

NOPD CONSENT DECREE MONITOR  
NEW ORLEANS, LOUISIANA



202.747.1904 direct  
ddouglass@sheppardmullin.com

March 6, 2018

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 the amended Chapter 1.3.6 – Reporting Use of Force. The OCDM has no objection to the policy as amended.

We believe that the amended Chapter 1.3.6 – Reporting Use of Force, 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)  
EMILY GUNSTON, DEPARTMENT OF JUSTICE (VIA ELECTRONIC MAIL)



# NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

## CHAPTER: 1.3.6

### TITLE: REPORTING USE OF FORCE

EFFECTIVE: 12/06/15

REVISED:

---

#### PURPOSE

The purpose of this Chapter is to set forth requirements for reporting and investigating an incident in which an NOPD officer used a reportable level of force and to ensure that such incidents are thoroughly investigated in a fair and impartial manner.

#### POLICY

1. It is the policy of this Department that every reportable use of force by an NOPD officer be reported accurately, completely, and promptly, and investigated with the utmost thoroughness, professionalism, and impartiality to determine if the officer actions conform to the law, complies with the Department's Chapter on use of force, and was consistent with NOPD training.
2. NOPD force reporting and investigation allows the Department and community to better understand officer use of force. It enables the Department to determine the appropriateness of officer actions during the incident and to determine whether the incident indicates any need to change NOPD policy, tactics, training or equipment. Force reporting and investigation thus is critical to promoting officer safety and the integrity of the Department.
3. The Force Investigation Team (FIT) shall be responsible for investigating all incidents involving Deadly Force, Serious Use of Force or the Use of Force Indicating Potential Criminal Conduct (see definitions). FIT's responsibilities are further set out in **Chapter 1.3.2 – Force Investigation Team**.

#### RESPONSIBILITY TO REPORT USES OF FORCE – GENERAL

4. Officers who use force or observe the use of force shall notify their supervisors immediately following any use-of-force incident. Officers shall notify their supervisors upon receipt of an **allegation of unreasonable or unreported use of force by an officer. Officers who observe force and fail to report it shall be subject to disciplinary action, up to and including termination.**
5. Officer(s) who use force shall complete a Force Statement and any associated NOPD Incident Report(s). An officer who witnesses a use of force or was present at the scene when the force may also have to, depending on the Level, complete a Force Statement.

These forms shall be completed and forwarded to the officer's immediate supervisor for review and approval prior to the end of his/her tour of duty, unless prevented by injury. (See **Paragraph 16 below** for list of what must be included in the force statement.)

6. A department member who has been assigned a BWC device may review his or her own BWC recording before completing a Force Statement to help insure accuracy and consistency of accounts (**Chapter 41.3.10 – Body Worn Camera**) A department member involved in any use of force incident or accident causing injuries will be permitted, but will not be required, to review his/her own BWC recordings prior to providing a recorded statement or completing reports. Witness department members will only be allowed to review BWC recordings consistent with **Chapter 41.3.10 – Body Worn Camera**. However, department members must complete their Force Statements before the end of their tour of duty in which force is used and review of BWC recordings shall not unduly delay the timely submission of a member's other reports.
7. All public safety statements and other officer statements in incident reports, arrest reports, force statements, and similar documents, and statements made in interviews such as those conducted in conjunction with NOPD's routine use of force reviews and investigation processes, are part of each officer's professional duties.
8. A supervisor who uses force or is involved in a reportable incident, to include ordering the force being investigated or participating in the incident leading up to the use of force, shall not investigate the incident or review the Force Statements for approval. The involved supervisor shall notify his/her supervisor immediately following any use of force in which he or she is an Involved or Witness Officer.
9. The supervisor approving the officer's Force Statement or completing the Use of Force Report shall ensure the reason for any delay is documented. Whether on duty or off duty, officers who use or observe a use of force and fail to report it in a timely manner shall be subject to disciplinary action.

