



**Office of Inspector General**  
**Independent Police Monitor**

**City of New Orleans**

**Review of the New Orleans Police Department's  
Field Interview Policies, Practices, and Data**

**OIPM # 2012-757**

**Susan Hutson**  
**Independent Police Monitor**

**Final Report**

**March 12, 2013**

# CITY OF NEW ORLEANS



SUSAN HUTSON  
INDEPENDENT POLICE MONITOR

March 12, 2013

Councilmember Stacy Head, President  
Councilmember Jacqueline Brechtel Clarkson, Vice President  
Councilmember Susan G. Guidry, Co-Chair Criminal Justice Committee  
New Orleans City Council  
1300 Perdido Street  
New Orleans, LA 70112

Dear Councilmembers:

I hereby submit the enclosed "**Review of the New Orleans Police Department's Field Interview Policies, Practices, and Data**" of the Independent Police Monitor, Office of Inspector General, pursuant to City of New Orleans Code Sec. 2-1121, Paragraph 16.

If you have any questions, please contact me at (504) 681-3223.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'SH', written over a horizontal line.

Susan Hutson  
Independent Police Monitor

Enclosure

Councilmember LaToya Cantrell, District B  
Councilmember Kristin Gisleson Palmer, District C  
Councilmember Cynthia Hedge-Morrell: Councilmember, District D  
Councilmember James A. Gray III: Councilmember, District E

# Review of the New Orleans Police Department's Field Interview Policies, Practices, and Data

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## ACKNOWLEDGEMENTS

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The OIPM would like to acknowledge the hard work of our pro bono lawyer team, without which this report would not have been completed. First and foremost, the OIPM would like to acknowledge Barbara Siefken and Elizabeth Owen, who both worked tirelessly to overcome the many obstacles to complete this report. Both Ms. Siefken and Ms. Owen worked countless hours to make this report what it is. The OIPM would also like to acknowledge the work of Alex Campbell, the third member of the OIPM pro-bono team legal team. The OIPM also wants to thank its team of interns who were responsible for final edits of the report, Heather Siegel, Daniel Tonkovich, and Alexandra Sawicki.

The OIPM would also like to acknowledge Jeffry Fagan, the author of *The New York City Police Department's "Stop and Frisk" Practices: A Report to the People of the State of New York from the Office of the Attorney General*, who both consulted with the OIPM on this report and read many earlier versions of the report.

Lastly, the OIPM remains grateful to the Inspections and Evaluations Division of the Office of the Inspector General for conducting an inspection and analysis of the NOPD's field interview data.

## EXECUTIVE SUMMARY

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The Office of the Independent Police Monitor (OIPM) conducted a review of the New Orleans Police Department's (NOPD) stop and frisk practices, policies, and data. This review encompassed a legal analysis of NOPD Operations policies and training materials and an evaluation of data collection and auditing methods, based on NOPD policies. In conjunction with this review, the Office of Inspector General (OIG) Division of Inspections and Evaluations at the OIPM's request conducted an inspection and analysis of NOPD Field Interview data.

### BACKGROUND STOP & FRISK: NOPD FIELD INTERVIEW PROGRAM

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Under federal and state law, a police officer has the authority to stop, briefly detain, and question an individual based upon that officer's objective and reasonable suspicion that an individual is, has been, or may be engaged in criminal activity. NOPD policy designates this police procedure as a "field interview."<sup>1</sup> During a legally justified stop, an officer may conduct a pat down and/or frisk of the individual's outer garments for weapons, if the officer reasonably determines a weapon may be present.

NOPD policy directs officers conducting field interviews and pat downs to complete Field Interview Cards (F.I.C.s). The F.I.C., which an officer is required to fill out after stopping and questioning an individual, prompts the officer to record: the reason for the stop, personal information on the individual(s) stopped, and the disposition of the stop. Although NOPD Operations Policy does not state the specific purpose for the collection of field interview data, F.I.C.s are entered directly into a designated database and retained for at least three years.<sup>2</sup>

When implemented effectively, the police practice of stop and frisk can be an important law enforcement tool for investigating suspicious, potentially criminal, activity. But the practice is also vulnerable to abuse, often raising concerns of constitutional violations, specifically an individual's rights to equal protection under the law and the right to be free from unreasonable search and seizure.

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<sup>1</sup> Based upon the United States Supreme Court decision in *Terry v. Ohio* 392 U.S. 1 (1968), this police procedure is commonly known around the country as a *Terry* stop. NOPD stop and frisk policy is set forth in the department's Policy Manual Chapter 41.30 under the title Field Interviews/Stop & Frisk. This written policy adheres to the same federal and state legal standards as a *Terry* stop, requiring officers to have reasonable suspicion of criminal activity.

<sup>2</sup> NOPD staff informed OIPM that the records retention policy does not state clearly a timeframe to retain FIC data but the data is retained for a minimum of three years as required by state law. Unless a records retention policy is developed, submitted and approved, La.R.S. 44:36 requires agencies to maintain their records for three years from the date the record is made.

## SUMMARY OF FINDINGS AND RECOMMENDATIONS

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The OIPM's objectives for this report were to: (1) assess whether current NOPD policies and training are consistent with federal and state law, (2) review current NOPD data collection practices in light of expert recommendations and national best practices for appropriate data collection and data auditing methods, and (3) make recommendations to improve NOPD stop and frisk policies and practices.

The OIPM planned to inspect and analyze the Field Interview data to determine (1) whether or not NOPD officers were compliant with legal requirements to stop individuals only when there was reasonable suspicion to do so, and (2) whether, when conducting a stop and frisk, NOPD appeared to apply the constitutional standard of reasonable suspicion equally to all persons.

However, a review by the Inspections and Evaluations Division of the New Orleans Office of Inspector General (OIG) revealed that there are fundamental flaws in the NOPD's method of collecting and reporting field interview data. Without accurate data, the OIPM was unable to conduct its planned in-depth legal analysis.

The NOPD has made efforts to make improvements to the stop and frisk program during the course of this review. However, additional changes are needed.

Part I of this report presents a thorough review of the U.S. Constitutional law and the Louisiana state law governing the police practice of stop and frisk. The OIPM identified the following findings and recommendations relating to NOPD policies and training materials:

- The NOPD's Field Interview Policy lists certain facts for officers to consider when justifying a stop and pat down, or frisk, but (A) provides no case law or practical examples; and (B) does not explain that any one fact, by itself, would be insufficient legal justification for a stop or a frisk. NOPD policy chapter 41.30 should provide practical guidance on when and how the totality of the circumstances may or may not rise to the level of legally justified reasonable suspicion.
- NOPD training and Legal Update Course materials provide incomplete information on the current federal and state law governing Stop and Frisk. NOPD should re-design its training materials to provide real-life and case law examples that explain the importance of observing and articulating the specific facts and circumstances leading the officer to reasonably suspect an individual is engaged in criminal activity.
- NOPD policies on stop and frisk (chapter 41.30) and profiling (chapter 41.6) are inconsistent with national best practices because the two policies are not developed or explained in conjunction. NOPD should adopt a detailed policy on impartial policing to

be included in the Code of Conduct and as part of the policy on Field Interviews and Pat-Down Searches.

Part II includes our review of NOPD Field Interview data collection methodology and auditing procedures and our findings in light of best practices recommended by experts in the field of police procedures. The OIPM identified the following findings and recommendations relating to NOPD data collection methodology and auditing procedures:

- Chapter 41.30 does not state the purpose or objectives for collecting F.I.C.s, and NOPD Departmental policies are internally inconsistent on the matter of when officers are required to complete Field Interview Cards (F.I.C.) during police-civilian interactions. NOPD officers should only submit information to the department's F.I.C. database when the interaction is the stop of a person suspected of, or caught engaging in criminal activity.
- NOPD's Policy Manual requires officers to articulate the explicit reason for initiating a Field Interview; however, the department's F.I.C. does not include a narrative field to be completed by the officer at the time of the stop. NOPD should require officers to articulate in a descriptive narrative the specific, observable behaviors that legally justify the stop.
- NOPD's Field Interview Card (F.I.C.) prompts officers to report the Social Security Numbers of persons stopped, raising concerns about privacy violations. NOPD should not collect the Social Security Numbers from persons stopped for a Field Interview.
- NOPD retains identifying information for all persons stopped in its field interview database for a minimum of three years, violating its own policies. NOPD should not retain personally identifying subject information on individuals stopped who are not cited or arrested as a result of field interviews; furthermore, NOPD should develop a formal records retention policy regarding all information collected and stored in the field interview database.
- NOPD search data does not clearly identify who or what was searched during a stop and officers are not required to record a description of the legal basis for the search. NOPD officers must be required to describe particularly who and what was searched, the legal basis of any search conducted, and the specific type of evidence seized.
- NOPD's data auditing practices do not ensure that F.I.C. data is accurate or complete. NOPD should implement adequate data auditing practices, such as ensuring supervisors are reviewing F.I.C.'s and providing receipts and/or business cards to individuals that have been stopped.

A draft of this report was provided to the CAO's Office and the NOPD for review and comment prior to publication. The NOPD's full response, dated December 7, 2012, is appended to this report. The NOPD provided responses to the OIPM's request for additional information on December 26, 2012, January 4, 2013, January 7, 2013, and February 22, 2013. The OIPM addressed NOPD responses to specific findings and recommendations in the body of this report.

## OBJECTIVES, SCOPE, AND METHODOLOGY

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The New Orleans Office of the Independent Police Monitor conducted a review of the NOPD's Field Interview Program, policies and practices (more commonly known as stop & frisk). Inspectors in the Inspections & Evaluations Division of the Office of Inspector General conducted an inspection and analysis of the New Orleans Police Department's (NOPD) field interview data.<sup>10</sup>

The OIPM's objectives were to: (1) assess whether current NOPD policies and training are consistent with federal and state law; (2) review current NOPD data collection practices in accordance with expert recommendations and national best practices for appropriate data collection and data auditing methods; (3) make recommendations to improve NOPD stop and frisk policies and practices.

The scope of this project included legal research on the constitutional and legal standards that govern stop and frisk practices; interviews with NOPD officers and experts in police stop and frisk practices; a review of NOPD policies, including the NOPD Policy Manual, and NOPD Education and Training Division training materials; and attendance at COMPSTAT meetings and in-service trainings.

OIPM also consulted publications by agencies such as the Police Executive Research Forum, the International Association of Chiefs of Police, and the Department of Justice (DOJ), including the *DOJ's Investigation of the New Orleans Police Department*, the latter released on March 16, 2011.

This report includes findings and recommendations intended to improve the policies and practices of the New Orleans Police Department's stop and frisk program, to ensure that such practices are carried out in full accordance with the law, and to facilitate the collection, monitoring, and analysis of complete, accurate, and valid field interview data.

Below is the NOPD's general comment on this report:

***NOPD GENERAL COMMENTS:*** *The NOPD stated that this report serves as a "repetitive accounting" of the U.S. Department of Justice's investigation and findings report released on March 16, 2011. The NOPD also stated that since the release of the DOJ's Investigation, the*

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<sup>10</sup> The Inspections and Evaluations Division's contributions to this section of the OIPM report were conducted in accordance with the Principles and Standards for Offices of Inspector General for Inspections, Evaluations, and Reviews (Quality Standards for Inspections, Evaluations, and Reviews by Offices of Inspector General, *Principles and Standards for Offices of Inspector General* (Association of Inspectors General, 2004).

