such an analysis.

- There should be greater clarity of the word “articulable”—does this mean that the officer has to be able to articulate these facts to the person stopped or simply that they have to be able to articulate them in their official report?

### **NPD Response:**

Reasonable suspicion is not developed based solely upon a person’s presence in an identified high crime area. A high crime area is one of the indicators in the totality of the circumstances regarding reasonable suspicion. That is why the officer was deployed to a certain area in the first place or what they were told to be on the lookout for while traveling through a particular region of the city.

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

An area where crime is occurring is an abstract idea that is taken into consideration by NPD crime analysts using current crime patterns and trends mapped over a specific piece of geography.

The NPD definition of reasonable suspicion will remain the same.

## **PROHIBITED ACTIONS** **(Policy Section IV)**

### ***1. General Comments***

#### **Feedback and Recommendations:**

- Throughout this section of the policy, there appears to be a lot of discretion for NPD to “weasel” out of these prohibitions (e.g., through repeated use of the word “solely.”). In a list of prohibited actions, there should be no room left for discretion; if a practice is prohibited, it must be prohibited in full without exception.

### **NPD Response:**

All human interactions are too dynamic and too fluid to make a preconceived determination of what is right and wrong in every possible situation. It is also not feasible for officers to be able to predict the future to adequately determine what “supervisor permissions” they may need 10 minutes from now.

Listed below are the “Prohibited Actions” which include language that might be perceived to contain discretion:

- *Conducting “pretext stops / detentions” of people or vehicles without prior approval of a supervisor, unless it is not reasonably practical to obtain such approval. If officers cannot obtain supervisory approval prior to a “pretext” vehicle stop, they will obtain such approval as soon as possible after conducting the stop and will document why it was not practical to obtain prior approval.*
- Asking for consent to search a motor vehicle unless the officer has a reasonable and articulable suspicion that the search will turn up evidence of a crime. Officers will document in writing the basis for this suspicion or other legal authority. (See *State v. Carty*)
- Using any demographic category as a factor to any degree in establishing reasonable suspicion or probable cause during an unplanned enforcement activity. This conduct will be considered bias-based policing. The only exception to this is in circumstances where the specific suspect’s description from a trustworthy source relevant to place and time.

In reference to the first bullet point, a police officer investigating a crime has the opportunity to conduct a pretext stop (that a violation has occurred in their presence that lawfully justifies an investigative detention or stop which also happens to further a separate investigation into a different crime, as it is defined within the “Consensual Citizen Contacts and Investigatory Stops Policy”) and he/she cannot reach a supervisor, then they are still within the scope of the law to conduct a stop.

Although the wording may be backwards, the action of conducting “pretext stops / detentions” without supervisor approval is strictly prohibited. The fact that officers may conduct a “pretext stop” and obtain supervisor approval thereafter just allows for officers to conduct a lawful stop before the person who is responsible for the violation is able to get away.

Furthermore, the language as currently stated puts the risk of conducting a “pretext stop / detention” prior to supervisor approval squarely on the officer. This stresses that officers must think twice before taking this type of action and that even though the stop of someone in these situations are completely legal, if the supervisor does not agree with the measure taken, then the officer is subject to administrative investigation and/or discipline.

In reference to the second bullet point, *“Asking for consent to search a motor vehicle unless the officer has a reasonable and articulable suspicion that the search will turn up evidence of a crime. Officers will document in writing the basis for this suspicion or other legal authority. (See State v. Carty).”* This is not an exception, it is the rule (as outlined in the case law *State vs. Carty*, 170 N.J. 632 (2002)) and officers are prohibited from breaking it.

The third bullet point, *“Using any demographic category as a factor to any degree in establishing reasonable suspicion or probable cause during an unplanned enforcement activity. This conduct will be considered bias-based policing. The only exception to this is in circumstances where the specific suspect’s description from a trustworthy source is relevant to place and time.”* This 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.

## **2. (B) Pretext Stops**

### **Draft Policy:**

- NPD is prohibited from conducting pretext stops without prior approval of a supervisor, unless it is not reasonably practical to obtain such approval.

### **Feedback and Recommendations:**

- Pretext stops should be prohibited wholesale (barring immediate risk of serious bodily injury or death)—there should be no supervisor approval exception to the rule (“the exception almost becomes the rule”).
- Talking to supervisors is not an effective barrier to the abuse of pretext stops; officers can write whatever they want in their report to ultimately justify the stop.
- There should be greater clarity regarding what circumstances would make it “not reasonably practical” to obtain supervisor approval before conducting a pretext stop.

### **NPD Response:**

NPD believes that there may be a misunderstanding of what it defines a “pretext stop / detention” and what some community members who commented believe it to mean. A pretext stop **IS NOT** defined by the NPD as officers taking their prejudiced views or beliefs (implicit or explicit biases) and using them in lawful stops / detentions to discriminate against any demographic group.

Although the wording may be backwards, the action of conducting “pretext stops / detentions” without supervisor approval is strictly prohibited. The fact that officers may conduct a “pretext stop” and obtain supervisor approval thereafter just allows for officers to conduct a lawful stop before the person who is responsible for the violation is able to get away.

Furthermore, the language as currently stated, puts the risk of receiving discipline from conducting a “pretext stop / detention” prior to supervisor approval squarely on the officer. This stresses that officers must think twice before taking this type of action and that even though the stop of someone in these situation are completely legal, if the

supervisor does not agree with the measure taken, then the officer is subject to administrative investigation and/or discipline.

### **3. (C) *Pro Forma/Conclusory Language***

#### **Draft Policy:**

- NPD is prohibited from using pro forma or conclusory language in a report.

#### **Feedback and Recommendations:**

- Examples of prohibited pro forma/conclusory language should be provided.

#### **NPD Response:**

An example of pro forma / conclusory language can be included where it appears in the policy. Possible additions could be “the suspect was frisked for officer safety” or “the suspect was detained based upon reasonable suspicion that they committed a crime” or “observed furtive conduct”.

### **4. (D) *Information Used***

#### **Draft Policy:**

- NPD is prohibited from “[u]sing information known to be materially false or incorrect in effecting an investigatory stop or detention.”

#### **Feedback and Recommendations:**

- It needs to be made clearer whether this prohibition applies to using false information only in a report or also in telling a stopped person why they have been stopped.

#### **NPD Response:**

NPD maintains that it applies in both circumstances because within the policy it is written:

1. officers must clearly articulate reasonable suspicion justifying the investigative stop;

and

2. As early in the contact as safety permits, officers shall introduce him or herself to the citizen (providing name, rank or title, agency affiliation and that the stop is being recorded, if applicable), and state the reason for the stop. This information shall be provided to the subject prior to requesting their information.

But to make it even clearer NPD proposes changing the language mentioned to read:

“Using information known to be materially false or incorrect in effecting an investigatory stop or detention, in documenting the stop or detention, or in stating the reason for the stop or detention to the person was not free to leave;”

## **5. (E) Geographic Location**

### **Draft Policy:**

- NPD is prohibited from “[u]sing an individual’s geographic location, without any other reliable indicator(s), as a basis for an investigatory stop/detention.”

### **Feedback and Recommendations:**

- “Without any other reliable indicator(s)” is too vague to serve as a basis for reasonable suspicion without listing examples of reliable indicators.

### **NPD Response:**

NPD proposes to modify the language to: “Using an individual’s geographic location, without any other reliable indicator(s) that when added together in examining the totality of the circumstances amounts to reasonable suspicion, as a basis for an investigatory stop / detention. Examples of such include, but are not limited to, presence of a person in a high crime area or proximity of a person to the scene of suspected or reported crime;”

## **6. (F) Response to Presence of Police Officers**

### **Draft Policy:**

- NPD is prohibited from “[b]asing investigatory stops/detentions solely on an individual’s response to the presence of police officers, such as an individual’s attempt to avoid contact with an officer.”

### **Feedback and Recommendations:**

- An individual’s response to the presence of police officers should never be used to justify a search, whether “solely” on its own or in conjunction with other factors.

### **NPD Response:**

People who commit crimes usually do not want to get caught.

NJ case law prohibits a person’s response to observing police (e.g. fleeing when a person sees the police) as being the sole basis for a detention. However, the reaction (flight) may be considered, with other factors, to determine reasonable suspicion that a person is

engaging in criminal activity. Reasonable suspicion allows an officer to make an investigatory stop.

## **7. (G) *Later-Discovered Information***

### **Draft Policy:**

- NPD is prohibited from “[b]asing 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.”

### **Feedback and Recommendations:**

- Later-in time information should never be used to justify a search, whether “solely” on its own or in conjunction with other factors. This is so because “[i]t is inherently illogical for an officer to be able to retroactively justify stopping an individual if the information was not available at the initial time of the stop.”

### **NPD Response:**

There are two different legal standards to conduct an investigative stop / detention (reasonable suspicion) and a search (probable cause). Reasonable suspicion is the lower, less reliable, standard out of the two.

If the police legally stop someone after meeting the reasonable suspicion standard, then during their investigation (after the stop was initiated) they may come across additional facts (of sufficient quantity or quality based on the totality of the circumstances or the “whole picture”) that establish probable cause to arrest.

The same holds true for information learned after a legal stop was made. The information learned by the police after the stop may prove that even though on its face it appeared criminal activity was afoot, the actions were totally innocent in nature.

Because information learned after a stop was initiated may contain indicators as to the presence of crime (or lack thereof), it cannot be excluded from use outright.

## **8. (H) *Proximity***

### **Draft Policy:**

- NPD is prohibited from “[b]asing investigatory stops/detentions solely upon the fact that a person is in close proximity to someone who is suspected of criminal activity.”

### **Feedback and Recommendations:**

- Being in close proximity to someone who is suspected of criminal activity should never be used to justify a search, whether “solely” on its own or in conjunction with



other factors, absent some existing knowledge of a relationship between the two people.

