

NOPD CONSENT DECREE MONITOR NEW ORLEANS, LOUISIANA



May 12, 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 1.2.4 – Search and Seizure. The OCDM has no objection to the policy as written.

We believe that Chapter 1.2.4 – Search and Seizure, 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: 1.2.4

TITLE: SEARCH AND SEIZURE

EFFECTIVE:

REVISED:

PURPOSE

The federal and state Constitutions both provide every person with the right to be free from unreasonable searches and seizures. This Chapter requires that New Orleans Police Department officers abide by these legal protections when dealing with search and seizure issues, as well as searches of persons in custody.

POLICY STATEMENT

1. It is the policy of the New Orleans Police Department to respect the fundamental privacy rights of all individuals. Officers will conduct searches in strict accordance with the rights secured and protected by the Constitution and laws of the United States of the persons being searched. All seizures by this Department will comply with relevant federal and state law governing the seizure of persons and property.
2. All searches shall be conducted with concern for safety, dignity, courtesy, respect for privacy, and hygiene and shall be in compliance with policy and law to protect the rights of the persons subject to any search.
3. Officers shall not use race, color, ethnicity, national origin, ancestry, creed, religion, gender, gender identity, sexual orientation, economic status, age, cultural group, disability, housing status, or affiliation with any other similar identifiable group in exercising discretion to conduct a warrantless search or to seek a search warrant (refer to **Chapter 1.2.4.2 – Search Warrants**), except as part of an actual and apparently credible description of a specific suspect or suspects in any criminal investigation.
4. Officers shall conduct searches of individuals on probation or parole only when officers have probable cause, or the person has consented to a search.
5. In all instances where property or evidence is seized, the officer shall immediately complete documentation as appropriate and outlined in this Chapter and Departmental regulations including a complete and accurate inventory of the property or evidence seized. A receipt for the items seized shall be provided to the individual from whom the item was seized.

DEFINITIONS

Arrest—The taking of one person into custody by another. To constitute arrest there must be an actual restraint of the person. The restraint may be imposed by force or may result from the submission of the person arrested to the custody of the one arresting him. (La. C.Cr. P. Art. 201)

Body cavity search—Any visual or physical inspection of a person’s genital or anal cavities with or without physical contact or intrusion into a body cavity.

Consensual Contact—Casual conversation between an officer and an individual during which the individual clearly is free to walk away or ignore the officer. A consensual contact is not considered a “stop” within the meaning of the law or this Chapter. If a reasonable person would not feel free to terminate the encounter and walk away, the encounter is not consensual, but rather is a “stop.” An investigatory “stop” requires an officer to have reasonable suspicion that the person has committed, or is about to commit, a crime. A stop to enforce traffic laws requires probable cause to believe the driver has offended a traffic law. During a consensual contact, the officer shall not position his/her body or vehicle in a manner that would make a reasonable person believe that he or she is not free to walk away. Officers shall not engage in any physical gestures, such as placing the officer’s hand on his/her firearm that would make a reasonable person believe that he or she is not free to walk away.

Custodial Arrest—Synonymous with “**Arrest**” but referring to maintaining physical custody and control of the arrested person and booking at a jail facility rather than any form of release by the officer such as a summons or traffic citation.

Exigent Circumstances—A compelling urgency or true emergency that an officer can specifically describe not using vague terms or boilerplate language. Circumstances that cause a reasonable person to believe that prompt action is necessary to prevent injury to himself/herself or others.

Field Interview Cards (FICs)—The method the New Orleans Police Department (NOPD) utilizes to document stops and other discretionary interactions between a member of NOPD and individual members of the community. See **Chapter 41.12 – Field Interview Card**.

Investigatory Stop—The temporary involuntary detention and questioning of a person and/or vehicle and its occupants to investigate potential criminal conduct. To conduct an investigatory stop, the officer must have reasonable suspicion that the individual or vehicle occupant has engaged, is engaging, or is about to engage in criminal conduct.

Pat-down/frisk—An external examination of the outer garments of an individual for the purpose of ensuring the individual does not possess any weapons. A pat down may only be performed when it is based on an officer’s reasonable suspicion that the person is **armed and dangerous** and must be limited to what is necessary to detect weapons

Plain-feel doctrine (aka plain-touch doctrine)—An officer may seize an object while conducting a legal pat-down if its nature as contraband is immediately apparent during a touching permitted by a stop and frisk.

Probable cause—The facts and circumstances known to the officer at the time which would justify a reasonable person in believing that the suspect committed or was committing an offense.