*NOPD has already taken steps to address the DOJ recommendations and “by June 2012, believed we had made significant process [sic] in addressing over 40% of these recommendations...” “The NOPD has openly agreed to and supported the unprecedented oversight that will be provided by both the U.S. Department of Justice and Federal Court Monitor,” under the pending Consent Decree.*

***OIPM COMMENT:*** *The findings and recommendations within this report purposely reference findings and recommendations from the DOJ’s Investigation of the New Orleans Police Department, appropriate where the DOJ conducts a major investigation which includes in part the Stop and Frisk practices of the NOPD. The DOJ’s report encompassed 14 areas of NOPD practices, one of which includes, “Stops, Searches, and Arrests.”<sup>11</sup> The OIPM’s Review of the New Orleans Police Department’s Field Interview Policies, Practices and Data focuses on the New Orleans Police Department’s policy on Field Interviews/Stop & Frisk, as contained in the New Orleans Police Department Policy Manual Chapter 41.30, the training used to implement that policy, and the use of Field Interview Cards to collect data on stops. This report also includes updated information from the NOPD beyond the date of the DOJ Findings released in March of 2011.*

*In the Official Comments to this report, the NOPD made several references to the agreement with the Department of Justice to complete comprehensive reviews of policies, training and data collection protocol in accordance with the Consent Decree.<sup>12</sup> On January 11, 2013, the Honorable Judge Susie Morgan of the United States District Court for the Eastern District of Louisiana approved and signed the Consent Decree to reform the New Orleans Police Department. On January 31, 2013, the City of New Orleans filed a Motion to Vacate the Consent Decree and sought to withdraw from the entire Consent Decree process.<sup>13</sup> The City of New Orleans’ motion to vacate calls into question whether the agreement for comprehensive reforms and federal oversight, provided for in the Consent Decree, will be implemented. As of the publication of this report, the court has not ruled on the City’s Motion to Vacate and the Effective Date for the Consent Decree has not been set. Therefore, the OIPM’s concise and specific recommendations on the implementation of constitutional safeguards are all the more timely.*

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<sup>11</sup> U.S. Department of Justice, *Investigation of the New Orleans Police Department* (March 16, 2011).

<sup>12</sup> Joint Motion and Memorandum for Entry of Consent Decree, *U.S. v. City of New Orleans*, 12-CV-01924 (E.D. La. July 24, 2012).

<sup>13</sup> Memorandum In Support of Motion to Vacate Consent Decree, *U.S. v. City of New Orleans*, 12-CV-01924 (E.D. La. Jan. 31, 2013).

## DEFINITION OF TERMS RELATED TO STOP AND FRISK

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The following definitions of terms related to stop and frisk have been used throughout this report, except as otherwise noted. When appropriate, definitions have been taken from the NOPD Policy Manual.

**Consensual Encounter** - A consensual encounter occurs when a police officer approaches an individual and engages them in conversation, but the individual must remain free not to answer and to walk away.<sup>14</sup>

**Field Interview** - The brief detention of an individual, whether on foot or in a vehicle, based on reasonable suspicion of a crime for the purposes of determining the individual's identity and resolving the officer's suspicions.<sup>15</sup>

**Field Interview Card** – The electronic or written record of a field interview.<sup>16</sup>

**NOPD Policy Manual** - Rules and Procedures of the New Orleans Police Department.

**NOPD Training Materials** – Teaching materials provided to NOPD Officers by the NOPD's Education and Training Division.

**Pat-down or frisk (limited search)** - An external feeling of the outer garments of an individual. An officer may not manipulate objects which are discovered under the clothing.<sup>17</sup>

**Probable Cause** – More than bare suspicion; it exists when the facts and circumstances within the officers' knowledge, of which officers have reasonably trustworthy information, are sufficient in themselves to warrant a person of reasonable caution in the belief that an offense has been or is being committed.<sup>18</sup>

**Profiling or Biased Policing** – The detention of any vehicle, pedestrian, or person, or investigatory treatment thereof, where the stop or detention is based solely on the racial, ethnic, socioeconomic, gender, sexual orientation, or belief system of the individual detained.

**Reasonable Suspicion** - Specific and articulable facts, which, taken together with rational inferences from those facts allow an officer to conduct a Terry Stop.<sup>19</sup>

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<sup>14</sup> *Florida v. Bostick*, 501 U.S. 429 (1991)

<sup>15</sup> NOPD Policy Chapter 41.30.

<sup>16</sup> NOPD Policy Chapter 41.30

<sup>17</sup> *Terry v. Ohio*, 392 U.S. 1, 16 (1968); NOPD Policy Chapter 41.30

<sup>18</sup> NOPD Policy Chapter 41.30.

<sup>19</sup> *Terry v. Ohio*, 392 U.S. 1, 16 (1968); NOPD Policy Chapter 41.30

**Search (Broader Search for Evidence or Weapons)** – An examination of a person’s body or property by a law enforcement officer for the purpose of finding evidence of a crime. A search defined as such should be based on probable cause and is a search of an area in which the person would have a reasonable expectation of privacy. Ordinarily a search cannot be conducted without probable cause as the Fourth amendment prohibits unreasonable searches and seizures.<sup>20</sup>

**Stop or Detention or Custody** – The restraint upon an individual’s freedom to walk away or leave from an encounter with an officer, based on reasonable suspicion or probable cause. These actions are considered “seizures” under the Fourth Amendment.<sup>21</sup>

**Suspicious Person** - The behavior, appearance, or demeanor of an individual which, based on reasonable suspicion, suggests that he/she is, has been, or may be engaged in criminal activity.<sup>22</sup>

**Terry Stop**– A brief detention and questioning of an individual based upon an officer’s objective and reasonable suspicion that an individual is, has been, or may be engaged in criminal activity.<sup>23</sup>

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<sup>20</sup> *Terry v. Ohio*, 392 U.S. 1, 11-27 (1968).

<sup>21</sup> *Terry*, 392 at 16.

<sup>22</sup> *Terry*, 392 at 10.

<sup>23</sup> *Terry*, 392 at 16

## PART I: CONSTITUTIONAL AND LEGAL STANDARDS

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The Fourth Amendment of the U.S. Constitution is the founding legal standard for the protection of individuals against “unreasonable” search and seizure. In the last forty years, federal and state courts have amassed a significant body of case law that defines the balance between the Fourth Amendment’s protection of individual rights and the authority granted to law enforcement to deter crime and ensure the community’s safety. Based on this case law, officers must conduct the stop and frisk of individuals suspected of criminal intent or behavior according to strict legal standards.

More recently, both individuals and the courts have challenged police departments’ discriminatory practices of discriminatory stop and frisk, also known as racial profiling. It has been found through stop and frisk reports in other jurisdictions that police often engage in a practice of stopping minorities, often in targeted neighborhoods, at a much higher rate than they stop other non-minority members of the community. Studies have found the stops often yield a low rate of contraband, weapons, summonses, and arrests.<sup>24</sup> For these reasons, the starting point for examining a jurisdiction’s stop and frisk practices must begin with a thorough understanding of the constitutional and legal standards on which those practices must be based.

### LEGAL HISTORY

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In *Terry v. Ohio*, the United States Supreme Court held that, for the purposes of effective crime prevention and detection, law enforcement officers have the authority to detain an individual briefly in order to investigate possible criminal activity even when there is less than probable cause to arrest that individual.<sup>25</sup> The officer’s authority to stop or seize an individual depends upon the scope of the seizure and the strength of the suspicion prompting the stop.<sup>26</sup> If an officer has reasonable suspicion, based upon his/her particularized observations and objective belief that criminal activity is afoot, then that officer may detain an individual only long enough for further investigation to resolve or confirm the suspicion.

In order for an officer’s “stop” of an individual to meet the constitutional standard of reasonable suspicion of criminal activity, “the police officer must be able to point to specific and articulable facts, which, taken together with rational inferences from those facts,

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<sup>24</sup> Center for Constitutional Rights, “Stop and Frisk: The Human Impact” (2012). The Urban Institute, “Key Issues in the Police Use of Pedestrian Stops and Searches” (2012).

<sup>25</sup> *Terry v. Ohio*, 392 U.S. 1 (1968)

<sup>26</sup> *Id.* See also, *Beck v. Ohio*, 379 U.S. 89 (1964) which found that to make an arrest, a police officer must have probable cause—facts within the officer’s knowledge based upon trustworthy and sufficient information for a reasonable person to believe the individual seized has committed a crime.

reasonably warrant the brief intrusion on the individual's rights."<sup>27</sup> The length of the detention must also be reasonable in light of the facts that prompted the officer's suspicions of criminal activity. "Once the purpose of [the stop] has been completed and an officer's initial suspicions have been verified or dispelled, the detention must end unless there is additional reasonable suspicion supported by articulable facts."<sup>28</sup>

The decision to make a stop must be based on something more than an "unparticularized suspicion or hunch."<sup>29</sup> An officer should be able to explain his/her deductive reasoning by pointing out specific observations about the circumstances which lead the officer to conclude the situation warranted further investigation. Although officers do not need to observe direct evidence of a particular offense in order to lawfully stop a person for investigation, there should be a clear nexus, apparent upon review, between the observed suspicious behavior and any actual criminal activity investigated.<sup>30</sup>

The decision to conduct a frisk or pat down for weapons must also be based on the officer's objective reasoning, training and experience. Even after an officer has conducted a lawful investigatory stop, the officer's authority does not automatically extend to frisking the individual. A pat down of the stopped individual must be based upon an officer's separate, and equally reasonable determination that an individual may be carrying a weapon that threatens the safety of the officer(s) or persons in the area.<sup>31</sup> Addressing this issue in *State v. Sims*,<sup>32</sup> the Louisiana Supreme Court stated:

Allowing police officers to conduct a protective frisk based on anything less than specific and articulable facts illustrating their reasonable belief that danger existed "would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulable hunches."<sup>33</sup>

Over the forty-five years since the *Terry* decision, thousands of court cases across the country have scrutinized police stop and frisk practices; each stop and frisk case is judged on a case-by-case basis. The term reasonable suspicion "fall[s] short of providing clear guidance dispositive

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<sup>27</sup> *Terry*, 392 at 27.

<sup>28</sup> *United States v. Estrada*, 459 F.3d 627 (5<sup>th</sup> Cir. 2006)

<sup>29</sup> *Terry*, 392 at 27.

<sup>30</sup> *United States v. Pack*, 612 F.3d 341 (5<sup>th</sup> Cir. 2010)

<sup>31</sup> The legal standard for a frisk is codified in Louisiana law under La. Code Crim. Procedure article 215.1 (B) When a law enforcement officer has stopped a person for questioning pursuant to this Article and reasonably suspects that he is in danger, he may frisk the outer clothing of such person for a dangerous weapon. If the law enforcement officer reasonably suspects the person possesses a dangerous weapon, he may search the person.