- “Close proximity” is too vague a phrase to be included in a policy without limiting language (e.g., 10 feet, within the same car, etc.).

### **NPD Response:**

As listed in a previous NPD response, the feedback speaks to searches but the policy discussed is stops. Nonetheless, NPD will use the lesser threshold of stopping / detaining someone (reasonable suspicion) in this response.

NPD is prohibited from “[b]asing investigatory stops/detentions solely upon the fact that a person is in close proximity to someone who is suspected of criminal activity.”

Another person who is in “close proximity to someone who is suspected of criminal activity” at times can be a factor in establishing reasonable suspicion, probable cause or a higher level of proof.

NPD policy uses the word “solely” because as the policy reads, it is prohibited from being used alone. But, in conjunction with other facts of sufficient quantity or quality (based on the totality of the circumstances, the “whole picture” perspective) proximity can establish reasonable suspicion or probable cause of the crime of conspiracy.

“Close proximity” is vague because no policy can imagine every possible scenario. Putting physical limits on circumstances that are unpredictable cannot be used as a boundary for acceptable behavior. For example, two criminals can conspire to commit a crime by:

- both being in very close proximity to one another while carrying out a stolen item from a burglarized home;
- both being a city block apart, with one party acting as a lookout for law enforcement, while the other is carrying out the physical act of robbing a bank while communicating via handheld radios or cellular telephone; or
- both being thousands of miles apart while working together over the internet to commit identity theft.

## **9. (I) Demographic Category**

### **Draft Policy:**

- NPD is prohibited from “[u]sing any demographic category as a factor to any degree in establishing reasonable suspicion or probable cause during an unplanned enforcement activity. This conduct will be considered bias-based policing. The only



exception to this is in circumstances where the specific suspect's description [is] from a trustworthy source relevant to place and time.”

### **Feedback and Recommendations:**

- The policy should include examples of what constitutes a “trustworthy source” (a 911 call? An anonymous tip?) and what limits there are to what is “relevant to place and time” (e.g., what leeway is given re: distance and the passage of time?).

### **NPD Response:**

“The only exception to this is in circumstances where the specific suspect's description [is] from a trustworthy source relevant to place and time” can refer to a Be On The Lookout (BOLOs) where information is received from someone who is the victim or a witness to a crime and is giving the police a description of who committed the crime, and the police are using that information in an active attempt to locate a possible suspect near the time of the incident.

In general terms when using BOLOs 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 an 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 scenarios 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.

## 10. (K) Relocation

### Draft Policy:

- NPD is prohibited from “[r]elocating someone who is the subject of an investigative stop/detention, and is not under arrest, a significant distance away from where they were stopped in order to conduct a show-up identification for a suspected offense.”

### Feedback and Recommendations:

- The policy should provide an example of what constitutes a “significant distance” away or eliminate this prohibition entirely (the case law is too open-ended to be a coherent policy). This same issue also arises in Section V(B).
- Any time a stopped person is relocated (but not “under arrest”), the distance moved must be listed in the report, as well as any reason given for movement.

### NPD Response:

What the case law (*State v. Davis*, 104 N.J. 490, 504 (1986)) lacks in exact distance measurement, it clearly prescribes in its intent. **An officer conducting an investigative detention for eyewitness identification should “use the least intrusive investigative techniques reasonably available to confirm or dispel his suspicions in the shortest time reasonably possible.”**

NPD would propose changing the language to reflect this critical point of the case law that was left out. NPD can change the policy to state:

“Relocating someone who is the subject of an investigative stop / detention, and is not under arrest, a significant distance away from where they were stopped in order to conduct a show-up identification for a suspected offense. An officer conducting an investigative detention for eyewitness identification should “use the least intrusive investigative techniques reasonable available to confirm or dispel his suspicions in the shortest time reasonably possible. (See *State v. Davis*)

Supervisors are required to review, reject or approve all investigative stops / detention reports. As stated on page 11, under section VII. Supervisor Responsibilities:

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

If a situation gives rise to transform a consensual citizen contact into investigative stop / detention and/or if a person was “transferred after being detained.” The above passage

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

## **PROCEDURES** **(Policy Section V)**

### **Consensual Citizen Contact**

#### ***1. General Comments***

##### **Feedback and Recommendations:**

- The policy should require NPD to affirmatively tell residents whether they are free to leave during a stop, and that they are allowed not to answer questions, because residents often cannot tell the difference between a consensual citizen contact and an investigatory stop. NPD should also have to affirmatively state whether a person is obligated to comply during an interaction.
- NPD should include a reference in the policy to the importance of de-escalation in both consensual citizen contacts and investigatory stops.

##### **NPD Response:**

NPD will add language to both the consensual citizen contacts section and the investigatory stops section emphasizing the importance of using de-escalation techniques in both types of encounters in an attempt to prevent encounters from spiraling out of control.

NPD is trying to re-establish a positive relationship with the community it serves and starting off every encounter by stating “you are free to leave” would imply that we do not want to talk to them, is awkward in application, and does not allow the police to use all tools allowed under the law to fully investigate crimes at the behest of victims and in pursuit of the actual parties who are responsible for the heinous crimes committed upon those victims.

#### ***2. Failure to Engage***

##### **Draft Policy:**

- The policy states that “[d]uring any type of voluntary citizen contact, a person may lawfully refuse to speak to officers, refuse to identify themselves, or otherwise not cooperate without consequence.”

##### **Feedback and Recommendations:**

- This important piece on residents' rights during stops is buried in a legal standards section (top of pg. 7). This should be in its own separate paragraph that clearly identifies what rights residents have during such a contact.

#### **NPD Response:**

NPD will draw out the sentence, "During any type of voluntary citizen contact, a person may lawfully refuse to speak to officers, refuse to identify themselves, or otherwise not cooperate without consequence" from the paragraph and let it stand alone on its own line and highlight it in bold.

### ***3. Attempt to Avoid Police Interaction***

#### **Draft Policy:**

- The policy states that "[i]f an officer perceives that a person's action indicates an attempt to avoid police interaction (e.g. refusal to stop, failure of a person to respond to officer's questions, remaining silent, not providing identification, or not wishing to give specific details during a citizen contact), the officer cannot use that behavior alone to justify transforming a citizen contact into an investigatory stop or detention."

#### **Feedback and Recommendations:**

- An attempt to avoid police interaction should never justify a stop, either "solely" on its own or in conjunction with other factors.

#### **NPD Response:**

NPD believes the language in the policy is adequate.

### **Investigatory Stop/Detention**

#### ***1. General Comments***

#### **Feedback and Recommendations:**

- The policy should state that if the officer makes a mistake of law, the stop can never be justified.

#### **NPD Response:**

Under the "II. Policy" section of this document (on page 2) it states:

Investigative stops are lawful to the extent they meet the requirements of the 4<sup>th</sup> 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."

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.

## **2. (5) Detention Period**

### **Draft Policy:**

- An officer may "detain the person for only the reasonable amount of time that is needed to confirm or dispel the officer's suspicion for the violation of law. Any delays or extension of the detention period in order for officers to complete necessary actions must be objectively reasonable; officers may not extend the detention of a person solely to await the arrival of a supervisor. Officers will take all reasonable measures to ensure the citizen understand the purpose of reasonable any delays."

### **Feedback and Recommendations:**

- There should be greater definition of what is a "reasonable amount of time," what facts need to be reported for longer detention, and what is "necessary" to prolong an interaction.
- Any stop longer than 5 minutes should require an extensive report, which outlines the reason for every prolonging of the stop in 5-minute intervals from then on.

### **NPD Response:**

The reasonableness of stops depends on the totality of the circumstance (looking at the "whole picture"). The U.S. Supreme Court, in *Terry v. Ohio* (1968), allows any amount of time to dispel officer's suspicion.

Detentions are not static events, and that the reasonableness of the officers' actions often depends on what happened as things progressed, especially whether the officers reasonably became more or less suspicious, or more or less concerned for their safety. See *U.S. v. Place* (1983).

As mentioned above, in *State v. Davis*, 104 N.J. 490, 504 (1986) officers need to work to conduct the stop of someone as efficiently as possible: An officer conducting an investigative detention for eyewitness identification should “use the least intrusive investigative techniques reasonably available to confirm or dispel his suspicions in the shortest time reasonably possible.”

### **3. (10) Badge Number**

#### **Draft Policy:**

- During an investigatory stop, “[o]fficers will provide his or her name and badge number when requested, in writing or on a business card (if authorized).

#### **Feedback and Recommendations:**

- NPD should affirmatively, and without prompting, provide their badge number at the beginning of an investigatory stop.

#### **NPD Response:**

On page 8, under section V. Procedures - B. Investigatory Stop / Detention - #2 states:

“As early in the contact as safety permits, officers shall introduce him or herself to the citizen (providing name, rank or title, agency affiliation and that the stop is being recorded, if applicable), and state the reason for the stop. This information shall be provided to the subject prior to requesting their information”

Although badge number is not included in this list, officers are clearly guided to identify themselves at the outset of every investigative stop as long as safety is not in jeopardy.

Officers have five digit badge numbers that are not easily remembered in an opening introduction by the public when added to all the other information that will be presented.

### **4. Anonymous Tip**

#### **Draft Policy:**

- The draft policy states “[i]nformation or descriptions resulting from an anonymous tip is not sufficient, by itself, to establish reasonable suspicion or probable cause that could justify a stop, frisk, detention, or arrest. If acting on an anonymous tip, the officer must further develop the information provided in the tip into reasonable and articulable suspicion prior to stopping a subject. An officer’s observations at the scene, additional information secured from the anonymous caller and other circumstances can establish reasonable suspicion that the subject has violated or is

about to violate the law, but such information must be collected before a stop is conducted.”

**Feedback and Recommendations:**

- There should be further specificity given to what may constitute corroboration of an anonymous tip.