## DEFINITIONS

**Elbow strike**—A strike to a person with the point of an officer's elbow.

**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 #114B). 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.

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

**Kick**—To forcibly strike a person with any part of an officer's leg.

**Leg sweep**—To trip a person and/or cause one or both legs of a person to collapse and the person to fall to the ground.

**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.

**Serious Use of Force**—Includes the following:

- (a) All uses of lethal force by an NOPD officer;
- (b) All critical firearm discharges by an NOPD officer;
- (c) All uses of force by an NOPD officer resulting in serious physical injury or requiring hospitalization;
- (d) All neck holds;
- (e) All uses of force by an NOPD officer resulting in a loss of consciousness;
- (f) All canine bites;
- (g) 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 15 seconds or longer, whether continuous or consecutive; and
- (h) Any strike, blow, kick, CEW application or similar use of force against a handcuffed subject.

**Takedown**—A person is thrown, pushed, tackled, or shoved to the ground or against a wall, car, or other surface by an officer. The key element to a takedown is the degree of force used. The use of a compliance technique off-balancing the subject against a wall, car, or surface (**other than ground**) alone is **not** a takedown. A shove or push does not maintain contact, but rather creates distance between the officer and the subject, and is not a takedown unless a fall to the ground results.

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

**Witness Officer**—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.

## LEVELS OF REPORTABLE USE OF FORCE

10. For reporting and investigative purposes, the Department categorizes use of force by its members into four (4) force reporting levels:

### LEVEL 1

11. Level-1 uses of force include pointing a firearm at a person and hand control or escort techniques (e.g., elbow grip, wrist grip, or shoulder grip) applied as pressure point compliance techniques are not reasonably expected to cause injury; takedowns that do not result in actual injury or complaint of injury; and use of an impact weapon for non-striking purposes (e.g., prying limbs, moving or controlling a person) that does not result in actual injury or complaint of injury. It does not include escorting, touching, or handcuffing a person with minimal or no resistance.

**LEVEL 2**

12. Level-2 uses of force include use of a CEW (including where a CEW is fired at a person but misses); and force that causes or could reasonably be expected to cause an injury greater than transitory pain but does not rise to a Level 3 use of force.

**LEVEL 3**

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

**LEVEL 4**

14. Level-4 uses of force include all '*serious uses of force*' as listed below:
- (a) All uses of lethal force by an NOPD officer;
  - (b) All critical firearm discharges by an NOPD officer;
  - (c) All uses of force by an NOPD officer resulting in serious physical injury or requiring hospitalization;
  - (d) All neck holds;
  - (e) All uses of force by an NOPD officer resulting in a loss of consciousness;
  - (f) All canine bites;
  - (g) More than two applications of a 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 15 seconds or longer, whether continuous or consecutive;
  - (h) Any strike, blow, kick, CEW application, or similar use of force against a handcuffed subject; and
  - (i) Any vehicle pursuit resulting in death, serious physical injury or injuries requiring treatment at a hospital.

**NON-REPORTABLE LEVELS OF FORCE**

15. Hand control or escort techniques applied for the purposes of handcuffing or escorts that are not used as an anatomical compliance techniques, do not result in injury or complaint of injury, and are not used to overcome resistance, are not reportable uses of force, e.g., simply handcuffing someone, simply escorting a handcuffed prisoner.

**OFFICER REPORTING REQUIREMENT – FORCE STATEMENT**

16. Depending on the level of reportable use of force, as set forth below, an Involved Officer (IO) and/or Witness Officer (WO) may be required to prepare a Force Statement. The officer shall independently prepare his or her Force Statement and include facts known to the officer, to include:
- (a) A detailed account of the force incident from the officer's perspective;
  - (b) The reason for the initial police presence, e.g.: response to (nature of) call, on-view suspicious activity (describe the suspicious activity), flagged by a citizen (nature of citizen's concern), shots fired, or screams heard, etc.;
  - (c) A specific description of the acts that led to the use of force;
  - (d) The specific description of resistance encountered;
  - (e) A description of every type of force used or observed;
  - (f) Names of all assisting officers and supervisors participating in the actions leading up to the use of force;