<sup>32</sup> 851 So.2d 1039 (La. 2003) (providing an examination of how and why an NOPD officer failed to meet the federal and state constitutional standard for protective frisk, even though the facts supported reasonable suspicion for an investigatory stop.)

<sup>33</sup> *Id.* at 1043, citing *Terry* at 21.

of the myriad factual situations that arise ... but the essence of all that has been written is that the totality of the circumstances—the whole picture—must be taken into account.”<sup>34</sup>

## **A. Reasonable suspicion determination**

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Reviewing courts, including the U.S. Supreme Court and the Louisiana Supreme Court, have examined certain factors that officers commonly cite in their determination that reasonable suspicion exists and justifies a stop. These factors include observations about the individual, location, time of day, as well as any other information relied upon by the officer at the time of a particular stop. The courts then evaluate these factors to determine whether an officer had a particularized reasonable suspicion under those circumstances. Commonly cited factors include: unprovoked flight from an officer;<sup>35</sup> characteristics of the area (i.e. the officer has experience with high crime or drug trafficking in that particular area);<sup>36</sup> location and time of the stop;<sup>37</sup> appearance or demeanor of the individual (i.e. nervousness or evasive answers);<sup>38</sup> informant’s tip;<sup>39</sup> and observation of a suspicious object or a bulge in clothing that suggests the individual may be armed.<sup>40</sup>

None of these factors, singly or combined, necessarily equate to reasonable suspicion to justify a stop.<sup>41</sup> The Louisiana Supreme Court has held that flight from an officer or nervousness at the sight of an officer, is by itself insufficient to support reasonable suspicion.<sup>42</sup>

## **B. Race as a Factor**

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The Fourteenth Amendment prohibits the unequal or discriminatory treatment of individuals based upon race or ethnicity.<sup>43</sup> In the context of stop and frisk policies and practices, police

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<sup>34</sup> *United States v. Cortez*, 449 U.S. 411, 417 (1981)

<sup>35</sup> See *Illinois v. Wardlow*, 528 U.S. 119 (2000); *State v. Morgan* 59 So.3d 403 (La. 2011); *State v. Belton*, 441 So.2d 1195 (La. 1983)

<sup>36</sup> *United States v. Arvizu*, 534 U.S. 266 (2002); *State v. Morgan*, 59 So.3d 403 (La. 2011)

<sup>37</sup> *Brown v. Texas*, 443 U.S. 47 (1979); *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975)

<sup>38</sup> *United States v. Brigham*, 382 F.3d 500 (5<sup>th</sup> Cir. 2004)

<sup>39</sup> *United States v. Martinez*, 486 F.3d 855 (5<sup>th</sup> Cir. 2007); *Alabama v. White*, 496 U.S. 325 (1990).

<sup>40</sup> *State v. Lange*, 832 So.2d 397 (La. App. 4 Cir. 2002)

<sup>41</sup> In *State v. Morgan*, 59 So.3d 403 (La. 2011), (case in which the Louisiana Supreme Court applied a totality of the circumstances test in concluding that the officer’s observation and articulation of three factors—late night hour, a dimly lit area, and unprovoked flight from an officer—were sufficient to justify a police investigatory stop.)

<sup>42</sup> *Id.* at 407, citing *Illinois v. Wardlow*, 528 U.S. 119 (2000); *Brown v. Texas*, 443 U.S. 47 (1979). See also *State v. Boudoin*, 56 So.3d 233 (La. 2011); *State v. Johnson*, 815 So.2d 809 (La. 2002); *State v. Lange*, 832 So.2d 397 (La. App. 4 Cir. 2002)

<sup>43</sup> The Equal Protection clause of the Fourteenth Amendment states, “No State shall make or enforce any law which shall...deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. Amendment XVI, §1. Under Louisiana law, “No person shall be denied the equal protection of the laws. No law shall discriminate against a person because of race or religious ideas, beliefs, or affiliations.” La. Const. Art. 1, §3.

officers may not stop a person based solely on a racial justification.<sup>44</sup> All persons are equally guaranteed the right to be free from unreasonable search and seizure under the Fourth Amendment; therefore, the constitutional standard of reasonable suspicion for a stop and frisk must be applied equally to all persons regardless of race or ethnicity.

When an officer initiates a stop based upon the description of a suspect, and that description includes the race of the suspected individual, the reported race or ethnicity of a specific suspect may be considered under a totality of the circumstances determination. The report or description of a suspect must be based on reliable, independently corroborated or investigated information.<sup>45</sup> Whether that description comes from an informant, dispatch, or call for service, a stop based on descriptive information must include substantial predictive information about the reported suspect in addition to race—such as height, facial features, clothing, or location relative to reported criminal activity, etc.—that can be independently observed and corroborated.

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### NOPD STOP AND FRISK POLICIES

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NOPD's written policies governing warrantless search and seizure provide insufficient detail and explanation to adequately guide officers' conduct.<sup>46</sup>

*U. S. Department of Justice*

The NOPD provided the OIPM with a copy of the 2011 Policy Manual to review for this report. In January 2013, the NOPD provided the OIPM with the most up-to-date version of the 2013 Policy Manual.<sup>47</sup> The Policy Manual sets forth all department rules, policies and procedures, and all NOPD employees are deemed to have knowledge of all rules, policies and procedures from their respective effective dates.<sup>48</sup> Chapter 41.30 of the Policy Manual, entitled Field

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<sup>44</sup> For discussion of Equal Protection in the context of criminal cases, see *United States v. Armstrong*, 517 U.S. 456 (1996). See also *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975), (case in which the Supreme Court held that police cannot stop a motorist based solely on their racial or ethnic appearance. However, in the specific situation of border patrols, the race or ethnicity of individuals may be considered in the totality of the circumstances along with other specific, articulable factors to justify the stop.)

<sup>45</sup> See *Alabama v. White*, 496 U.S. 325 (1990) (case in which the Supreme Court held that reasonable suspicion is dependent upon both the content of information possessed by police and the degree of reliability. A stop based upon an informant or anonymous tip needs description of corroborating factors and other circumstances to justify reasonable suspicion.)

<sup>46</sup> *Investigation of the New Orleans Police Department*, United States Department of Justice, Civil Rights Division, March 16, 2011.

<sup>47</sup> OIPM was not provided with the entire 2013 Policy Manual. On January 4, NOPD notified the OIPM that a copy of the most up-to-date 2013 Policy Manual would be provided to OIPM, but NOPD stated that certain Policy Manual chapters were still under review by city attorneys.

<sup>48</sup> Within the NOPD, the rules, policies and procedures are cited by the appropriate "Rule," "Chapter," or "Policy" number and paragraph. Rule 1: Policy Manual, para. 2, states that employees shall have knowledge of the rules and policies from their effective dates.

Interviews/Stop & Frisk, contains the policy and procedures for conducting a stop and a frisk and completing Field Interview Cards. Based on the foregoing review of federal and state laws governing stop and frisk, the OIPM found that Chapter 41.30 does not provide explicit guidance, nor examples, to officers on when and how to conduct a constitutionally justified stop and frisk.

**FINDING 1: THE NOPD'S FIELD INTERVIEW POLICY LISTS CERTAIN FACTS FOR OFFICERS TO CONSIDER WHEN JUSTIFYING A STOP AND PAT DOWN, OR FRISK, BUT (A) PROVIDES NO CASE LAW OR PRACTICAL EXAMPLES; AND (B) DOES NOT EXPLAIN THAT ANY ONE FACT, BY ITSELF, WOULD BE INSUFFICIENT LEGAL JUSTIFICATION FOR A STOP OR A FRISK.**

The Field Interview policy, in the 2011 Policy Manual Chapter 41.30,<sup>49</sup> explains departmental policy regarding when and in what manner officers are warranted in conducting Field Interviews and Pat Down searches. Chapter 41.30 begins by providing a one-sentence, legal definition for field interview (stop), pat down search (frisk), probable cause, and reasonable suspicion. Chapter 41.30 further describes justifications for initiating a field interview and, separately, for conducting pat down searches. The policy correctly states the law on stop and frisk, as stated by the United States Supreme Court and codified in the Louisiana Code of Criminal Procedure, but the policy does not provide any practical explanation or guidance to officers.

Chapter 41.30, paragraph 1, instructs officers to justify the stop of an individual by articulating specific facts that reasonably justify detaining that person for further investigation. The policy lists certain facts an officer should consider in justifying a stop. Without any reference to specific case law or practical examples, however, this list of facts offered in the policy is vague and open to subjective interpretation.

No reviewing court has ever adopted a rule stating that certain factors will always and objectively justify initiating a stop, because each case involves a unique set of circumstances. The Field Interview policy in Chapter 41.30 does not provide examples of how or why the facts listed in Chapter 41.30 could reasonably warrant a stop, and, most important, the policy fails to explain that any one of these facts by itself would be insufficient legal justification for a stop.

A trial court hearing (e.g. Motion to Suppress) may often be the first time an officer is required to justify his rationale for a stop. At that point, the technicalities of how and why an individual was stopped could determine whether criminal charges are sustained. It is essential that officers be able to articulate sufficient circumstances to justify a stop, because constitutional police practices provide the foundation for effective criminal prosecution.

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<sup>49</sup> Each policy states the Effective date and all revision dates. The 2013 revisions to the Policy Manual included Chapter 41.30, but it remained unchanged from the 2011 Op. Man. Chapter 41.30, Field Interviews/Stop & Frisk was effective on August 29, 1999 and was last revised on October 5, 2003.

Chapter 41.30, paragraph 3 explains the justification for conducting Pat-down searches. This part of the policy acknowledges that officers must justify a pat-down separately from the initial justification for the stop, and states that a pat down must only be conducted if the officer has reasonable fear for his or her or another person's safety. Although a constitutionally valid pat down requires that the officer articulate the reasons the officer believes the subject is armed and dangerous, Chapter 41.30 only lists general criteria or factors that may establish the justification of a pat down search for weapons. Chapter 41.30 contains no requirement for officers to particularly describe the circumstances leading the officer to reasonably believe that the individual may be armed with a weapon.

***NOPD RESPONSE:*** *Policy and training are two separate issues and policy is not an “all encompassing” reflection of training. The NOPD’s training program is accredited by the Louisiana Peace Officer Standards & Training Council (POST).*

***OIPM COMMENT:*** *Officers are required to have knowledge and understanding of all Departmental policies, rules, regulations, and procedures. Officers receive Recruit Training once in their career, and officers can choose from several In-Service trainings to fulfill the 40-hour requirement each year. Currently, the NOPD has approximately 1260 sworn officers. Fifty-eight NOPD officers have received Recruit training and graduated from the Academy since 2010. Upon graduation from the Academy, an NOPD officer’s point of reference for standards, rules, and procedures comes from the official policy as contained in the NOPD Policy Manual. The Policy Manual reinforces training, it serves as the principal reference guide on all policies, and it remains available to officers at all times. Furthermore, clarity, consistency and repetition cannot be underestimated.*

*Accreditation is a separate issue from the implementation of policy. POST certification has been required under Louisiana state law, LA R.S. 40:2402, since the establishment of the POST Council in 1978. The OIPM recognizes the importance of this state program, but POST represents only the minimum requirements for peace officer academy curriculum and only the minimum qualifications for instructors in Louisiana.*

**FINDING 2: NOPD TRAINING AND LEGAL UPDATE COURSE MATERIALS PROVIDE INCOMPLETE INFORMATION ON THE CURRENT FEDERAL AND STATE LAW GOVERNING STOP AND FRISK.**

The policy contained in Chapter 41.30 does not represent the entirety of information provided to NOPD officers on the subject of stop and frisk. The NOPD Academy Recruit Training program consists of 18 weeks of classroom/academic, procedure and practical skills training, in combination with a 16 week long Field Training Officer program that provides on-the-job

experience.<sup>53</sup> Upon becoming sworn members of the NOPD, officers are required to complete 40 hours of In-Service training each year.