Reasonable suspicion—Articulable facts that, within the totality of the circumstances, lead an officer to reasonably suspect that criminal activity has been or is about to be committed. The standard for reasonable suspicion is less than probable cause but must be more than a hunch or a subjective feeling.

Search—An inspection, examination, or viewing of persons, places, or items in which an individual has a legitimate expectation of privacy.

Stop—A brief, minimally intrusive detention of a subject, including pedestrians, bikers, and/or the occupants of a vehicle, during which a reasonable person in the subject's position would not feel free to leave, as defined in *Terry v. Ohio*, 392 U.S. 1 (1968).

Strip search—Any search of a person that includes the removal or rearrangement of some or all clothing to permit visual inspection of the exterior of the suspect's groin/genital area, buttocks, female breasts, or undergarments covering these areas.

Supervisor Feedback Log (SFL)—A web-based application utilized by Department supervisors to document close and effective supervision actions such as redirection, counseling, and support. SFL is available to supervisors, the Compliance Bureau, and the Public Integrity Bureau on NOPD Web Apps under Applications.

Vehicle stop—The involuntary detention of a motor vehicle and its occupants. Vehicle stops may be conducted (1) where there is probable cause to believe that the driver has committed a traffic violation or (2) where there is reasonable suspicion that a vehicle occupant has engaged, is engaging, or is about to engage in criminal conduct. See also **Chapter 1.2.4.3 – Vehicle Stops**.

SEARCH AND SEIZURES

6. The U.S. Constitution generally requires law enforcement to obtain a warrant prior to conducting a search. There are, however, limited exceptions to the warrant requirement, such as valid consent to search, search incident to a lawful arrest, and a search conducted under exigent circumstances.
7. Because case law regarding search and seizure is constantly changing and subject to interpretation by the courts **it is the officer's responsibility to remain current on the legal aspects of search and seizure laws. When in doubt as to the existence or applicability of an exception to the search warrant requirement, the officer should take the time to obtain a search warrant (refer to Chapter 1.2.4.2 – Search Warrants).**

GENERAL REQUIREMENTS FOR SEARCHES AND SEIZURES

8. Officers shall not use race, color, ethnicity, national origin, ancestry, creed, religion, gender, gender identity, sexual orientation, economic status, age, cultural group, disability, housing status, or affiliation with any other similar identifiable group in exercising discretion to conduct a search, except as part of an actual and apparently credible description of a specific suspect or suspects in any criminal investigation.
9. Officers should realize that the search of a person is inherently demeaning; therefore, officers shall make all efforts to conduct the search with dignity, courtesy, and in a professional manner that does not compromise the officer's safety.

10. Whenever practicable, an officer of the same gender as the gender identity of the person being searched should conduct the search. When an officer is to search a person not of the same gender as the searching officer, the officer shall make a reasonable effort to summon an officer of the same gender as the subject to conduct the search. When it is not practicable to summon an officer of the same gender as the subject, the officer shall:
 - (a) Have another officer or a supervisor witness the search.
 - (b) Not search areas of the body covered by tight-fitting clothing, sheer clothing or clothing that could not reasonably conceal a weapon.See **Chapter 41.13.1 – Interactions with LGBTQ Persons** for guidance on conducting searches with LGBTQ individuals.
11. Officers shall not frisk any person for the purpose of determining that person's gender or to view or touch the person's genitals or breasts. Where same-gender searches are required by law or NOPD policy, the officer shall respect the gender identification expressed by the individual. Where the individual does not self-identify and the gender identity is not clear to a reasonable person or the officer is uncertain, the officer will take reasonable, non-invasive steps to determine the gender identity, such as asking the individual how the individual would like to be addressed.
12. Officers shall explain to the person being searched the reason for the search and the process officers will use to conduct it to the greatest extent practicable.
13. Officers should attempt to record the activity on which they base their reasonable suspicion to the extent practicable and safe pursuant to **Chapter 41.9 - Body Worn Camera** and **Chapter 41.3.8 – In Car Camera**.
14. Officers shall not seize or search recordings in a manner inconsistent with **Chapter 1.2.10 – Public Recording of Police Officers**.
15. Officers shall carry out searches with due regard and respect for private property interests and in a manner that minimizes damage. Officers shall leave property in a condition as close as reasonably possible to its pre-search condition.
16. In order to minimize the need for forcible entry, and where doing so would not place officers at heightened risk, officers shall attempt to obtain keys, combinations, or access codes when a search of locked property is anticipated.
17. Officers shall use accurate and specific descriptive language and not rely solely on "boilerplate" or "pat" language in any reports documenting investigatory stops, detentions, or searches. Articulation of reasonable suspicion and probable cause shall be specific and clear.
18. Officers shall not use or rely on information known to be materially false or incorrect in effectuating an investigatory stop or detention or in establishing reasonable suspicion for a search.
19. Officers shall not compromise their safety, or other officers' safety, in order to justify searches.
20. Officers shall not detain non-occupants present at the location where a search warrant is executed for longer than reasonably necessary to secure the area or determine whether they are occupants of the premises being searched, unless the officer has individualized reasonable suspicion that the non-occupant is involved in criminal activity or poses a danger to officer safety.