**NPD Response:**

The passage already gives examples of what may constitute corroboration of an anonymous tip in the second sentence cited:

“An **officer’s observations** at the scene, **additional information secured from the anonymous caller** and other **circumstances can establish reasonable suspicion** that the subject has violated or is about to violate the law, but such information must be collected before a stop is conducted.”

**REPORTING REQUIREMENTS**  
**(Policy Section VI)**

***1. Report Triggering***

**Draft Policy:**

- Per the policy, “[d]ocumentation of an interaction between a person and the police is required when the **person stopped does not feel free to leave.**”

**Feedback and Recommendations:**

- NPD should be required to write a report for both investigatory stops and consensual citizen contacts.

**NPD Response:**

Based on the sheer number of interactions officers engage in each day it is impractical to require they write a report about every person they engage in a consensual citizen contact. Furthermore, if officers are required to write a report for consensual citizen contacts, then they will need information to do so, which will prompt the officer to ask the person whom they are engaging in a consensual citizen contact with for information.

This may lead citizens to believe that every interaction they have with the police is solely for intelligence gathering and not establishing a meaningful relationship with them, or may even convert the encounter into an investigatory stop. If this is incorporated, it has the potential to re-create the very problems that NPD is working to eliminate.

## **2. Event Number**

### **Draft Policy:**

- The policy states that “[a]ll data entries of stop information must have a corresponding Event Number.”

### **Feedback and Recommendations:**

- An Event Number should be generated for all investigatory stops and all consensual citizen contacts. These numbers should be given to any stopped person for quick and easy retrieval of any police report involving their contact with the police.
- An online dashboard and search function should allow citizens to see the results of these interactions to provide accountability.

### **NPD Response:**

Investigative stops / detentions do require an event number.

As listed on page 9, under section, V. Procedures – B. Investigatory Stops / Detentions - #12:

“Officers will fully document all stops as soon as possible, but no later than by the end of the officer’s workday”, and as listed above, “All data entries of stop information must have a corresponding Event Number”.

Because reports generated for investigative stops / detentions may contain people’s personal identifying information it would not be responsible for NPD to allow this information to be accessed through an online dashboard and search function. The technology infrastructure that is currently in place at NPD does not provide the option to scrub the personal identifying information from the reports before making it available. NPD will keep this idea in mind. NPD is in the process of conducting an independent technology assessment to achieve a greater level of transparency, and become more efficient in delivering police services. NPD will explore the legality and feasibility of employing such an accountability tool.

As for modification to the policy in question, NPD proposes altering the language on page 9, under section, V. Procedures – B. Investigatory Stops / Detentions - #10 to read:

“Officers will provide his or her name, badge number and Event Number for the investigative stop / detention when requested, in writing or on a business card (if authorized);”



### **3. (D) Report Information**

#### **Draft Policy:**

- The policy lists a number of items that should be included in an officer's report.

#### **Feedback and Recommendations:**

- The following information should also be entered in an officer's stop report: (1) whether any of the policy's prohibited categories was used as part of a reasonable suspicion determination; (2) whether the stop evolved from a "consensual citizen interaction," and (3) the distance a person was transferred after being detained.

#### **NPD Response:**

Supervisors are required to review, reject or approve all investigative stops / detention reports. As stated on page 11, under section VII. Supervisor Responsibilities:

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

If a situation gives rise to transform a consensual citizen contact into investigative stop / detention and/or if a person was "transferred after being detained." The above passage requires supervisors to check reports for accuracy, completeness and adherence to law and division policy (which lists the prohibited actions).

### **SUPERVISOR RESPONSIBILITIES & ADMINISTRATIVE REVIEW** **(Policy Sections VII and VIII)**

#### **1. General Comments**

#### **Feedback and Recommendations:**

- Stop reports and data should be made publicly available. Residents should be able to pull up their stop report like a traffic ticket.
- An early-warning system should be developed to flag any officer with a high rate of improper stops; these officers' names should be publicly available for the CCRB to review, and any officer flagged by the early warning system should be placed on desk duty.
- A select number of reports must be reviewed by the public, and compared with any supervisory review of same for better accountability.

## **NPD Response:**

General data from stops and other topics of concern are already publicly available online at:

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

As stated in a previous response, because reports generated for investigative stops / detentions may contain people's personal identifying information it would not be responsible for NPD to allow this information to be accessed through an online dashboard and search function. The technology infrastructure that is currently in place at NPD does not provide the option to scrub the personal identifying information from the reports before making it available. NPD will keep this idea in mind. NPD is in the process of conducting an independent technology assessment to achieve a greater level of transparency, and become more efficient in delivering police services. NPD will explore the legality and feasibility of employing such an accountability tool.

As listed on page 13, under section VIII 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 his/her designee, to ensure that the tenets of this General Order are implemented and adequately monitored.

The Commander of the Office of Professional Standards, or his/her designee, to 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.

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.”

This passage speaks toward the early warning system mentioned in the comment. An objective assessment of data from officers who were flagged by the early warning system will determine if the officer’s actions are proper, or if s/he is an outlier among their peers, but still operating within the confines of the law and division policy. Based on that assessment, as stated in the above passage, “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.”

## ***2. Video Review***

### **Draft Policy:**

- On page 12, the policy states “[s]upervisors will also review a random selection of video recordings of stops and detentions, searches and arrests amounting to **at least** 10 percent of all stops and detentions, searches, and arrests.”

### **Feedback and Recommendations:**

- “[A]t least” should be replaced with “a minimum of.”

### **NPD Response:**

NPD will change the mentioned language located on page 12, to read “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.”

## ***3. Discipline & Accountability***

### **Draft Policy:**

- The policy states that “[o]fficers, including supervisors found to have violated this Order will be subject to disciplinary action (including counseling, mediation and training) up to and including termination.”

### **Feedback and Recommendations:**

- The policy is not descriptive enough about what disciplinary actions will be taken against officers who conduct “bad” stops or otherwise fail to comply with the policy.

## **NPD Response:**

The topic of this policy is “Consensual Citizen Contacts and Investigatory Stops”. NPD has separate policies that guide how administrative and criminal investigations are carried out by the Office of Professional Standards / Internal Affairs, as well as the disciplinary process itself.

### **TRAINING** **(Policy Section IX)**

#### ***1. General Comments***

##### **Feedback and Recommendations:**

- The amount of training is not enough and it is unclear how exactly the training will be spread out throughout the year (to take place over hours, weeks, months?).
- The training should include de-escalation and sensitivity training as well.
- An assessment of the training should be included to determine if follow-up training is needed.
- The training should be taught by external trainers (not just police and prosecutors), and should include defense attorneys, community voices, and social scientists.

## **NPD Response:**

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.

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

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

## **RESPONSIBILITY FOR COMPLIANCE**

### **(Policy Section X)**

#### ***1. General Comments***

##### **Feedback and Recommendations:**

- What impact will noncompliance have on admissibility in court (e.g., the exclusionary rule)?

##### **NPD Response:**

The policy was drafted trying to take into account the most common types of circumstances that officers encounter. All possible situations are unable to be covered in this one policy. Any type of evidence recovered and the admissibility of the evidence in court is reviewed by prosecutors, judges and defense attorneys at appropriate legal proceedings.

## Feedback Received From a Community Member in an Email Submission

Before diving into specifics, I have a few general comments about the structure and wording of the Stop Policy, which is the only one of the three I have reviewed so far.

First, the policy remains cloaked in legal jargon that a layperson (and likely a police officer walking a beat) will not understand. All the terminology, though consistent with criminal procedure and constitutional law, are difficult to put into application. For example, at the community forum, when citizens heard the term "articulable" they believed that an officer would actually have to tell them the reasons they were being stopped, when in actuality, "articulable" simply means that the officer can explain the reasoning in the report. See VI.D.9. The officer has no obligation under the policy (or the law) to actually inform civilians about what facts the officer used to develop reasonable suspicion during the stop. Simply using the "constitutional" or legal language does not guarantee any more trust from the community.

**NPD:** Page 8, under section V. Procedures – B. Investigatory Stop / Detention – number 2 states:

“As early in the contact as safety permits, officers shall introduce him or herself to the citizen (providing name, rank or title, agency affiliation and that the stop is being recorded, if applicable), and **state the reason for the stop**. This information shall be provided to the subject prior to requesting their information.”

Under the same section number 5 states:

“Detain the person for only the reasonable amount of time that is needed to confirm or dispel the officer’s suspicion for the violation of law. Any delays or extension of the detention period in order for officers to complete necessary actions must be objectively reasonable; officers may not extend the detention of a person solely to await the arrival of a supervisor. **Officers will take all reasonable measures to ensure the citizen understands the purpose of reasonable any delays.**”

Under the same section number 9 states:

“**Officers will answer any questions the citizen may have**, including explaining options for traffic summons dispositions, if relevant;”

Under the same section number 11 states:

“**Officers will offer an explanation for the circumstances and reasons for the stop.**”

Second, the policy contains many qualifications of its broad contours, which can be misleading for community members and police officers. Policies should be clear and exceptions limited. Otherwise, exceptions quickly become the rule. Obviously police officers cannot anticipate every fact pattern that may emerge from a citizen encounter. However, what length of time is "necessary" for a stop or what distance is "significant" or what circumstances make calling a supervisor "not reasonably practical"? Each of these inquiries is critical for the public to

understand this policy, and none are defined or fleshed out in the policy. As stories came out of our discussion group on April 25, two of the described encounters with the police involved 30-45 minute stops for minor traffic infractions and the humiliation of having to ask permission to go to the bathroom while boxed in by police officers or having to explain to a child why the police weren't letting them leave even though they had done nothing wrong. Under the law, such a stop is probably "reasonable" depending on what additional information the police were trying to learn. But in building trust with a community, a single second longer than an encounter has to last can feel unreasonable without clear and consistent communication about the reasons for the extended stop.

