

NOPD CONSENT DECREE MONITOR  
NEW ORLEANS, LOUISIANA



January 15, 2019

202.747.1904 direct

File Number: 37PA-191555

Deputy Superintendent Danny Murphy  
Compliance Bureau, New Orleans Police Department  
714 Broad Street  
New Orleans, LA 70119

Dear Superintendent Murphy:

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

We believe that Chapter 1.2.4.1 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 ¶ 8.

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

Very truly yours,

A handwritten signature in blue ink, appearing to read "David L. Douglass", is written over a light blue circular stamp.

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:225829293.7



# NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

## CHAPTER: 1.2.4.1

### TITLE: STOPS

EFFECTIVE: D R A F T

REVISED:

---

#### 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. This Chapter sets forth the requirements that apply to all stops, including pedestrian, vehicle stops, and other stops. Additional particularized requirements apply for vehicle stops and are set forth in **Chapter 1.2.4.3 - Vehicle Stops**.

#### POLICY STATEMENT

1. Members of the Department shall not use race, color, ethnicity, national origin, religion, gender, disability, sexual orientation, or gender identity 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. NOPD officers shall be fair, impartial, and courteous during stops and shall take the necessary action in a professional and positive manner.
3. Officers shall exercise good judgment and sound discretion when determining the best action to take, including de-escalation, and shall not unnecessarily embarrass, demean, cause collateral harm to individuals, or present an unnecessary public safety risk.
4. 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

**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.” 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.

**Exigent circumstances**—A compelling urgency or true emergency that an officer can specifically describe without 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.

**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**—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. This applies to legal persons as well as natural persons. See also **Chapter 1.2.4 – Search and Seizure**.

**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).

**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**.

## GENERAL INFORMATION

5. 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.

6. Stops shall not be done solely to generate activity or statistics.
7. NOPD officers, either on-duty or off-duty, must have a functioning police radio when conducting a stop.
8. NOPD officers, either on-duty or off-duty, **are not authorized** to make stops outside of Orleans Parish, unless the violation would be considered a felony under state law. If a stop for a felony violation is made outside of Orleans Parish, the officer shall contact the law enforcement agency with jurisdiction as soon as feasible of the impending or actual stop supplying all requested information.
9. Non-uniformed officers conducting stops shall conspicuously display their Department credentials to the stopped subject(s) and announce that they are police officers.

### LEVELS OF POLICE-CITIZEN CONTACT

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

### STOPS

11. A stop is a detention short of an arrest for the purpose of investigating potential criminal conduct or enforcing traffic laws. All other detentions must be made pursuant to the policies for arrests with and without a warrant (**Chapter 1.9 - Arrests**) or seizure of a person for a psychological evaluation (**Chapter 41.25 – Crisis Intervention**).
12. Officers may only conduct stops where (1) there is reasonable suspicion that a person has engaged, is engaging, or is about to engage in criminal conduct or (2) there is probable cause to believe that a driver has committed a traffic violation. The stop must be based on what the officer knew before prior to 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.
13. Members of the Department shall not use race, color, ethnicity, national origin, religion, gender, disability, sexual orientation, or gender identity 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.
14. During a stop, officers shall limit the seizure to a reasonable scope.
15. Actions that would indicate to a reasonable person that he or she is being arrested or detained convert a stop into an arrest requiring probable cause or an arrest warrant.
16. 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, 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 (see **Chapter 1.3.1.1 – Handcuffing and Restraint Devices**);
  - (g) Transporting a person 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 (see **Chapter 1.2.4 – Search and Seizure**).

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

17. During all 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; and
  - (d) The reason for the stop.
18. When releasing a person at the end of a stop, officers shall offer an explanation of the circumstances and reasons for the stop.
19. Individuals other than the driver of a motor vehicle, who is required to provide a driver's license, 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.
20. 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.
21. Additional requirements apply to vehicle stops. See **Chapter 1.2.4.3 – Vehicle Stops and Chapter 61.3 – Traffic Citations**,

### **FRISKS (PAT-DOWNS)**

22. 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.
23. 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.
24. A frisk or pat-down may not be used as a pretext to search for incriminating evidence.
25. An individual's presence in a "high-crime area" is not, by itself, sufficient to justify a frisk.
26. In **addition** to the basis for the stop itself, in order to conduct a frisk 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.

27. 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.
28. 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.
29. 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.
30. Additional guidance on conducting a frisk or pat-down is provided in **Chapter 1.2.4 – Search and Seizure**.

### **CONSENT SEARCHES**

31. The guidelines for conducting a consent search are contained in **Chapter 1.2.4 – Search and Seizure**.

### **ANONYMOUS TIPS**

32. Information or descriptions resulting from anonymous tips without additional facts are insufficient to establish probable cause 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 stop.

### **REPORTING**

33. Members of the Department conducting a stop shall complete an electronic field interview card (FIC), recording the information for the individuals involved, subject to the guidelines of **Chapter 41.12 – Field Interview Card**.