

NOPD CONSENT DECREE MONITOR  
NEW ORLEANS, LOUISIANA



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VIA ELECTRONIC MAIL ([tafaverill@nola.gov](mailto:tafaverill@nola.gov))

Deputy Superintendent Timothy Averill  
Compliance Bureau, New Orleans Police Department  
714 Broad Street  
New Orleans, LA 70119

RE: Policy Approval

Dear Superintendent Averill:

This letter constitutes confirmation that the Office of Consent Decree Monitor ("OCDM") has reviewed and provided comments on the revised policy Chapter 1.2.4.1, Stops/Terry Stops. The OCDM has no objection to the policy as revised.

We believe that the revised Chapter 1.2.4.1, Stops/Terry Stops, 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 ¶ 18.

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

Very truly yours,

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

CC: HONORABLE SUSIE MORAN (VIA ELECTRONIC MAIL)  
EMILY GUNSTON, DEPARTMENT OF JUSTICE (VIA ELECTRONIC MAIL)



# NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

## CHAPTER: 1.2.4.1

### TITLE: STOPS / TERRY STOPS

**EFFECTIVE: D R A F T**

**REVISED:**

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#### PURPOSE

All stops, searches, and arrests are to be conducted in accordance with the rights secured or protected by the U.S. Constitution and laws of the United States and the State of Louisiana.

#### POLICY STATEMENT

1. Members of the Department 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 as a factor in conducting a stop, except as part of an actual and apparently credible description of a specific suspect or suspects in any criminal investigation.
2. Except in exigent circumstances, when a subject is stopped or detained as part of an investigation and subsequently released, the officer will explain to the subject in a professional, courteous manner why he or she was stopped or detained.

#### DEFINITIONS

Definitions relevant to this Chapter include:

**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

**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.” A “stop” requires an officer to have reasonable suspicion that the person has committed, or is about to commit, a crime. 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.

**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 official Stops/Terry Stops of members of the public. To conduct a field interview, the officer must have reasonable suspicion that the person has been, is, or is about to be, engaged in the commission of a crime.

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

**Reasonable suspicion**—Specific, objective, articulable facts, within the totality of the circumstances, that, taken together with rational inferences, create a well-founded suspicion that there is a substantial possibility that a subject has engaged, is engaging, or is about to engage, in criminal conduct.

**Search**—An inspection, examination, or viewing of persons, places, or items in which an individual has a legitimate expectation of privacy. This applies to legal persons as well as natural persons.

**Stop/Terry stop**— A brief, minimally intrusive detention of a subject, including 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. To justify a stop, the officer must have reasonable suspicion. For purposes of this Chapter, the terms “stop” and “Terry stop” are used interchangeably, and shall include detentions, investigatory stops, seizures, and field interviews. The stop must be based on what the officer knew before the stop. Information learned during a stop can lead to additional reasonable suspicion or probable cause that a crime has occurred, but it cannot provide the justification for the original stop.

## GENERAL INFORMATION

All stops, searches and arrests made by members of the NOPD must be consistent with the Department's overall crime prevention strategy and with the community's priorities for enforcement. All interactions with the public shall be conducted with fairness and respect for all parties involved.

Stops/Terry stops are generally self-initiated activity by the officer(s) to solicit information related to possible criminal activity or to aid in an investigation. As such, Terry stops shall not be done solely to generate activity or statistics.

## LEVELS OF POLICE-CITIZEN CONTACT

3. In general, there are three levels of interaction between the police and the public. They are, in order of intrusiveness: consensual contacts; stops/Terry stops; and arrests.

## TERRY STOPS

4. A Terry stop is a detention short of an arrest. All other detentions must be made pursuant to the policies for arrests with and without a warrant (**Chapter 1.9 - Arrests**), traffic stops (**Chapter 61.15 – Traffic Stops**), or seizure of a person for a psychological evaluation (**Chapter 41.2.7 – Mental Illness Civil Commitments**).
5. During a Terry stop, officers shall limit the seizure to a reasonable scope.