In June 2011 and August 2012, OIPM requested and received copies of NOPD Education and Training Division course materials.<sup>54</sup> The NOPD provided the OIPM with a Stop and Frisk Legal Update PowerPoint presentation for an In-Service training and with a chapter on “Field Interrogations” from the Academy Recruit curriculum. These two particular training documents provide insufficient guidance on the legal standards for initiating a field interview and conducting a pat down search.

The Stop and Frisk Legal Update In-Service training outline does not properly state the legal standard for initiating a stop. The course description of “the stop” misstates the constitutional standard by (1) not using or explaining the term reasonable suspicion and (2) implying that a stop may be made solely on the reasonable belief that an individual may be armed with a weapon. Stop and frisk are two separate acts that must be justified by separately articulated observations. However, no mention is made that the officer must be able to articulate his or her observations, no sample case or sample explanation of the conduct prompting the officer’s suspicion is provided, and there is no mention of the requirement to objectively justify the officer’s actions.

The justification which is listed in the Stop and Frisk Legal Update outline for conducting a frisk also fails to meet the constitutional standard. The Stop and Frisk Legal Update states that if the components of the stop are met, then for protection of the officer or other persons the officer may conduct a pat-down. This description can easily be misinterpreted to allow for an automatic frisk, because it does not state that the officer must specifically observe facts that lead him/her to reasonably believe that the individual is armed with a weapon.

In contrast to the Policy Manual, the Stop and Frisk Legal Update course material does cite three United States Supreme Court cases, presumably to illustrate certain aspects of the legal standard for stop and frisk.<sup>55</sup> The outline, and the accompanying PowerPoint presentation which is used during training, states in one sentence the holding of each case cited, and the entire course outline includes five sentences on the policy and practice of stop and frisk. The rest of the course material reviews other issues such as property searches, search incident to an arrest, and search and arrest warrants.

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<sup>53</sup> According to the NOPD description of Basic Recruit Training, the 18 week portion of training consists of 476 course hours in 12 areas. “Legal Aspects” of policing consists of 42 course hours. Found at <http://www.nola.gov/GOVERNMENT/NOPD/Basic%20Recruit%20Training%20-%20Lateral%20Program/>

<sup>54</sup> The latter was updated on May 1, 2010, but the chapter on Field Interrogations did not indicate a revision date. In August 2012, the OIPM requested any updated materials for Stop and Frisk trainings, and the NOPD provided the same Stop and Frisk Legal Update presentation from 2011.

<sup>55</sup> See *Illinois v. Wardlow* (finding that unprovoked flight from an officer by itself is insufficient cause to initiate a stop); See also *Florida v. J.L.* and *Alabama v. White* (finding that an anonymous tip requires independent corroboration before an officer performs a stop based on that information).

The Academy Recruit curriculum provided by the NOPD to the OIPM in June 2011 includes only one chapter on Field Interrogations. This course material relates more to the practical aspects of approaching an individual once the officer has determined some suspicious behavior that justifies investigation. Far from giving legal definitions or explaining constitutional standards, the course material describes how an officer should stop and question suspicious persons who fit the description of a wanted individual or whose appearance, behavior, or location suggest that criminal activity is afoot.

**NOPD RESPONSE:** *NOPD disagreed with the characterization of the NOPD training programs as inadequate, and stated that the report failed to distinguish between Recruit training and In-Service training. NOPD reiterated that the Academy’s curricula and lesson plans for recruits have been reviewed and certified by POST since 1978. The NOPD further referenced a five-page excerpt from the recruit training textbook, Criminal Procedure: Law and Practice by Rolando V. Del Carmen, that discusses the concept of reasonable suspicion, the guidelines of Terry v. Ohio, and the separate legal requirements for a stop and a frisk. Also in response, the NOPD noted that beginning in April 2012, legal updates governing current case law have routinely been presented to members of NOPD by the Office of Policy & Planning. NOPD stated that the current Recruit training program provides members with the comprehensive level of skill and knowledge needed to perform the duties of a police officer, and the 40 hour annual In-Service training program introduced in 2011 for all members of NOPD reinforces the required skill sets and addresses current issues impacting law enforcement.*

*In December 2012, after meeting with NOPD leadership to discuss the Official Comments from the New Orleans Police Department to this report, the OIPM requested any additional training materials from the NOPD’s Academy Recruit program and In-Service trainings on the issue of stop and frisk that were not given to the OIPM in its initial request. In January 2013, the NOPD provided the OIPM with a five-page excerpt from the textbook used in Academy Recruit training<sup>56</sup> and copies of 18 legal update articles distributed to NOPD members in 2012, heretofore undisclosed.<sup>58</sup>*

**OIPM COMMENT:** *The OIPM has reviewed the additional training materials provided by the NOPD in January 2013. The textbook excerpt, used during NOPD Academy Recruit Training, explains the constitutional requirements for a valid stop and frisk. The excerpt, from a chapter entitled “Stop and Frisk and Stationhouse Detention,” provides a case brief of Terry v. Ohio, explains the separate rules and actions for a valid stop and frisk, and cites several United States*

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<sup>56</sup> Rolando del Carmen, *Criminal Procedure: Law and Practice* (Wadsworth, 2010), 124-128.

<sup>58</sup> The list of 20 legal update materials can be found on page 3 of the Official Comments from the NOPD appended to this report. Two of the legal updates listed, “Featured Training on Arrest, Search & Seizure 6 Supreme Court Decisions” and “U.S. Supreme Court 2011-2012 End of Session Legal Update for Law Enforcement” were webinars that NOPD members could access for a fee. According to the NOPD, members could request funding or reimbursement but the legal update webinars were not mandatory.

*Supreme Court cases that explain the constitutional standard of reasonable suspicion.<sup>60</sup> The textbook explanation of the legal requirements of stop and frisk appears to provide a good foundation for training on field interviews/stop and frisk. However, NOPD officers only receive this particular review of the law on stop and frisk during their Recruit training program. It is unknown how many times the said textbook material is referenced, and whether the said textbook material is provided to the police recruit in a written or verbal form.*

*All of the legal update articles were published in 2012 by the Public Agency Training Council Legal & Liability Risk Management Institute. The legal update articles reviews recent court decisions on a range of topics from several federal appeals courts, state courts, and the U.S. Supreme Court. Two articles out of the 18 provided, discuss 6<sup>th</sup> and 8<sup>th</sup> Circuit U.S. Court of Appeals' decisions related to the law on reasonable suspicion to justify an investigative stop. In communications between the OIPM and NOPD, the NOPD acknowledged that the decisions from courts other than the U.S. Supreme Court, Louisiana Supreme Court, or the U.S. Fifth Circuit Court of Appeals is not binding precedent in Louisiana, but NOPD stated that these legal updates inform officers of developments in various areas of criminal law and procedure. Again, it is unknown how many times the said textbook material is referenced, and whether the said textbook material is provided to the police recruit in a written or verbal form.*

**FINDING 3: NOPD POLICIES ON STOP AND FRISK (CHAPTER 41.30) AND PROFILING (CHAPTER 41.6) ARE INCONSISTENT WITH NATIONAL BEST PRACTICES BECAUSE THE TWO POLICIES ARE NOT DEVELOPED OR EXPLAINED IN CONJUNCTION.**

For its March 2011, *Investigation of the New Orleans Police Department*, the DOJ retained criminal justice professionals who were experts in the best practices of policing. The findings and recommendations subsequently shaped the July 24, 2012 consent decree, which requires that NOPD policies and procedures “comport with best practices.”<sup>61</sup> The best practices considered by these experts refer to the police practices most highly recommended by professional police organizations such as the International Association of Chiefs of Police, the Police Executive Research Forum, and Community Oriented Policing Services (COPS).

Most expert recommendations regarding police stop and frisk policies and practices focus on the problem or perception of biased policing, rather than the issue of whether reasonable suspicion exists to justify the stops.<sup>62</sup> Nonetheless, experts agree that these two issues should

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<sup>60</sup> The following cases were cited as follows in reference to reasonable suspicion, stop and frisk: *Alabama v. White* (1990); *United States v. Arvizu* (2002); *Ornelas et al. v. United States* (1996); *Brown v. Texas* (1979); *United States v. Mendenhall* (1980); *Illinois v. Wardlow* (2000).

<sup>61</sup> *U.S. v. City of New Orleans, Joint Motion and Memorandum for Entry of Consent Decree* (E.D. La. July 24, 2012), 12; and U.S. Department of Justice, *Investigation of the New Orleans Police Department* (March 16, 2011).

<sup>62</sup> Fridell, Lorie, et al, *Racially Biased Policing: A Principled Response*, Police Executive Research Forum, at 117 (2001).

be considered together because both require knowledge and implementation of constitutional standards for the protection of individual rights guaranteed by the Fourth Amendment and the Fourteenth Amendments and by state law. Police practices and policies must be free of bias in all situations, and in the specific situation of an investigatory stop and frisk officers must rely on objective, unbiased, specifically articulated reasons that justify the brief detention of a person for further investigation.

The NOPD Departmental policy referencing biased policing is found in the Policy Manual Chapter 41.6, entitled “Profiling.” This policy chapter was made effective in November 2001 and has not been revised since that date. The policy restates the Fourth Amendment rights and privileges of all individuals, and reemphasizes the requirement of reasonable suspicion for conducting a stop. One sentence in this two-page policy states that officers may not consider race, gender, sexual orientation or ethnicity as a factor for determining reasonable suspicion for a stop, without credible supporting information or articulable suspicion. This statement does not define or articulate what information or reports would be considered credible. The policy does not state that officers should have detailed, reliable and independently corroborated information that establishes reasonable suspicion about a suspected individual.

Furthermore, Chapter 41.30 does not include any reference to Chapter 41.6 on Profiling or vice versa. The issue of profiling or biased policing most often arises during officer interactions with individuals during field interviews or stops. Chapter 41.30 lacks directives or explanations on how stop and frisk is to be carried out in an unbiased, objective manner that protects the rights of individuals and provides for public safety.

