

NOPD CONSENT DECREE MONITOR
NEW ORLEANS, LOUISIANA



May 21, 2021

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File Number: 37PA-191555

Deputy Superintendent Otha Sandifer
Compliance Bureau, New Orleans Police Department
714 Broad Street
New Orleans, LA 70119

Dear Deputy Superintendent Sandifer:

This letter constitutes confirmation that the Office of Consent Decree Monitor ("OCDM") has reviewed and provided comments on Chapter 1.19 Interacting with Sex Workers or Victims of Sex Trafficking. The OCDM has no objection to the policy as written.

We believe that Chapter 1.19 Interacting with Sex Workers or Victims of Sex Trafficking, incorporates all requirements of the Consent Decree and sets forth clear and appropriate rules to guide officer conduct. We will continue to assess the adequacy of this policy following its implementation. If we identify any concerns following implementation, we will present those concerns to you and the Department of Justice. Additionally, we note that, pursuant to the Consent Decree, NOPD has agreed to review and revise policies and procedures as necessary upon notice of a significant policy deficiency. We also note NOPD's obligation to review this policy after a year of implementation to ensure it "provides effective direction to NOPD personnel and remains consistent with the Agreement, best practices, and current law." Consent Decree at ¶ 8.

We appreciate your team's effort, cooperation, and responsiveness throughout this process.
Very truly

Very truly yours,

David L. Douglass
For SHEPPARD MULLIN RICHTER & HAMPTON LLP*
2099 PENNSYLVANIA AVE., N.W., SUITE 100
WASHINGTON, DC 20006

CC: HONORABLE SUSIE MORGAN (VIA ELECTRONIC MAIL)
JUDE VOLEK, DEPARTMENT OF JUSTICE (VIA ELECTRONIC MAIL)
SUNNI LEBEOUF, CITY ATTORNEY (VIA ELECTRONIC MAIL)

SMRH:4816-6540-9429.7



NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

CHAPTER: 1.19

TITLE: INTERACTING WITH SEX WORKERS OR VICTIMS OF SEX TRAFFICKING

EFFECTIVE:

REVISED: (NEW)

PURPOSE

This Chapter governs interactions with members of the community who engage in sex work, and outlines the processes and procedures to be followed by members in addition to the guidelines of **Chapter 41.3 – Bias Free Policing, Chapter 41.13.1 – Interactions with Lesbian, Gay, Bisexual, Transgender, and Questioning Persons, Chapter 42.2 – Sexual Assault, and Chapter 1.9 – Arrests.**

POLICY

1. Sex workers and victims of sex trafficking face a constant risk of abuse, including discrimination, violence, sexual assault and harassment. Sex workers and victims of sex trafficking often face barriers in reporting violent crimes to law enforcement, including a fear of harassment by law enforcement or arrest.
2. Sex workers and victims of sex trafficking are disproportionately likely to be people of color or members of the LGBTQ community, and discrimination against sex workers therefore tends to overlap with and amplify other forms of discrimination.
3. NOPD prioritizes public safety, including the safety of sex workers. This policy is intended to create a climate where sex workers, victims and witnesses have equal access to reporting violent crimes, and to remind officers that all people are entitled to be treated with value, dignity, and respect and to be protected by law enforcement. The rights of sex workers shall be protected to the same extent as any other victim.
4. Officers are reminded that any form of officer misconduct against sex workers, including retaliation, coercion, or coercive intimate acts, will not be tolerated and is subject to disciplinary and/or criminal action. See **Chapter 52.1.1 – Misconduct Complaint Intake and Investigation.**

DEFINITIONS:

Definitions relevant to this Chapter include:

Sex Work - Sex work involves a voluntary exchange of sexual services for money, goods or

services. Sex work encompasses both varying levels of direct physical contact between buyers and sellers, as well as indirect sexual stimulation. Sex work can involve, for example: street prostitution, indoor prostitution (e.g. escort services, brothel work, massage parlor-related prostitution, bar or casino prostitution), phone sex operation, exotic dancing, lap dancing, webcam modeling, and pornographic film performing.

Sex Worker – A person who willingly engages in sex work.

