

NOPD CONSENT DECREE MONITOR
NEW ORLEANS, LOUISIANA



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October 15, 2015

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VIA ELECTRONIC MAIL (tafaverill@nola.gov)

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

RE: Amended Policies

Dear Superintendent Averill:

This letter constitutes confirmation that the Office of Consent Decree Monitor ("OCDM") has reviewed and provided comments on the amended policies as listed below.

- Chapter 1.3, Use of Force
- Chapter 1.3.1.2, Control Devices and Techniques
- Chapter 1.3.2, Force Investigation Team
- Chapter 1.3.6, Reporting Use of Force
- Chapter 1.3.7, Use of Force Review Board
- Chapter 1.4, Authorized Firearms
- Chapter 1.4.2, Firearms Training, Qualification, and Requalification
- Chapter 1.7.1, Conducted Electrical Weapon
- Chapter 41.4, Foot Pursuits
- Chapter 41.5, Vehicle Pursuits
- Chapter 41.22, Canine
- Chapter 71.1, Prisoner Transportation and Guarding

The OCDM has no objection to the policies as amended. We believe that the amended policies incorporate all requirements of the Consent Decree and set forth clear and appropriate rules to guide officer conduct. We will continue to assess the adequacy of the policies following 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 each

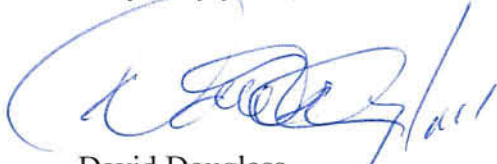
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policy after a year of implementation to ensure it “provides effective direction to NOPD personnel and remains consistent with the Agreement, best practices, and current law.” Consent Decree at ¶ 18.

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

Very truly yours,



David Douglass
For SHEPPARD MULLIN RICHTER & HAMPTON LLP*
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CC: HONORABLE SUSIE MORAN (VIA ELECTRONIC MAIL)
EMILY GUNSTON, DEPARTMENT OF JUSTICE (VIA ELECTRONIC MAIL)



NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

CHAPTER: 1.3.1.2

TITLE: CONTROL DEVICES AND TECHNIQUES

EFFECTIVE:

REVISED:

PURPOSE

This Chapter governs the issuance, maintenance, and use of control devices and techniques during detentions and arrests to provide for the safety and security of the subject being detained or in custody, the officer, and the public.

POLICY STATEMENT

1. The New Orleans Police Department authorizes the use of control devices and techniques in order to control persons who actively, aggressively or aggravatedly resist a lawful detention or arrest in accordance with this Chapter, **Chapter 1.3 - Use of Force** and department training.
2. Control devices and techniques **shall not** be used to demean, embarrass, or punish.

DEFINITIONS

Definitions relevant to this Chapter include:

Active Resistance—Resistance exhibited by a suspect that is between passive resistance and aggressive resistance (e.g., attempts to leave the scene, flee, hide from detection, or pull away from the officer's grasp). Verbal statements, bracing, or tensing alone do not constitute active resistance.

Aggressive Resistance—Is a subject's attempt to attack or an actual attack of an officer. Exhibiting aggressive behavior (e.g., lunging toward the officer, striking the officer with hands, fists, kicks or any instrument that may be perceived as a weapon such as a knife or stick) are examples of aggressive resistance. Neither passive nor active resistance, including fleeing, pulling away, verbal statements, bracing, or tensing, constitute aggressive resistance.

Aggravated Resistance—When a subject's actions create an objectively reasonable perception on the part of the officer that the officer or another person is subject to imminent death or serious physical injury as a result of the circumstances and/or nature of an attack. Aggravated resistance represents the least encountered but most serious threat to the safety of law enforcement personnel or another person.

Agitated Delirium (also known as Excited Delirium) - a syndrome or condition characterized by extreme physical agitation, paranoid or irrational behavior, and/or pain insensitivity, often but not necessarily caused by mental illness or substance use. (symptoms listed below).

Anatomical Compliance Technique— The act of applying pressure to vulnerable areas, weak points or pressure points of the body. This technique is used to cause immediate compliance by a subject who poses a threat.

Compliant—Cooperative obedience in response to lawful requests or directions from law enforcement personnel.

Imminent Threat—An immediately impending danger that must be instantly met.