The Denver Police Department and Cincinnati Police Department both set forth policy directives that address biased policing in conjunction with investigative stops.<sup>63</sup> The Denver Police Department’s Policy 118.00, entitled “Biased Policing Policy and Criminal Intelligence Information,” begins with an explanation of the policy statement in four paragraphs: (1) the commitment to protecting civil rights and liberties for all people; (2) the policy that all detentions or stops must be supported by reasonable suspicion as required by the Fourth Amendment, and all persons have the right to equal protection under the law as required by the Fourteenth Amendment; (3) the policy that officers shall not consider race, ethnicity, national origin, age, sex, sexual orientation, or religion as the sole basis for reasonable suspicion or probable cause in conforming with the Department’s commitment to unbiased policing; and (4) the policy on criminal intelligence gathering as outlined further in section 118.03. The

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<sup>63</sup> Cincinnati Police Department Police Procedure Manual, Section 12:554, “Investigatory Stops” (Revised 3/21/06) posted online at <http://www.cincinnati-oh.gov/police/> ; Denver Police Department Police Policy Manual, Series 100, 118 – Biased Policing Policy and Criminal Intelligence Information” (Revised 1/06) posted online at <http://www.denvergov.org/police/PoliceDepartment/AboutUs/OperationsManual/tabid/442533/Default.aspx>

Denver policy also expounds on the purpose of the policy and provides guidance on officer conduct during detentions, stops, arrests, or searches.<sup>64</sup>

In 2012, the OIPM attended NOPD In-Service training lectures on Impartial Policing and Reasonable Suspicion.<sup>65</sup> These two-hour trainings covered the definitions and legal standards for both topics but neither two-hour training sessions referred directly to policy chapters or included any handouts for reference during or after each lecture. The trainings did not allow enough time to review policies and discuss questions or difficulties faced by officers and supervisors in following these policies. The lecture on Impartial Policing reviewed specifically the requirement of reasonable suspicion for stops and discussed the need for officers to be aware of unconscious bias in the performance of duty. The lecturer emphasized the difference between identifying the specific facts and circumstances that create reasonable suspicion in each situation and relying on preconceived ideas or negative experiences in similar situations or areas. The trainings offered practical advice about the concepts of reasonable suspicion and impartial policing, but NOPD policies should be referenced in trainings.

**NOPD RESPONSE:** *NOPD stated that, in May 2011, Superintendent Serpas communicated with and requested assistance from the Director of the U.S. Department of Justice Community Oriented Policing Services (COPS) to perform a comprehensive analysis of the NOPD Recruit Training Program. NOPD stated that COPS also specifically redesigned curricula and lesson plans related to bias-free and community policing. NOPD stated that COPS is a “recognized authority on ‘best practices.’” In addition, NOPD stated, “NOPD’s entire policy manual has been undergoing comprehensive revision to ensure it is reflective of Federal and State ‘best practice’ standards.”*

*The OIPM requested clarification and more detailed information about the on-site technical assistance and redesigned curricula provided to the NOPD by COPS. The NOPD informed the OIPM that COPS representatives and technical assistance team members, and not the Director of COPS, came to New Orleans over two days in May 2011 to observe NOPD In-Service trainings, to discuss NOPD Academy infrastructure, to meet with NOPD instructors, to review COPS Curriculum, and to discuss the development of new courses on Community Policing and Racially Biased-Policing based on COPS curriculum standards. COPS provided analysis of NOPD trainings and developed a redesigned curricula and lesson plans related to bias-free and community policing which the NOPD instituted for the 2012 trainings.*

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<sup>64</sup> 118.02(1)(b) on the purpose of Biased Policing stated, “The policy will also help officers keep in mind the ‘probable cause’ and ‘reasonable suspicion’ criteria for their stops and searches. Traffic enforcement and pedestrian contacts are routinely performed by officers but for the motorist or pedestrian who are stopped it is frequently an emotionally upsetting experience. Officers should be aware of these conditions and should strive to make each contact educational and leave the motorist with an understanding that the officer has performed a necessary task in a fair, professional and friendly manner.”

<sup>65</sup> In-Service training for Supervisors, July 30, 2012, “Impartial Policing;” In-Service Training for Officers. July 16, 2012, “Probable Cause and Reasonable Suspicion”.

*The NOPD also provided the OIPM with a comparative outline of the NOPD Recruit curriculum before and after receiving recommendations from COPS.*

**OIPM COMMENT:** *The OIPM reviewed the information provided by NOPD related to the revised Academy Recruit curriculum based on the analysis and recommendations from COPS. The NOPD Recruit training curriculum was increased from a one-hour course of instruction on “Racial Profiling” to an 8-hour block of instruction. The previous one-hour course reviewed relevant constitutional amendments, the definition of racial profiling, communication techniques, and community views on racial profiling. The redesigned 8-hour curriculum reveals broader and more in-depth consideration of racial profiling, specifically as it relates to reasonable suspicion, probable cause, and criminal profiling. The new curriculum requires specific time allocation for class participation and class exercise, and it dedicates significant blocks of time to considering the negative impact of racial profiling and building trust and communication with the community.*

*The OIPM commends the NOPD for requesting the assistance of COPS to redesign NOPD Recruit Training on the important issues of bias-free and community oriented policing. The OIPM will continue to follow and report on changes to NOPD policy and training on impartial policing, racial profiling, community-oriented policing, and stop and frisk.*

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## PART I: RECOMMENDATIONS

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**RECOMMENDATION 1:** **NOPD POLICY CHAPTER 41.30 SHOULD PROVIDE PRACTICAL GUIDANCE ON WHEN AND HOW THE TOTALITY OF THE CIRCUMSTANCES MAY OR MAY NOT RISE TO THE LEVEL OF LEGALLY JUSTIFIED REASONABLE SUSPICION.**

A list of facts that “may be considered” in making a stop or a list of certain criteria that “may justify” a frisk, does not sufficiently explain what officers must do to articulate objective reasonable suspicion in each situation. Without additional clarification, NOPD policies provide insufficient guidance to officers who are expected to meet specific constitutional requirements.

To ensure that officers properly understand how to determine and explain reasonable suspicion, NOPD policy on Field Interviews should include more emphasis on qualitative observation. Officers must also be trained, and tested on, how to evaluate and describe the individual, the actions, the location, and all surrounding circumstances leading him or her to reasonably believe that criminal activity is afoot or that a subject is armed with a weapon. Officers must be required to describe these observations succinctly and clearly on the Field Interview Card, in any other reports of the incident, and in court hearings.

**NOPD RESPONSE:** *NOPD disagreed that its policies and the POST certified training materials do not already provide practical guidance to officers. NOPD also stated, “we also recognize the*

*critical importance in protecting the rights of all citizens. That is why, under the pending Federal Consent Decree, NOPD willingly accepts a comprehensive review and restructuring of both its policy and training in consideration of ‘best practices.’”*

**OIPM COMMENT:** *The OIPM recognizes the importance of POST certification, but that program represents only the minimum requirement for all law enforcement curriculum training throughout the state of Louisiana. The OIPM commends the NOPD for its willingness to accept a review and restructuring of NOPD policy and training in accordance with the Consent Decree. The OIPM encourages the NOPD to move forward with implementing policy revisions based upon the recommendations within this OIPM report, the findings within the DOJ investigation, the recommendations within the Consent Decree, and the best practices recommended by experts on police practices (i.e. IACP, COPS).*

**RECOMMENDATION 2:** **NOPD SHOULD RE-DESIGN ITS TRAINING MATERIALS TO PROVIDE REAL-LIFE AND CASE LAW EXAMPLES THAT EXPLAIN THE IMPORTANCE OF OBSERVING AND ARTICULATING THE SPECIFIC FACTS AND CIRCUMSTANCES LEADING THE OFFICER TO REASONABLY SUSPECT AN INDIVIDUAL IS ENGAGED IN CRIMINAL ACTIVITY.**

Officers should be provided with real case examples to illustrate how the totality of the circumstances in any situation can rise to the level of legally justified reasonable suspicion. Over forty years of case law provides guidance on the subject of reasonable suspicion in police investigatory stops. The Fifth Circuit U.S. Court of Appeal, the Louisiana Supreme Court and the Fourth Circuit Court of Appeal in Orleans Parish have decided (and published) hundreds of cases involving this issue.

Federal and state courts evaluate the constitutionality of actual police practices on a case-by-case basis, and NOPD officers should know how police practices have been scrutinized under the law and how its actions will be examined. As examples of how the NOPD stop and frisk practices have been examined under Louisiana law, we present synopses of two cases from the Louisiana Fourth Circuit Court of Appeal in Orleans Parish in Appendix A.

**NOPD RESPONSE:** *NOPD reiterated that the legal update materials are designed to provide officers with real-life and case law examples. In addition, “Officers are currently required to take 20 training scenarios per month via a web based interactive program that is monitored by the Academy and requires a 100% pass rate.”*

*The OIPM requested to review “Daily Training Bulletin” (DTB) training scenarios that officers are required to take each month. The NOPD provided the OIPM with a sample of the February 2013 training bulletin. The NOPD informed OIPM that all commissioned NOPD officers must complete 20 training bulletin scenarios within the month and pass all 20.*

**OIPM COMMENT:** *The OIPM reviewed the 20 Daily Training Bulletins (DTB) from February 2013. Each DTB is focused on a particular topic, i.e. Officer Safety and Tactics, Use of Force,*

*Personnel, Equipment, Investigations and Enforcement or Additional Topics. The DTB then provides a brief narrative scenario, states an “Issue” and the correlating “Rule” for the scenario. Some DTBs include an “Analysis” of the issue, and all state a “Conclusion.” Each DTB poses a “Question” and offers either a True/False or multiple choice “Answer.”*

*The OIPM commends the NOPD for implementing the Daily Training Bulletin program. The scenarios provide real-life scenarios and reference relevant rules or procedure for each scenario. The questions and answers are straightforward and are not dependent on reviewing the scenario. The purpose and use of the DTBs indicate the NOPD’s effort to provide continuous training and to test to officers on a range of topics, issues and rules. The DTBs from February 2013 do not include any training scenarios related specifically to stop and frisk.*

**RECOMMENDATION 3: NOPD SHOULD ADOPT A DETAILED POLICY ON IMPARTIAL POLICING TO BE INCLUDED IN THE CODE OF CONDUCT AND AS PART OF THE POLICY ON FIELD INTERVIEWS AND PAT-DOWN SEARCHES.**

NOPD policy inadequately addresses the troubling patterns of constitutional violations found by the Department of Justice and complained of to the OIPM by many New Orleans community members and organizations with regards to profiling or biased policing during stops.

NOPD needs a cohesive, all-encompassing policy that brings together the standards and procedures for conducting field interviews/stops with policy directives on impartial or unbiased policing. Field interviews and impartial policing must be practiced in conjunction, and therefore should be explained together within the same policy.

As stated previously, the Denver Police Department and Cincinnati Police Department provides good examples of policies. The Cincinnati Department’s Procedure Manual, which is posted online, instructs officers on the requirements and parameters of Investigatory Stops and unbiased policing in clear terms.<sup>66</sup> The policy states that an officer who stops an individual based on race or ethnicity is “engaged in a practice which undermines legitimate law enforcement,” and is violating federal law. The Cincinnati policy also points out the need for keen, careful observation and professionalism when conducting investigatory stops. The Cincinnati manual says in part:

Awareness is the key to success in criminal interdiction. Observations must be evaluated in the aggregate—not isolation. An officer must use all senses while avoiding the development of tunnel vision. An important factor to remember when conducting an enforcement stop is to take the time to do it right. Do not rush through the stop or an important indicator of criminal activity may be missed. ... When a citizen is stopped or detained and then released as part of an

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<sup>66</sup> Cincinnati Police Department Procedure Manual, Section 12:554, “Investigatory Stops” (Revised 3/21/06).

investigation, the officer will explain to the citizen in a professional, courteous manner why he or she was stopped or detained.<sup>67</sup>

The Denver Police Department requires officers to provide a business card to any person detained during a traffic stop, if that person is not issued a citation, summons, or is arrested. The business card must contain the officer's name, badge number, assignment, and a contact number for comments or complaints. For pedestrian stops, officers are required to provide name and badge number when requested by the person detained. This procedure reinforces the policy on unbiased policing by reminding officers to remain respectful, professional and fair during stops.