Human Trafficking - the illegal trade of human beings, through abduction, the use of threats of force, deception, fraud, or “sale” for the purposes of sexual exploitation or forced labor. Under US law, anyone under 18 who is in prostitution is considered a trafficking victim, regardless of force, fraud, or coercion. (See: La. R.S. 14:46.2 – Human Trafficking).

Self-Defense—The use of force or violence in defense when it is:

- a) Apparently necessary to prevent a forcible offense against the person or a forcible offense or trespass against property in that person’s lawful possession; and
- b) Reasonable and apparently necessary to prevent such offense (La. R.S. 14:19).

GENERALLY

5. Officers shall treat ALL persons with courtesy, professionalism, and respect, regardless of a person’s involvement in sex work or related industries.
6. Officers are specifically prohibited from using demeaning, harassing, intimidating, or derogatory language regarding sex workers or trafficking victims. Note that “prostitute” is a disfavored term when referring to sex workers, as the term is considered by some to stigmatize/stereotype people involved in sex work.
7. Officers shall not fail to respond to a call for service or complaint based on the caller’s or complainant’s actual or perceived involvement in sex work.

INVESTIGATING OFFICER’S RESPONSIBILITIES

8. Sex workers may feel angry or fearful, even if a victim or witness, when dealing with police officers. When interacting with sex workers who are victims or witnesses to a crime during a call for service, stop, or investigation, officers must:
 - a. Treat the person with empathy and respect.
 - b. Remain patient and calm, even if the person is upset.
 - c. Reassure the person that they can continue to call law enforcement if necessary. This is especially true for victims who seem hostile or angry.
 - d. Reassure the victim that they do not deserve violence and that they did the right thing by calling law enforcement.
 - e. Provide the victim with privacy and dignity, including, for example, by shielding them from on-lookers.
9. When a sex worker is a victim of a crime, officers shall take the following actions to provide victim assistance:
 - a. Remain at the scene until the likelihood of further imminent violence has passed.
 - b. When possible, obtain a phone number of someone who will always know how to reach the victim. Check with the victim to make sure the number is safe to include in the report.
 - c. Provide the victim with the report’s item number and work contact information for the responding officer.
 - d. Provide victim with The Rights of Crime Victims and Witnesses brochure (Refer

- to **Chapter 55.1 - Victim and Witness Assistance** for general guidelines on providing victim assistance.)
- e. Provide victim with The Louisiana Victim Notice and Registration (LAVNS) form.
 - f. Provide victim with referrals to community-based support.
 - g. Arrange or provide transportation for the victim to a safe location if the victim expresses a concern for their safety or if otherwise appropriate under **Chapter 10.1 – Public Safety Rides**.
 - h. Assist the victim in obtaining medical treatment, including summoning emergency medical assistance if needed.
 - i. Notify the victim of their right to apply for a protective order and that assistance with this process can be obtained through the New Orleans Family Justice Center or other qualified legal services organizations.
 - j. If the person is a victim of domestic violence or sexual assault, refer them to the New Orleans Family Justice Center.
10. Any investigations of incidents involving sexual assault or possible sex work or human trafficking involving a minor shall be immediately communicated to the officer's supervisor and the on-duty or on-call Child Abuse detective notified through Communications Services. See **Chapter 42.19 – Child Abuse**.
 11. Any investigations involving adult victims of sexual assault shall be immediately communicated to the officer's supervisor and the on duty or on call Sex Crimes detective notified through Communications Services. See **Chapter 42.2 – Sexual Assault**.
 12. Members are advised that confiscating, citing, and invoicing condoms as evidence for any prostitution-related offenses may compromise public health by creating a disincentive to carry, distribute, share, receive, or keep condoms in order to engage in safer sex practices. Officers are advised that mere possession of a condom or condoms does not establish reasonable suspicion or probable cause of a sex work offense. Accordingly:
 - a. Officers shall not cite or rely on the mere presence or possession of condoms to any degree as the sole basis for reasonable suspicion or probable cause to believe that an individual has engaged or intends to engage in any prostitution-related offense.
 - b. Members shall not seize or confiscate unused condoms except where the items are evidence in a criminal investigation.
 13. When officers arrest or charge someone with a prostitution-related offense, officers shall not use **RS 14:89.2 – Crime Against Nature by Solicitation** unless another prostitution-related offense does not cover the act, and unless they receive specific approval of an on-scene supervisor. This approval shall be documented in the accompanying EPR and BWC and shall contain specific evidence as to compensation.