- (g) The name of the supervisor the involved officer notified, and the time of the notification;
  - (h) The name of the supervisor who responded to the scene;
  - (i) Names, if know, of any civilian witnesses;
  - (j) A description of any injuries suffered by the officer, subject, or witnesses;
  - (k) Whether a body-worn camera was activated and its identifiable file location;
  - (l) Whether a vehicle camera was activated and its identifiable file location; and
  - (m) Whether a CEW activation occurred, even if the CEW was not discharged.
17. Officers shall not make conclusory statements, including the use of “boilerplate” or “pat” language (e.g., “suspect made a furtive movement” or “suspect took a fighting stance”) in statements and reports documenting use of force. A specific description of an individual’s action(s) that led to the perceived need for a use of force response by an officer must be clearly articulated.
18. Witness officers should prepare a Force Statement (see Paragraph 19 for exception in Level 1 Use of Force) if they were present on the scene at the time of the application of force even if they did not witness the actual application of force. Their Force Statements should describe the role they played and include information on what they saw or heard firsthand. If the witness officer did not hear or see any part of the application of force, the Force Statement should so indicate.

#### **Level 1 Use of Force**

19. Following a reportable Level 1 use of force incident, the officer using force shall:
- (a) Immediately notify his/her supervisor.
  - (b) Complete a Force Statement prior to the end of his/her tour of duty
  - (c) Complete an NOPD Incident Report on the underlying offense that required the Use of Force. All critical information surrounding the officer’s Level 1 Use of Force should be included in this report.
  - (d) The Force Statement and all associated NOPD Incident Reports shall be provided to the same reviewing/approving supervisor prior to the officers’ end of tour of duty.
20. Witness officers may also be required to prepare a force statement if directed to do so by a supervisor.

#### **Levels 2 – 4 Use of Force**

21. Each officer using a Level 2 through 4 use of force shall immediately notify his/her immediate supervisor and shall:
- (a) Provide a public safety statement to the responding supervisor;
  - (b) Complete a Force Statement prior to the end of his/her tour of duty; and
  - (c) Complete an NOPD Incident Report on the underlying offense that required the Use of Force. All critical information surrounding the officer’s Level 2-4 Use of Force should be included in this report.
22. Each officer present at the scene (i.e., all Involved Officers and Witness Officer) of a Level 2, Level 3, or Level 4 use of force shall also prepare a Force Statement.
23. All Involved Officers or Witness Officers shall provide their Force Statements and the corresponding NOPD Incident Report to the same reviewing/approving supervisor prior to each officer’s end of tour of duty.

**INVESTIGATING SUPERVISOR'S RESPONSIBILITY – GENERAL**

24. Supervisors are required to write a Force Statement if they fit the definition of an Involved Officer or Witness Officer as defined above. If they are a Witness or Involved Officer, they must follow the requirements of this Chapter.

**REPORTING LEVEL 1**

25. Upon notification by an officer of a Level 1 Use of Force, the supervisor shall:
- (a) If possible, respond to the scene of the event to conduct an on-scene review;
  - (b) Ensure that all Involved Officers complete and submit a Force Statement prior to the end of their tour of duty;
  - (c) Require Witness Officer to prepare a Force Statement if any aspect of the use of force is under question;
  - (d) Contact the Communications Section Liaison, obtain a Force Tracking Number, and ensure the force tracking number is entered on the Force Statement, in the narrative of the associate EPR and on all other associated documents;
  - (e) Ensure the Involved Officer has completed and submitted the underlying NOPD Incident Report prior to the end of the officer's tour of duty; elevate and investigate any use of force that has been inappropriately characterized as a Level 1 Use of Force;
  - (f) Initiate a Blue Team entry by ETOD of the supervisor's NEXT Tour Of Duty , which will list preliminary information regarding the use of force incident; and
  - (g) Upon approving the NOPD Incident Report and Force Statement(s), forward the complete packet through the chain of command to the District/Division Commander.

