

NOPD CONSENT DECREE MONITOR
NEW ORLEANS, LOUISIANA



202.747.1904 direct
ddouglass@sheppardmullin.com

October 15, 2015

File Number: 37PA-191555

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

October 15, 2015

Page 2

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: 1.3.2

TITLE: FORCE INVESTIGATION TEAM (FIT)

EFFECTIVE:

REVISED:

PURPOSE

The purpose of this Chapter is to set standards for the Force Investigation Team (FIT) to investigate and assess all serious uses of force involving department members in a fair and impartial manner utilizing individuals with appropriate expertise, independence, and investigative skills to ensure that uses of force that are contrary to law or policy are identified and appropriately resolved; that policy, training, equipment, or tactical deficiencies related to the use of force are identified and corrected; and that investigations of sufficient quality to ensure that officers are held accountable, as necessary, are conducted

POLICY STATEMENT

1. FIT shall fully and fairly investigate all serious uses of force. In addition to all serious uses of force, FIT shall investigate uses of force indicating apparent criminal conduct by an officer, unless referred to another law enforcement agency; uses of force by Department members of a rank higher than sergeant; uses of force reassigned to FIT by the Superintendent, the Superintendent's designee, or the Public Integrity Bureau (PIB); and any death, serious physical injury or injuries requiring treatment at a hospital associated with a police pursuit. FIT also shall investigate all instances in which an individual has died while in, or as an apparent result of being in, the custody of NOPD. FIT members shall identify all policy, training, equipment, or tactical deficiencies related to the use of force. FIT investigations may result in criminal charges, administrative action, or both.
2. NOPD's Homicide Section shall not investigate any officer-involved serious use of force or any NOPD in-custody death. When it is appropriate to ensure the fact and appearance of impartiality, NOPD may refer investigations of serious use of force, or force indicating apparent criminal conduct by an officer, to an independent, competent external agency, such as the Federal Bureau of Investigations.
3. FIT shall be composed of members who are specially trained in both criminal and administrative force investigations. Members of FIT shall be assigned to PIB and shall not be assigned to any district.

DEFINITIONS:

Definitions related to this policy include:

Critical firearm discharge—A discharge of a firearm by an NOPD officer, including discharges when no person or animal is struck. Range and training firings, humane destruction of animals, and off-duty hunting discharges when no person is struck are not critical firearms discharges.

Deadly force/lethal force—Any force likely to cause death or serious physical injury. The use of a firearm (discharge) is considered deadly force. Neck holds and strikes to the head, neck, or throat with a hard object are considered deadly force.

Conducted electrical weapon (CEW)—A weapon designed primarily to discharge electrical impulses into a subject that will cause involuntary muscle contractions and override the subject's voluntary motor responses.

CEW application—The contact and delivery of electrical impulse to a subject with a CEW.

Force Investigation Team (FIT)— The NOPD unit tasked with conducting investigations of serious uses of force; uses of force indicating apparent criminal conduct by an officer; uses of force by NOPD personnel of a rank higher than sergeant; and uses of force reassigned to FIT by the Superintendent, the Superintendent's designee, or PIB. FIT also shall investigate all instances in which an individual has died while in, or as an apparent result of being in, the custody of NOPD.

Force statement— A written statement required as part of the departmental Use of Force Report (in Blue Team application and Form #114). The Force Statement is completed by an involved officer or witness officer documenting a use of force. A Force Statement is not considered a compelled statement under *Garrity v. New Jersey* or under analogous State law. The statement can be considered compelled only when the officer is ordered to provide a statement after refusing to do so on the grounds that the officer has a reasonable, good faith belief that such statement may incriminate himself/herself.

Force tracking number—A unique number assigned by FIT to each reportable use of force event to facilitate awareness event and tracking of a use of force investigation. The number includes the letters "FTN" for force tracking number, followed by the year the force event occurred followed by a three digit sequential number starting with 001 for the first recorded allegation of the year. FTN 2014-001 indicates the first reportable use of force event in 2014.

In-custody death—An incident in which an individual died while in, or as an apparent result of being in, the custody of NOPD.

Involved Officer (IO)— An involved officer is an officer who used force, or against whom force was used.

Lead investigator—The principal person conducting the investigation and responsible for authoring the report.

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.