**NPD:** NPD has a duty to be guardians of the Constitution, their community, and NPD also has a duty to investigate violations of law. NPD will continue to guide officers to act within the confines of the law and use lawful methods to investigate potential violations of the law. Generally, an officer will not need 30-45 minutes to dispel suspicion. *Terry v. Ohio* allows whatever time necessary to dispel suspicion.

Third, I highly recommend that actual civilians and the public defender's office be included in the actual drafting of the policy. Allowing for feedback only after the policy has been drafted in whole by police and prosecutors makes an open discussion impossible. It seems unlikely to me that the final policy will look much different than what is currently on paper, simply because of time and resource constraints. I urge the NPD and monitor to ensure that authentic community participation can take place before, during, and after the drafting is done, rather than a one-time rushed meeting conducted in a single neighborhood with roughly 70 minutes of actual community feedback on April 25. This is not an authentic amount of community feedback and the policy as a result reads like one written by individuals on only one side of the thin blue line. Such a policy is unlikely to build any additional trust in the community.

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

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

### **Specifics**

III.E. I recommend that an event number be generated during even consensual citizen interactions during which an officer is performing any investigatory function. The line between a "consensual" citizen interaction and a "stop" blurs quickly for a citizen.

**NPD:** Based on the sheer number of interactions officers engage in each day it is impractical to require they write a report about every person they engage in a consensual citizen contact with (those who are always free to leave). Furthermore, if officers are required to write a report for consensual citizen contacts (when people in the community are free to leave) then they will

need information to do so, which will prompt the officer to ask the person whom they are engaging in a consensual citizen contact with for information. This will lead citizens to believe that every interaction they have with the police is solely for intelligence gathering and not establishing a meaningful relationship with them. In addition, it may very well convert the contact into a “stop”, as the person may no longer feel free to leave. If this is incorporated it has the potential to foster a sense of distrust that NPD is working to eliminate.

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

**NPD:** NPD believes that there may be a misunderstanding of what it defines a “pretext stop / detention” as and what some of the community members who commented believes it to mean. A pretext stop **IS NOT** defined by the NPD as “officers taking their prejudice view or beliefs (implicit or explicit biases) and using them in lawful stops / detentions to discriminate against any imaginable demographic.”

As stated earlier, if a police officer is involved in investigating a crime and has the opportunity to conduct a pretext stop (that a separate offense has occurred in their presence that lawfully justifies an investigative detention or stop which also happens to further their separate investigation into a different crime, as it is defined within the “Consensual Citizen Contacts and Investigatory Stops Policy) and he/she cannot reach a supervisor (either over the police radio or by telephone) then they are still within the scope of the law to conduct a stop.

Although, the wording may be backwards, the action of conducting “pretext stops / detentions” without supervisor approval is strictly prohibited. The fact that officers may conduct a “pretext stop” and obtain supervisor approval thereafter just allows for officers to conduct a lawful stop before the person who is responsible for the violation is able to get away.

Furthermore, the language as currently stated, puts the risk of receiving discipline from conducting a “pretext stop / detention” prior to supervisor approval squarely on the officer. This stresses that officers must think twice before taking this type of action and that even though the stop of someone in these situation are completely legal, if the supervisor does not agree with the measure taken, then the officer is subject to administrative investigation and/or discipline.

III.L. It is not enough that a person’s presence in a high crime area is insufficient “taken alone” does not rise to the level of reasonable suspicion. The category of “high crime area” is so vague that it cannot be included in the “totality of the circumstances.” “High crime area” contains no content.

- What is “high”? Most of Newark has “high crime” relative to the rest of the state. Some areas of Newark are high relative to the rest of Newark but not the surrounding area.
- What is “crime”? An area with high reports of prostitution, for example, should only lead to elevated suspicion of prostitution, not generalized “crime.” I doubt that officers will be performing investigatory stops inside the Prudential building on suspicion of financial crimes, simply because they are likely to occur in that area.



- What is “area”? A neighborhood’s boundaries can stretch many blocks. Are whole neighborhoods simply subject to fewer constitutional rights than others? If I cross a street, could that put me at elevated risk of stops and searches?

**NPD:** Reasonable suspicion is not developed based solely upon a person’s presence in an identified high crime area. A high crime area only be a small piece of reasonable suspicion, such as why the officer was deployed to a certain area in the first place or what they were told to be on the lookout for while traveling through a particular region of the city. There needs to be statistical evidence or intelligence (i.e. intelligence reports or crime bulletins citing a higher occurrence of the specific crime(s) occurring recently based on reports or calls to NPD from the public in NPD logs) that are listed as one written component of reasonable suspicion.

The Fagan report in New York’s stop and frisk case revealed that “high crime area” was frequently paired with other vague justifications for stops (i.e. “furtive movements,” “lookout behavior,” “fits description,” “reached for his pockets”). Once the door is opened to using this as a justification, it is easy to find another fact to bolster it (“It was late at night.” “He was looking around a lot.” “He turned and walked away when he saw I was a police officer.”). If an individual simply has one additional “suspicious” fact (say, puts his hands in his pockets), does that now allow “high crime area” to enter the equation?

**NPD:** This is the general order for the City of Newark Police Division, not the New York City Police Department. 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. The fact is that 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 documented statistics captured NPDs records management system from previous reports and citizen calls for service.

“High crime area” is simply too vague to ever be used as part of a reasonable suspicion analysis. Without statistical evidence of the level of crime, the specificity of the crime being investigated, or specific reports that can support the allegation of “high crime,” the term is simply begging for misuse.

**NPD:** See above comments about factual document statistics.

This analysis also applies to IV.E, which states that geographic location cannot be used “without any other reliable indicator(s)” without listing what any of those indicators might be or what other indicators should be excluded as pro forma.

**NPD:** See above comments.

IV.B. Pretext stops should be prohibited, barring immediate risk of serious bodily injury or death. Research by Epps, Maynard-Moody and Haider-Markel (2014) shows that pretextual traffic stops have eroded black community trust in the police and negatively affected how minorities participate in civic life. Once a police officer lies to a community member about why they are stopped, there is no reason to trust that the officer views the community member as a trusted ally rather than as a suspicious criminal or criminal-to-be. It is common sense that police should be honest. Simply calling a supervisor (who has made pretext stops all his or her life) or explaining why getting such approval was “not practical” is too big a loophole. Regardless of their legality, pretext stops make trust-building impossible and must be used in only the rarest of circumstances.

**NPD:** Pretext stops do not remove the level of suspicion required to conduct a stop of someone. Pretext stops are meant for police who are conducting an investigation to further their investigation without revealing that an active investigation is ongoing.

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

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

IV.C. Examples are needed for what “pro forma” language entails. Such language is embedded into the language of police reports and court cases and difficult to remove. “Furtive movements,” “Sudden movements,” “Hands in pockets,” “Lookout behavior,” “Looked uncomfortable,” “Fits description,” “Suspicious bulge,” etc. Examples of impermissible terms are needed, as are their specific and fact-based analogues. Additionally re data review, stop reasons should be routinely searched for common patterns to ensure that new euphemisms do not simply rise to replace prior barred “pro forma” language.

**NPD:** An example of pro forma / conclusory language can be included where it appears in the policy. One possible addition could be “the suspect was frisked for officer safety” or “the suspect was detained based upon reasonable suspicion that they committed a crime” or “the suspect engaged in furtive activity”.

IV.D. Confusing given earlier prohibition against “pretext stops.” Does this refer to “using information” in a report about a stop? Or does this refer to using false information to tell a stopped person why they’ve been stopped?

**NPD:** See above comment on “pretext stops”

IV.E. See earlier piece on “high crime neighborhood.”

**NPD:** See above comment on “high crime neighborhood”

IV.F., G., and H. The policy seems to recognize that response to the presence of officers (F), later-in-time-discovered information (G), and proximity to someone who is suspected of criminal activity (H) are all inherently unreliable pieces of information. If they are inherently unreliable, they are inherently unreliable every time, not merely when they exist in isolation.

**NPD:** An individual’s response to the officer (e.g. flight) and an individual’s proximity to a person suspected of criminal activity are factors, along with other factors, that could create reasonable suspicion.

This is the “totality of the circumstances” test required by *Terry v. Ohio*. If the officer discovers evidence subsequent to a valid investigatory stop, the officer may conclude that this post-stop evidence assists in establishing probable cause. Accordingly, “solely” is the accurate and appropriate term.

In particular, later-in-time discovered information is inherently not usable to justify a search, in isolation or in combination with any other factors. It is inherently illogical for an officer to be able to retroactively justify stopping an individual if the information was not available at the initial time of the stop.

**NPD:** See above response.

Response to the presence of officers should not ever justify a stop. The same applies to section V.A. as well which states that a person’s response to police cannot be used “alone” to justify transforming contact into “stop.” Fear and alarm at the presence of police officers is justified in a world where officers routinely abuse power and cell phone cameras capture officer shootings of unarmed civilians regularly. Again, building trust with the community means not treating any normal reaction to police presence with suspicion and coercive force (i.e. a stop).

**NPD:** See above comment on response to presence of officers.

“Proximity” to someone who is suspected of criminal activity is simply too vague to ever be used to justify a stop, absent some existing knowledge of a relationship between the two. How close is “proximate”? 10 feet? 20? 50? In the same group of people on a public sidewalk? In the same car? On the same bus? Vagueness in a policy leads to discretion by officers, exactly what a policy such as this one must avoid.

