

NOPD CONSENT DECREE MONITOR
NEW ORLEANS, LOUISIANA



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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: 1.3.7

TITLE: USE OF FORCE REVIEW BOARD

EFFECTIVE:

REVISED:

PURPOSE

This policy establishes and sets requirements for a Use of Force Review Board to review all serious uses of force and other Force Investigation Team (FIT) investigations, all chain of command use-of-force investigations forwarded to the Board by the Deputy Chief of PIB, and all vehicle pursuits resulting in a serious injury or death

The Use of Force Review Board (UFRB) serves as a quality control mechanism to ensure timely reviews of all serious use of force investigations to determine the appropriateness of the investigative findings, and to quickly appraise use of force incidents from a tactics, training, policy, and agency improvement perspective.

This review process shall be in addition to any other review or investigation that may be conducted by the NOPD, or any outside or multi-agency entity having jurisdiction over the investigation or evaluation of the use of force.

DEFINITIONS:

Definitions related to this Chapter from **Chapter 1.3 – Use of Force** 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 where 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, strikes to the head, neck or throat with a hard object are considered lethal force.

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.

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

Serious use of force—Include 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 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 longer than 15 seconds, whether continuous or consecutive, and;
- (h) any strike, blow, kick, CEW application or similar use of force against a handcuffed subject.

REVIEW BOARD

1. The UFRB consists of the following personnel as the UFRB's only voting members:
 - (a) The Deputy Superintendent of the Field Operations Bureau, (FOB) who will act as the UFRB chairperson;
 - (b) The Deputy Superintendent of Public Integrity Bureau (PIB);
 - (c) The Deputy Superintendent of Investigations and Support Bureau (ISB); and
 - (d) One Commander selected by the Superintendent to serve a six-month term as a non-voting member on the UFRB.
2. The Chief of the Compliance Bureau and the Commander of the Education and Training Division shall participate in all Board meetings as non-voting members.
3. The commander of the Risk Management Unit shall participate as a non-voting member when a pursuit or department vehicle crash is involved.
4. The Board may summon or compel the appearance of other members of the department for questioning or to obtain Department documents necessary to carry out the duties of the Board.
5. The Deputy Superintendent of PIB is responsible for providing administrative support to the UFRB and will assign a PIB staff member to serve as the secretary to the UFRB. The UFRB secretary will:
 - (a) Assemble and distribute case information packages to UFRB members and observers prior to their meeting.
 - (b) Include in the information package a summary of key issues identified in each use-of-force investigation to be reviewed.
 - (c) Prepare a findings memo for the signature of the chairperson for each case reviewed by the UFRB after a draft has been circulated to the other voting members for consideration.
 - (d) Prepare summary minutes of the meeting for review and approval by the UFRB.
 - (e) Ensure that any follow-up action directed by the UFRB is forwarded to the responsible member of the Department for action.
 - (f) Track and report back to the UFRB action taken in response to its follow-up recommendation.
 - (g) Maintain complete records of the UFRB's actions.

6. All records and reports generated by the UFRB shall be securely maintained by PIB.
7. The PIB/FIT member or any other involved person responsible for the investigation will be available to the UFRB during its review to summarize the investigative findings and answer any questions that may arise.

PROCEDURAL REVIEW REQUIREMENTS

8. The Superintendent of Police will determine whether the UFRB should delay its review of a case until after completion of any related criminal investigation, review by any prosecutorial body, filing of criminal charges, and the decision not to file criminal charges or any other action based on recommendation by the Deputy Superintendent of PIB. This determination will be communicated to the chairperson of the UFRB in the form of a Form 105 for inclusion in UFRB records. However, in no case will the review be delayed more than 30 days after the investigation is considered complete and closed.
9. The UFRB shall:
 - (a) Review all use of force investigations completed by the Force Investigation Team.
 - (b) Review less serious use of force events where PIB/FIT identifies patterns or practices warranting command level review.
 - (c) Review other use of force events as directed by the Superintendent.
 - (d) Conduct timely and comprehensive reviews of each FIT investigation within 30 days of receiving the FIT report from the Deputy Superintendent of PIB.