Public safety statement— A statement by an involved or witness officer that describes the type of force used, the direction and approximate number of shots fired by the involved officer (or officers) and the suspect (or suspects), the location of an injured person, the description of outstanding suspect(s) and the direction of the suspect's flight, the time lapse since the suspect was last seen, whether the suspect is armed, any other information that could assist in the apprehension of outstanding suspects, description(s) of any victims or witnesses, description and location of any know evidence, and any other information to ensure officer and public safety.

Sequestered—The separation and isolation of officers, witnesses or accused from others who may have involvement in or be witness to an action that is under investigation by the NOPD either internally or criminally. The intent is to preserve the clarity and accuracy of the individual's independent recollection of events and actions and to minimize, to the extent reasonably possible, contamination of memory by group discussion or conversation. This does not apply to those cases where the sequestered persons are exercising legally protected rights (e.g. access to legal counsel, labor representative, etc. –see R.S. 40:2531).

Serious physical injury—Physical injury that creates a substantial risk of death, causes death or serious and protracted disfigurement, or causes impairment of the function of any bodily organ or limb.

Serious use of force—Include the following:

- All uses of lethal force by an NOPD officer;
- All critical firearm discharges by an NOPD officer;
- All uses of force by an NOPD officer resulting in serious physical injury or requiring hospitalization;
- All neck holds;
- All uses of force by an NOPD officer resulting in a loss of consciousness;
- All canine bites;
- More than two applications of an CEW on an individual during a single interaction, regardless of the mode or duration of the application, and whether the applications are by the same or different officers, or CEW application for longer than 15 seconds, whether continuous or consecutive; and
- Any strike, blow, kick, CEW application or similar use of force against a handcuffed subject.

Supervisor—A sworn NOPD employee at the rank of sergeant or above (or anyone acting in those capacities) and non-sworn NOPD members with oversight responsibility for officers.

Use of force—Physical effort to compel compliance by an unwilling subject above unresisted handcuffing, including pointing a firearm at a person.

Use of force indicating apparent criminal conduct by an officer—Force that a reasonable and trained supervisor would conclude could result in criminal charges due to the apparent circumstances of the use of force. The level of the force used as compared to the resistance encountered, discrepancies in the use of force as described by the officer and the use of force as evidenced by any resulting injuries, witness statements, or other evidence are examples.

Use of Force Levels—For reporting and investigative purposes, the New Orleans Police Department categorizes use of force by its members into four (4) primary force levels:

LEVEL 1

Level-1 uses of force include pointing a firearm or CEW at a person and hand control or escort techniques (e.g., elbow grip, wrist grip, or shoulder grip) applied as pressurepoint compliance techniques or that result in injury or complaint of injury. (Note: Hand control or escort techniques applied for the purposes of handcuffing or escorts 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, are not reportable uses of force.)

LEVEL 2

Level-2 uses of force include use of a CEW (including where a CEW is fired at a person but misses); use of an impact weapon to strike a person but where no contact is made; use of a baton for non-striking purposes (e.g., prying limbs, moving or controlling a person); and weaponless defense techniques (e.g., elbow strikes, kicks, leg sweeps, and takedowns).

LEVEL 3

Level-3 uses of force include any strike to the head (except for a strike with an impact weapon); use of impact weapons when contact is made (except to the head), regardless of injury; or the destruction of an animal.

LEVEL 4

Level-4 uses of force include all 'serious uses of force' as listed below:

- All uses of lethal force by an NOPD officer;
- All critical firearm discharges by an NOPD officer;
- All uses of force by an NOPD officer resulting in serious physical injury or requiring hospitalization;
- All neck holds;
- All uses of force by an NOPD officer resulting in a loss of consciousness;
- All canine bites;
- More than two applications of an CEW on an individual during a single interaction, regardless of the mode or duration of the application, and whether the applications are by the same or different officers, or CEW application for longer than 15 seconds, whether continuous or consecutive; and
- Any strike, blow, kick, CEW application or similar use of force against a handcuffed subject.
- Any vehicle pursuit resulting in death, serious physical injury, or injuries requiring hospitalization.

Use of Force Report—A written report documenting a supervisor's investigation of a use of force (in Blue Team application and Form #114).

Witness officer (WO) — A witness officer is any officer at the scene of an event when force was used. Whether or not the officer witnessed the actual application of force is not necessary for the officer to be considered a witness officer.