NOPD should institute a means to establish trust and cooperation within the community and to affirm the NOPD's commitment to impartial policing. Such a commitment could include instituting a business card or identification requirement as is used in Denver and/or publishing its investigatory stops policy online for public consumption with the reiteration that the stop of an individual based on race and ethnicity alone, violates federal law as is done in Cincinnati.

***NOPD RESPONSE:*** *NOPD stated that under the pending Federal Consent Decree, the NOPD has agreed to a comprehensive review of bias-free policy, but also stated that NOPD policy already provides a clear statement on unbiased policing in Chapter 41.6.*

***OIPM COMMENT:*** *As stated previously with regard to Finding 3, the OIPM commends the NOPD for requesting assistance from the U.S. Department of Justice Community Oriented Policing Services (COPS) and implementing significant changes to the Academy Recruit training on the issues of bias-free and community oriented policing. NOPD Policy Chapter 41.6, however, has not been revised since November 2001. Chapter 41.6 should reinforce the newly implemented training on bias-free policing by including references to the training or statements to officers about remaining aware and respectful of community concerns of racial profiling.*

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<sup>67</sup> *Id.* at 2.

## PART II: NOPD FIELD INTERVIEW DATA COLLECTION & AUDITING

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In an email to the entire Department on July 27, 2012, Superintendent Ronal Serpas provided the following statement:

Terry Stops and Traffic Stops, professionally and constitutionally performed, have long been two valuable tools in enforcing the law to disrupt crime. Please understand that correctly using these, and any tools, that we can to make New Orleans the safest city it can be is critical as we protect the rights of citizens and those we accuse of crime.

The police practice of stop and frisk is an important and useful tool to detect and prevent crime. If, however, the practice is not monitored closely by the police department then a stop and frisk program has the potential to engender controversy and tense relations between the police and the community. Police departments can help allay community concerns about stop and frisk practices by communicating the purpose of the program and describing the policies and procedures that govern the program. Furthermore, monitoring the implementation of a stop and frisk program through data collection and analysis is arguably the most persuasive method of demonstrating to the public that the program serves a positive purpose and is being conducted equitably and lawfully.

Well-designed and executed data collection and analysis can inform policy change by revealing whether a stop and frisk is conducted according to constitutional standards and established departmental policy. Individual officers can then be held accountable for behavior that violates constitutional standards, enabling agencies to take necessary instructional and corrective actions.<sup>69</sup>

Collecting and analyzing stop and frisk data provides the department with information that can be shared publicly. By making stop and frisk data available to the public, a police department informs the community that law enforcement is committed to unbiased policing. Sharing the data opens a dialogue between the agency and the public and empowers the community by offering the community an opportunity for its independent assessment of police activity. By providing a mechanism of accountability to the community, data collection can “support community policing by building trust and respect for the police in the community.”<sup>74</sup>

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<sup>69</sup> Elizabeth G. Hill, *An Evaluation of: Racial Profiling Data Collection and Training* at 7 (Aug. 27 2002); Fridell, Lorie, *Racially Biased Policing: A Comprehensive Agency Response*, Presented by The National Institute of Crime Prevention, Las Vegas, NV (July 14-16, 2008).

<sup>74</sup> Fridell, Lorie, et al, *Racially Biased Policing: A Principled Response*, Police Executive Research Forum, at 117 (2001); U.S. Dep’t of Justice, *A Resource Guide on Racial Profiling Data Collection Systems: Promising Practices and Lesson Learned*, 13 (Nov. 2000).

According to the U.S. Department of Justice:

The only way to move the discussion about racial profiling from rhetoric and accusation to a more rational dialogue about appropriate enforcement strategies is to collect the information that will either allay community concerns about the activities of the police or help communities ascertain the scope and magnitude of the problem.<sup>75</sup>

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## DATA COLLECTION METHODOLOGY

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Identifying the specific questions to be answered requires thoughtful consideration and depends on what the department hopes to learn. Once the questions are identified, the department can identify the types of data to be collected.

Stop and frisk data should also reflect information relevant to important questions from the community. There may be two primary community interests for collecting and analyzing stop and frisk data: (1) to assess whether officers are stopping individuals without reasonable suspicion in violation of federal and state law; and (2) to assess whether police stop and frisk practices disproportionately affect specific groups of people.<sup>76</sup>

### **A. Types of Data Collected**

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The data collected should indicate information that addresses community concerns of biased policing and provides departments with information on crime patterns and officer activity. These variables include: the reason for the stop; the stop-initiating party; time, date, location; the subject's apparent race, age and gender; vehicle characteristics; stop outcome; search and evidence information; and officer information.

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<sup>75</sup> U.S. Dep't of Justice, *A Resource Guide on Racial Profiling Data Collection Systems: Promising Practices and Lesson Learned*, 13 (Nov. 2000).

<sup>76</sup> Most academic literature discusses data collection for assessing the existence of racially-biased policing. There is little research on data collection for the purpose of assessing whether stops and subsequent searches are based on reasonable suspicion. This may be because community complaints have historically addressed racially-biased policing. It may also be because it is somewhat easier to gather data to show disparate impact (for example, the demographics of the population stopped) than it is to collect data to analyze whether a particular officer had reasonable suspicion for a stop (which requires identifying and measuring the particular that motivated the officer to make the stop).

## Reason for the Stop

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Experts largely agree that the reason for the stop is “one of the most important pieces of information” collected during a police stop.<sup>77</sup> Knowing the reason for the stop, when articulated by the officer in his or her own words, permits analysts to identify reported stops that were initiated absent reasonable suspicion of criminal activity. Understanding the reason for the stop also allows an analyst to gauge the level of officer discretion; circumstances where officers can exercise a high level of discretion invite both the intentional and unintentional exercise of bias.<sup>78</sup>

## Stop-Initiating Party

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Officers should also report whether the stop was self-initiated (by the officer) or in response to a request for a stop (e.g. a call for service from dispatch or from an individual). Differentiating between “self-initiated” and “reactive” stops provides information to help evaluate the level of discretion when examining potential bias.

## Time, Date, and Location

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The vast majority of jurisdictions nationally, along with the NOPD, collect information on time, date, and location. Time- and place-based policing enables departments to employ an evidence-based problem-solving approach to crime in the future. It allows supervisors to monitor the activity of officers and enables departments to target resources where more resources are needed. Time and place-based policing can also assist with criminal investigations by placing identified suspicious persons in specific areas at certain times. These contextual variables are also necessary for advanced analyses that indicate whether some groups of individuals are being treated differently than others.<sup>79</sup>

## Subject’s Apparent Race, Age, and Gender

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General subject characteristics, such as perceived race, age, and gender, frequently correlate with allegations of discrimination (e.g., “young black males” are presumed to be frequent

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<sup>77</sup> U.S. Dep’t of Justice, *supra* at 48; Fridell, Lorie, et al, *Racially Biased Policing: A Principled Response* 131(Police Executive Research Forum, 2001).

<sup>78</sup> High-discretion stops involve stops for suspicious activity in which officers do not observe a specific criminal violation; low discretion stops include officers’ direct observations of criminal activity. In the traffic-stop context, law enforcement agencies might consider minor violations, such as failing to signal when changing lanes, high-discretion stops because such violations are common and do not pose significant threats to public safety. Agencies might consider more significant violations, such as speeding significantly above the speed limit or running a red light, as low-discretion stops (Fridell, 2001).

<sup>79</sup>Fridell, Lorie, et al: *Racially Biased Policing: A Principled Response*, Police Executive Research Forum, at 128 (2001).

targets of “racial profiling”).<sup>80</sup> Advanced analyses that include these subject variables can help determine how often the variables appear to be predictors of whom will be stopped.

### Vehicle Characteristics

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Collecting information on vehicle characteristics, such as the license plate number and the state of vehicle registration makes it possible to conduct an independent audit of the data collected by cross-checking the data with information from the Department of Motor Vehicles. Descriptive characteristics of the vehicle, such as the type, condition and age of the vehicle, could also be used to determine whether a disparity in vehicle stop outcomes might be due to socio-economic status rather than race/ethnicity.<sup>81</sup>

### Stop Outcome

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According to Dr. Lori Fridell, the former Director of Research at the Police Executive Research Forum, “Beyond data collection on *whom* police stop, another important question is whether they treat those they stop differently based on their race/ethnicity.” To capture stop outcome information, experts suggest tracking whether a stop resulted in an arrest, ticket/citation, verbal warning, or no action.<sup>82</sup>

Information on stop outcomes is also helpful for evaluating the accuracy of reasonable suspicion determinations. A “hit rate” analysis computes how often stops lead to recovering contraband (including weapons), arrests, or other legal sanctions. Additionally, a hit rate analysis can help determine whether reasonable suspicion existed for a stop:

[Reasonable and articulable suspicion] determinations are predictions that crime is afoot or has recently occurred. An accurate determination of [reasonable and articulable suspicion] could lead [to] the apprehension of an offender who has just committed an offense, the apprehension of someone who is carrying contraband (including weapons), or the identification of a suspect in a prior crime ...<sup>83</sup>

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<sup>80</sup>Fridell, Lorie, et al: *Racially Biased Policing: A Principled Response*, Police Executive Research Forum, at 129 (2001); *but see*, U.S. Dep’t of Justice, *Principles for Promoting Police Integrity*, 16-17 (2001) (recommending that agencies collect information on gender but not age).

<sup>81</sup>Tillyer at 76; DOJ *Resource Guide* at 45.

<sup>82</sup>Fridell, Lorie, et al, *Racially Biased Policing: A Principled Response*, Police Executive Research Forum, at 132 (2001); Tillyer at 132; *see also* Ian Ayres, *A Study of Racially Disparate Outcomes in the Los Angeles Police Department*, at i (“It is implausible that higher frisk and search rates are justified by higher minority criminality when . . . frisks and searches are substantially less likely to uncover weapons, drugs or other types of contraband.”)

<sup>83</sup> Fagan at 62; Jeffrey Fagan, *Expert in Floyd v. City of New York*, 08 Civ. 01034, p. 62; *see also* David Harris, *The Reality Of Racial Disparity In Criminal Justice: The Significance Of Data Collection*, LAW & CONTEMPORARY PROBLEMS, at 81-82(2003).