**REPORTING LEVEL 2 OR 3**

26. Supervisors shall thoroughly investigate and complete a Use of Force Report for all Level 2 and Level 3 uses of force, with the exception of:
- (a) Those incidents involving a serious use of force (Level 4 use of force);
  - (b) Uses of force indicating apparent criminal conduct by an officer;
  - (c) A use of force incident by NOPD personnel of a rank higher than the supervisor assigned to investigate the incident; or
  - (d) A use of force Investigation reassigned to FIT through determination made by the Superintendent or his or her designee or PIB.
27. Supervisors shall be held accountable for the timely, accurate, and thorough investigation and documentation of all use-of-force incidents under their command or assigned to them for review and shall further ensure the provisions of all policies and procedures are properly applied.
28. Upon notification of a Level 2 or Level 3 use of force incident or allegation of excessive force, the officer's (s') immediate supervisor shall:
- (a) Respond to the scene, examine the subject of the force for injury, interview the subject for complaints of pain after advising the subject of his/her rights, and ensure the subject receives medical attention from an appropriate medical provider;
  - (b) Obtain statements from the Involved Officers and Witness Officers;
  - (c) Notify the Communications Section Liaison immediately of the use of force and obtain a use of force tracking number;
  - (d) Identify and collect all relevant evidence and evaluate that evidence to determine whether the use of force:
  - (e) Was consistent with NOPD policy, and/or

- (f) Raises any policy, training, tactical, or equipment concerns;
  - (g) Ensure that all evidence to establish material facts related to the use of force, including audio and video recordings, photographs, and other documentation of injuries or the absence of injuries are identified, collected, documented, and preserved;
  - (h) Ensure that a canvass for, and interview of, civilian witnesses is conducted (Civilian witnesses should be encouraged to provide and sign a written statement in their own words);
  - (i) Ensure all officers who witnessed a use of force incident by another officer provide an independently prepared Force Statement;
  - (j) Sequester officers involved in a use of force incident until interviewed; group Interviews are prohibited;
  - (k) Ensure that Use-of-Force Reports identify all officers who were involved in the incident, witnessed the incident, or were on the scene when it occurred;
  - (l) Not ask officers or other witnesses leading questions that suggest legal justifications for the officers' conduct;
  - (m) Record all interviews with civilian witnesses and all follow-up interviews with officers.
    - i. Subjects shall be advised of their rights and that they are being questioned only about the use of force. Interviews with subjects (including advisements of rights) shall be recorded. During such force investigation interviews the supervisor shall advise the subject that he or she is only questioning the subject about the use of force.
  - (n) Review all Force Statements and ensure all officer and witness officers' statements include material facts.
  - (o) Consider all evidence (circumstantial, direct, physical evidence, etc.) that may be relevant to the investigation, and make credibility determinations, if feasible. Supervisors will make all reasonable efforts to resolve material inconsistencies between statements (officers, civilians, subject, witness, etc.), as well as inconsistencies between the level of force claimed by the officer and the subject's injuries.
  - (p) Review and assess, if applicable, the CEW Firing Log to ensure consistency with the force statement and log along with proper spark testing and battery level requirements.
  - (q) Initiate a Blue Team entry by ETOD of the supervisor's NEXT Tour Of Duty, which will list preliminary information regarding the use of force incident.
29. Should the assigned supervisor at any point during a use-of-force investigation make a determination that the force used should be elevated to a Level 4 investigation; the supervisor shall immediately contact his/her District/Division Commander and the PIB Force Investigation Team for on-scene assistance. FIT, at its discretion, may take over the investigation. However, if, after a review of the facts and circumstances, the use of force meets the criteria for Level 4 use of force, FIT shall assume the investigation.

