

NOPD CONSENT DECREE MONITOR
NEW ORLEANS, LOUISIANA



November 29, 2018

202.747.1904 direct

File Number: 37PA-191555

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

Dear Superintendent Murphy:

This letter constitutes confirmation that the Office of Consent Decree Monitor ("OCDM") has reviewed and provided comments on Chapter 1.9 - Arrests. The OCDM has no objection to the policy as written.

We believe that Chapter 1.9 - Arrests, 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*
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NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

CHAPTER: 1.9

TITLE: ARRESTS

EFFECTIVE:

REVISED:

PURPOSE

This policy outlines the process and procedures to be considered and followed by members when making an arrest.

POLICY

1. An arrest is a restraint of greater scope or duration than an investigatory stop or detention. An arrest is lawful when supported by probable cause.
2. Officers shall respect the constitutional rights of arrestees at all times while the person is in custody.
3. Officers shall advise suspects of their **Miranda Rights** at the time of arrest, or prior to any custodial interrogation (see **Chapter 1.9.1 – Miranda Rights**).
4. Officers shall arrest a suspect only when the officer has probable cause to believe that an offense has occurred and that the suspect committed the offense.
5. In effectuating an arrest, officers shall not rely on information known to be materially false or incorrect.
6. Officers shall not consider race, color, ethnicity, national origin, religion, gender, disability, sexual orientation, or gender identity in effecting an arrest, except as part of an actual and apparently credible description of a specific suspect or suspects in any criminal investigation.

DEFINITIONS

Arrest—The taking of one person into custody by another. To constitute arrest there must be an actual restraint of the person. The restraint may be imposed by force or may result from the submission of the person arrested to the custody of the one arresting him/her. (La. C.Cr. P. Art. 201)

Arrest report (gist)—For purposes of this Chapter, an arrest report consists of the completed “face sheet” of an incident report and a “Gist” sheet detailing the probable cause and essential elements of the offense(s) charged and linking the offense(s) to the person charged. The “Gist”

sheet shall be reviewed for accuracy and sufficiency by a supervisor and signed by the reviewing supervisor prior to the person who is charged being booked at lockup. For the purposes of arrests only for violations of municipal code, the arresting officer's sworn affidavit shall serve as the arrest report.

Exigent circumstances—A compelling urgency or true emergency that an officer can specifically describe not using vague terms or boilerplate language. Circumstances that cause a reasonable person to believe that prompt action is necessary to prevent injury to himself/herself or others.

Probable cause—The facts and circumstances known to the officer at the time which would justify a reasonable person in believing that the suspect committed or was committing an offense.

Patrol officer—For purposes of this Chapter, patrol officers includes all commissioned members assigned or detailed to one of the eight Districts of the Field Operations Bureau, as well as any officer working a police secondary employment assignment when an incident occurs that requires a police report to be written.

Protective sweep—A cursory search that police are allowed to conduct when they arrest someone in order to ensure their own safety, and that of those on the scene, by searching in the vicinity of the arrest for individuals who may pose a threat. The scope of the protective sweep is limited by its purpose. Officers may look only in areas where a person could be hiding. Protective sweeps must be cursory. The sweep can last only as long as it takes to dispel the suspicion of danger and can last no longer than it takes to arrest the subject and leave the premises.

Officers may perform a cursory visual inspection of closets and other spaces immediately adjoining the location where an arrest takes place—places from which an attack by some concealed person could “immediately be launched”— regardless of whether they have probable cause or reasonable suspicion that an individual is actually present who poses a danger. *Maryland v. Buie*, 494 U.S. 325 (1990). Officers may extend the protective sweep to areas beyond those immediately adjoining the location of an arrest **only if** they have an objectively reasonable belief, based on specific and articulable facts, that the additional area harbors an individual posing a danger to those on the arrest scene. In other words, police must be able to point to facts that would lead a “reasonably prudent” officer to believe that the area to be swept actually harbors someone posing a threat. (*Maryland v. Buie, supra.*)

Search incident to arrest (SITA)—One of the exceptions to the general search warrant requirement of the 4th Amendment. The SITA exception is valid if it occurs at the same time or shortly after the legal arrest and is limited to a search of the person arrested and the immediate area within which that person might gain possession of a weapon or destroy or hide evidence at the time of the search.