Impact Weapon— Any solid or semi-solid object used by an officer as a method of gaining control of a subject. Absent exigent circumstances, officers shall not use non-traditional weapons/hard objects, such as firearms or radios, as impact weapons.

Neck Hold— One of the following types of holds: (1) arm-bar control hold, a hold that inhibits breathing by compression of the airway in the neck; (2) carotid restraint hold, a hold that inhibits blood flow by compression of the blood vessels in the neck; (3) lateral vascular neck constraint; or (4) a hold with a knee or other object to the back of a prone subject's neck. A neck hold is considered lethal force.

Positional or Compression Asphyxia—When a subject's body position interferes with breathing, either when the chest is restricted from expanding properly or when the position of the subject's head obstructs the airway. Death may occur from positional asphyxia.

Reportable Use of Force—Any force above hand control or escort techniques applied for the purposes of handcuffing, or escort techniques that are not used as pressure-point compliance techniques, do not result in injury or complaint of injury, and are not used to overcome resistance. The pointing of a firearm or CEW laser at a subject is a reportable use of force.

Sudden Tranquility—When a subject who was acting violent suddenly becomes calm, sleepy, and appears to be resting.

Training Coordinator—Member or members of the Education and Training Division staff designated by the Commander of the Education and Training Division to ensure all department personnel who are authorized to carry a control device have been properly trained and certified to carry any specific control device and are retrained or recertified as required by Departmental regulations.

ISSUANCE, MAINTENANCE AND CARRYING OF CONTROL DEVICES

3. Control devices and techniques described in this Chapter may be carried and/or used by members of this Department only if the device or technique has been issued or approved by the Superintendent of Police or his or her authorized designee.
4. All routine maintenance and care of a control device shall be the responsibility of the member to which it is issued, who carries it, or who uses it.

PRIOR TRAINING

5. Any previous baton training that any officer has received which may employ any type of strike to the head area above the shoulder line should not be utilized. This will include any prior training received through the New Orleans Police Academy, military training, or

any training received by any other means.

6. Any prior training received in any type choke-hold, carotid type or otherwise should not be utilized. This will include any prior training received through the New Orleans Police Department, military training, or by any other means.
7. Any prior training received in any type of anatomical control technique that employs a baton, flashlight, or other weapon that applies any type hold to the head area above the shoulder line should not be utilized. This includes any prior training received through the New Orleans Police Academy, military training or by any other means.

NECK HOLDS

8. Neck holds are prohibited except where lethal force is authorized.

USE OF RESTRAINTS

9. Control devices or techniques may be used to restrain or arrest subjects who actively resist, aggressively resist or aggravatedly resist a lawful detention or arrest and the use of the device or technique appears objectively reasonable under the circumstances.
10. Members are responsible for the safety and well-being of the subjects in their custody and control. Subjects who have resisted control or restraint may evidence signs of **Positional Asphyxia**, **Agitated Delirium**, or **Sudden Tranquility** due to recent physical exertions, existing physical conditions or drug use and must be monitored while they are restrained.
11. Control devices or techniques described in this Chapter are authorized for use by members who have successfully completed Department-approved training in the use of those devices or techniques.
12. Control devices may be used when a decision has been made to restrain or arrest subjects who have or demonstrate the intent to be violent and the use of the device appears reasonable under the circumstances.
13. Only the following control devices are approved for use when justified:
 - (a) Expandable batons (includes Monadnock Expandable Baton and ASP Batons)
 - (b) Monadnock PR-24 Side Handle Police Baton
 - (c) Monadnock Defensive Tactics System (MDTS)
14. Only the following anatomical control techniques are approved for use when justified:
 - (a) Standard control holds include those from Monadnock Defensive Tactics and Strategic Self-Defense & Grappling Tactics (SSGT) Strong Side or Support Side Escort Position or Two-on-One Escort Position;
 - (b) SSGT Hollow Behind The Ear Pressure Point to Escort Position or Brachial Pressure Point to Escort Position
 - (c) SSGT Rear Wrist Lock to Escort Position
 - (d) SSGT PR-24 or Expandable Baton Strong Side or Support Side Arm lock to an Escort Position
15. Once a suspect becomes compliant officers shall cease use of Anatomical Compliance techniques immediately.