#### **REPORTING LEVEL 4**

30. For all Level 4 use of force incidents, supervisor(s) shall:
- (a) Respond to the scene;
  - (b) Obtain a public safety statement from the involved officer;
  - (c) Ensure aid is given to any injured party;
  - (d) Secure the scene, limit access to essential personnel and ensure evidence is preserved;
  - (e) Coordinate the pursuit/apprehension of any outstanding suspects;
  - (f) Notify FIT via the Communications Section; and

- (g) Provide assistance and support as required by the PIB Force Investigation Team. (See **Chapter 1.3.2 – Force Investigation Team**).

### **USE OF FORCE – INVESTIGATING SUPERVISOR’S REPORTING REQUIREMENTS FOR LEVEL 2 & LEVEL 3 USE OF FORCE**

31. For all investigations into Level 2 or Level 3 use of force events the supervisor shall provide a written gist to the Division Commander by the end of his/her shift documenting his/her preliminary determination of the appropriateness of the use of force, including whether the force was reasonable and within policy, and whether the injuries appear proportionate to the use of force described. The written gist shall also include summaries of subject, witness, and officer statements.
32. The supervisor will initially complete and document the preliminary investigation information into Blue Team Use of Force System by ETOD of the supervisor’s NEXT Tour Of Duty. The supervisor will have 72-hours to complete and input the remainder of the information into Blue Team and submit it through his/her chain of command to PIB. A District/Division Commander may authorize an extension to the 72-hour deadline, but this extension must be documented in the Blue Team application or a 105 before the initial deadline.
33. The supervisor’s Use of Force Report shall include:
- (a) The supervisor’s 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 the supervisor’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) Documentation of any non-disciplinary corrective action taken;
  - (f) Documentation of injuries incurred by the officer or subject, to include photos and records of treatment at hospital;
  - (g) Identify all audio/video recordings (e.g., Taser, BWC, DMVAR, surveillance, or other existing video recording) that exist and whether the supervisor reviewed them;
  - (h) Include as attachments to the use of force report:
    - i. Force statements by all officers using or witnessing the use of force;
    - ii. A copy of all associated Incident Reports;
    - iii. A copy of any arrest reports;
    - iv. Copies of any hospital records if treatment was obtained; and
    - v. Copies of any photos or audio/video tapes associated with the incident.
  - (i) The investigating supervisor’s evaluation of the use of force, based on the supervisor’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; and 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.

34. In the event multiple officers are involved in a single incident, regardless of the varying levels of force used by a particular officer involved, the investigating supervisor shall prepare only one Use of Force Report listing all involved personnel. When multiple levels of force are used, the highest level of force shall determine the investigative responsibility.
35. Completed use of force reports shall be submitted to the PIB - Force Investigation Team through Blue Team for review and approval no later than 21 days after the initial Blue Team entry is submitted.
36. The 21-day period provides time for the investigating sergeant to complete the use of force investigation and the chain-of-command to review the use of force report, before submitting the report to the Force Investigation Team. (For example, a sergeant who obtains a written extension submits a completed force investigation to his/her lieutenant within seven (7) days after the use of force. The lieutenant has seven (7) days to review the report, return it for corrections, and submit it to his/her commander for approval. The commander has seven (7) days to review the report, return it for corrections, approve it and submit it to the Force Investigation Team.) (All extensions shall be placed into the IA Pro Investigative File).