21. A juvenile cannot waive his/her rights and consent to a search without first being allowed to engage in a meaningful consultation with an attorney or an informed parent, guardian, or other adult interested in his or her welfare. For searches involving juveniles, see **Chapter 44.2 – Juveniles**.

CONSENT SEARCHES

22. Officers shall document consent to search in writing and shall record the consent process and the entire search process on his/her BWC.
23. An officer shall immediately notify a supervisor when considering a search based on consent. Before an officer may conduct a consent search, the officer must have the express approval of his or her supervisor. The approving supervisor's name and approval shall be noted on the required **Consent to Search Form** (Form #146).
24. When an officer seeks consent for a search, the officer shall affirmatively inform the subject of his or her right to refuse and to revoke consent at any time. The officer shall document and execute the subject's consent on the "Consent to Search Form" (Form #146), which clearly explains these rights. The following information shall be required on all Consent to Search Forms:
- (a) The date, time, location, and NOPD item number that directly relates to the request or consent to search.
 - (b) The full name of the person who is granting the consent.
 - (c) The residential address of the person who is granting consent.
 - (d) The full name of the officer who is requesting consent to search.
 - (e) An indication if the consent relates to the search of the person, his/her vehicle, or residence (it can be more than one).
 - (f) The initials of the person granting consent indicating the officer(s) did not threaten or coerce the person to obtain consent.
 - (g) The initials of the person granting consent indicating the officer(s) did not make any promises in return for cooperation to the person to obtain consent.
 - (h) An indication that the person granting consent had the right to refuse to consent to the search.
 - (i) An indication that the person granting consent had the right to revoke consent at any time.
 - (j) An indication that all of the rights listed on the form were read and explained to the person granting consent by the officer(s) requesting consent prior to the person signing.
 - (k) The signature of the person granting consent to search.
 - (l) The signatures (and names printed) of two persons who are not members of the NOPD and preferably family or friends of the person granting consent and who were present for the entire recitation of rights and witnessed the person granting consent.
 - (m) The signature of the officer requesting consent and a witness or assisting officer who was present for the entire recitation of rights to the person granting consent; and
 - (n) The signature of the supervisor who approved the consent to search BEFORE the search was executed.
25. The original Consent to Search Form must accompany the related NOPD Incident Report or EPR along with a copy of the receipt for any items seized by the officer(s). The original receipt for any items seized will be given to the consenting person.

26. The officer shall specifically reference the video documentation of the consent to search in the related FIC, NOPD Incident Report or EPR along with a copy of the receipt for any items seized by the officer(s). In these reports, the officer should note the approximate time the consent to search was conducted.

CONSENSUAL CONTACTS

27. An officer may engage a person in consensual contact (see **Chapter 1.2.4.1 – Stops**) during the course of his/her duties.

PERFORMING A STOP/DETENTION

28. When reasonable suspicion or probable cause exists to perform a stop, it should be performed with due caution, restraint, and sensitivity. Officers are authorized to perform stops only in accordance with **Chapter 1.2.4.1 – Stops** and **Chapter 1.2.4.3 Vehicle Stops**. Documentation of stops shall be done according to **Chapter 41.12 – Field Interview Cards**.

