

NOPD CONSENT DECREE MONITOR  
NEW ORLEANS, LOUISIANA



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VIA ELECTRONIC MAIL ([tafavorill@nola.gov](mailto:tafavorill@nola.gov))

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

RE: Policy Approval

Dear Superintendent Averill:

This letter constitutes confirmation that the Office of Consent Decree Monitor ("OCDM") has reviewed and provided comments on the revised policy Chapter 41.13, Bias-Free Policing. The OCDM has no objection to the policy as revised.

We believe that the revised Chapter 41.13, Bias-Free Policing, 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 ¶ 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: 41.13

### TITLE: BIAS-FREE POLICING

**EFFECTIVE:**

**REVISED:**

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#### PURPOSE

The purpose of this Chapter is to ensure that members of the New Orleans Police Department discharge their duty to serve the community in a bias-free manner.

#### POLICY STATEMENT

1. NOPD strives to provide police services that are equitable, respectful, and bias-free in a way that helps promote broad-based community engagement and bolsters confidence in the Department. Actual or perceived race, color, ethnicity, national origin, religion, gender, gender identity, sexual orientation, economic status, age, cultural group, disability, housing status, or affiliation with any other similar identifiable group shall not be a motivating factor to any degree in any law enforcement decision, including the decision to take no action, or in the selection or rejection of particular tactics and strategies.
2. Bias-based policing is strictly prohibited. Bias-based policing degrades the public's confidence in the Department and is detrimental to effective law enforcement because it fosters distrust in the community and undermines the Department's ability to enforce the law.

#### DEFINITIONS:

Definitions relevant to this Chapter include:

**Bias-based policing**—An inappropriate reliance, to any degree on characteristics, whether actual or perceived, such as race, color, ethnicity, national origin, ancestry, creed, religion, gender, gender identity, sexual orientation, economic status, age, cultural group, disability, housing status, or affiliation with any other similar identifiable group as a factor in deciding whether to take law enforcement action or to provide any form or type of service. Inappropriate reliance includes selecting an individual for law enforcement contact or police action, including a stop, use of force, detention, search, issuance of citation, or arrest, based on any of the characteristics listed above as well as the selective enforcement or non-enforcement of the law, i.e. discriminatory policing or “profiling.”

Inappropriate reliance on the listed characteristics **does not** include using race, ethnicity, or any other status as part of a reliable and individual-specific description for purposes of identification.

**Explicit bias**—Bias that reflects a person’s consciously held belief or attitude. In contrast to implicit bias, an explicit bias is one that a person is or can be aware of.

**Gender**—Refers to the attitudes, feelings, and behaviors that a given culture associates with a person’s biological sex. Behaviors that are viewed as incompatible with these cultural associations may be considered gender non-conforming.

**Implicit bias**—Bias that results from an unconscious stereotype, association, feeling, perception, or attitude. Unlike explicit bias, an implicit bias may exist without a person’s awareness and can contradict that person’s stated beliefs.

**Pat-down search/frisk**—An external examination of the outer garments of an individual. It is limited to what is necessary to detect weapons and must be based on reasonable, articulable suspicion that the person is armed and dangerous. Pursuant to the “plain-feel doctrine,” police may seize contraband discovered in the course of a frisk, but only if the contraband’s identity is immediately apparent. An officer may not manipulate objects that are discovered under the clothing to determine whether they are contraband.

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

**Reasonable suspicion**—Specific, objective, articulable facts, within the totality of the circumstances, that, taken together with rational inferences, create a well-founded suspicion that there is a substantial possibility that a subject has engaged, is engaging, or is about to engage, in criminal conduct.

**Stop/Terry stop**—A brief, minimally intrusive detention of a subject, including the occupants of a vehicle, during which a reasonable person in the subject’s position would not feel free to leave, as defined in *Terry v. Ohio*, 392 U.S. 1. To justify a stop, the officer must have reasonable suspicion. For purposes of this Chapter, the terms “stop” and “Terry stop” are used interchangeably, and shall include detentions, investigatory stops, seizures, and field interviews. The stop must be based on what the officer knew before the stop. Information learned during a stop can lead to additional reasonable suspicion or probable cause that a crime has occurred, but it cannot provide the justification for the original stop.

## **BIAS-BASED POLICING PROHIBITED**

3. Bias-based policing is strictly prohibited. Law enforcement and investigative decisions must be based upon observable behavior or specific and reliable information.
4. Employees who engage in, ignore, or condone bias-based policing will be subject to discipline, up to and including termination.
  - (a) It is not a violation of this policy for an officer to consider factors such as actual or perceived race, color, ethnicity, national origin, religion, gender, gender identity, sexual orientation, economic status, age, cultural group, disability, housing status, or affiliation with any other similar identifiable group in combination with other legitimate factors (i.e., weight, age, height, dress, etc.) in reference to the description of a specific suspect, witness, person of interest or perpetrator of a crime for whom the officer is searching at that time.