ARRESTING OR CHARGING SEX WORKERS WHO ARE VICTIMS/WITNESSES

14. Officers shall not arrest or charge a sex worker victim/witness for any crime when the officer has determined they have an affirmative defense or have acted in self-defense for that crime.
15. In an effort to reduce reporting barriers for victims or witnesses to violent crimes, officers shall not arrest or cite alleged sex workers for engaging in sex work or for sex-work related offenses or for any non-violent misdemeanor (including drug offenses) officers learn of because the person reports a violent offense (including sexual assault, human trafficking, stalking, robbery, assault, kidnapping, extortion, burglary or other violent crime).

16. Officers shall seize and book evidence as appropriate and document the non-violent misdemeanor in the investigative report. See **Chapter 84.1 – Evidence and Property**.
17. Arrests of victims/witnesses reporting violent crimes are generally discouraged even for felonies or violent misdemeanors.
18. If the officer determines probable cause exists to believe that the sex worker victim/witness committed a violent misdemeanor resulting in bodily harm on the suspect, an arrest of the sex worker is permitted only if:
 - a. The victim/witness still poses an impending threat to others.
 - b. The officer obtains supervisor approval in advance.
 - c. The officer documents the basis for believing the victim/witness still poses a threat in the investigative report.
19. If the officer determines probable cause exists to believe that the sex worker victim/witness committed a felony, the officer must weigh, at a minimum, the following factors to determine whether an arrest is appropriate:
 - a. The public safety benefits of encouraging reporting of violent crime by making victims and witnesses feel safe coming forward;
 - b. The importance to the investigation of victims and witnesses providing candid and complete information and not withholding information relevant to the investigation out of fear of prosecution;
 - c. The potential chilling effect that charging the victim or witness will have on future reporting;
 - d. The impact a victim's or witness's conviction would have on the defendant;
 - e. Whether the victim was chosen, groomed or extorted in order to trap the victim into a vulnerable position where if the victim reported a violent crime, he/she would be charged with a prostitution-related crime (see also defense affirmative determination, below);
 - f. The nature and severity of the victim's or witness's offense;
 - g. The harm caused by the victim's or witness's offense; and
 - h. The risk to the public of not charging the victim or witness with the offense.

Officers must obtain supervisor approval before making an arrest of the victim/witness for the felony. The supervisory review and approval of the arrest decision must be documented in the investigative report.
20. If the officer and supervisor determine a violent misdemeanor or felony charge against a victim or witness of violent crime is appropriate, and both the victim/witness and the perpetrator of the violent crime being reported participated in the commission of the charged offense, the officer and supervisor shall consider whether to charge the perpetrator of the violent crime with the additional count as well, and document this in the investigative report. In the event that the officer chooses to charge the victim but not the perpetrator of the violent crime with the offense in which they both participated, the officer shall document the decision not to charge the perpetrator and the justifications for the decision. The officer shall obtain supervisory approval and concurrence for this decision and document the reasons in the investigative report.

SUPERVISOR'S RESPONSIBILITIES

21. Supervisors are responsible for approving or disapproving an officer's decision to make an arrest of a victim/witness consistent with this chapter.
22. Supervisors are responsible for approving or disapproving an officer's request to transport a victim to a safe location when requested consistent with **Chapter 10.1 Public Safety Rides**.

23. When notified of an officer's determination of insufficient probable cause to make an arrest, supervisors shall review all relevant information concerning the incident and either:
 - a. Advise the officer to make an arrest based on the information provided; or
 - b. Advise the officer to document the reason for not making an arrest.
24. The supervisor shall review any recordings (BWC and ICC) surrounding the incident, review and approve all required reports (EPR), FIC and paperwork prior to the end of the arresting officer's shift.

TRAINING

25. NOPD will develop training on sex work and crimes against sex workers to ensure that this Chapter is implemented in a manner that furthers the goals of the reporting of violent crimes and building trust and rapport with this community.