JUSTIFICATION FOR CONDUCTING PAT-DOWNS/FRISKS

29. During a stop, if the officer has reasonable suspicion that the suspect is in possession of a weapon and presents a present danger to the officer or others in the area, the officer may conduct a pat-down (frisk) of the suspect's outer garments to search for weapons. Not every stop or detention justifies conducting a pat-down. These pat-downs are justifiable and may be performed only to protect the safety of officers and others and may never be used as a pretext for obtaining evidence.
30. In **addition** to the basis for the stop itself, in order to conduct a pat-down the officer must have reasonable suspicion that the subject may possess a weapon and pose a threat to the officer and/or others. (See **Chapter 1.2.4.1 – Stops**.) The basis for reasonable suspicion may include, but is not limited to:
 - (a) Prior knowledge that the subject carries a weapon.
 - (b) Suspicious behavior, such as failure to comply with instructions to keep hands in sight; or
 - (c) Observations, such as suspicious bulges, consistent with carrying a concealed weapon.
31. An individual's presence in a "high-crime area" is not, by itself, sufficient to justify a pat-down.
32. The officer must articulate, in sufficient detail to allow for supervisory review, the basis for reasonable suspicion for the pat-down on the FIC.
33. The purpose and scope of the search must be strictly limited to what is necessary to discover weapons that pose a danger to the officer or those nearby; however, pursuant to the "plain-feel doctrine," police may seize contraband discovered in the course of a frisk but only if the contraband's identity is immediately apparent. An officer may not manipulate objects that are discovered under the clothing to determine whether they are contraband.
34. Officers may not pat-down for weapons during a consensual civilian contact. Conducting a weapons pat-down during a consensual civilian contact converts the encounter to a detention.

PERFORMING A PAT-DOWN(FRISK)

35. Officers shall conduct pat-downs only in the following manner:
- (a) Unless exigent circumstances exist, pat-downs should be conducted by at least two officers, one who performs the search while the other provides protective cover.
 - (b) Unless exigent circumstances exist, a pat-down should be performed by an officer of the same gender as the subject being searched. If an officer of the same gender is not immediately available to conduct the search, the search should be performed with the back of the officer's hand, or with the fingertips. See **Chapter 41.13.1 – Interactions with LGBTQ Persons** for guidance on conducting searches with LGBTQ individuals.
 - (c) Because pat-downs are cursory in nature and are limited to determining if an individual is armed, they should be performed with the subject in a standing position, with hands placed against a stationary object and feet spread apart. Unless specifically required for safety or the safety of others, officers shall not handcuff individuals during a pat-down unless there is probable cause to arrest. See **Chapter 1.3.1.1 Handcuffing and Restraint Devices**.
 - (d) **Pat-downs are of outer clothing only.** Pat down(s) are not generalized searches of the entire person. Officers may not place their hands in pockets or under the outer most layer of clothing unless they feel an object that could reasonably be a weapon (e.g., firearm, knife, club, etc.).
 - (e) During pat-downs, officers may seize only those items that are immediately recognizable as contraband without manipulation of the object (plain feel doctrine).
 - (f) If the subject is carrying an object such as a handbag, suitcase, briefcase, sack, or other item that may contain or conceal a weapon, the officer may not search it. Instead, the officer should place it out of reach of the subject.
 - (g) If the pat-down of the subject's clothing fails to disclose a weapon, no further search may be conducted without a warrant unless the search is conducted incident to arrest.
 - (h) If a weapon or obvious contraband is discovered during the pat-down, the officer may retrieve that item only.
 - (i) If the item is a weapon or obvious contraband, the possession of which is a crime, the officer may make an arrest of the subject and perform a search incident to a lawful arrest.
 - (j) If retrieving the item requires removal or rearrangement of some or all clothing covering the suspect's groin/genital area, buttocks, female breasts, or undergarments covering these areas, refer to the requirements below for strip searches or body cavity searches.
 - (k) Officer must articulate in the electronic Field Interview Card and any related incident reports (EPR):
 - i. The reasonable suspicion for the stop.
 - ii. The reasonable suspicion for the pat-down; and
 - iii. The results of the pat-down, including a description of any weapon(s) or contraband found and the location on the body or clothing where recovered.

SEARCH INCIDENT TO ARREST AND TRANSPORTATION SEARCHES

36. A search incident to arrest (**SITA**) is permissible after a lawful custodial arrest. This warrantless search is an exception to the general 4th Amendment search warrant requirement. It does not matter what offense the person is being arrested for; as long as the custodial arrest is legal, the search incident to arrest is allowed.

37. Officers **shall** conduct a search of any person or persons placed under a lawful custodial arrest.
38. There are two valid purposes for conducting searches incident to custodial arrest:
 - (a) To protect the officer and other persons in the vicinity from any dangerous items in the possession of the person arrested; or
 - (b) To prevent the destruction of evidence within the reach of the person being arrested.
39. The scope of the search incident to arrest extends to the immediate areas in which the arrestee might obtain a weapon or evidentiary items, including clothing, purses and wallets of the arrestee; the search may be for weapons, evidence, or a means of escape.
40. An officer shall conduct a search of a custodial arrestee:
 - (a) Immediately after the arrest (see: **Chapter 1.9 – Arrests**).
 - (b) When receiving an arrestee from another person; and
 - (c) Before transporting an arrestee in any Department vehicle (see **Chapter 71.1 – Prisoner Transportation and Guarding**).
41. Whenever practicable, an officer of the same gender as the person being searched should conduct the search. If an officer of the same gender is not reasonably available, a witnessing officer or supervisor shall be present during any search of a person not of the same gender as the searching officer. See **Chapter 41.13.1 – Interactions with LGBTQ Persons** for guidance on conducting searches with LGBTQ individuals.