Relevant “hit rate” variables for Fourth Amendment analysis include: (1) whether a stop led to an arrest of a subject or a citation, and (2) whether contraband was seized.<sup>84</sup> In order to allow for the most accurate analysis of success rates, departments should collect stop outcome information for each individual involved in a stop.<sup>85</sup>

### Search and Evidence Information

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Like stop outcome data, information on whether or not an officer has conducted a search (including a frisk) during a stop is useful for analyzing allegations of biased policing.<sup>86</sup> Also, collecting data on search outcomes (such as whether evidence was obtained, and if so, what kind and quantity) also allows an agency to assess search productivity and the presence or absence of a sufficient legal cause for the search.<sup>87</sup> At a minimum, experts recommend that officers record information on whether or not a search occurred, what was searched, the legal basis for the search, and the results of the search.

Requiring officers to record the authority for the search provides contextual information for analysis. According to Dr. Fridell, it also reminds officers of the legal limits on their ability to search.<sup>88</sup> She recommends that, at a minimum, officers record whether authority for the search emanated from one of the following:<sup>89</sup>

- Consent – with the permission of the person searched<sup>90</sup>
- Reasonable suspicion (weapon) - specific and articulable facts, which, taken together with rational inferences from those facts suggest that an individual is, has been, or may be engaged in criminal activity
- Incident to arrest – subsequent to a lawful arrest, the officer may search the person and areas within the arrestee’s reach for weapons or evidence of the crime
- Probable cause – reasonable belief that an offense has been or is being committed
- Inventory - the routine accounting of the contents of an impounded vehicle
- Plain view - evidence of criminal activity or the product of a crime that can be seen without an entry or search
- Other

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<sup>84</sup> Fagan at 62-63.

<sup>85</sup> Tillyer *supra* at 76.

<sup>86</sup> Fridell at 135; Rameriz at 51; *see also* Harrison at 91

<sup>87</sup> Fridell at 135; Rameriz at 51; Tillyer at 76.

<sup>88</sup> Fridell at 135

<sup>89</sup> Some jurisdictions, such as New York and Philadelphia, require officers to report the factors establishing the legal basis (e.g. probable cause) that justified a search, or the reasonable suspicion that justified a frisk.

<sup>90</sup> *see also* Harrison at 91 (“[C]onsent searches give us an invaluable measure of how police use discretion that is for all practical purposes legally unbounded.”).

The Department of Justice also recommends that departments distinguish small quantities of contraband recovered from large quantities:

[O]fficers may be making many stops that result in small “finds” of drugs or guns, but such stops do not uncover higher quantities of contraband associated with trafficking. By having some qualitative information about the quantities seized in searches, departments can monitor the effectiveness of their traffic-stop efforts.<sup>91</sup>

Therefore, in order to prioritize valuable resources, departments should track the kind of contraband recovered from a search and the quantities of the contraband seized.

### Officer Information

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Linking data to individual officers enables analysts to examine whether specific officer characteristics are associated with disparities in decision-making. According to Professor Tillyer, an officer’s age, gender, race, assignment, education, and experience may correlate to decision-making.<sup>92</sup> In addition, collecting data on individual officers allows departments to identify officers as part of its Early Warning System. Some experts argue that an agency cannot correctly assess or respond to racially biased policing without information on individual officers’ activity.<sup>93</sup>

### B. Auditing of Stop and Frisk Data

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Police departments collecting stop and frisk data must ensure that officers report the correct information by the most efficient means possible. If the data collected is inaccurate, or if it is incomplete, it will lead to invalid analysis and incorrect findings. Inaccurate or incomplete data also has the potential to damage a department’s reputation and its relationship with the community.<sup>94</sup> In contrast, a department armed with accurate and complete data can engender trust, can counter claims of biased policing with hard data, and can dissuade litigation by showing a commitment to self-correction.<sup>95</sup>

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<sup>91</sup>Rameriz at n123.

<sup>92</sup>Tillyer at 77.

<sup>93</sup>See, e.g. Tillyer at 77, Fridell at 132-133.

<sup>94</sup>See Brandon Garrett, *Remedying Racial Profiling*, 33 Colum. Hum. Rts. L. Rev. 41, 52 (2001).

<sup>95</sup>See Lamberth, Karl, et al, *Practitioners Guide for Addressing Racial Profiling* (Oct. 3, 2005); see also Elizabeth G. Hill, *An Evaluation of: Racial Profiling Data Collection and Training* (Aug. 27 2002). It should be noted that the ability of data collection to deter litigation is not universally accepted, as some argue that the collected data actually provides the hard proof a litigant might need to prove the existence of unlawful practices. See, e.g., Fridell, Lorie, et al: *Racially Biased Policing: A Principled Response*, Police Executive Research Forum, at 118-19 (2001); U.S. Dep’t of Justice, *A Resource Guide on Racial Profiling Data Collection Systems: Promising Practices and Lesson Learned*, 14 (Nov. 2000); Tillyer, Rob et al, *Best Practices in Vehicle Stop Data Collection and Analysis, Policing: An International Journal of Police Strategies & Management*, at 71 (2010).

Police departments should implement a mechanism for spot-checking and/or cross-checking the stop and frisk data collected. A department can check Stop and Frisk information against another source to ensure that the data is reliable and correct.

1. Stop Receipts. One method of checking the accuracy of stop and frisk data collection and reporting is to have officers issue a “receipt” to the person stopped.<sup>98</sup> Receipts give individuals who have been stopped a record of the encounter, which can be referenced if the individual wanted to register a complaint against an officer or a compliment/commendation on behalf of an officer. The practice of issuing receipts to document stops can also lessen the chance that an officer might falsify or fail to submit a report, which in turn can ease the individual’s concern about the encounter.<sup>99</sup> For the practice of issuing receipts to be effective, however, the department should engage in a public education campaign to inform individuals that they are entitled to a receipt.
2. Squad Car Video and Other Audio/Video Recordings. Periodic review of audio and video recordings from cameras and audio-recording devices mounted in police cars and on police officers’ uniforms can provide real-time documentation of individual encounters. As required by the proposed NOPD consent decree, Department supervisors can review these tapes/recordings on a regular basis and compare what they see and hear with the information reported by the officer and evaluate their officers’ interactions with the public.<sup>100</sup> Recordings also provide feedback for officers, who can review them for the purpose of evaluating and improving their encounters with individuals. In addition, video and audio recordings provide documentation that can be entered as evidence during criminal and civil cases.<sup>101</sup>
3. Review Associated Documentation. Stop and frisk data can also be compared to other corresponding documentation, such as arrest records or issued citations<sup>102</sup>

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<sup>98</sup> The Denver police department has a practice of providing receipts to the person stopped in a stop and frisk encounter.

<sup>99</sup> See Brandon Garrett, *Remedying Racial Profiling*, 33 Colum. Hum. Rts. L. Rev. 41, p.122 (2001) (article in which Professor Garrett explains the value of having the officer fill out the form in front of the citizen: “the citizen knows that the stop is documented, that its rationale is being recorded, and that she can check the identity of the officer. However, if the form is filled out after the fact without any questions being asked, then the citizen may be less likely to trust in the reporting.” Providing the citizen a copy of this form, or requiring the citizen to sign off on the form, would also promote citizen confidence in the reliability of the form.)

<sup>100</sup> See, U.S. Dep’t of Justice, *Principles for Promoting Police Integrity: Examples of Promising Police Practices and Policies*, January 2001; (“For agencies with patrol cars equipped with video cameras, supervisors should periodically review a sampling of in-car video tapes of stops and should take appropriate action whenever it appears that the agency’s policies are being violated or the officer is engaging in at-risk behavior”).

<sup>101</sup> See Matthew Thurlow, *Lights Camera, Action: Video Cameras as Tools of Justice*, 23 John Marshall J. of Comp. & Info. Law 771 (2005).

<sup>102</sup> This is one of the methods used by the Oakland Police Department’s Office of Inspector General.

According to experts, along with periodic, comprehensive data analysis, data auditing should be an ongoing process. A report released on behalf of the Department of Justice's Office of Community Oriented Policing Services (COPS) explains: "Data analysis should begin almost simultaneously with data collection. This prevents a long time period from passing before discovering that certain data is missing in reports or data is not being collected at all."<sup>103</sup>

## NOPD FIELD INTERVIEW DATA COLLECTION

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The NOPD currently collects stop and frisk data and inputs such information into a specific database for Field Interviews. The OIPM reviewed the types of data collected and retained within the Field Interview Card database, and evaluated the NOPD data collection methods based upon its research of expert recommendations and national best practices in data collection, auditing, and analysis.<sup>104</sup>

**FINDING 1: CHAPTER 41.30 DOES NOT STATE THE PURPOSE OR OBJECTIVES FOR COLLECTING F.I.C.S, AND NOPD DEPARTMENTAL POLICIES ARE INTERNALLY INCONSISTENT ON THE MATTER OF WHEN OFFICERS ARE REQUIRED TO COMPLETE F.I.CS DURING POLICE-CIVILIAN INTERACTIONS.**

The NOPD Policy Manual Chapter 41.30 on Field Interviews describes a field interview as an important point of contact between officers and individuals for preventing and investigating criminal activity. The policy requires that officers record F.I.Cs on all *Terry* stops (whether pedestrian or vehicle) and all instances where an officer stops a vehicle based upon the officer's observation of a traffic violation. The NOPD's F.I.C also includes reason codes for other encounters that may not constitute or become a *Terry* stop, including "citizen contact," "flagged down," and "calls for service."

During the course of OIPM's review, the OIPM spoke to NOPD officers who reported that some district supervisors instructed officers to submit information for individual encounters that did not involve suspicious persons or criminal activity (e.g. traffic accidents). In early 2012, an officer from the Training Division informed NOPD leadership that officers were being instructed, incorrectly, to complete F.I.Cs whenever they came into contact with individuals, regardless of the reason.<sup>105</sup> Additionally, OIPM representatives observed instructors telling officers that, despite Policy Manual instructions, the Superintendent was instructing officers to fill out F.I.Cs for every individual interaction. In response, NOPD leadership issued

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<sup>103</sup> *Id.*

<sup>104</sup> OIPM requested and received from NOPD the FIC data reported to the FIC database from January 1, 2011 to June 30, 2011. The following review, evaluation, and recommendations were based upon the FIC data from that period, the 2011 NOPD Policy Manual, and information gathered during interviews with NOPD officers and in-service trainings from June 2011 through August 2012.

<sup>105</sup> Brendan McCarthy, *As NOPD files away mountain of data from traffic stops, critics warn overuse may break law.* New Orleans Times-Picayune, July 10, 2012.

departmental memoranda and public statements to clarify departmental policy that stops are to be made only where reasonable suspicion exists.

Due to the abovementioned information given to officers, combined with the lack of a descriptive narrative to explain the officer's reasonable suspicion on the F.I.C, the OIPM was unable to determine which reported F.I.C stops were actually due to "reasonable suspicion."

