

**Newark Police Division**  
**Arrests With or Without an Arrest Warrant Draft Policy**  
*What You Need to Know*

**Background**

Police officers routinely make arrests as part of their official duties. Although the preference is for the police to obtain a warrant before making an arrest, there are some circumstances in which an arrest without a warrant is allowed. This white paper outlines the requirements and standards for arrests both with and without a warrant.

Section VI of the Consent Decree outlines and references the arrests policy.

**Arrests With or Without an Arrest Warrant Draft Policy Summary**

The current draft arrests policy contains the following sixteen sections: (1) purpose; (2) policy; (3) definitions; (4) prohibited actions; (5) probable cause; (6) investigative stop/detention converted into arrest/de facto arrest; (7) arrests with an arrest warrant; (8) arrests without an arrest warrant; (9) entry into a structure to effect an arrest; (10) arrest procedures; (11) voiding arrests; (12) supervisor responsibilities; (13) administrative review; (14) training; (15) responsibility for compliance; and (16) effect of this order.

**WHAT IS THE PURPOSE OF THIS POLICY?<sup>1</sup>**

The policy seeks to “ensure that officers of the Newark Police Division engage in lawful practices when conducting arrests during their official duties. Officers are guided by this order when making an arrest, with or without an arrest warrant.”

**WHAT ARE THE POLICE REQUIRED TO DO WHEN MAKING AN ARREST?<sup>2</sup>**

This policy defines arrest as “the exercise of control or custody over a person by restricting that person’s liberty of movement for a significant period of time.” When making an arrest, NPD officers are required to follow a number of procedures, including the following:

- Identify themselves as police officers and clearly advise the person to be arrested that they are under arrest;
- Inform the person to be arrested of the reason for the arrest;
- Immediately notify central communications of the arrest;
- If the person to be arrested has a visible injury or complains of pain, the officer will immediately request needed assistance for the person; and
- Advise the person to be arrested of their Miranda rights (at time of arrest or before any custodial interrogation).

Police are required to notify a supervisor when it is determined by further investigation that the person arrested did not commit the offense in question or that the probable cause standard cannot be met. The supervisor will evaluate the totality of the circumstances and, if warranted, authorize the immediate release of the person.

**WHAT ARE POLICE PROHIBITED FROM DOING IN MAKING AN ARREST?<sup>3</sup>**

NPD is prohibited from doing the following in making an arrest:

- Arresting a person without having probable cause to do so;
- Relying on information known to be materially false or incorrect to carry out the arrest or obtain an arrest warrant;
- Considering a person’s demographic category to justify an arrest or seek an arrest warrant, unless as part of a specific suspect description, given that the description is from a trustworthy source and is relevant to the locality and time;

<sup>1</sup> See NPD General Order (“Arrests With or Without an Arrest Warrant”) at I.

<sup>2</sup> See Arrests With or Without an Arrest Warrant at X, XI.

<sup>3</sup> See Arrests With or Without an Arrest Warrant at IV, XII, XIII.

- Using pro forma or conclusory language, such as wording that makes claims without supporting evidence or has little true meaning or importance, in their documentation of supporting details for all arrests;
- Basing an arrest solely on information or evidence discovered after the arrest was executed;
- Basing an arrest solely on a person's presence with or near other people suspected of criminal activity; and
- Detaining, arresting, or threatening to detain or arrest people based on activity protected by the First Amendment of the U.S. Constitution (e.g., verbal criticism or questioning of police actions, electronically recording officers' actions in a way that does not interfere with an active investigation, and the display of offensive or uncomplimentary gestures toward the police).

All police supervisors will take appropriate actions to address all apparent violations or deficiencies in investigatory stops or detentions, searches, and arrests. The Commander of the Professional Standards Unit will conduct cumulative and quarterly demographic analyses of the enforcement activities related to this policy.

#### WHEN DOES AN INVESTIGATIVE STOP BECOME AN ARREST?<sup>4</sup>

This policy defines an investigatory stop/detention as “a seizure of a person for investigative purposes.” To determine whether an investigatory stop or detention has elevated into an arrest, courts will consider several factors including, but not limited to, the following:

- Whether contact with the police was consensual or non-consensual;
- The duration of the encounter;
- Whether the officer informed the person that they are the subject of an investigation, advised them that they are not free to leave, or blocked the person's path;
- The number of police personnel on the scene and their demeanor;
- The location of the encounter (whether it occurred in a public or private space); and
- Whether the person was handcuffed or confined in a police vehicle.

#### WHEN MAY AN OFFICER ENTER A STRUCTURE TO MAKE AN ARREST?<sup>5</sup>

- A. Police can enter a person's primary residence to make an arrest with the following court orders:
  - a. Parole or probation warrant;
  - b. Grand jury indictment warrant;
  - c. Bench warrant for failure to appear;
  - d. Arrest warrant; or
  - e. Search warrant.
- B. When the place they wish to enter is believed to be one of the person's primary residences and they believe the person is inside or consent is obtained from a person with authority over the third-party residence.
- C. When exigent circumstances occur, officers do not require an arrest or search warrant to enter any structure to effect the arrest of someone who has committed an indictable offense. Exigent circumstances include:
  - a. **Hot pursuit** – The officer has probable cause to arrest a person and the pursuit of the person for an indictable offense started in a public place.
  - **Threat to public safety** – Officers have probable cause to arrest a person who is reasonably believed to be armed or dangerous, is inside a structure, has injured or threatened to injure themselves or others, and who has refused to surrender to authorities or is in the process of causing bodily harm to someone.

#### WHAT ARE THE TRAINING REQUIREMENTS FOR ARRESTS?<sup>6</sup>

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 and the effect of stops, searches, and arrests on community perceptions of police legitimacy and public safety.

<sup>4</sup> See Arrests With or Without an Arrest Warrant at VI.

<sup>5</sup> See Arrests With or Without an Arrest Warrant at IX.

<sup>6</sup> See Arrests With or Without an Arrest Warrant at XIV.