SEARCHES OF VEHICLES WITHOUT A WARRANT

42. The United States Supreme Court, in *Arizona v. Gant*, 129 S. Ct. 1710 (2009), ruled that police may search the passenger compartment of a movable vehicle incident to a recent occupant's arrest only if:
 - (a) The arrestee is within reaching distance of the passenger compartment at the time of the search, or
 - (b) It is reasonable to believe the passenger compartment of the vehicle contains evidence of the offense of arrest.
43. Officers may conduct a limited search of the passenger compartment of a vehicle for weapons if the officer has reasonable suspicion that an individual, whether or not the arrestee, is dangerous and might access the vehicle to gain immediate control of weapons. The search must be limited to those areas in which a weapon may be placed or hidden. (See also: **Chapter 1.2.4.3 – Vehicle Stops**).
44. Absent the stated exceptions to the search warrant requirement, officers may not search vehicles, even incident to arrest, unless the officer has obtained a search warrant or can articulate an exception to the warrant requirement applies.

CUSTODIAL SEARCHES

45. For the safety of everyone, the officer having control over a custodial arrestee shall search the custodial arrestee before bringing the custodial arrestee into any NOPD facility.

SEARCHES AT ANY NOPD FACILITY

46. Officers receiving arrestees in any NOPD facility shall thoroughly search the arrestee. When an arrestee has been handcuffed, the arrestee should remain handcuffed until the search is completed.

HANDLING OF ARRESTEE'S PROPERTY

47. Officers shall take reasonable care in the handling of an arrestee's property to avoid damage, discrepancies, or losses.
48. Any property belonging to an arrestee but retained by an officer for safekeeping shall be kept in a secure location until the arrestee is released or transferred.
49. Any property too large to be secured in the receiving facility shall be taken to Central Evidence and Property for safekeeping and logged as property under the arrestee's name.
50. Any property that will not otherwise be accepted by a receiving facility in the event of a detainee transfer should also be logged into Central Evidence and Property for safekeeping.
51. The arresting or transporting officer shall provide the arrestee with a receipt indicating: the items seized, the officer's name and badge number, and the procedure to reclaim property that is not being held as evidence.
52. Officers shall log property belonging to the arrestee but retained by that officer as evidence, according to procedures established for the handling of evidence. The arrestee shall be advised that such property will be kept as evidence.
53. Officers shall not retain custody of an arrestee's property for any reason other than turning it over to a receiving facility (jail) or the NOPD Central Evidence and Property Section.

HANDLING OF ARRESTEE'S CURRENCY OR VALUABLES

54. All money handled by officers and belonging to the arrestee shall be counted in front of the arrestee. If not evidence, it shall be returned to the arrestee.
55. Any money or valuables in the possession of an arrestee shall not be placed on the books at Central Evidence and Property for safekeeping, unless the arrestee is physically or mentally impaired to the extent that he or she can easily be victimized or he or she specifically requests that the officers place his/her belongings in safekeeping.
56. All money in possession of an arrestee and seized as evidence shall be counted in front of the arrestee and logged as evidence in Central Evidence and Property before the seizing officer's tour of duty ends.
57. In all cases, officers shall document their handling of money or valuables (e.g., Incident Report, FIC, Traffic Citation, etc.). Officers shall specifically mention the amounts by denomination, names of persons present during counting, and descriptive notation of any other valuables.