**NPD:** “Close proximity” is the most accurate description. No policy can imagine every possible scenario. Putting physical limits on circumstances that are unpredictable cannot be used as a boundary for acceptable behavior. For example, two criminals can conspire to commit a crime by:

- both being in very close proximity to one another while carrying out a stolen item from a burglarized home;
- both being a city block apart, with one party acting as a lookout for law enforcement, while the other is carrying out the physical act of robbing a bank while communicating via handheld radios or cellular telephone;
- both being thousands of miles apart while working together over the internet to commit identity theft

If these factors are ever used, their use must be severely restricted. Simply allowing them to be used as long as any other factor exists will inevitably lead to abuse. For example, say Officer Friendly encounters a person who runs the other way and later discovers that the person has an outstanding warrant for unpaid child support. Nothing in this policy would prevent such a stop. But based on what research and experience tell us about civilian responses to the police, such a stop does not reflect any actual evidence of criminality.

**NPD:** See above response concerning “totality of the circumstances” regarding an investigatory stop.

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

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

Also, in terms of reliability of information or “trustworthy source,” the information must be weighted on the totality of the circumstances. Information received from an 911 caller who does not leave a return number or name is inherently less reliable than someone who is the first person victim of the crime, and 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 cases must be judged on the totality of the circumstances (the “whole picture” perspective) and less desirable or reliable information must be corroborated with additional components of reasonable suspicion or probable cause before police may act on it.

IV.K. What is a “significant distance away” to relocate a suspect? The case law on this is too open-ended to be a coherent policy. Any time a stopped person is relocated (but not “under arrest”), the distance moved must be listed, as well as any reason given for movement. Again, the

reasons should be enumerated and heavily restricted. Unless there is imminent risk of serious harm, a stop should be conducted in a quick enough period of time that no movement is necessary.

**NPD:** What the case law (*State v. Davis*, 104 N.J. 490, 504 (1986)) lacks in exact distance measurement it clearly prescribes in its intent. An officer conducting an investigative detention for eyewitness identification should “use the least intrusive investigative techniques reasonable available to confirm or dispel his suspicions in the shortest time reasonably possible.”

NPD would propose changing the language to reflect this critical point of the case law that was left out. NPD can change the policy to state:

“Relocating someone who is the subject of an investigative stop / detention, and is not under arrest, a significant distance away from where they were stopped in order to conduct a show-up identification for a suspected offense. An officer conducting an investigative detention for eyewitness identification should “use the least intrusive investigative techniques reasonable available to confirm or dispel his suspicions in the shortest time reasonably possible. (See *State v. Davis*)

V.A. and VI.A. The “free to leave” test is deeply confusing for any non-lawyer. See Daniel Kessler, *Free to Leave - An Empirical Look at the Fourth Amendment's Seizure Standard*, 99 J. Crim. L. and Criminology (2008). As Kessler notes, very few people actually feel “free to leave” in circumstances that judges have deemed people “free to leave” legally. As VI.A. notes “it is incumbent on the officer to make sure that people know that they are free to leave.” However, it does not specify what form this “making sure” should take. Officers should verbally inform any individual when the officer is performing a criminal investigation, similar to a Miranda warning, that they may leave whenever they want and that they are allowed to not answer the officer’s questions. Whenever the interaction becomes a “stop” they should inform the person that they are being momentarily detained. These kinds of warnings, though not 100% effective, will at least make clear the contours of the case law rather than merely continue to use the inherently coercive power of the badge and uniform without warning.

**NPD:** NPD will add language to both the consensual citizen contacts section and the investigatory stops section emphasizing the importance of using de-escalation techniques in both types of encounters in an attempt to prevent encounters from spiraling out of control.

NPD is trying to re-establish a positive relationship with the community it serves and starting off every encounter by stating “you are free to leave” would imply that we do not want to talk to them, is awkward in application, and does not allow the police to use all tools allowed under the law to fully investigate crimes at the behest of victims and in pursuit of the actual parties who are responsible for the heinous crimes committed upon those victims.

V.B. See above in IV.K. about “significant distance.”

**NPD:** See above response about significant distance.

V.B. second paragraph. The policy should state that if the officer makes a mistake of law, the stop can never be justified. Otherwise, an officer can say after the fact that an innocent person

was mistakenly thought to be violating the law. One example given in our share-back group was that a person pulled over for an illegal right turn actually performed a legal turn, but that the stop nonetheless continued for 45 minutes without a reason given and with a citation finally issued that was then dismissed in municipal court. The law presumes all citizens to know all the laws. Surely this policy must presume that officers know the same.

**NPD:** Under the “II. Policy” section of this document (on page 2) it states:

Investigative stops are lawful to the extent they meet the requirements of the 4<sup>th</sup> 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.”

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.

V.B.5. What is a “reasonable amount of time”? What specific facts need to be reported for longer detention? What is “necessary” to prolong an interaction? As noted above, the vaguer this language is, the easier it is to exploit. Any stop longer than 5 minutes should require an extensive report, which outlines the reason for every prolonging of the stop in 5-minute intervals from then on. If an officer cannot obtain the information they need within 5 minutes, the stop has escalated to an arrest and should require probable cause.

Prolonging police interactions without clear justification undermines trust in the community.

**NPD:** The reasonableness of stops depend on the totality of the circumstance (looking at the “whole picture”) and with every situation being unique it is impractical, as the United States Supreme Court has recognized that there be an exact time limit placed upon all stops/investigative detentions. *Terry v. Ohio* allows whatever time necessary to dispel suspicion.

As has been explained in legal opinions, the courts understand that detentions are not static events, and that the reasonableness of the officers’ actions often depends on what happened as things progressed, especially whether the officers reasonably became more or less suspicious, or more or less concerned for their safety. (See *U.S. v. Place* (1983)).

What the case law (*State v. Davis*, 104 N.J. 490, 504 (1986)) lacks in exact distance measurement it clearly prescribes in its intent. An officer conducting an investigative detention for eyewitness identification should “use the least intrusive investigative techniques reasonable available to confirm or dispel his suspicions in the shortest time reasonably possible.”



Also, if officers are busy “clock watching” then they will be distracted from performing their duty to conduct the whole legal rationale for the stop / investigative detention, the on scene investigation to determine if reasonable suspicion is confirmed, dispelled, or if probable cause is established.

V.B. on p. 9, what corroboration of illegality is necessary? Again the section here on corroborating an anonymous tip remains vague. How about two anonymous tips? Three? More specificity is needed to flesh out what may constitute corroboration. Additionally it must be clear to a person who has been stopped the information that justified their stop.

**NPD:** The passage already gives examples of what may constitute corroboration of an anonymous tip in the second sentence cited:

“An **officer’s observations** at the scene, **additional information secured from the anonymous caller** and other **circumstances can establish reasonable suspicion** that the subject has violated or is about to violate the law, but such information must be collected before a stop is conducted.”

VI.C. These event numbers need to be given to any stopped person for quick and easy retrieval of any police report involving their contact with the police, especially if it resulted in a stop. This should be publicly available in any event, but this process should be no harder than paying a traffic ticket. An online dashboard and search function should allow citizens to see the results of these interactions in order to provide communities to keep a close tab on police stops and officers who routinely omit information.

**NPD:** Investigative stops / detentions do require an event number.

As listed on page 9, under section, V. Procedures – B. Investigatory Stops / Detentions - #12:

“Officers will fully document all stops as soon as possible, but no later than by the end of the officer’s workday”, and as listed above, “All data entries of stop information must have a corresponding Event Number”.

Because reports generated for investigative stops / detentions may contain people’s personal identifying information, it would not be responsible for NPD to allow this information to be accessed through an online dashboard and search function. The technology infrastructure that is currently in place at NPD does not provide the option to scrub the personal identifying information from the reports before making it available. NPD will keep this idea in mind. NPD is in the process of conducting an independent technology assessment to achieve a greater level of transparency, and become more efficient in delivering police services. NPD will explore the legality and feasibility of employing such an accountability tool.

As for modification to the policy in question, NPD proposes altering the language on page 9, under section, V. Procedures – B. Investigatory Stops / Detentions - #10 to read:

“Officers will provide his or her name, badge number and Event Number for the investigative stop / detention when requested, in writing or on a business card (if authorized); and”

As listed in a previous comment, “Based on the sheer number of interactions officers engage in each day it is impractical to require they write a report about every person they engage in a consensual citizen contact with (those who are always free to leave). Furthermore, if officers are required to write a report for consensual citizen contacts (when people in the community are free to leave) then they will need information to do so, which will prompt the officer to ask the person whom they are engaging in a consensual citizen contact with for information. This will inherently lead citizens to believe that every interaction they have with the police is solely for intelligence gathering and not establishing a meaningful relationship with them and convert the encounter into a “stop” if the person does not feel free to leave. If this is incorporated it has the potential to foster a sense of distrust that NPD is working to eliminate.

VI.D. More information needed for all stops include:

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

**NPD:** Supervisors are required to review, reject or approve all investigative stops / detention reports. As stated on page 11, under section VII. Supervisor Responsibilities:

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

If a situation gives rise to transform a consensual citizen contact into an investigative stop / detention and/or if a person was “transferred after being detained” then both situations will be checked as stated in the mentioned passage, which requires supervisors to check reports for accuracy, completeness and adherence to law and division policy (which lists the prohibited actions).

VII. Although supervisor responsibilities for review are important, transparency with the public is even more important. An early-warning system needs to be developed to flag any officer with a high rate of stops without sufficient suspicion or with high rates of use of force. These officers’ names should be publicly available for the CCRB to review. Any officer should be immediately placed on desk duty if they meet the warning system to prevent harms to public trust.

A select number of reports must be reviewed by the public and community, and these can then be corroborated with the supervisory review to see where there are disagreements between police review and civilian review.

Additionally, more record-keeping such as event numbers are needed for consensual citizen interactions.

**NPD:** General data from stops and other topics of concern are already publically available online at:

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



As stated in a previous response, because reports generated for investigative stops / detentions may contain people's personal identifying information it would not be responsible for NPD to allow this information to be accessed through an online dashboard and search function. The technology infrastructure that is currently in place at NPD does not provide the option to scrub the personal identifying information from the reports before making it available. NPD will keep this idea in mind. NPD is in the process of conducting an independent technology assessment to achieve a greater level of transparency, and become more efficient in delivering police services. NPD will explore the legality and feasibility of employing such an accountability tool.