Supervisor Feedback Log (SFL)—A web-based application utilized by Department supervisors to document close and effective supervision actions such as redirection, counseling, and support. SFL is available to all supervisors, the Compliance Bureau, and the Public Integrity Bureau on NOPD Web Apps under Applications.

AUTHORITY TO ARREST

7. Pursuant to La. Code Crim. P. art. 213, an officer may, without a warrant, arrest a person only when:
 - (a) The person to be arrested has committed a criminal offense (felony or misdemeanor) for which the officer has jurisdiction;

- (b) The offense must take place in the presence of the officer or the officer must have probable cause to believe that the person to be arrested has committed an offense, although not in the presence of the officer; or
 - (c) The officer has received positive and reliable information that another officer from this State holds an arrest warrant (felony or misdemeanor), or an officer of another state or the United States holds an arrest warrant for a felony offense.
8. An officer in close pursuit (hot pursuit) of a person to be arrested may enter another jurisdiction in this State and make the arrest. Officers shall abide by **Chapter 41.5 – Vehicle Pursuits** when considering a vehicle pursuit of a person to be arrested.

OFFICERS' RESPONSIBILITIES

9. Officers shall immediately (as soon as safety permits) notify a supervisor when effectuating:
- (a) A felony arrest;
 - (b) An arrest in which the officer used a level of force reportable under **Chapter 1.3 – Use of Force**;
 - (c) An arrest for crossing or traversing a police cordon (Municipal Code § 54-442) or resisting an officer (Municipal Code § 54-441);
 - (d) A custodial arrest in which the most serious violation was:
 - 1. A vehicle infraction (under the Municipal Code § 154 or La. R.S. Title 32);
 - 2. Simple drug possession; or
 - 3. **Outside the 8th Police District**, any of the following city or state laws:
 - i. Disturbing the Peace (Municipal Code § 54-103; La. R.S. 14:103);
 - ii. Criminal Trespass (Municipal Code § 54 153; La. R.S. 14:63);
 - iii. Obstructing Public Passages (Municipal Code § 54-40; La. R.S. 14:100.1); or
 - iv. Begging/Vagrancy (Municipal Code § 54-411; La. R.S. 14:107).
10. Patrol officers shall complete and submit all arrest reports before the end of their shifts.
11. Patrol officers shall complete all Municipal affidavits and ensure they are signed by an approving supervisor as an “ex-officio notary” prior to booking.

SUPERVISOR'S RESPONSIBILITIES

12. Upon notification of an arrest as outlined in this Chapter, the notifying officer's supervisor shall respond to the scene, **unless all of the following elements apply**:
- (a) The arrest only involves narcotics;
 - (b) The suspect will be relocated to the station to test the narcotics;
 - (c) The supervisor will be present at the station to review the arrest recommendation; and
 - (d) No injuries are involved.
13. Transporting a prisoner or suspect to a police facility (District Station) **shall** be approved by a supervisor prior to transport and **shall** follow the restrictions and guidelines of **Chapter 71.1 – Prisoner Transportation and Guarding**.
14. The responding supervisor shall approve or disapprove the officer's arrest recommendation based on the existence of probable cause and consistency with NOPD regulations.