STRIP SEARCHES

58. Unless the requirements for a strip search outlined below are met, officers may not:
- a. Reach inside outer clothing and touch skin or underwear, especially in the groin, genital, and buttock / anal region.
 - b. Manipulate items inside outer clothing which may be in direct contact with skin especially in the groin, genital, and buttock / anal region to recover an item or move them into open view; or
 - c. Require someone to remove or rearrange some or all clothing to permit visual inspection of a person's groin/genital area, buttocks, female breasts, or undergarments covering these areas.
59. Strip searches may only be conducted only where the officer has articulable, probable cause to believe one or more of the following circumstances exist **and** less intrusive means (e.g., metal detectors) do not exist or are unavailable:
- a. The subject is concealing a weapon or item that presents an immediate risk of harm to the officer, subject, or others.
 - b. The subject is concealing evidence of a violent crime or serious felony and there is an immediate risk that the evidence may be lost or destroyed before the subject is turned over to the OPSO.
60. Strip searches may not be conducted to search for evidence of crimes for which NOPD does not issue arrest warrants or the DA has issued a non-prosecution policy (such as possession of minor amounts of drugs or drug paraphernalia).
61. In those cases where a subject has discarded previously concealed contraband from within clothing, officers may not conduct a strip search unless they have articulable probable cause to believe there is additional contraband concealed in the groin/genital area, buttocks, female breasts or undergarments covering these areas.
62. Strip searches shall be conducted in the secure area of a NOPD facility unless exigent circumstances exist. The following requirements apply to all strip searches:
- (a) The officer shall obtain written authorization from his or her supervisor prior to the strip search, and the supervisor shall be on-scene at all times during the search.
 - (b) Only officers trained on how to conduct a proper strip search may participate in a strip search.
 - (c) Officers shall use appropriate methods and personal protective equipment when conducting strip searches.
 - (d) All strip searches shall be performed under conditions that provide privacy from all but those authorized to conduct the search.
 - (e) All officers involved in a strip search shall take reasonable steps to minimize the potential embarrassment or discomfort to the party being searched.
 - (f) Prior to conducting the strip search, the officer and supervisor will explain to the subject why they are being strip searched and give the person the opportunity to voluntarily produce the suspected item. The person will be allowed to voluntarily produce the item only if the officer and supervisor believe that the item can be produced without compromising officer safety or risking destruction of evidence.
 - (g) All officers involved with the strip search shall be of the same gender as the identified gender of the person being searched. Officers shall advise the subject of the search, "***Our policy requires that the officer conducting the strip search to be the same gender as the person being searched. To ensure compliance with that policy, should we have a police woman or police man conduct the search?***"

- (h) All strip searches shall be conducted in a professional manner and include the least number of personnel necessary.
 - (i) Whenever possible, a second officer of the same gender should assist in conducting the search.
 - (j) Officers conducting a strip search shall not touch the genital area, buttocks, or female breasts of the person being searched.
 - (k) No employee should view an arrestee's private underclothing, genital area, buttocks, or female breasts while that person is changing clothes, unless the arrestee otherwise qualifies for a strip search.
63. Strip searches shall not be video recorded or photographed unless requested by the person being searched. Before the search and while recording using their body worn camera, officers shall explain to the person being searched that NOPD generally does not record strip searches but can record the search using their body cameras at the person's request. The officer shall ask the person being searched whether they wish the search to be recorded.
- (a) If the person being searched does **not** want the search recorded:
 - i. This request shall be recoded on the video.
 - ii. The officer shall stop recording the incident after verbalizing that he/she is doing so for the purpose of a strip search. No officer will record any part of the search.
 - iii. After the search is complete, if appropriate, officers shall resume recording the incident.
 - (b) If the person being searched requests the search be recorded:
 - i. The affirmative request shall be documented on the video.
 - ii. Officers shall stop and immediately re-start recording so the video is only of the strip search. The recording shall be concluded once the strip search is finished. If appropriate, officers shall resume recording the incident to begin a new video.
 - iii. No further strip searching shall be conducted without repeating the entire documentation process.
 - iv. The video of the strip search shall be categorized as "Strip & Body Cavity Search Video (Restricted)" from the drop-down selection for BWC and labeled in such a manner as to identify the item number and subject.
 - v. NOTE: Once categorized as "Strip & Body Cavity Search Video (Restricted)" only IT Admin and PIB will be able to view the recording.
64. If the subject has been placed under custodial arrest, the arrestee shall be transported to the OPSO booking facility and officers shall advise the deputies of the circumstances, method, and location of concealment of the contraband. The OPSO deputies can then determine if any additional action is required by intake procedures.
65. Officers shall not conduct field strip searches except when exigent circumstances exist such that to relocate the individual would place the life of the officers, the subject, or others at risk. Field strip searches must be explicitly approved by a supervisor. Field strip searches should be rare. Supervisors shall immediately respond to the scene when an officer requests permission to conduct a strip search.
66. Where field strip searches are conducted, they must be done under conditions that provide privacy. In these circumstances, if an officer of the same gender as the identified gender of the person being searched is not on the scene, and if waiting for an officer of the appropriate gender to arrive would not pose a risk to the officers or others, the on-scene officer shall request an officer of the appropriate gender come to the scene to perform the search. For example, if a person can be safety restrained and observed in a

manner that prevents access to a weapon until the appropriate officer arrives, less intrusive alternatives to a field strip search must be used.