CRIMINAL AND ADMINISTRATIVE SECTIONS

4. The Force Investigation Team is a sub-unit of the Public Integrity Bureau. The supervisor in charge of FIT reports directly to the PIB Deputy Superintendent.
5. The Force Investigation Team is divided into administrative and criminal sections. Information obtained through a criminal investigation can be shared with administrative investigators and made part of the administrative investigation. Consistent with applicable law, compelled statements obtained as a result of an administrative investigation shall not be shared with criminal investigators and cannot be made part of the criminal investigation.
6. If an investigation proceeds criminally, any compelled interview of the subject officers shall be delayed. Officers' routine reports and public safety statements are not compelled statements. No other part of the investigation shall be held in abeyance unless specifically authorized by the Superintendent.

CRIMINAL SECTION

7. Investigators assigned to FIT's Criminal Section shall be responsible for conducting investigations that are criminal in nature and may focus on both the officer(s) and the suspect(s). The product of the investigation may result in the prosecution of the officer(s), as well as the suspect(s).
8. The Department may relinquish its criminal investigation to an outside agency or may request the criminal investigation be conducted by an outside agency with the approval of the Superintendent of Police, or his/her designee.

ADMINISTRATIVE SECTION

9. Investigators assigned to the FIT - Administrative Section shall conduct investigations that determine if a member of the department violated the Rules, Policies, and Procedures of the department. The results of the investigation may result in disciplinary actions against the officer(s).
10. FIT investigative information may also be used for training purposes.

IMMEDIATE SUPERVISORY AND FIT DUTIES

11. The on-scene supervisor shall immediately notify FIT, via the Command Desk, and FIT shall respond to:
 - (a) Every incident involving a serious use of force;
 - (b) Uses of force indicating apparent criminal conduct by an officer;
 - (c) Uses of force by department members of a rank higher than sergeant;
 - (d) All instances in which an individual has died while in, or as an apparent result of being in, the custody of NOPD; and
 - (e) All instances in which a person dies, suffers a serious physical injury or injuries requiring treatment at a hospital during a police pursuit.
12. FIT shall also respond to any scene as ordered by the Superintendent or his designee or PIB.
13. FIT shall immediately notify the PIB Deputy Superintendent and Commander of the use of force, verify that the on-scene supervisor has notified PIB, and obtain a force tracking number.

14. The Commander of PIB shall immediately notify and consult with the City Attorney, District Attorney, Independent Police Monitor, FBI, and the U.S. Attorney's Office regarding any use of force indicating apparent criminal conduct by an officer, evidence of apparent criminal conduct by an officer during a misconduct investigation, any use of force in which an officer discharged his firearm, or where an individual has died while in, or as an apparent result of being in, the custody of the Department.

INVESTIGATION

15. FIT shall conduct all investigations in accordance with its written unit standard operating guidelines. FIT's responsibilities include:
 - (a) Responding to and securing the scene;
 - (b) Ensuring all injured parties receive timely medical attention;
 - (c) Examining the subject of the use of force for injury;
 - (d) Advising the subject of his/her rights and then interviewing the subject for complaints of pain; and ensuring that the subject receives medical attention from an appropriate medical care provider;
 - (e) Ensuring that the incident scene is processed and that all evidence related to the use of force is collected, including, but not limited to, audio and video recordings, photographs, and other documentation of injuries or the lack thereof (any evidence that cannot be collected, for whatever reason, must be specifically documented in the investigative report. (e.g. the subject's refusal to have injuries photographed));
 - (f) Identifying all officers who were involved in the incident, witnessed the incident, or were on the scene when it occurred;
 - (g) Ensuring a canvas for and interview of civilian witnesses is conducted. Whenever possible, interviews shall be recorded, including those where the person interviewed states she/he did not witness any part of the incident. ;
 - (h) Obtaining signed, written statements from witnesses (written in their own words), whenever possible;
 - (i) Ensuring that all witness officers provide a force statement and that the statements include all information required by NOPD policy;
 - (j) Ensuring that no group interviews are conducted and involved officers are sequestered;
 - (k) Ensuring that FIT not ask officers or other witnesses leading questions that improperly suggest legal justification for the officers' conduct, when such questions are contrary to appropriate law enforcement techniques;
 - (l) Ensuring that all interviews are recorded;
 - (m) Considering all relevant evidence, including circumstantial, direct, and physical evidence, and making credibility determinations as necessary; and
 - (n) Making all reasonable efforts to resolve material inconsistencies between the officer, subjects, and witness statements, as well as inconsistencies between the level of force claimed by the officer and the subject's injuries.
16. FIT shall complete a preliminary report that shall be presented to the Superintendent or his/her designee as soon as possible, but in no circumstances later than 24 hours after learning of the use of force.
17. FIT shall complete all administrative investigations within 30 days from the use of force, and any request for an extension of time shall be subject to the approval of the Deputy Superintendent of PIB in consultation with the Superintendent.