- (b) Officers may only consider factors such as actual or perceived race, color, ethnicity, national origin, religion, gender, gender identity, sexual orientation, economic status, age, cultural group, disability, housing status, or affiliation with any other similar identifiable group if it forms part of a description that is:
- i. specific;
  - ii. from a reliable source;
  - iii. tied to a particular incident or event; and
  - iv. tied to the individual's known or suspected whereabouts or the time frame of the criminal activity.
5. Officers may never rely solely on generalized descriptions of an individual's actual or perceived race, color, ethnicity, national origin, religion, gender, gender identity, sexual orientation, economic status, age, cultural group, disability, housing status, or affiliation with any other similar identifiable group, even if such factors purport to represent a suspect description. Such factors may only be considered in combination with other legitimate factors that form a specific, reliable description that meets the criteria above.
6. Officers shall not record an individual's actual or perceived sexual orientation or gender identity in written reports. In providing descriptions of individuals for the purposes of identification, officers shall not include information about individuals' actual or perceived sexual orientation or gender identity. For example, officers shall not describe a person as "a gay man," "a lesbian," or "a transgender woman," or use similar terms to describe a person as a male, a man, a female, a woman, or as gender nonconforming. Officers are permitted to refer to an individual's actual or perceived sexual orientation or gender identity in the narrative portions of written reports when that information is reasonably relevant to the crime or incident about which the report is written, or when it is necessary to accurately reflect the statement of a witness, victim, or person interviewed about the crime or incident.
7. Laws shall not be selectively enforced, or not enforced, based to any degree on actual or perceived race, color, ethnicity, national origin, religion, gender, gender identity, sexual orientation, economic status, age, cultural group, disability, housing status, or affiliation with any other similar identifiable group.
8. Officers are prohibited from selecting or rejecting particular policing tactics, strategies, or locations based to any degree on actual or perceived race, color, ethnicity, national origin, religion, gender, gender identity, sexual orientation, economic status, age, cultural group, disability, housing status, or affiliation with any other similar identifiable group.

#### **AVOIDING THE PERCEPTION OF BIAS**

9. In an effort to prevent perceptions of bias, officers shall use the following measures whenever reasonably possible when conducting consensual contacts, investigative detentions, traffic stops, arrests, and searches and seizures of property:
- (a) Be professional and polite.
  - (b) Provide a self-introduction and explain to the subject the reason for the contact as soon as practical, unless providing this information will compromise the investigation or the safety of officers or other persons. In ordinary vehicle stops, this information shall be provided before asking for driver's license, vehicle registration, and proof of insurance or other identification.

- (c) Ensure that the length of the detention is no longer than reasonably necessary to take appropriate action for the known or suspected offense, as well as any offense which is legitimately discovered during the course of the investigation.
- (d) Ensure that the purpose of reasonable delays is explained to the person contacted.
- (e) Answer any questions the person contacted may have, including explaining options for the disposition of a traffic citation, if relevant.
- (f) Provide name and badge number when requested, verbally, in writing, or on a business card.
- (g) If the reasonable suspicion for the stop is dispelled or the stop was made in error, explain why the error was made and apologize for any inconvenience.

### STOPS AND SEARCHES

- 10. Officers detaining any person shall be prepared to articulate and document sufficient reasonable suspicion to justify any detention independent of the actual or perceived race, color, ethnicity, national origin, religion, gender, gender identity, sexual orientation, economic status, age, cultural group, disability, housing status, or affiliation with any other similar identifiable group.
- 11. Under no circumstances shall officers frisk or search any person solely for the purpose of determining that person's biological gender or to view or touch the person's genitals. At no time shall an officer refuse to search someone based on his/her actual or perceived gender identity or sexual orientation. (See Chapter 41.13.1, "Interactions with LGBTQ Persons.")
- 12. Officers shall adhere to the guidelines of **Chapter 1.2.4, Search and Seizure**. When same-gender searches are required by law, officers shall respect the gender identification expressed by the individual to be searched.

### MEMBER RESPONSIBILITIES

- 13. Every member of this Department shall perform his/her duties in a fair and objective manner and is responsible for promptly reporting any known instances of bias-based policing to a supervisor before the end of the shift during which they become aware of the incident.
- 14. Except as part of a reliable and specific description of an individual's identity, linking the individual to an event or location, an individual's actual or perceived race, color, ethnicity, national origin, religion, gender, gender identity, sexual orientation, economic status, age, cultural group, disability, housing status, or any combination thereof shall not be a factor in determining the reasonable suspicion for a stop, probable cause for an arrest, or asset seizure and forfeiture efforts.
- 15. If a violation of law has occurred, and the individual is not to be custodially arrested and booked, the officer shall complete the required citation, summons, or Field Interview Card (FIC) as quickly as possible and allow the individual to continue without unnecessary delay.
  - (a) Information pertaining to the individual's gender, race, and age shall be entered on all forms. If this information can be obtained from documentation on the individual's person, he/she will not be asked to provide it. If this information

can be obtained from the individual's appearance, it will be entered without asking the individual to provide it.