#### **REPORTING AND INVESTIGATING UNREPORTED OR UNREASONABLE FORCE**

37. When anyone reports to a supervisor an unreasonable or previously unreported use of force the supervisor will conduct a preliminary investigation into the allegation, including responding to the scene of the incident to identify and interview witnesses and preserve evidence. The supervisor also shall inform PIB immediately of the allegation of unreported or unreasonable force; PIB shall complete an appropriate investigation pursuant to **Chapter 52.1- Employee Misconduct Complaints and Internal Disciplinary Investigations**.
38. When a supervisor assigned to handle a Level 2 or Level 3 investigation, *or in reviewing a Level 1 investigation*, determines possible misconduct may have occurred, the supervisor shall:
  - (a) Criminal Misconduct—should the supervisor determine through investigation, or in review of a level 1 investigation, there may have been criminal misconduct on the part of the officer(s) involved in the use of force incident; the supervisor shall suspend the force investigation immediately and immediately notify PIB and FIT through the NOPD Communications Section. FIT will respond to the scene and assume the investigation.
  - (b) Administrative Misconduct—where a force investigation indicates administrative misconduct, including a review of a Level 1 investigation, the reviewing/investigating supervisor shall immediately notify PIB and FIT through the NOPD Communications Section to respond to the scene. PIB will review the attendant facts as communicated by the supervisor and make a determination as to who will conduct the administrative investigation. The initiation of an administrative investigation shall be documented in the Use of Force Report to include the date/time PIB was notified and PIB control number assigned.

**INVESTIGATING USE OF FORCE – COMMAND REVIEW OF USE OF FORCE INVESTIGATIONS AND USE OF FORCE REPORTS**

39. The District/Division Commander shall be responsible for the accuracy, completeness, and timeliness of Use-of-Force Reports prepared by supervisors under his/her command. If the investigating supervisor requires more than 72 hours to complete the investigation and sufficient justification for an extension exists, the Commander will prepare a Form 105 explaining the need for the extension and providing the date by which the investigation will be completed. The Commander will immediately forward a copy of the signed and approved Form 105 to the Commander of PIB, ensuring the Force Tracking Number is entered on the memo.
40. The District/Division Commander, who receives a Level 1, 2 or 3 Use-of-Force Report, Force Statement(s), and any corresponding NOPD Incident Reports, shall review the documents to ensure they are complete and consistent, and that the findings are supported by the preponderance of the evidence. The District/Division Commander shall order additional action by the investigating supervisor when it appears there is relevant evidence that may assist in resolving inconsistencies or improve the reliability or credibility of the findings. In the event the Commanding Officer orders additional investigation by the supervisor, he should prepare a memo to the investigating supervisor describing the deficiencies and directing him to complete the additional tasks by a specific date. A copy of the Commander's memo to the supervisor should be sent to the Commander of PIB to alert him/her to any delay this may cause.
41. Only when the District/Division Commander finds the supervisor's initial Use-of-Force Report is complete and the findings are supported by the evidence will the investigation file be forwarded to PIB through the chain-of-command.
42. When the District/Division Commander determines the supervisor's findings of whether or not the officer's actions are within NOPD policy and consistent with state and federal law are not supported by a preponderance of evidence, the District/Division Commander shall document the reasons for this determination in a Form 105 and shall include the memo as an addendum to the original investigation. The District/Division Commander's review should include 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.
43. The District/Division Commander will be responsible for determining if any disciplinary action or additional training is required for investigations or reports that are deemed insufficient. The investigating supervisor's commander shall counsel the investigating supervisor regarding the inadequately supported determination and any investigative deficiencies that led to it. Where an investigating supervisor has repeatedly conducted deficient investigations, the supervisor shall receive the appropriate corrective action, including training, demotion, and/or removal from a supervisory position in accordance with performance evaluation procedures and/or Civil Service Rules.
44. PIB shall forward all Use-of-Force Reports to the Education & Training Division for evaluation and revisions to training after PIB has reviewed the Use-of-Force Report.
45. Whenever the District/Division Commander finds evidence of a use of force indicating apparent criminal conduct by an officer that was not identified by the original investigating supervisor, he/she shall immediately notify the Commander of PIB requesting a FIT investigation be conducted. The PIB Commander immediately shall notify FIT, which will take over the investigation.