USE OF FORCE REPORT REVIEW

18. FIT shall review all use of force reports of incidents for which FIT did not have primary investigative responsibility and ensure that they are complete and accurate. FIT's review and quality control shall include:
 - (a) Ensuring that all witness and involved officers provided a force statement (except witness officer statements are not required for Level 1 uses of force);
 - (b) Reviewing force statements to ensure that they include all required information;
 - (c) Ensuring that all evidence related to the use of force has been collected, including audio and video recordings, photographs, and other documentation of injuries or the lack thereof. Any evidence that cannot be collected, for whatever reason, must be specifically documented in the investigative report. (e.g. the subject's refusal to have injuries photographed);
 - (d) Ensuring that civilian witnesses have been identified, located, and interviewed, whenever possible, and that the interviews are recorded;
 - (e) Ensuring that the supervisor who wrote the use of force report completed his/her supervisory review, including viewing of relevant video evidence;
 - (f) Considering all relevant evidence, including circumstantial, direct, and physical evidence, and making credibility determinations as necessary.
 - (g) Making an assessment that the findings of the investigating supervisor are made based upon a preponderance of the evidence presented in her/his report.
19. Whenever FIT discovers that use-of-force reports are deficient, FIT shall return the report to the supervisor who wrote the report with instructions for its completion. FIT will forward a copy of the memo returning the use of force report for further action to the investigating sergeant's commanding officer.
20. When an investigating supervisor fails to correct a deficient investigation or repeatedly conducts deficient investigations, FIT shall refer a report of the supervisor's conduct to PIB for an administrative investigation. The supervisor shall be subject to corrective action including counseling, training, demotion, and/or removal from a supervisor position in accordance with Civil Service rules.

DISTRICT ATTORNEY NOTIFICATION

21. If the incident results in the apprehension of a suspect, the FIT investigator shall submit a complete report to the Orleans Parish District Attorney's Office within twenty-one days of the apprehension. If the suspect was hospitalized as a result of force used by an officer, the twenty-one day time frame begins at the time of booking.
22. Upon receipt of any forensic testing results, the FIT investigator shall submit the results to the District Attorney's office via supplemental report by the lead FIT criminal investigator.
23. If an incident results in the death of a suspect, the FIT investigator shall complete their investigative report within forty-five days of the incident.

ORLEANS PARISH CORONER'S OFFICE

24. FIT investigators shall request and obtain, when available, a completed Coroner's Report from the Orleans Parish Coroner's Office within 30 days regarding a death to a use of force the District Attorney or other investigating agency regarding any non-natural cause of death or homicide declaration within 60 days after the use of force.

PUBLIC STATEMENTS/MEDIA RELEASE

25. The NOPD Public Information Office shall prepare a media release, with input and concurrence from the investigating supervisor and the agency representative responsible for each phase of the investigation. These releases will be available to the lieutenant in charge of the Force Investigation Team or lead investigator in the event of inquiries from the media.
26. The name(s) of the involved officer(s) may be withheld for 24 - 48 hours. Any request for the name(s) of the involved officer(s) will be referred to the Superintendent for action.
27. No involved officer shall make any comments to the media unless authorized by the Superintendent or a Deputy Superintendent (R.S. 40:2532).
28. Employees receiving inquiries regarding incidents occurring in other agency jurisdictions shall refrain from comment and will direct inquiries to the agency having jurisdiction and primary responsibility for the investigation.