As listed on page 13, under section VIII 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 his/her designee, to ensure that the tenets of this General Order are implemented and adequately monitored.

The Commander of the Office of Professional Standards, or his/her designee, to 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.

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

- e) Misconduct complaints;
- f) Stop, detention and arrest data;
- g) Use of force analysis; and
- h) 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. "

This passage speaks toward the early warning system mention in the comment. An objective assessment of officers who are flagged by the early warning system to drill down into the information to see if there is something improper going on or if the officer is just an outlier among his/her peer, but still operating within the confines of the law and division policy. Based on that assessment, as stated in the above passage, "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."

X. What impact will noncompliance have on admissibility in court? This is not discussed in the policy, but we know that the exclusionary rule is a deterrent to abuse of police power.

**NPD:** The policy was drafted trying to take into account the most common types of circumstances that officers encounter. All possible situations are unable to be covered in this

one policy. Any type of evidence recovered and the admissibility of the evidence in court is reviewed by prosecutors, judges and defense attorneys at appropriate legal proceedings.

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

① CAN A REQUEST BE MADE FOR AN OFFICER CAM TO BE PUT ON, FOR REASON TO BELIEVE IT'S NOT.

② CAN A PERSON RECORD A STOP WITHOUT REPERCUSSION.

Any person can request that an officer activate their Newark Police Division body worn camera.

A person can record any stop without repercussion as long as it does not interfere with an officer's on-scene investigation or official police action.

The new NPD policy regarding stops, "Consensual Citizen Contacts and Investigatory Stops" prohibits officers from:

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

Searching a pocketbook —  
AGE How DOES AGE impact  
the procedure —

- WITH THE TRAINING BECOMES  
MANDATORY practices —
- what ABOUT TEENAGERS —
- WHAT TECHNOLOGY AVAILABLE to  
support the OFFICERS or track  
officers  
MISTAKES OF MIND OR HEAR !!

Officers need to establish probable cause to believe, using facts of sufficient quality and quantity based on the totality of the circumstances, that a pocketbook contains evidence of a crime to conduct a search of it. Otherwise, the officer will need to obtain knowingly and intelligently given consent to search from the person who has control over the pocket book.

The mandatory procedures are being developed first (e.g. the policies) and the training will be guided by them.

The rules are slightly different for teenagers when officer wishes to obtain consent to search a pocketbook in their possession. All reasonable efforts will be made to first contact a parent or guardian of the child to obtain knowing and intelligently given consent to search a pocketbook in their possession.

Currently, the Newark Police Division employs a Performance Monitoring System through an IA-Pro computer database (maintained by the Office of Professional Standards). The system tracks when complaints are made (internally – by police supervisors for deficiencies or violations of orders, or externally – by citizens). The Consent Decree mandates a more robust Early Warning System that will be custom to Newark and developed by a 3<sup>rd</sup> party vendor after a complete technology assessment of all of NPD's current information systems is complete.

Launch Sat  
Demographic disparities  
How are these changes  
monitored between & among other  
police agencies.

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. To measure the changes against another police agency would prove difficult, because all police departments and communities are unique. Police Departments across the country that are under Consent Decrees face different identified deficiencies, so they have different requirements.

1. WHAT IS THE PROCEDURES WHEN THE BODY CARM ARE NOT WORKING
- 2 ARE THEY CHECKED BEFORE LEAVING THE BUILDING
- 3- WHAT U DO WHEN U R STOP HAS A WARRANT AND THEN TAKE U <sup>THE TO</sup> TO THE POLICE STATIONS AND FIRST ~~THAT~~ THEY 3 MORE WARRANTS +

When an NPD body worn camera is not working officers will use a training guide and instructional videos to attempt to troubleshoot the problem. If that fails to remedy the issue, officers will seek the assistance of an on duty body worn camera trainer and/or supervisor to assist in fixing the issue. If all else fails, the officer will be temporarily issued a different body worn camera until the non-functioning unit has been repaired by NPD technical staff, contracted outside vendor, or camera manufacturer.

Officers are required to test the body worn camera for functionality prior to being deployed into the field.

When your stop has a warrant the arrestee is taken to the appropriate police precinct. If additional warrants are revealed, the arrestee will be booked on all open arrest warrants.

4. THE TRAINING 16 HR IS NOT <sup>2014</sup> ENOUGH

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

- 1) When investigatory stops/entries fail to meet the reasonable suspicion standard and are returned to the officer, can the officer edit and resubmit the report? If so, will all drafts of the report be publically available? If not, why not?
- 2) When officers are found to have violated this order, will their violations and any discipline they receive be publically available? If not, why not?

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

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

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

This policy "Consensual Citizen Contacts and Investigatory Stops" states, "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".

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"



- 1) Pretext stops: As defined on page 4, this category of stops will permit conscious or subconscious discrimination. Accordingly, pretext stops should be prohibited. If you disagree, what is the justification for allowing pretext stops?
- 2) What is a "significant distance" beyond which it is impermissible to relocate a person for a show-up?
- 3) How will police officers "make sure people know they are free to leave"? How will they communicate this? When must they communicate this?

See above comment on "pretext stops"

See above comment on "significant distance"

Police officers will proactively make sure people know they are free to leave by:

"Consensual Citizen Contacts and Investigatory Stops" under section "IV. Prohibited Actions" section (located on page 5) officers are prohibited from: "Taking any steps, through words or conduct, that would make a person feel he/she is not free to leave during a voluntary citizen contact".

"Consensual Citizen Contacts and Investigatory Stops" under section "V. Procedures" section (located on page 6) states:

"During a citizen contact, officers shall ensure that their actions, conversations and/or requests are delivered in a manner that would cause a reasonable person to believe that they are free to leave".

"Consensual Citizen Contacts and Investigatory Stops" under section "V. Procedures" section (located on page 7) states:

"During a consensual citizen contact, an officer may not take any steps, through words or conduct, that would make a person feel he/she is not free to leave during a voluntary citizen contact. Any such steps would convert the contact into an investigative stop, or in some cases, an arrest. Both of which would require adequate levels of suspicion."

"Consensual Citizen Contacts and Investigatory Stops" under section "VI. Reporting Requirements" section (located on page 10) states:

“Documentation of an interaction between a person and the police is required when the **person stopped does not feel free to leave**. Because a stopped person’s perception should be considered in determining what must be reported, it is incumbent on the officer to make sure that people know that they are free to leave, or are being stopped / detained.”

NPD is trying to re-establish a positive relationship with the community it serves and starting off every encounter by stating “you are free to leave” would imply that we do not want to talk to them, is awkward in application, and does not allow the police to use all tools allowed under the law to fully investigate crimes at the behest of victims and in pursuit of the actual parties who are responsible for the heinous crimes committed upon those victims.

This will be addressed in the mandated 16 hours of stop, search, and arrest training, in the mandated four hours of yearly stop, search and arrest training thereafter, in roll call trainings, in training bulletins and by embedding this concept in policy.

Officers do not communicate this explicitly unless asked by the public or if someone attempts to flee a stop.

1) Being approached for any reason can be upsetting - what is NPD doing to instruct its officers in de-escalation tactics so stops don't unnecessarily turn into arrests?

2) Re: data collection - police who have been trained for 16 hrs. may get more savvy at writing reports + implementing data, ~~but~~ without feeling the need to make their stops more constitutional  
↳ How can that problem be avoided?

NPD hired an outside vendor, which has trained approximately 30 officers to be trainers for a course in de-escalation. NPD is in the process of implementing this training for all personnel. Also, the following language has been added to the "Consensual Citizen Contacts and Investigatory Stops" policy to convey the importance of this point:

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

The training officers will receive will give them a greater awareness of what a constitutional stop looks like and shall be guided accordingly. Educated supervisors, compliance inspections, and audits of reports will ensure that policy is actually being carried out. The fact that stops will be checked against NPD camera footage will be the most effective countermeasure NPD can take to check that what is written on paper is consistent with what is occurring. In instances where officers documentation of an incident is not consistent with camera footage proof warrants an administrative and/or a criminal investigation with appropriate discipline applied.

Stops need to be constitutional, but when an encounter is not a "stop" the training will guide officers in what has been deemed acceptable and what may turn a mere encounter into a de-facto stop or arrest which is out of policy.

CAN you define the different  
legal standards and what  
a Terry Frisk is?

The different legal standards spoken about in the “Consensual Citizen Contacts and Investigatory Stops” policy are:

**Probable Cause** – Specific, 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 then the beyond a reasonable doubt standard needed for conviction. Probable cause is a practical, non-technical probability.

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

A “Terry Frisk” is a limited frisk or pat-down of legally stopped subjects for 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. The term “Terry Frisk” comes from the 1968 U.S. Supreme court ruling in the case, *Terry v. Ohio*.

The U.S. Supreme Court, In *Terry v. Ohio*, permitted the police to conduct the limited “frisk” based upon the reasonable suspicion standard.

1) Are there any quotas that have to be fulfilled by Newark Police officers regarding stops/contacts, tickets issued, and arrests?

2) Do Newark Police officers receive any kind of incentives for stops, tickets issued, and arrests?

The above mentioned quotas and incentives are illegal under N.J. law and against NPD policy, specifically listed NPD General Order # 69-3 "Annual Evaluations of Sworn Personnel" under section "V. Prohibition on Quotas."

Please see the exact language from the N.J. law (N.J.S.A. 40A:14-181.2) below:

**40A:14-181.2 Police ticket quota for motor vehicle violations prohibited; permitted use of statistics.**

2. a. A State, county or municipal police department or force engaged in the enforcement of Title 39 of the Revised Statutes or any local ordinance adopted pursuant to this title shall not establish any quota for arrests or citations. The department or force may, however, collect, analyze and apply information concerning the number of arrests and citations in order to ensure that a particular officer or group of officers does not violate any applicable legal obligation.

b. The department or force shall not use the number of arrests or citations issued by a law enforcement officer as the sole criterion for promotion, demotion, dismissal, or the earning of any benefit provided by the department or force. Any such arrests or citations, and their ultimate dispositions, may be considered in evaluating the overall performance of a law enforcement officer.