15. Those arrests approved by a supervisor shall reflect the approval by the supervisor's signature on the Gist Sheet for State arrests and the supervisor's signature on the sworn affidavit for municipal arrests.
16. When a supervisor disapproves of an arrest, he/she shall take appropriate action to address violations or deficiencies in the officer's arrest recommendation, which shall include:
 - (a) Requiring additional investigation before the final determination to arrest or release is made;
 - (b) Releasing the subject (if additional investigation does not support lawful arrest);
 - (c) Taking non-disciplinary corrective action for the involved officer; and/or
 - (d) Referring the incident for administrative or criminal investigation
17. The supervisor shall document corrective action in the Supervisor Feedback Log (see **35.1.7 – Non-Disciplinary Responses to Minor Violations**) or by initiating a formal disciplinary investigation (see **52.1.1 – Misconduct Intake and Complaint Investigation**). For each subordinate, the supervisor shall track each violation or deficiency and the corrective action taken in the Supervisor Feedback Log to identify officers needing repeated corrective action. Supervisors shall initiate a formal disciplinary investigation as appropriate. Through these mechanisms, supervisors shall document corrective action for all arrests that:
 - (a) Are unsupported by probable cause;
 - (b) Violate NOPD policy, regulations; or
 - (c) Indicate a need for corrective action or review of agency policy, strategy, tactics, or training.
18. Supervisors shall review each arrest report made by officers under their command and shall appropriately document their review within 12 hours of submission. The supervisor shall track each violation or deficiency and the corrective action taken in the Supervisor Feedback Log to identify officers needing repeated corrective action. Supervisors shall initiate a formal disciplinary investigation as appropriate.
19. Supervisors shall review arrest reports and forms for:
 - (a) Boilerplate or pat language;
 - (b) Inconsistent information; and
 - (c) Lack of probable cause, or other indications that the information in the reports or forms is not current, authentic, or correct.
20. Absent exceptional circumstances, supervisors shall:
 - (a) **Approve** arrest reports that meet all legal and departmental standards and do not require additional investigation or clarification, and
 - (b) **Disapprove** and, as appropriate, return for corrections and additions any arrest reports that are incomplete, do not meet all legal and department standards, and/or require additional investigation or clarification.
21. The supervisor shall ensure that each violation or deficiency is noted in the officer's annual performance evaluation(s).
22. The quality of these supervisory reviews shall be taken into account in the supervisor's own performance evaluations. Commanders shall take appropriate corrective or disciplinary action against supervisors who fail to conduct timely reviews of adequate and consistent quality.

DISTRICT/DIVISION COMMANDER'S RESPONSIBILITIES

23. A district/division Commander shall review, in writing, all supervisory reviews that relate to arrests that:
 - (a) Are unsupported by probable cause;
 - (b) Are in violation of NOPD policy; or
 - (c) Indicate a need for corrective action or review of agency policy, strategy, tactics, or training.
24. The Commander's review shall be completed within seven (7) days of receiving the document reporting the event.
25. The district/division Commander shall evaluate the corrective action and recommendations in the supervisor's corrective action and ensure all appropriate corrective action is taken, including referring the incident to PIB for investigation, if appropriate.
26. NOPD shall track, centrally, and at the district/division level, the Orleans Parish District Attorney's Office's (DA) acceptance and refusal rates of arrests made by NOPD and the reasons for refusals, when made available by the DA, including those factors and information indicating that a failure to prosecute was due to:
 - (a) The quality of an officer's arrests, or
 - (b) Concerns regarding officer conduct in the investigation or subsequent prosecution of the case.
27. These statistics shall be included in the district/division MAX report.
28. Each district/division Commander shall be held accountable for referring to PIB for investigation any information regarding specific incidents of possible officer misconduct related to officer arrests noted in the DA's reasons for refusal.

ARRESTS WITHIN RESIDENCE/DOMICILE

29. Arresting a person from inside his/her own residence/domicile without an arrest warrant is permissible only if one or more of the following exceptions is/are met:
 - (a) **Consent** to enter the residence is given by a person who shares access and control of the premises. The burden is on the officer to ascertain whether the person granting access has the right to give permission (see **Chapter 1.2.4 – Search and Seizure** and **Form 146 – Consent to Search**).
 - (b) **Exigent circumstances** (e.g., hot pursuit, spontaneous violence, prevention of a crime, or imminent escape to avoid apprehension).
30. An arrest warrant is required prior to arresting a person from within a residence not his/her own, absent hot pursuit, consent to enter, exigent circumstances, or a search warrant for that location naming the wanted person as the thing to be seized.
31. The arrest warrant(s) must name the person(s) wanted.
32. Officer(s) must reasonably believe the person(s) is within the residence at the time of entrance.
33. A search warrant or an arrest warrant is not required to arrest a person(s) in a public venue.

34. An officer may perform a limited **protective sweep** subsequent to an in-residence arrest in a private dwelling to determine whether there are individuals present who pose a danger to officers and others present at the scene of the arrest. The sweep may extend to only a cursory visual inspection of those spaces where a person may be found, and the sweep must last no longer than it takes to complete the arrest and depart the premises (see *Maryland v. Buie*, 494 U.S. 325 (1990)). Officers may perform a cursory visual inspection of closets and other spaces immediately adjoining the location where an arrest takes place—places from which an attack by some concealed person could “immediately be launched”—regardless of whether they have probable cause or reasonable suspicion that an individual posing a danger is actually present. Protective sweeps shall not be carried out as a pretext to gather evidence that could otherwise be obtained only with a warrant. Officers may extend the sweep beyond those areas immediately adjoining the location of an arrest **only if** they possess an objectively reasonable belief, based on specific and articulable facts, that the additional area to be swept harbors an individual posing a danger to those on the arrest scene.