**USE OF FORCE – FORCE INVESTIGATION TEAM RESPONSE**

46. In every incident involving a serious use of force, uses of force indicating apparent criminal conduct by an officer, uses of force by department personnel of a rank higher than sergeant, all instances of in-custody deaths and deaths as an apparent result of being in NOPD custody, and all uses of force reassigned to FIT by the Superintendent or his or her designee or the Deputy Superintendent of PIB, the supervisor shall immediately notify the Communications Section which will in turn immediately notify FIT.
47. For all Level 4 use of force events, upon notification, the FIT supervisor will contact the on-scene supervisor and obtain a briefing of the circumstances of the use of force. The FIT supervisor will ensure appropriate FIT staff responds to the scene to ensure the investigation into the use of force is investigated fully and fairly.
48. Upon notification of an officer-involved shooting or a use of force resulting in serious injury, the FIT supervisor shall immediately contact the Deputy Superintendent of the Public Integrity Bureau, the Public Integrity Bureau Commander, and the on-call member of the Independent Police Monitor to confirm their notification regarding the incident. The FIT supervisor will:
  - (a) Contact the on-scene supervisor to obtain a briefing on the circumstance of the shooting;
  - (b) Ensure the on-scene supervisor obtains a public safety statement from the involved and witness officers;
  - (c) Direct the on-scene supervisor to:
    - i. Secure the scene;
    - ii. Identify and separate involved and witness officers;
    - iii. Isolate witnesses; and
    - iv. Protect all evidence, including body worn cameras.
  - (a) Respond to the scene and take charge of the investigation;
  - (b) Designate a member of the FIT team as lead investigator;
  - (c) Ensure sufficient FIT staff also respond to assist in the investigation; and
  - (d) Conduct a FIT response and investigation in conformance with **Chapter 1.3.2 - Force Investigation Team** (FIT), FIT unit policy and procedures manual.

**USE OF FORCE – PUBLIC INTEGRITY BUREAU RESPONSIBILITIES**

49. PIB shall:
  - (a) Have oversight responsibility over all investigations into Use of Force by NOPD Officers;
  - (b) Maintain a log of all reportable use of force events;
  - (c) Review all completed Force Statements submitted by officers using Level 1 reportable force to ensure compliance with reporting requirements and to identify patterns of behavior warranting remedial attention;
  - (d) Review all completed Use-of-Force Reports prepared by field supervisors assigned to conduct an investigation into a Level 2 or Level 3 reportable use of force to ensure the investigation is complete and sufficient, and the finding(s) are supported by a preponderance of evidence;
  - (e) Return to the District/Division Commander for further investigation any Use-of-Force Report it finds deficient;
  - (f) When deemed appropriate, reassign the investigation into a Level 2 or Level 3 use of force to the FIT team;
  - (g) Maintain the central repository of all Force Statements and Use-of-Force Reports; and
  - (h) Include an analysis of NOPD's use of force and the department's response in its annual report.

50. The Deputy Chief 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 discovered during a misconduct investigation, any use of force in which an officer discharged his or her firearm, or where an individual has died while in, or as an apparent result of being in, the custody of the Department.

#### **Administrative Tracking, Support and Annual Report**

51. PIB shall be responsible for quality control of all investigations into use of force, for tracking the status of the investigation and for maintaining the central repository for all Force Statements, and use-of-force reporting and investigative files. PIB shall be responsible for providing all administrative support and documentation required for the Use of Force Review Board (See **Chapter 1.3.7 - Use of Force Review Board**).
52. Annually, PIB will analyze the preceding year's use-of-force data and document its findings in a public report that includes:
  - (a) Force related outcome data;
  - (b) Determination of significant trends;
  - (c) Identification of training, policy equipment, or supervisory deficiencies; and
  - (d) Recommendations to correct deficiencies.
53. To collect data for purposes of training, resource allocation, analysis, and related purposes, PIB may require the completion of additional report forms, as specified in Department policy, procedure or law.