Strip Search Reporting Requirements

67. The primary officer conducting the search shall prepare a written Strip Search Authorization Form #353 to include:
- (a) The written authorization for the search obtained from the employee's supervisor.
 - (b) The name of the supervisor who authorized the search.
 - (c) The name of the person who was searched.
 - (d) The name of the person who conducted the search.
 - (e) The name of any person who assisted or witnessed the search.
 - (f) The time and date of the search including the duration.
 - (g) The place at which the search was conducted, including the particular room or area used.
 - (h) A list of the items, if any, recovered during the search and the location on the body where found.
 - (i) The facts upon which the officer based his or her belief that the person searched was concealing a weapon or controlled substance or other particularized evidence of a crime if the person was not arrested for a felony.
 - (j) The steps taken to protect the person's privacy; the existence of any videos and;
 - (k) If a field strip search, the exigent circumstances that placed the life of the officers or others at risk.
68. The officer shall provide a copy of the written authorization and search form to the person searched.
69. The officer shall document any strip search conducted without a warrant in an FIC. (See **Chapter 41.12 – Field Interview Cards**).

BODY CAVITY SEARCHES

70. No person may be subject to a body cavity search **without** a search warrant.
71. A body cavity search **shall only** be conducted at a medical facility by authorized medical personnel.
72. Should visual examination of a suspect during a strip search and/or other information lead an officer to believe that the suspect is concealing a weapon, evidence, or contraband within a body cavity, officers shall:
- (a) Restrain the subject in such a manner as to prevent his or her ability to obtain a weapon or dispose of evidence.
 - (b) Keep the subject under observation at all times until the determination is made as to the need and legality to conduct a body cavity search.
 - (c) Consult with their immediate supervisor to determine whether probable cause exists to seek a search warrant for a body cavity search. The decision to seek a search warrant shall recognize that a body cavity search is highly invasive of personal privacy and is reasonable only when the suspected offense is of a serious nature or poses a threat to the safety of officers or others.
 - (d) Obtain written authorization from their supervisor prior to obtaining a warrant for the body cavity search. The Application for Search Warrant (Form #117) shall be completed by the requesting officer providing an accurate and clear description of the reasons for the request for the search, the place or person to be searched, and items or possible evidence that are the purpose of the search, and reviewed and signed by the approving supervisor.

- (e) If a search warrant is obtained, the officer must advise the individual that a judicial officer has signed a search warrant for a body cavity search. If practicable the officer shall display the warrant to the individual and allow him or her to read the warrant. If not, the officer shall read to the individual the portion of the warrant commanding the officer to conduct the body cavity search and the limits of the search.

CONDUCTING BODY CAVITY SEARCHES

73. Body cavity searches shall be conducted as follows:
- (a) A body cavity search shall be conducted only by a physician, registered nurse, or practical nurse, licensed to practice in this state.
 - (b) The search shall be conducted at a medical facility.
 - (c) All officers present during the search shall be of the same gender as the identified gender of the person being searched and limited to those absolutely necessary to conduct and document the search.
 - (d) The search shall be conducted in a secure area with sufficient privacy so that the search cannot be observed by persons not directly involved with the search.
 - (e) Officers present during the search shall not touch the genital area, buttocks, or female breasts of the person being searched.
 - (f) Body cavity searches shall not be video recorded or photographed unless requested by the person being searched. The request shall be documented on the video. Before the search and while recording using their body worn camera, officers shall explain to the person being searched that NOPD generally does not record cavity searches but can record the search using their body cameras at the person's request. The officer shall ask the person being searched whether they wish the search to be recorded.
 - i. If the person being searched does **not** want the cavity search recorded:
 - 1. This request shall be recoded on the video.
 - 2. The officer shall stop recording the incident after verbalizing that he/she is doing so for the purpose of a cavity search. No officer will record any part of the search.
 - 3. After the search is complete, if appropriate, officers shall resume recording the incident.
 - ii. If the person being searched requests the cavity search be recorded:
 - 1. The affirmative request shall be documented on the video.
 - 2. Officers shall stop and re-start their video, so the video is only of the cavity search. The recording shall be concluded once the strip search is finished. If appropriate, officers shall resume recording the incident to begin a new video.
 - 3. No further cavity searching shall be conducted without repeating the entire documentation process.
 - 4. The video of the cavity search shall be categorized as "Strip & Body Cavity Search Video (Restricted)" from the drop-down selection for BWC and labeled in such a manner as to identify the item number and subject.
 - 5. NOTE: Once categorized as "Strip & Body Cavity Search Video (Restricted)" only IT Admin and PIB will be able to view the recording.
74. The officer who executed the search warrant for a body cavity search shall prepare a written Return on Search Warrant (Form #117b) to include:
- (a) The written authorization for the search obtained from the employee's supervisor and noted on the Search Warrant Application Form (Form #117).