6. Actions that would indicate to a reasonable person that he or she is being arrested or indefinitely detained will convert a Terry stop into an arrest requiring probable cause or an arrest warrant.
7. Unless justified by the articulable reasons for the original stop, officers must have additional articulable justification for further limiting a person's freedom during a Stop/Terry stop, such as:
  - (a) Taking a person's identification or driver license away from the immediate vicinity;
  - (b) Ordering a motorist to exit a vehicle;
  - (c) Putting a pedestrian up against a wall or comparable structure;
  - (d) Directing a person to stand or remain standing, or to sit on a patrol car bumper or any other place not of his or her choosing;
  - (e) Directing a person to lie or sit on the ground;
  - (f) Applying handcuffs;
  - (g) Transporting any distance away from the scene of the initial stop, including for the purpose of witness identification;
  - (h) Placing a person into a police vehicle;
  - (i) Pointing a firearm (see **Chapter 1.3 – Use of Force**); and
  - (j) Frisking for weapons.

Taking any of these actions does not necessarily convert a Stop / Terry stop into an arrest.

8. During all Terry stops, officers shall be courteous and professional, including identifying themselves. When reasonable, as early in the contact as safety permits, officers will inform the suspect of the following:
  - (a) The officer's name;
  - (b) The officer's rank or title;
  - (c) The fact that the officer is a New Orleans Police Officer;
  - (d) The reason for the stop; and
  - (e) That the stop is being recorded, if applicable (See **Chapter 41.3.8 – In Car Camera** and **Chapter 41.3.10 – Body Worn Camera**).
9. When releasing a person at the end of a stop, officers shall offer an explanation of the circumstances and reasons for the stop.
10. Individuals have a right to refuse to identify themselves. An individual's refusal to identify him or herself, alone, will not justify an arrest. Officers may not transport a person to any police facility or jail merely for the purpose of identifying him/her unless they have probable cause to arrest.
11. During detention of an alleged violator of any provision of the motor vehicle laws of this state, an officer may not detain a motorist for a period of time longer than reasonably necessary to complete the investigation of the violation and issuance of a citation for the violation, absent reasonable suspicion of additional criminal activity.
12. Officers may conduct a frisk or pat-down of stopped subject(s) if they reasonably suspect that the subject(s) may be armed and presently dangerous. The purpose **and** scope of the frisk or pat-down is to discover weapons or other items that pose a danger to the officer or those nearby. It is *not* a generalized search of the entire person.

13. The decision to conduct a frisk or pat-down must be based upon the totality of the circumstances and the reasonable conclusions drawn from the officer's training and experience.
14. A frisk or pat-down may not be used as a pretext to search for incriminating evidence.
15. The fact that a *Terry* stop occurs in a "high-crime area" is not, by itself, sufficient to justify a frisk.
16. In **addition** to the basis for the stop itself, the officer must have reasonable suspicion that the subject may be armed and pose a threat to the officer and/or others. This 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; and
  - (c) Observations, such as suspicious bulges, consistent with carrying a concealed weapon.
17. The frisk for weapons is strictly limited to what is necessary for the discovery of 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 or pat-down is completed, the officer's limited authority to frisk is completed and the frisk must stop.
18. Officers may not frisk for weapons during a consensual civilian contact. Conducting a weapons frisk during a consensual civilian contact converts the encounter to a detention.

### CONSENT SEARCHES

19. 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, signature and approval shall be noted on the required Consent to Search Form (Form #146).
20. When an officer seeks consent for a search, the officer shall affirmatively inform the person of his or her right to refuse and to revoke consent at any time. The officer shall document and execute the person's consent on the "Consent to Search Form" (Form #146), which clearly explains these rights. The form shall include separate lines for persons to affirm that they understand they have a right to refuse, and for officers to certify that they have read and explained the right to refuse to the person. The Consent to Search Form (Form #146) shall be made available to officers in both Spanish and Vietnamese on [NOPD Web Applications](#). [Nopd.org](#), **FORMS**. (See **Chapter 55.4 – Limited English Proficiency**).

### ANONYMOUS TIPS

21. Information or descriptions resulting from anonymous tips is not sufficient probable cause, by itself, to stop and search individuals. Officers must carefully develop reasonable suspicion in cases involving anonymous tips. Officers' observations while on the scene, securing more complete information from an anonymous caller and other circumstances that would tend to support the information received are all ways that officers can use to articulate reasonable suspicion allowing a *Terry* stop.