#### **Reassignment of Use of Force Investigations**

54. At the discretion of the Superintendent, or his or her designee, or the Deputy Chief of PIB, a use-of-force investigation may be assigned or re-assigned for investigation:
  - (a) To FIT;
  - (b) To another supervisor, whether within or outside of the Division or District in which the incident occurred; or
  - (c) Returned to the assigned Unit for further investigation or analysis.
55. The returned assignment or re-assignment of investigations shall be explained in writing via *NOPD Form 105, Interoffice Correspondence* to the Commander of the Division / District to which it is being returned or reassigned.
56. Where a use of force is found not to comply with departmental policy, the Superintendent, or his or her designee, shall direct appropriate disciplinary action be initiated.
57. Where the use of force indicates policy, training, tactical, or equipment concerns, the Superintendent or his or her designee shall ensure necessary training is provided and policy, tactical, or equipment concerns are resolved.

#### **Education and Training Division Responsibility**

58. The Commander of the Education and Training Division shall ensure that Division staff review and evaluate all uses-of-force reports to identify training issues. The Commander shall ensure that the Division updates training material accordingly.

**Supervisory Responsibility Involving the Destruction of Animals**

59. Supervisors assigned to investigate a use-of-force incident involving the destruction of animals shall be responsible for contacting the S.P.C.A. if a determination of the cause of death of the animal is necessary or the Department of Sanitation to remove the remains of the animal appropriately if no cause of death determination is required.

**Use of Force Incidents Occurring Outside Orleans Parish**

60. Whenever a NOPD member is involved in a reportable use-of-force incident resulting from an enforcement action that occurs outside Orleans Parish, the involved member shall immediately notify the NOPD Communications Section.
61. Upon notification, the Communications Section shall:
- (a) Notify the primary jurisdiction's law enforcement agency where the incident occurred;
  - (b) Send an on-duty supervisor to the jurisdiction in which the incident occurred unless the distance makes it impractical (The supervisor shall remain with the member(s) during the investigation by the outside agency);
  - (c) Notify the Deputy Chief of PIB who shall determine if PIB and/or FIT investigators are to be called-out; and
  - (d) Notify the PIB Commander who shall determine if the PIB Administrative Investigators are to be called-out.
62. The law enforcement agency that has jurisdiction where the incident occurred has incident command and primary criminal investigation responsibility.
63. PIB and/or FIT investigators shall request to monitor and attend the interview of NOPD personnel, unless the distance involved makes this impractical.

**Level 4 Force Incidents Involving Outside Agency Personnel**

64. FIT shall conduct criminal investigations for Level-4 use-of-force incidents and in-custody deaths by personnel from other agencies that occur in Orleans Parish. The agency may assist at the discretion of the PIB Deputy Superintendent.

**Officer's Bill of Rights**

65. All members shall be afforded all substantive and procedural rights and remedies as provided by law, including those granted by the Rights of Law Enforcement Officers while under Investigation. (La. R.S. 40:2531).
66. The Superintendent shall determine if the member(s) should be returned to his/her regular assignment following a serious use-of-force incident after completion of any mandatory debriefing and clearance for fitness for duty by the Department's psychologist, and any recommended retraining.
67. Any determination by the Superintendent not to return an officer (or officers) to his/her regular assignment and to continue his/her reassignment is administrative and in no way considered punitive.

**Supervisor Training in Conducting Use-of-Force Investigations**

68. Supervisors shall complete a department approved training course regarding the departmental Use-of-Force Chapter and reporting and investigating use-of-force

incidents. The training shall be developed through consultation with PIB.

### **Report of Firearm Discharge**

69. Except during training or recreational use, any member who discharges a firearm intentionally or unintentionally, on or off duty, shall notify the Communications Section or dispatcher and his/her supervisor immediately or as soon as circumstances permit. If the discharge occurs within the jurisdiction of the NOPD and is a Level 4 use of force (see **Chapter 1.3 – Use of Force**, Definition of Level 4), the Command Desk shall notify FIT and additional officer statements and reports shall be made in accordance with the Force Investigation Team Chapter (see **Chapter 1.3.2 – Force Investigation Team (FIT)**). If the discharge occurs outside the jurisdiction of the NOPD, the appropriate local law enforcement agency for that jurisdiction shall be notified as well as NOPD Communications Section.