SEARCH INCIDENT TO AN ARREST

35. A search incident to arrest (**SITA**) is permissible after a lawful custodial arrest. This warrantless search is an exception to the general 4th Amendment search warrant requirement. It does not matter what offense the person is being arrested for; as long as the arrest is legal, the search incident to arrest is allowed.
36. There are two valid purposes for conducting searches incident to arrest:
- To protect the officer and other persons in the vicinity from any dangerous items in the possession of the person arrested, or
 - To prevent the destruction of evidence within the reach of the person being arrested.
37. Officers **shall** conduct a search of any person or persons placed under a lawful custodial arrest.
38. The scope of the search incident to arrest extends to the immediate areas in which the arrestee might obtain a weapon or evidentiary items, including clothing, purses and wallets of the arrestee; the search may be for weapons, evidence, or a means of escape.
39. The United States Supreme Court, in *Arizona v. Gant*, 129 S. Ct. 1710 (2009), ruled that police may search the passenger compartment of a movable vehicle incident to a recent occupant’s arrest only if:
- The arrestee is within reaching distance of the passenger compartment at the time of the search; or
 - It is reasonable to believe the passenger compartment of the vehicle contains evidence of the offense of arrest.
40. Officers may conduct a limited search of the passenger compartment of a vehicle for weapons if the officer has reasonable suspicion that an individual, whether or not the arrestee, is dangerous and might access the vehicle to gain immediate control of weapons. The search must be limited to those areas in which a weapon may be placed or hidden.
41. Otherwise, officers may not search vehicles, even incident to arrest, unless the officer has obtained a warrant or can show that another exception to the warrant requirement applies.

42. All searches must comport with the requirements of **Chapter 1.2.4 – Search and Seizure**. Officers should realize that the search of a person is inherently demeaning, therefore officers shall make all efforts to conduct the search with dignity, courtesy, and in a professional manner that does not compromise the officer's safety.
43. Whenever practicable, an officer of the same gender as the person being searched should conduct the search. If an officer of the same gender is not reasonably available, a witnessing officer or supervisor shall be present during any search of a person not of the same gender as the searching officer.

WANTED PERSONS - SUMMONS IN LIEU OF ARREST

44. A summons may be issued in lieu of a custodial arrest pursuant to La. Code Crim. P. art. 211 (summons by officer instead of arrest and booking) and when authorized by Department policy (see **Chapter 48.1 – Affidavits and Summons**).
45. In situations where an officer has detained an individual and verified a warrant or attachment on that individual from a jurisdiction within the State of Louisiana other than Orleans Parish, the officer shall follow these guidelines:
 - (a) If the originating agency states that **it will pick up the individual**, the officer shall physically arrest, book, and process the individual in accordance with this Chapter and **Chapter 41.8 – Affidavits and Summons**. (See also: **Chapter 1.11 – Warrant Inquiries**).
 - (b) If the originating agency **does not confirm that it will pick up the individual**, the officer shall not book the individual and shall notify the individual the status of the outstanding warrant or attachment. (See also: **Chapter 1.11 – Warrant Inquiries**).

ADULT ARRESTS - STATE FELONY AND/OR MISDEMEANOR

46. The arresting officer shall check the arrested person's name and/or identification information in all available arrest record databases.
47. All state felony and misdemeanor arrestees shall be transported to Central Lockup for processing as soon as possible after arrest.
48. The arresting officer shall document all state felony and misdemeanor charges in an EPR.
49. The arresting officer shall complete a face sheet of an incident report for each arrested person prior to arrival at Central Lockup. If an officer(s) believes the victim(s), prisoner(s), or others may be in danger and/or when immediate transportation from the scene is necessary, the Incident Report face sheet may be completed at Central Lockup.
50. The face sheet of the incident report (EPR) shall be photocopied at Central Lockup and a copy left with the receiving deputy.
51. Any person arrested or detained in connection with an investigation or commission of any offense shall be advised fully of the officer's authority, and the reason for his/her arrest or detention. If he/she will be interrogated, the arrestee shall be given his/her Miranda warnings (see **Chapter 1.9.1 – Miranda Rights**).