- (b) The name of the physician, registered nurse, or practical nurse performing the search.
 - (c) The names of all other medical personnel present during the search.
 - (d) The name of the person who was searched.
 - (e) The names of the officers' present during the search.
 - (f) The time, date, and duration of the search;
 - (g) The place at which the search was conducted, including room number; and
 - (h) A list of the items, if any, recovered during the search and the location on or in the body where found.
75. A copy of the signed search warrant and a receipt for any items seized should be provided to the person searched.

BLOOD, SALIVA, AND DNA SAMPLES

76. The collection of DNA samples, blood, saliva or other bodily fluids during the course of a criminal investigation are governed by the Chapters relating to those specialized investigations (e.g. traffic fatality, sexual assault, homicide, etc.).
77. Unless specifically trained and/or certified, members of this Department shall not recover specimens of DNA, blood, saliva or other bodily fluids for possible evidentiary use.
78. Unless a specific exception exists under State law or the investigator has obtained appropriately documented consent from the person from whom the sample is to be taken, a warrant is required before any sample is taken.
79. Investigators shall make attempts to obtain consent, where possible, in all cases. Consent must be voluntary and documented in writing on the appropriate consent to search forms for that type of investigation.
80. All procedures governing the collection and preservation of evidence and chain of custody outlined in **Chapter 83.1 – Collection and Preservation of Evidence** shall be followed.

SUPERVISOR'S RESPONSIBILITIES

81. Supervisors shall review reports to ensure the reports are accurate, that actions are properly documented and that current legal requirements and department policy have been met.
82. Supervisors shall review the written and video documentation for consent searches to ensure that they comply with the law and this Chapter.
83. For all officers' applications for search warrants, their respective supervisors shall review the search or arrest warrant, including each affidavit or declaration, before it is filed by an officer in support of a warrant application, for appropriateness, legality, and conformance with New Orleans Police Department regulations. The supervisor shall conduct and document this review according to **Chapter 1.2.4.2 – Search Warrants**.
84. The supervisor shall assess the information contained in the warrant application and supporting documents for authenticity, including examination for "boilerplate" or "pat" language, inconsistent information, and lack of articulation of a legal basis for the warrant.

85. Supervisors who approve strip searches or body cavity searches are responsible for maintaining a record of all requests that are approved or disapproved. This record shall reflect the following:
 - (a) NOPD Item Number;
 - (b) Type of Search (Strip/Body Cavity);
 - (c) Name of Requesting Officer;
 - (d) Name of approving/disapproving supervisor; and
 - (e) The reason for the approval or disapproval.
86. As part of the supervisory review, the supervisor shall document in the District or Division's Compliance Logs those searches or warrant applications that are legally unsupported, are in violation of New Orleans Police Department policy, or that indicate a need for corrective action or review of NOPD policy, strategy, tactics, or training.
87. If the supervisor determines during his/her review of an incident that NOPD should revisit policy, tactics, training, or strategy related to the incident, the supervisor shall document that in a PRR Form #358. The supervisor submitting a PRR form #358 is responsible for thoroughly completing the form's "Request" section. The supervisor shall make a digital copy of the form and email it to PSAB@nola.gov. The supervisor shall make an earnest effort to provide information to facilitate the review of the request. Supervisors shall be available to the reviewer and respond to follow-up questions the PSAB reviewer may have.
88. The supervisor shall take appropriate action to address violations or deficiencies, including recommending non-disciplinary corrective action for the involved officer, and/or referring the incident for administrative or criminal investigation. The supervisor shall document the corrective action in the Supervisor Feedback Log (see **Chapter 35.1.7 – Non-Disciplinary Responses to Minor Violations**) or by initiating a formal disciplinary investigation (see **Chapter 52.1.1 – Misconduct Intake and Complaint Investigation**) and note the corrective action in the Compliance Log.
89. Supervisors shall take into account the quality and accuracy of searches, search documentation, search warrants and supportive affidavits or declarations in officer performance evaluations.
90. Supervisors shall assist their subordinates in executing search warrants in accordance with **Chapter 1.2.4.2 – Search Warrants**.

TRAINING

91. The Department will provide relevant and current training to officers as guidance for the application of current law, local community standards and prosecutorial considerations regarding specific search and seizure situations, as appropriate to their job duties.