

Newark Police Division
Searches With or Without a Search Warrant Draft Policy
What You Need to Know

Background

Generally, police officers need a valid search warrant before they can conduct a search. There are certain situations, however, where they can legally conduct a search without a warrant. This white paper outlines the circumstances and requirements for searches both with and without a warrant.

Section VI of the Consent Decree outlines the requirements of this search warrant policy.

Searches With or Without a Search Warrant Draft Policy Summary

The current draft search policy contains the following thirteen sections: (1) purpose; (2) policy; (3) definitions; (4) prohibited actions; (5) searches with a warrant; (6) searches without a warrant; (7) strip searches and body cavity searches; (8) reporting requirements; (9) supervisor responsibilities; (10) administrative review; (11) training; (12) responsibility for compliance; and (13) effect of this order.

WHAT IS THE PURPOSE OF THIS POLICY?¹

The policy seeks to “ensure that members of the Newark Police Division engage in lawful practices when conducting searches during the course of their official duties. This policy serves as a guide for Officers as to when they need to obtain a search warrant.”

DO THE POLICE HAVE TO HAVE A WARRANT TO CONDUCT A SEARCH?²

Generally, a search must be supported by a warrant that demonstrates probable cause that evidence of a crime exists, and that the evidence was once and continues to be at the place described. Warrants are limited in scope, apply only to the specific location described in the warrant, and the officer must have a reasonable belief that the evidence sought is within the area actually searched.

WHEN IS A WARRANT NOT REQUIRED FOR A SEARCH?³

There are several exceptions to the general rule that a warrant is required for a search, subject to certain considerations outlined in the policy:

1. **Consent to Search:** When a person has given an officer **consent to search**;
2. **Exigent Circumstances:** When there are **exigent circumstances** (i.e., an immediate threat to public safety, active attempt by a person to destroy evidence or escape, or in instances of community caretaking when an immediate response is required);
3. **Open View/Plain View:** Where evidence is in **open view/plain view**, if certain conditions are met;
4. **Protective Search:** When conducting a **protective search**, given certain circumstances;
5. **Vehicle Search:** When conducting a **vehicle search**, if there is probable cause to believe that the vehicle contains evidence of a crime and the circumstances giving rise to the probable cause were unforeseen and spontaneous (also called the “automobile exception”);

¹ See NPD General Order (“Searches With or Without a Search Warrant”) at I.

² See Searches With or Without a Search Warrant at V.

³ See Searches With or Without a Search Warrant at VI.

6. **Search Incident to Arrest:** When there is a **search incident to arrest** of a person and the surrounding area, if certain conditions are met; and
7. **Custodial Search:** When carrying out a **custodial search** after it is determined that the person to be arrested will be transported to a custodial setting.

WHAT POLICE CONDUCT IS PROHIBITED IN CARRYING OUT A SEARCH?⁴

NPD is prohibited from doing the following in carrying out a search:

- Searching when the officer lacks probable cause that the person has committed, is about to commit, or is in the process of committing a violation of law;
- Using pro forma or conclusory language without supporting evidence;
- Relying on information known to be materially false or incorrect to justify a warrantless search or to seek a search warrant;
- Seeking consent to search a motor vehicle without reasonable and articulable suspicion that the search will reveal evidence of a crime;
- Conducting a search based on consent without first obtaining supervisor approval;
- Considering any demographic categories (such as age or race) to determine whether to conduct a search or seek a warrant, unless the demographic category is in a specific suspect description and the description is from a trustworthy source relevant to the locality and time;
- Basing searches solely on a person being in the company of others suspected of criminal activity;
- Taking any steps, through word or conduct, that would make a person feel they are required to give consent for a search; and
- Physically examining transgender or intersex people solely to determine genital status.

WHAT ARE THE REPORTING AND REVIEW REQUIREMENTS FOR SEARCHES?⁵

An officer must document any incident where a search and/or a frisk occurs, clearly articulating the appropriate level of suspicion required to conduct the search or frisk. At a minimum, a Field Inquiry Report should be completed for all searches, and information about each searched person and vehicle must be entered into NPD's BlueTeam system and/or other data entry system. All generated reports will be reviewed by a supervisor, and any apparent violations or deficiencies in searches will be met with appropriate action (e.g., retraining, disciplinary action, etc.). Records of each violation or deficiency, and any corrective action, will be maintained in the data entry system, and the supervisor will document the same in the officer's performance evaluations and NPD's Early Warning System to identify officers needing repeated corrective action. The Commander of the Office of Professional Standards (OPS) will conduct cumulative and quarterly analyses of NPD officers' enforcement activities related to this policy.

WHAT ARE THE TRAINING REQUIREMENTS FOR SEARCHES?⁶

NPD members are required to undergo at least sixteen hours of initial training on stops, searches, and arrests. NPD members will subsequently undergo a minimum of four hours of annual training, to include training on legal requirements, search procedures and handling of seized property and evidence, and the effect of stops, searches, and arrests on community perceptions of police legitimacy and public safety.

⁴ See Searches With or Without a Search Warrant at IV.

⁵ See Searches With or Without a Search Warrant at VIII, IX, X.

⁶ See Searches With or Without a Search Warrant at XI.