(b) If the officer completing the required paperwork cannot determine the gender, race, and/or age of the individual being detained, and the documentation submitted by the individual does not provide the necessary information, the officer may inquire as to the information needed to complete the required paperwork in a professional manner.

16. No person shall be discouraged from, intimidated from, or coerced into filing a complaint alleging profiling by any member (commissioned or civilian employee) of this Department. Officers, upon request, shall provide information about how to file a complaint (see Chapter 52.1.1, Misconduct Complaint Intake and Investigation).
17. If a person alleges bias-based policing, the officer shall call a supervisor to provide assistance with filing a misconduct complaint if requested (see Chapter 52.1.1, Misconduct Complaint Intake and Investigation). For purposes of this policy, an allegation of bias-based policing occurs whenever, from the perspective of a reasonable officer, a person complains that an officer treated him, her, or someone else differently because of actual or perceived race, color, ethnicity, national origin, religion, gender, gender identity, sexual orientation, economic status, age, cultural group, disability, housing status, or affiliation with any other similar identifiable group.

#### **SUPERVISOR RESPONSIBILITY**

18. Supervisors are responsible for monitoring those individuals in their command for any behavior that may conflict with the purpose of this Chapter and shall address any alleged or observed violation of this Chapter in accordance with **Chapter 52.1.1, Misconduct Complaint Intake and Investigation**. Supervisors shall discuss any issues with any involved officer and his/her supervisor in a timely manner.
19. Recordings that a supervisor believes capture a potential instance of bias-based policing shall be appropriately retained for administrative investigation purposes in accordance with NOPD's approved records retention schedule (see La. R.S. 14:411).
20. Supervisors shall ensure that no retaliatory action is taken against any member of this department who discloses information concerning bias-based policing.

#### **ADMINISTRATION**

21. The Deputy Superintendent of the Public Integrity Bureau shall annually assess and report on all NOPD programs, initiatives, and activities to ensure that no program, initiative, or activity is applied or administered in a manner that discriminates against individuals on the basis of actual or perceived race, color, ethnicity, national origin, religion, gender, disability, sexual orientation, gender identity, or housing status.
22. The assessment shall include but not be limited to whether there is discrimination with respect to the following:
  - (a) misconduct complaints involving discrimination;
  - (b) use of force;
  - (c) motor vehicle and pedestrian stops;
  - (e) arrests; and
  - (e) whether particular geographic deployment tactics or strategies may have been

selected or rejected based upon stereotypes or biases.

23. The assessment shall be based on accurate, complete and reliable data, including:
- (a) misconduct complaints and data contained in the Early Warning System;
  - (b) stop and detention data;
  - (c) use of force analysis;
  - (d) crime trend analysis in relation to population demographics;
  - (e) enforcement practices based on community concerns; and
  - (f) operations plans and after-action reports.

## **TRAINING**

24. Training on techniques to eliminate bias-based policing shall be conducted as directed by the Education, Training and Recruitment Division in Police Recruit Training and Annual In-service Training, including four hours of comprehensive training as well as four hours annually thereafter, based on developments in Louisiana or federal law and NOPD policy. This training shall address:
- (a) Methods and strategies for more effective policing that rely upon non-discriminatory factors;
  - (b) Police and community perspectives related to discriminatory policing;
  - (c) Constitutional and other legal requirements related to equal protection and unlawful discrimination;
  - (d) The protection of civil rights as a foundation of effective policing;
  - (e) The existence and impact of arbitrary classifications, stereotypes, and bias, including unconscious or implicit bias;
  - (f) Methods and strategies for identifying stereotypes and implicit bias in officer decision-making;
  - (g) Instruction in the collection of information required for standard reporting, citation, summons, affidavit, or Field Interview Card (FIC);
  - (h) Identification of key decision points at which discrimination can take effect; and
  - (i) Methods, strategies, and techniques to reduce misunderstanding, conflict, and complaints due to perceived discrimination or bias.
25. As part of, or in addition to, bias-based policing training, all officers shall view the video on racial/bias-based policing produced by the Department of Public Safety and Corrections (La. R.S. 32:398.10(F)).

## **HATE CRIMES**

26. State law creates penalty enhancements for identified crimes motivated because of actual or perceived race, age, gender, color, religion, creed, disability, national origin, sexual orientation or ancestry of the victim or victims or because of membership, service or employment with an organization (La. R.S. 14:107.2). Please refer to Chapter 42.12, Hate Crimes.