INVOLVED OFFICERS

29. Once the involved officer(s) have been sequestered, the Platoon Supervisor or other on-scene supervisor shall notify each officer that the incident shall not be discussed with any NOPD member except with authorized members or representatives. The following shall be considered for the involved officer (R.S. 40:2531):
 - (a) Any request for legal or officer representation (e.g., employee association) shall be accommodated.
 - (b) While discussions with a licensed attorney are considered privileged as attorney-client communications, involved officers shall not be permitted to meet with other involved officers or with witness officers prior to providing a formal interview or report.
 - (c) Discussions with officer representatives (e.g., employee association) will be privileged only as to the discussion of noncriminal information. However, involved officers shall not be permitted to meet with other involved officers or with witness officers prior to providing a formal interview or report.
 - (d) A psychologist or other psychotherapist shall be provided by the Department to each involved officer or any officer upon request.
 1. Interviews with a licensed psychotherapist are considered privileged and will not be disclosed except to the extent that a report is required to determine whether the officer is fit for return to duty.
 2. If an interview or session with a licensed psychotherapist takes place prior to the involved officer providing a formal interview or report, the involved officer shall not be permitted to consult or meet collectively or in a group with a licensed psychotherapist prior to providing a formal interview or report.
 - (b) Although the Department will honor the sensitivity of communications with peer counselors, **there is no legal privilege to such communications.** Peer counselors are cautioned not to discuss the facts of any incident with an involved or witness officer.
30. Care should be taken to preserve the integrity of any physical evidence present, especially on the officer's equipment or clothing. Items such as trace evidence (i.e., DNA, blood or fingerprints) are highly perishable until they can be properly retrieved and preserved by lab members or investigators.

31. Investigators shall make reasonable accommodations to the officer's physical and emotional needs.

PURSUIT RELATED MOTOR VEHICLE CRASHES AND OFFICER INVOLVED SHOOTINGS

32. When motor vehicle crashes involving a suspect vehicle and other civilian vehicles occur during the course of a Use of Force Incident (vehicle pursuit), members of the district of occurrence shall complete an official crash report supplied by the Department of Motor Vehicles. Such approved reports shall be made a part of the FIT Report as an attachment.
33. If an officer involved in a vehicle pursuit or any part of an incident which involves a motor vehicle crash while driving a department vehicle, the on duty/on call Traffic Section Unit investigator shall conduct an investigation and complete a crash report supplied by the Louisiana Department of Motor Vehicles. Such approved reports shall be made a part of the FIT Report as an attachment.
34. If the motor vehicle crash results in a fatality or serious physical injury which may result in death, members of the Traffic Fatality Section shall investigate that portion of the incident and complete a crash report. Such approved crash reports shall be made a part of the FIT Report as an attachment.

RECORDS AND DATA

35. FIT shall be responsible for maintaining all files and records on all use of force incidents, both those investigative by FIT and those investigated at the unit level.
36. Because FIT is divided into two sections (Criminal and Administrative), FIT shall maintain and file cases investigated by each section separately. Discussions on related cases (administrative and criminal) involving the same officers or factual occurrence are confined to members of the appropriate section of FIT. FIT Criminal Investigators shall not access compelled statements or discuss their contents. FIT Administrative Investigators shall not disclose to or discuss with any criminal investigators the contents of compelled statements.
37. At the conclusion of each use-of-force investigation, FIT shall prepare an investigative report that shall include:
 - (a) a narrative description of the incident, including a precise description of the evidence that either justifies or fails to justify the officer's conduct based on FIT's independent review of the facts and circumstances of the incident;
 - (b) a summary of the investigative steps taken during the investigation, including but not limited to conducting a canvas for witnesses;
 - (c) documentation of all evidence gathered, including names, phone numbers, and addresses of witnesses to the incident. In situations in which there are no known witnesses, the report shall specifically state this fact. In situations in which witnesses were present but circumstances prevented the author of the report from determining the identification, phone number or address of those witnesses, the report shall state the reasons why. The report should also include all available identifying information for anyone who refuses to provide a statement;
 - (d) the names of all other NOPD employees at the scene when the use of force took place;
 - (e) making all reasonable efforts to resolve material inconsistencies between the officer(s), subject(s), and witness statements;

- (f) explain the justification for, and reasoning used to make credibility determinations as part of the investigative summary;
 - (g) FIT's evaluation of the use of force, based on FIT's review of the evidence gathered, including a determination of whether the officer's actions appear to be within NOPD policy and consistent with state and federal law;
 - (h) An assessment of the incident for tactical and training implications, including whether the use of force may have been avoided through the use of de-escalation techniques or lesser force options;
 - (i) If a weapon was used, documentation that the officer's certification and training for the weapon are current; and
 - (j) Documentation of any disciplinary and/or non-disciplinary corrective action recommended.
38. FIT shall maintain, on an ongoing basis, statistical data concerning use-of-force incidents and reports. At least once a year, FIT shall conduct a comprehensive review and analysis of all use-of-force incidents and reports, and FIT shall draft a public report. The public report shall identify any significant patterns or trends; it shall also identify and correct deficiencies including those that indicate training needs, equipment problems, or that policy changes may be required.