This also applies to other enforcement activities, not just motor vehicle enforcement (title 39).

What about interaction with mentally ill persons? Is the CIT Memphis Model (CRISIS INTERVENTION TEAM) included in the Consent Decree?

The Newark, NJ Police Division Consent Decree can be found at:

<https://www.justice.gov/opa/file/836901/download>

**Page 10, paragraph 14 states:**

**B. Community Engagement Measures and Training**

14. NPD will provide direction and training to officers on the benefits of and means to achieve effective community engagement, including which police tactics and strategies are more likely to alienate community members, and how to employ alternatives to those tactics and strategies where consistent with public safety. Within 60 days of the Operational Date and annually thereafter, the NPD will provide eight hours of structured in-service training on community policing and problem-oriented policing methods and skills for all officers, including supervisors, managers and executives. This training shall include:

- a. methods and strategies to improve public safety and crime prevention through community engagement, including how to establish formal partnerships with community organizations, how to work with communities to set public safety and crime prevention priorities, and how to create opportunities for positive interactions with youth;
- b. scenario-based training that promotes the development and strengthening of partnerships between the police and community;
- c. leadership, ethics, and interpersonal skills;
- d. problem-oriented policing tactics; and
- e. conflict resolution, including verbal de-escalation of conflict.

**Page 24 states:**

VIII. USE OF FORCE NPD will develop and implement policies and training directing that the use of force by NPD officers accords with the rights secured and protected by the Constitution and state and federal law. NPD will also develop and implement policies and review mechanisms that will promptly identify and appropriately respond to any unreasonable uses of force. NPD will direct that officers use techniques other than force to effect compliance with police orders whenever feasible; use force only when necessary, and in a manner that avoids unnecessary

injury to officers and civilians; and deescalate the use of force at the earliest opportunity. To achieve these outcomes, NPD will implement the requirements set out below.

**Page 25, paragraph 67 states:**

67. NPD's use of force policy will include the following requirements:

- a. Officers will use advice, warnings, and verbal persuasion, when possible, before resorting to force;
- b. Force will be appropriately de-escalated as resistance decreases;
- c. When feasible, officers will rely on area containment; employ surveillance; wait out subjects; summon reinforcements; or call in specialized tactical units, in order to reduce the need for force and increase officer and civilian safety;
- d. Officers will allow individuals the opportunity to submit to arrest before force is used wherever possible;
- e. NPD will explicitly prohibit neck holds, except where lethal force is authorized;
- f. NPD will explicitly prohibit head strikes with hard objects, except where lethal force is authorized;
- g. NPD will explicitly prohibit using force against persons in handcuffs, except as objectively reasonable to prevent imminent bodily harm to an officer or another person or persons, or, as objectively reasonable, where physical removal is necessary to overcome passive resistance;
- h. NPD will explicitly prohibit the use of force beyond unresisted handcuffing to overcome passive resistance, except that physical removal is permitted as necessary and objectively reasonable;
- i. NPD will explicitly prohibit the use of retaliatory force by officers, including: force used after a threat has diminished or that is otherwise not reasonably necessary; force used to punish individuals for fleeing or otherwise resisting arrest; and force used in response to disrespectful language or actions.
- j. Unholstering a firearm and pointing a firearm at a person will be documented and tracked and used only when objectively and reasonably necessary to accomplish a lawful police objective;



- k. NPD will prohibit officers from using force to effect compliance with a command that is knowingly unlawful. A use of force is unreasonable when the initial arrest or detention was knowingly unlawful to the officer based on information that was known to the officer at the time of arrest or detention; and
- l. Immediately following a use of force, officers and, upon arrival, a supervisor will inspect and observe subjects for injury or complaints of pain resulting from the use of force, and immediately obtain any necessary medical care. If qualified to do so, an officer will be expected to provide emergency first aid until professional medical care providers are on scene.

what is a "high-crime area"?  
↳ "high" - relative to what?  
↳ "area" - how big?  
↳ "crime" - which crime? If this is  
an area known for prostitution, how  
could that support reasonable suspicion for  
a gun crime?  
Without defining these terms very specifically,  
any policy that allows "high-crime area" to  
support cause for a stop allows for hunch-  
based policing, which allows for bias-based  
policing. NPD shouldn't use it.

See above comments relative to "high-crime area", "area", and "crime" relative to the topic discussed on this comment card.

Q: There are lots of exceptions to the prohibitions.

III. L. - high-crime neighborhood  
"taken alone" can't  
be used

IV. B. - "unless not reasonably practical"

IV. F. - "solely" on certain  
indiv. response

OVER  
↓

G.H.  
IV I. exception to demo.  
category

See above comments relative to "high-crime area (neighborhood)", "solely", "demographic categories" and how the "totality of the circumstances" test is used by the courts to determine if a police action is constitutional or not.

How will these  
exceptions be restricted  
specifically, so they  
don't replace the rule?  
Why not provide real  
specificity?

See above comments relative to the exceptions (which use the word "solely") and how the "totality of the circumstances" test is used by the courts to determine if a police action is constitutional or not. There cannot be real specificity because every situation is unique, so it is impractical other than citing case law that guides officers actions based on a broad set of circumstances.

With respect to Terry v. Ohio,  
what is considered reasonable  
time to detain a person?  
What is a reasonable frisk?

The reasonableness of stops depends on the totality of the circumstances (looking at the “whole picture”). The U.S. Supreme Court, in *Terry v. Ohio*, does not specify a time limit regarding dispelling suspicion. However, NPD does instruct officers to employ an objectively reasonable standard based upon the serious nature of the crime and the weight of the evidence.

Detentions are not static events, and that the reasonableness of the officers’ actions often depends on what happened as things progressed, especially whether the officers reasonably became more or less suspicious, or more or less concerned for their safety. (See *U.S. v. Place* (1983)).

What the case law (*State v. Davis*, 104 N.J. 490, 504 (1986)) lacks in exact measurement it clearly prescribes in its intent. An officer conducting an investigative detention for eyewitness identification should “use the least intrusive investigative techniques reasonable available to confirm or dispel his suspicions in the shortest time reasonably possible.”

A “frisk” (also known as a “Terry Frisk”) is determined by the officer being able to articulate (in writing or orally) that there was reasonable suspicion to believe the person stopped is armed with a weapon and is a danger to the officer or the public. The reasonableness of the frisk is based on the totality of the circumstances (taking the whole picture into account).

~~+st page~~

Page 2

Under II - Policy

- (1) Have articulate facts that the person could be armed with a weapon. WHY - could be as app as opposed to IS?

The policy has been changed. The word "is" replaced "could be."

Community Engagement Officers  
Should be holding workshops  
on educating the general  
public on their civil liberties  
+ What their rights are  
upon encountering police to  
help build trust.

This suggestion has been forward to the Community Affairs / Clergy Unit for consideration. There is also a state resource that speaks to police citizen stops. The website is:

<http://nj.gov/oag/safestopnj/>

The website cites motor vehicle stops, but many of the same ideas apply to pedestrian stops. The NPD app also includes an icon that provides the general public with information on what to do when stopped by the police.

- ① The excuse of not having enough "Manpower" to police effectively is no longer acceptable. What type of innovative approaches are being worked out to overcome the threat of "Manpower?"
- ② Can Citizens get access to other policies/ general orders? If so, how?

The NPD is re-training all of its officers on the theory behind community policing. This emphasizes partnerships with the community (government, non-government, individuals, business and schools) in order to make Newark safer and a better place for all.

In order for community policing to be effectively implemented, every Newark Police officer must be responsible for practicing community policing. This does require patrol officers to have time to engage the community, rather than simply respond to calls for service. In accordance with paragraph 15 of the Consent Decree, the NPD is currently undergoing a staffing assessment in order to appropriately staff and deploy personnel to support effective community oriented policing.

NPD has recently created a webpage specifically dedicated to the Consent Decree:

[www.npdconsentdecree.org](http://www.npdconsentdecree.org)

Approved policies and policies under review and currently posted there. The Consent Decree requires that NPD post all of its policies for all to see. This is being addressed and may be contingent on the findings/recommendations of the in-progress technology assessment and will be completed in the future.

- ③ What fields did the Subject Matter Experts represent?
- ④ ~~How do you~~ What is the strategy the Newark Police Department will use to change the negative perception citizens have of police officers? Like how will the updated police and 16 hours of training ~~create~~ transform how people feel about the police?
- ~~⑤ What is the frequency of "Refreshers?"~~
- ⑤ Will data be available to residents regarding stops?

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/>

NPD will review and update its policies and procedures to comply with the most up to date laws and known best practices identified in policing and train officers adequately and regularly to enhance services provided to the community. NPD will continually measure customer satisfaction through community surveys to measure progress or identify areas in need of improvement.

Data regarding stops is currently available to the public on the following NPD website:

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

Please click on the blue tab labeled, "Field Inquiries" for the most recently available month of data or "Printable Version" for archived transparency reports for police stops.

Where are the criminal  
consequences for Police  
misconduct to be found  
as described by the  
Prosecutor?

The criminal consequences for police misconduct are dictated by what type of crime they commit. In addition to the accused crime, officers are subject to being charged with N.J.S.2C:30-2 (Official Misconduct), and N.J.S.2C:30-6 (Crime of Official Deprivation of Civil Rights), and N.J.S.2C:30-7 (Crime of Pattern of Official Misconduct).

The sentencing guidelines used by N.J. are found under N.J.S.2C:43-6 (Sentence of Imprisonment for Crime in New Jersey).