BOARD MEETINGS SCHEDULE

10. Absent special circumstances, the Use of Force Review Board shall meet every 30 days to review use of force incidents or investigations submitted by PIB or the Superintendent that have been completed since the prior UFRB meeting. The cancellation or rescheduling of scheduled UFRB meetings, and the reason for such, will be noted in the **next** scheduled UFRB meetings minutes. If there are no cases for review during that period, that fact will be noted in the next scheduled UFRB meeting.
11. The chairperson shall determine the date, time, and location of meetings and communicate the schedule to the other UFRB members and observers at least three (3) working days prior to the scheduled date.
12. The quorum for each Use of Force Review Board shall be all three 3 voting members.
13. Use of Force Review Board members shall not be permitted to send a representative in their place to a Use of Force Review Board proceeding. The only exception will be the absence of a named member and the appointment of an "Acting Bureau Chief" for that Bureau during that member's absence. This appointment can only be made by the Superintendent of Police or the absent Bureau Chief with the approval of the Superintendent of Police. The appointment should be communicated in a Form 105 to the UFRB chairperson and maintained in the UFRB records by the secretary.
14. The Use of Force Review Board secretary shall document board member attendance as part of the record. Absences, with replacement, shall be expressly noted in the meeting summary/minutes.

15. The Use of Force Review Board shall complete its review of each incident on the date scheduled and in any event, no longer than 30 days of receipt of an a FIT investigation report of the incident, unless UFRB extends its review pursuant to paragraph 8, above. The UFRB shall document its findings and recommendations in a written UFRB Report within the lesser of 45 days of receiving a FIT investigation report of the incident or 15 days of UFRB presentation, unless UFRB extends its review pursuant to paragraph 8, above.

RESPONSIBILITIES OF THE BOARD

16. The UFRB responsibilities are to:
 - (a) Review each FIT investigation within 30 days of receiving the completed FIT investigation report, unless UFRB extends its review pursuant to paragraph 8, above, to ensure it is complete and the findings are supported by a preponderance of the evidence.
 - (b) Hear the case presentation from the lead investigator and discuss the case as necessary, with the investigator to gain a full understanding of the facts of the incident. The officer(s) who used the force subject to investigation, or who are otherwise the subject(s) of the FIT investigation, shall not be present.
 - (c) Order additional investigation when it appears there is additional relevant evidence that may assist in resolving inconsistencies or improve the reliability or credibility of the findings. Where the findings are not supported by a preponderance of the evidence, the UFRB shall document the reasons for this determination, which shall be included as an addendum to the original investigation, including the specific evidence or analysis supporting their conclusions.
 - (d) Evaluate each case to either affirm or reject the investigative recommendations.
 - (e) If the Board determines the use of force violated NOPD policy, the Board shall refer it to PIB for disciplinary action.
 - (f) Review the incident to determine whether it raises policy, training, equipment, or tactical concerns, and refer such to the appropriate unit within NOPD to ensure the concerns are resolved.
 - (g) Direct district supervisors to take and document non-disciplinary corrective action to enable or encourage an officer to improve his/ her performance.
 - (h) Identify commendable conduct by NOPD officers or supervisors and ensure appropriate recognition is forthcoming.
 - (i) Document the UFRB findings and recommendations in a UFRB Report within 45 days of receiving the FIT investigation and within 15 days of the conclusion of the UFRB case presentation, unless UFRB extends its review pursuant to paragraph 6, above.
 - (j) Monitor progress on implementation of the findings and recommendation made by the UFRB.
 - (k) Ensure that a report is prepared summarizing the Board's actions during the year and included in the PIB Annual Report.
 - (l) Any case returned to FIT for further investigation shall be returned to the Board within 14 days for final Board Action.
17. The Commander of the Education and Training Division will use findings of the Board to assess the adequacy of the Department's training on use of force, defensive tactics and firearms. The Commander shall ensure that tactical deficiencies identified by the Board are addressed in future scenario-based training modules.