16. When deciding whether to use an approved control device or technique described in this Chapter, members should carefully balance **all** safety concerns with factors that include, but are not limited to:
 - (a) The circumstances of the detention or crime leading to the arrest;
 - (b) The demeanor and behavior of the detained / arrested subject;
 - (c) The age and health of the subject;
 - (d) Whether the subject is known to be, or appears to be, pregnant;
 - (e) Any other apparent disability or condition.

AUTHORIZED IMPACT WEAPON GUIDELINES

17. The need to immediately control a suspect must be weighed against the risk of causing serious injury.
18. An intentional strike to the head, neck, throat, spine, heart, and kidneys with any impact weapon is prohibited except when lethal force is authorized.
19. Uniformed personnel shall carry the authorized baton in its authorized holder on the duty gun belt. Plainclothes and non-field personnel may carry the baton as authorized and in accordance with the needs of their assignment or at the direction of their supervisor.
20. Other NOPD-issued equipment such as radios, rifles, shotguns, handguns, flashlights, and handcuffs shall not be used as impact weapons except in such circumstances where deadly/lethal force is authorized.

REQUIRED DOCUMENTATION

21. If a subject is arrested, the use of any control devices shall be documented in the related Electronic Police Report and any reports or forms (Blue Team and **Form 114**) required under **Chapter 1.3.6 – Reporting Use of Force**. The reporting member shall include, as appropriate:
 - (a) The type and manner of control devices used;
 - (b) How and if the suspect was treated and transported;
 - (c) Observations of the suspect's behavior during arrest, treatment and transport as well as any signs of physiological problems; and
 - (d) Any known injuries or suspected drug use or other possible medical problems.

EDUCATION AND TRAINING DIVISION RESPONSIBILITIES

22. Only officers who have successfully completed Department-approved training and maintained their qualifications in the use of any control device are authorized to carry and use the device.
23. The Education and Training Division shall ensure that each Department member authorized to carry and use the device:
 - (a) Receives instructions from a certified instructor on the proper use of the **PR-24 Rigid/Expandable Side-Handle Baton/PR-24 Control Device**, according to the Monadnock requirements. The Monadnock PR-24 Basic Course requires a minimum of 8 hours for a first time user.
 - (b) Receives instructions from a certified instructor on how the proper use of the **Monadnock Expandable Baton** according to the Monadnock Expandable Baton requirements. The Monadnock Expandable Baton basic course requires a minimum of 4 hours for the first time user.

Achieves a minimum score of 70% on a written exam on the functions and proper use of both the **Monadnock PR-24 and Expandable Baton**.

24. Upon passing the written portion of each examination, the student shall be required to demonstrate proficiency to at least minimum acceptable performance standards in all taught techniques of each device to a certified Monadnock PR-24 and Monadnock Expandable Baton Instructor before being certified to carry or use either baton.
25. The Education and Training Division shall manage the control device issuance, training, and the inventory(s).
26. Control devices will be annually inspected as part of the in-service training by Education and training Division personnel or the designated instructor for that device. The inspection shall be documented.
27. Damaged departmental control devices returned to the Education and Training Division shall be properly disposed of, repaired, or replaced.
28. The Commander of the Education and Training Division or the designated Training Coordinator shall ensure:
 - (a) Proficiency training is monitored and documented by the appropriate certified control device, weapons or tactics instructor;
 - (b) Retraining for all control devices should occur pursuant to the manufacturer's guidelines or every two years at a minimum;
 - (c) All training and proficiency for control devices will be documented in the officer's training file; and
 - (d) Officers who fail to demonstrate proficiency with the control device or knowledge of **Chapter 1.3 - Use of Force** and **Chapter 1.3.6 – Reporting Use of Force** will be provided remedial training. If an officer cannot demonstrate proficiency with a control device or knowledge of the Department's regulations after remedial training, the officer shall be immediately restricted from carrying the control device and may be subject to discipline.

REPORTING USE OF FORCE FOR CONTROL DEVICES AND TECHNIQUES

29. Any reportable use of force including, but not limited to any application of an impact weapon, control device or anatomical control technique excluding hand control or escort techniques applied for the purposes of handcuffing, or escort techniques that are not used as pressure point compliance techniques, do not result in injury or complaint of injury, and are not used to overcome resistance listed within this policy shall be documented in the related incident report and reported pursuant to the Use of Force Policy.