#### **2C:30-2. Official misconduct**

A public servant is guilty of official misconduct when, with purpose to obtain a benefit for himself or another or to injure or to deprive another of a benefit:

- a. He commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized or he is committing such act in an unauthorized manner; or
- b. He knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.

Official misconduct is a crime of the second degree. If the benefit obtained or sought to be obtained, or of which another is deprived or sought to be deprived, is of a value of \$200.00 or less, the offense of official misconduct is a crime of the third degree.



**2C:30-6. Crime of official deprivation of civil rights**

2. a. A public servant acting or purporting to act in an official capacity commits the crime of official deprivation of civil rights if, knowing that his conduct is unlawful, and acting with the purpose to intimidate or discriminate against an individual or group of individuals because of race, color, religion, gender, handicap, sexual orientation or ethnicity, the public servant: (1) subjects another to unlawful arrest or detention, including, but not limited to, motor vehicle investigative stops, search, seizure, dispossession, assessment, lien or other infringement of personal or property rights; or (2) denies or impedes another in the lawful exercise or enjoyment of any right, privilege, power or immunity.

b. (1) Except as provided in paragraphs (2) and (3) of this subsection, a public servant who violates the provisions of subsection a. of this section is guilty of a crime of the third degree.

(2) If bodily injury results from depriving a person of a right or privilege in violation of subsection a. of this section, the public servant is guilty of a crime of the second degree.

(3) If, during the course of violating the provisions of this section, a public servant commits or attempts or conspires to commit murder, manslaughter, kidnapping or aggravated sexual assault against a person who is being deprived of a right or privilege in violation of subsection a. of this section, the public servant is guilty of a crime of the first degree.

c. Notwithstanding the provisions of N.J.S.2C:1-8 or any other law, a conviction of official deprivation of civil rights under this section shall not merge with a conviction of any other criminal offense, nor shall such other conviction merge with a conviction under this section, and the court shall impose separate sentences upon each violation of this section and any other criminal offense.

d. Proof that a public servant made a false statement, prepared a false report, or, if the agency that employs the public servant, the Attorney General or the county prosecutor having supervisory authority over the agency required a report to be prepared, failed to prepare a report concerning the conduct that is the subject of the prosecution, shall give rise to an inference that the actor knew his conduct was unlawful.

e. For purposes of this section, an act is unlawful if it violates the Constitution of the United States or the Constitution of this State, or if it constitutes a criminal offense under the laws of this State.

### **2C:30-7. Crime of pattern of official misconduct**

3. a. A person commits the crime of pattern of official misconduct if he commits two or more acts that violate the provisions of N.J.S.2C:30-2 or section 2 of P.L.2003, c.31 (C.2C:30-6). It shall not be a defense that the violations were not part of a common plan or scheme, or did not have similar methods of commission.

b. Pattern of official misconduct is a crime of the second degree if one of the acts committed by the defendant is a first or second degree crime; otherwise, it is a crime of the third degree, provided, however, that the presumption of nonimprisonment set forth in subsection e. of N.J.S.2C:44-1 for persons who have not previously been convicted of an offense shall not apply. Notwithstanding the provisions of N.J.S.2C:1-8 or any other law, a conviction of pattern of official misconduct shall not merge with a conviction of official misconduct, official deprivation of civil rights, or any other criminal offense, nor shall such other conviction merge with a conviction under this section, and the court shall impose separate sentences upon each violation of N.J.S.2C:30-2 and sections 2 and 3 of P.L.2003, c.31 (C.2C:30-6 and C.2C:30-7).

### **2C:43-6. Sentence of Imprisonment for Crime in New Jersey**

Ordinary Terms; Mandatory Terms. a. Except as otherwise provided, a person who has been convicted of a crime may be sentenced to imprisonment, as follows:

- (1) In the case of a crime of the first degree, for a specific term of years which shall be fixed by the court and shall be between 10 years and 20 years;
- (2) In the case of a crime of the second degree, for a specific term of years which shall be fixed by the court and shall be between five years and 10 years;
- (3) In the case of a crime of the third degree, for a specific term of years which shall be fixed by the court and shall be between three years and five years;
- (4) In the case of a crime of the fourth degree, for a specific term which shall be fixed by the court and shall not exceed 18 months.

1- HECKLING BODY CAMERA  
2- POLICE TRAINING 16 HRS NO  
LARGER ENOUGH

When an NPD body worn camera is not working officers will use a training guide and instructional videos to attempt to troubleshoot the problem. If that fails to remedy the issue, officers will seek the assistance of an on duty body worn camera trainer and/or supervisor to assist in fixing the issue. If all else fails, the officer will be temporarily issued a different body worn camera until the non-functioning unit has been repaired by NPD technical staff, contacted outside vendor, or camera manufacturer.

Officers are required to test the body worn camera for functionality prior to being deployed into the field.

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

Trump Administration is  
stopping the Decree Around  
the country.

Our work will Be deleted  
and hardship with citizens  
will return. Who are Advocating  
to stop Trump Administration  
other than elected and Groups  
we law enforcement stand up.

NPD has already entered into a Consent Decree and will make reforms to itself as prescribed by it. The Consent Decree is a court order, and the President does not have the authority to end it, only the Federal Court. Regardless, Mayor Baraka has pledged to stick with the police reforms even if the Consent Decree is removed.

Please follow the below link/url to a NJ.com article pertaining to this topic:

[http://www.nj.com/essex/index.ssf/2017/04/baraka\\_response\\_to\\_sessions\\_plan\\_to\\_review\\_police.html](http://www.nj.com/essex/index.ssf/2017/04/baraka_response_to_sessions_plan_to_review_police.html)

What is the Right when  
stop for conceal weapon carrier.  
In the urban (Newark) qualified  
carrier many increase.  
Rights of illegal. when stopped  
consensual. ICE is not present.

The rights of a person with a concealed weapons permit are the same as every other person, except they have permission (or a license issued by the State of N.J.) to carry a concealed weapon under certain circumstances.

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](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.”

[REDACTED]

What happens when officers violate these policies?

Why isn't the gang enforcement unit being brought back to help reduce crime?

How does internal affairs handle the complaint about wrongful stops?

This policy "Consensual Citizen Contacts and Investigatory Stops" states, "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."

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

The formation or re-formation of any unit in the NPD is guided under the direction of the Public Safety Director and the Chief of Police.

Internal Affairs (Officer of Professional Standards) will handle complaints about stops as any other, by gathering facts and evidence to determine to the best of their ability what actually occurred and then charge officers with violations of the law and/or department policy when a the prescribed legal standard of proof is met.

What's the officer discipline if he/she breaks the stop policy?

This policy "Consensual Citizen Contacts and Investigatory Stops" states, "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."

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



Shouldn't officers be courteous +  
professional + treat all citizens with  
dignity + respect at all times, not  
just during consensual citizen  
contacts?

Page 7, V. Procedures / A. Consensual Citizen Contact states:

“After coming into contact with a person in the community, either initiated by the officer or by the person, the officers shall be courteous, respectful, and professional.”

Page 8, V. Procedures / B. Investigatory Stop / Detention states:

“When an officer has reasonable and articulable suspicion that a person(s) is about to violate the law, has violated the law or is in the process of violating the law, the officer may stop the person and:

2. Will be courteous, respectful, and professional;”

This covers all possible interactions with people.

- ① Why not tell people they are free to leave during a field inquiry (an objective standard) as opposed to not making a person feel he is not free to leave (subjective)?
- ② Using a person's assertion of their right not to talk to police as a factor in reasonable suspicion, just not the only factor (V.A.) is very troubling
- (over) →

NPD is trying to re-establish a positive relationship with the community it serves and starting off every encounter by stating "you are free to leave" would imply that we do not want to talk to them, is awkward in application, and does not allow the police to use all tools allowed under the law to fully investigate crimes at the behest of victims and in pursuit of the actual parties who are responsible for the heinous crimes committed upon those victims.

Page 8, under section V. Procedures – B. Investigatory Stop / Detention – number 2 states:

"As early in the contact as safety permits, officers shall introduce him or herself to the citizen (providing name, rank or title, agency affiliation and that the stop is being recorded, if applicable), and state the reason for the stop. This information shall be provided to the subject prior to requesting their information."

Under the same section number 5 states:

"Detain the person for only the reasonable amount of time that is needed to confirm or dispel the officer's suspicion for the violation of law. Any delays or extension of the detention period in order for officers to complete necessary actions must be objectively reasonable; officers may not extend the detention of a person solely to await the arrival of a supervisor. Officers will take all reasonable measures to ensure the citizen understands the purpose of reasonable any delays."

Under the same section number 9 states:

"Officers will answer any questions the citizen may have, including explaining options for traffic summons dispositions, if relevant;"

Under the same section number 11 states:

**“Officers will offer an explanation for the circumstances and reasons for the stop.”**

People who commit crimes usually do not want to get caught.

NJ case law prohibits a person’s response to observing police (e.g. fleeing when a person sees the police) as being the **sole** basis for a detention. However, the reaction (flight) may be considered, **with other factors**, to determine reasonable suspicion that a person is engaging in criminal activity. Reasonable suspicion allows an officer to make an investigatory stop.

③ The policy says bad stops will go into evaluations (VIP), but how? Just narrative form? Or quantitative assessments?

As listed on page 13, under section VIII 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 his/her designee, to ensure that the tenets of this General Order are implemented and adequately monitored.

The Commander of the Office of Professional Standards, or his/her designee, to 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.

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

- i) Misconduct complaints;
- j) Stop, detention and arrest data;
- k) Use of force analysis; and
- l) 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.”

This passage speaks toward the early warning system mentioned in the comment. An objective assessment of officers who are flagged by the early warning system to drill down into the information to see if there is something improper going on or if the officer is just an outlier among his/her peer, but still operating within the confines of the law and division policy.