**REPORTING**

22. Members of the Department conducting *Terry* stops shall complete electronic field interview cards (FICs), recording the information for the individuals involved, subject to the following guidelines:
  - (a) An officer shall cause an electronic FIC to be recorded in connection with a stop, whether a report, citation or summons is completed or not.
  - (b) The FIC requirement shall not apply to those situations in which vehicles are involved in a motor vehicle crash or accident, regardless of whether the drivers of those vehicles were issued a citation as a result of the accident.
  - (c) The primary unit on the scene shall be responsible for completion of an electronic FIC. Only one FIC entry should be made for each incident.
  - (d) Supervisors shall review all FICs entered by members of their unit to ensure that officers are complying with departmental regulations regarding legal stops, and that the electronic Field Interview Cards are completed accurately.
23. All electronic FICs shall be completed via Mobile Data Terminal (MDT), if available. If no MDT is available to the investigating officer, electronic FICs may be entered via computer network terminals. These computer network terminals are available at each district station, as well as other Departmental installations, and entries shall be made by the investigating officer.
24. All electronic FIC entries shall be completed prior to the end of the officer's tour of duty.
25. FIC entries made outside of regular duty times, shall contain the date and time of the stop, not the date and time of the entry (e.g., details) and must be made no later than the officer's next regular tour of duty.
26. The template for FIC entries made on MDTs is the same as the template for FIC entries made on computer network terminals. The date and time will automatically be entered by the computer based on the time of entry but should reflect the actual time of the stop or action, not the time of entry into the system.
27. The following information shall be required on all FICs:
  - (a) Date and time of the stop;
  - (b) Location of the stop;
  - (c) Duration of the stop;
  - (d) If a vehicle stop, presence and number of any passengers and the apparent race, ethnicity, gender, and age of each passenger;
  - (e) If a non-vehicle stop (e.g., pedestrian or bicycle), the number of individuals stopped and apparent race, ethnicity, gender, and age of each person.
  - (f) If a vehicle stop, whether the driver or any passenger was required to exit the vehicle, and the justification for that action.
  - (g) Whether any individual was asked to consent to a search and whether such consent was given. Unless exigent circumstances dictate otherwise, the Consent to Search Form shall be completed prior to the search.
  - (h) If a pat-down or frisk was performed on any individual, the facts justifying the pat-down or frisk including a description of any items of contraband or weapons found shall be documented.
  - (i) If a probable cause search was performed on any individual, the facts creating probable cause including a brief description of any items of contraband or weapons found shall be documented.

- (k) Disposition of the stop, including whether a citation or summons was issued to, or an arrest was made of, any individual, including all subsequent related NOPD Item numbers (i.e., officer conducts a stop-and-frisk and does the FIC under one item number; closes that item number and obtains an additional item number for a subsequent arrest report related to the stop).
28. Each field on the electronic Field Interview Card is labeled. Enter the appropriate information into each field. If a field does not apply, do not enter any information into that field.
29. Instructions for completion of the electronic FIC template are as follows:
- a) **OFFICER'S INFORMATION:** In the field titled "Reason for Stop," the officer shall enter brief descriptive language of the circumstances that justify the stop.
  - b) **SUBJECT INFORMATION:** For each subject being documented on an FIC, the Subject Info section shall be populated with all available relevant information.
  - c) **NARRATIVE:** A brief narrative explaining the reasonable suspicion for the stop shall be completed for all entries to include a disposition of the stop and any related item numbers.
  - d) In the field titled "Disposition," enter the disposition for the incident. The only acceptable dispositions are "NAT" (necessary action taken) or "RTF" (report to follow).
30. Officers completing an electronic FIC shall be sure to select "Add Field Interview" for the FIC to be recorded in the database.

### **SUPERVISORS SHALL APPROVE THE DOCUMENTATION OF TERRY STOPS**

31. Absent extenuating circumstances, by the end of each shift, supervisors shall review their officers' electronic FICs that document the *Terry* stops made during the shift to determine if they were supported by reasonable suspicion and are consistent with NOPD regulations, policy, federal and state law.
32. If a supervisor finds the electronic FIC documentation to be inaccurate or insufficient, that supervisor shall require that the officer supplement the documentation before the end of that officer's tour of duty.
33. If the *Terry* stops reviewed appear not to be supported by reasonable suspicion or are not consistent with this Chapter, federal and state law, the supervisor, in consultation with the shift commander (if present), shall document and establish a strategy to remediate the situation.
34. The supervisor shall also determine if the incident requires referral to PIB.

### **RECORDS**

35. The NOPD Technology Section shall be responsible for the maintenance of the electronic FIC database.
36. The records stored in the FIC database shall be maintained in the active files for three years from the date of entry.
37. After three years, the information will be purged.