ADULT ARRESTS WITHOUT A WARRANT - STATE MISDEMEANOR AND FELONY

52. The arresting officer shall prepare a detailed gist of the facts using a New Orleans Police Department Incident Report Gist Sheet at the time of arrest and shall complete an incident report (EPR) of the arrest on State charges within 72 hours of the incident.
53. A photocopy of the completed and signed gist or arrest warrant with a face is left with Central Lock-Up personnel at the time the prisoner is left in the custody of Central Lock-up.
54. The original gist is attached to and noted in the narrative section of the incident report.

ARREST ORIGINATING WITHIN ORLEANS PARISH OF ADULT WANTED PERSONS

55. If an officer locates a person wanted for an offense that occurred within the City of New Orleans, the officer shall verify the person is wanted through NCIC prior to arrest. (See **Chapter 1.9.2 – Arrest Warrant/Wanted Persons.**)
56. Personnel assigned to NCIC shall forward a copy of the arrest warrant (for State charges) or crime bulletin (for Municipal charges) to the arresting officer at Central Lockup.
57. When the arresting officer is not the original investigating officer, he/she shall forward a copy of the approved incident report / supplemental report detailing the arrest to the original investigating officer's unit and obtain a receipt for same.
58. If the original investigating officer has no on-duty platoon commander, desk officer, or A-Case officer, the arresting officer shall ensure the report is delivered to the unit and obtain a receipt when the platoon commander or desk officer is on duty.
59. If a prisoner is left at Central Lock-up for booking without the arresting officer knowing there is an outstanding arrest warrant, the following procedure(s) will apply:
 - (a) If the arresting officer is on duty, he/she will be notified to return to Central Lock-up and charge the prisoner with the criminal violations detailed in the warrant. The officer shall complete all paperwork required including all necessary supervisor approvals and signatures.
 - (b) If the arresting officer is off duty, the next available officer at Central Lock Up shall re-charge the prisoner with the criminal violations detailed in the warrant. The officer shall complete all paperwork required including all necessary supervisor approvals and signatures.
60. The following procedure shall be followed when charging a prisoner with additional violations:
 - (a) Verify the individual to be charged is still in the custody of the Orleans Parish Criminal Sheriff;
 - (b) Complete a face sheet and gist for each individual item number under which the prisoner is being additionally charged;
 - (c) Hand deliver a copy of the face sheet and supervisor approved gist containing the information to Central Lock-up; and
 - (d) Prepare an original incident report or supplemental report(s) as required for each additional charge.

MUNICIPAL ARREST WITHOUT A WARRANT - AUTHORITY

61. The authority of a New Orleans police officer to arrest a suspect for a violation of a municipal ordinance derives from the **New Orleans Comprehensive Code of Local Ordinances (NOCCOLO) Section 4-501 (4) & (7)** describing the general authority of NOPD officers to arrest and the **Louisiana Code of Criminal Procedure (CCRP) Article 213 (3)** dealing with authority of a peace officer to arrest without a warrant based on probable cause to believe that the person to be arrested has committed an offense, although not in the presence of the officer.
62. The probable cause described in the previous paragraph is derived from the bulletin filed with NOPD-NCIC Unit by the officer who handled the original incident/offense.

ADULT MUNICIPAL ARRESTS

63. Affidavits/summons for arrests for violations of state misdemeanors and municipal ordinances are completed in accordance with **Chapter 41.8 – Affidavits and Summons** and **Chapter 1.9.2 – Arrest Warrant Wanted Persons**.

MUNICIPAL/TRAFFIC COURT ATTACHMENT ARRESTS

64. All attachments by Municipal or Traffic Courts follow the procedures set forth in **Chapter 61.3 – Issuing Traffic Citations** and **Chapter 41.9 – Failure to Appear**.

CANCELLATION BULLETINS

65. If the warrant(s) is local (Orleans Parish charges), the arresting officer shall send a cancellation bulletin for an arrest based upon a verified warrant/crime bulletin and affecting an arrest. The cancellation bulletin contains the disposition of the arrest (physical arrest or summons issued); if a summons was issued the summons number is noted in the bulletin (**Chapter 1.9.2 - Arrest Warrants and Wanted Persons**).