The stated purpose of the field interview which is provided in Chapter 41.30 aligns with the constitutionally recognized practice of police stops. However, the NOPD's use and objectives for collecting and retaining F.I.Cs for stopped individuals is unclear, with regard particularly to stops that do not result in a citation or arrest. A field interview involves an extensive line of questioning in which the individual is asked to share personal identifying information, including Social Security number, address, nicknames, scars, and tattoos. Although the individual is not legally obligated to answer any of the questions, lack of cooperation may quickly raise the suspicions of the officer, which could lead to more serious action being taken (e.g. the individual may be searched, cited, or arrested). Unless the stop meets the legal standard of reasonable suspicion, these questions and the retention of such data raise issues regarding an individual's Fourth Amendment rights and right to privacy.<sup>106</sup>

**NOPD RESPONSE:** *"The revised policy specifically related to F.I.C's is currently being reviewed by the City Attorney's Office for compliance with Consent Decree Agreement mandates." In January 2013, the OIPM requested and received from the NOPD the most updated Policy Manual. Chapter 41.30 was included within the updated Policy Manual, but the Field Interview/Stop & Frisk policy had not been revised since October 2003. The OIPM inquired if Chapter 41.30 had been considered for revision, and the NOPD informed OIPM that Chapter 41.30 and some other Policy chapters were still under review.*

**OIPM COMMENT:** *Upon review of the current Policy Chapter 41.30, the OIPM is particularly concerned that the purpose for collecting and retaining F.I.Cs is not stated in the policy nor made clear to officers. In order for officers to carry out assigned duties in a consistent and effective manner, the officers should be fully informed of the purpose of police policies and procedures.*

*If the F.I.Cs are being used to track and investigate criminal activity, then F.I.Cs may be collected only where the officer has specifically articulated reasonable suspicion that an individual stopped is engaged in criminal activity. The F.I.Cs can also be used to evaluate whether an officer's conduct properly justifies a stop based on reasonable suspicion but only if officers are required and prompted to specifically describe the reason and circumstances leading to the stop.*

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<sup>106</sup> This type of questioning would only be appropriate if, during a routine stop, an officer could articulate reasonable suspicion of criminal activity. Otherwise, it risks violating an individual's Constitutional rights.

**FINDING 2: NOPD'S POLICY MANUAL REQUIRES OFFICERS TO ARTICULATE THE EXPLICIT REASON FOR INITIATING A FIELD INTERVIEW; HOWEVER, THE DEPARTMENT'S F.I.C DOES NOT INCLUDE A NARRATIVE FIELD TO BE COMPLETED BY THE OFFICER AT THE TIME OF THE STOP.**

The NOPD's policy manual chapter on F.I.Cs requires officers to record a "brief description of the circumstances which [sic] justify [each] stop."<sup>107</sup> However, the police department's centralized F.I.C data system does not allow officers to record the observed or suspected violation and does not allow officers to describe the specific circumstances that had led to the stop. Instead, the NOPD's Field Interview Card includes a field "reason for stop," in which officers can choose one from a drop down menu that includes: traffic violation; suspect person; call for service; citizen contact; criminal violation; suspect vehicle; flagged down; juvenile violation; present at crime scene; or other.

The F.I.C format does not prompt officers to record a narrative description of the circumstances leading up to the stop or describe the actions of the officer during the stop. NOPD officers can only make one selection from a drop down list, that includes a vague "other" category.

**NOPD RESPONSE:** *NOPD agreed that there are ways to improve its electronic F.I.C format and that a free-form narrative would be beneficial. NOPD stated that the necessary funding to make improvements to the system has been unavailable, but that the "costly reprogramming concerns" would be remedied through funding and technical assistance as directed by the Consent Decree agreement.*

*On January 28, 2013, the OIPM requested further information from NOPD regarding the reprogramming costs, and inquired whether NOPD had received a quote for the services of an IT Analyst to redesign the F.I.C. The NOPD responded to this inquiry on February 22, 2013, and stated that certain software changes to the F.I.C. system will be required by the Consent Decree "but until the exact nature and extent of changes is agreed upon, no cost estimate can be obtained." The NOPD also stated that the cost of implementing reforms was discussed in the 2013 Budget presentation.*

**OIPM COMMENT:** *The inclusion of a free-form narrative would allow for the critical analysis of reasonable suspicion for stops, which constitutes the main concern about the police practice of stop and frisk. The F.I.C should be redesigned at least to include and require the officer's narrative.*

*Neither the NOPD Budget Presentation nor the 2013 Adopted Budget for the City of New Orleans provides enough detail to determine whether funds were requested or approved for IT assistance to the NOPD for the redesign of the F.I.C system. If the Consent Decree is implemented, the City of New Orleans would be responsible for funding Consent Decree reforms and funding the necessary technical assistance to accompany any such reforms.*

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<sup>107</sup> NOPD Policy manual, Chapter 41.30, ¶ 7(c).

**FINDING 3: NOPD’S FIELD INTERVIEW CARD (F.I.C) PROMPTS OFFICERS TO REPORT THE SOCIAL SECURITY NUMBERS OF PERSONS STOPPED, RAISING CONCERNS ABOUT PRIVACY VIOLATIONS.**

Fields on the F.I.C prompt officers to report useful identifying information about persons stopped, such as first, middle, and last name; height, weight, and hair color; and tattoos, scars, or other marks. The F.I.C also prompts officers to report the subject’s Social Security number (SSN). The practice of collecting the Social Security numbers of stopped persons raises privacy concerns and does not serve a unique or helpful purpose.

The Federal Privacy Act limits the compulsory divulgence of Social Security numbers, and no federal, state, or local government agency can deny an individual any right, benefit or privilege because of the individual’s refusal to disclose his/her Social Security number.<sup>109</sup> State and local government agencies may ask individuals to disclose their SSN voluntarily but the agency must inform the individual that disclosure is voluntary and the individual has the right to request the reason and use that will be made of such disclosure.<sup>110</sup>

NOPD Policy Chapter 41.30 also does not require the collection of Social Security numbers during Field Interviews, but the F.I.C still prompts the officer to collect the SSN. NOPD Policy Chapter 41.30 does not make any reference to Social Security numbers. If an individual requests to know why and for what purpose the Social Security number is being requested, an officer does not have an official policy statement to explain the purpose for collecting such information.

From a literature review of best practice recommendations on the police practice of stop, question, and frisk, no expert proactively recommends that agencies record the Social Security numbers of persons who are not arrested or cited as part of stop information and no major city police department reviewed requires the collection of Social Security numbers from stopped individuals due to the potential violation of privacy rights of the individual. At least one state has banned a law enforcement agency from recording that information. In 2010, due to the community concerns and controversy surrounding New York Police Department stop and frisk practices, New York’s Governor Paterson signed legislation that prohibited the New York Police Department (NYPD) from recording the name, address and Social Security numbers of any persons stopped who were not cited or arrested.<sup>111</sup>

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<sup>109</sup> Privacy Act of 1974, 5 U.S.C. §552a

<sup>110</sup> 5 U.S.C. §552a, Sec. 7(b) states “Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.”

<sup>111</sup> NY SB 7945-2009, NY CPL § 140.50 (N.Y. 2011). Under the law, the database can still include a record of the stop and catalog its points of data – including where and when the stop took place, the race and gender of the person stopped and the reason that prompted the officer to make it.

**NOPD RESPONSE:** NOPD stated that the response to an officer's request for the person's Social Security number is voluntary, not compulsory, and 38% of NOPD records do not contain a social security number entry.

**OIPM COMMENT:** The NOPD has not provided a clear explanation for the purpose of collecting such information during field interviews. If there is a specific purpose for collecting the Social Security numbers of all individuals who are stopped and questioned in field interviews, then the NOPD should develop a clear policy statement establishing a rationale for collecting such information and how it will be used. Whether or not any individual has ever asked for a rationale for the collection of such personal information does not justify the NOPD's lack of a policy statement. The Federal Privacy Act requires law enforcement agencies to be able to inform individuals of the purpose for disclosing Social Security numbers. Officers must be fully informed of the purpose for this procedure in order to provide the proper explanation to individuals.

The OIPM questions the usefulness of the practice of collecting SSNs due to the NOPD's inconsistent implementation and results.

**FINDING 4: NOPD RETAINS IDENTIFYING INFORMATION FOR ALL PERSONS STOPPED IN ITS FIELD INTERVIEW DATABASE FOR A MINIMUM OF THREE YEARS, VIOLATING ITS OWN POLICIES.**

According to NOPD staff, all of the information reported to the department's field interview database, including all identifying information about persons stopped, is retained for a minimum of three years,<sup>112</sup> during which time all officers have the authority to search the database.<sup>113</sup> This ability to search by any and all NOPD officers is particularly problematic because NOPD staff informed the OIPM that the database is primarily used by investigators to identify potential suspects or persons of interest in areas where crime has occurred.

The NOPD Policy Manual limits the gathering of criminal intelligence to circumstances where there is an indication that a crime has been committed, about to be committed, or is being planned, and the information gathered is relevant to a *current or ongoing* investigation.<sup>114</sup>

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<sup>112</sup> Louisiana Revised Statutes 44:411 requires state agencies to develop and submit formal records retention policies to the State Archives. Until a records retention policy is approved, La.R.S. 44:36 requires agencies to maintain their records for three years from the date the record is made.

<sup>113</sup> NOPD provided Field interview data to the OIPM for the period of January 1, 2011 through June 30, 2011. The FIC data included subject information on over 40,000 individuals. See OIG Inspections and Evaluations Division report for more information.

<sup>114</sup> Specifically, NOPD Policy Chapter 51.01(3)(c) states: (a) Information gathering for intelligence purposes shall be based on circumstances that provide a *reasonable indication that a crime has been committed or is about to be committed or is being planned*. (b) Investigative techniques employed shall be lawful and only so intrusive as to *gather sufficient information to prevent the criminal act and/or to identify and prosecute violators*. (c) The intelligence function shall make every effort to ensure that information added to the criminal intelligence base is

Contrary to this policy, the NOPD has retained information about individuals who are no longer subject to investigation by keeping three-year-old stop information in the F.I.C database.<sup>115</sup>

The NOPD's practice of collecting personal identifying information on stopped persons raises serious privacy concerns and does not accord with best practices. In fact, few jurisdictions the OIPM reviewed, keep information on suspects' names. At least one state (New York) has banned a law enforcement agency from keeping personal identifying information in its stop and frisk database.<sup>116</sup>

Several states have formal records retention schedules for all state and local law enforcement agencies that include detailed policies on retaining specific types of police reports, including field interview/stop reports.<sup>117</sup> Louisiana requires state agencies to develop and submit a formal records retention schedule, but NOPD has not developed a formal records retention schedule and keeps records, including all personal identifying information, for at least three years.

**NOPD RESPONSE:** *NOPD stated, "F.I.C system records are not a part of the criminal intelligence files being referenced under this finding." The NOPD referred OIPM to a separate, standalone NOPD policy, Chapter 51.01, governing intelligence data gathered in support of 'criminal enterprises and gang activity' that specifically conforms to the requirements of the Code of Federal Regulations on criminal intelligence and requires an annual audit and purging of such records.*

**OIPM COMMENT:** *The OIPM maintains, that NOPD policy on Field Interview Cards does not explain the purpose, use, retention, or analysis of field interview information. The NOPD has not clearly delineated which collected information sources a F.I.C database and which collected information sources a criminal enterprises and gang activity' database. The NOPD stated that F.I.C. stop data can be an effective and valuable tool used to address profiling complaints or identify officers in need of additional training. The OIPM agrees with the use of F.I.C.s for that purpose however, that objective can be accomplished fully without collecting the names,*

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*relevant to a current or ongoing investigation and the product of dependable and trustworthy sources of information. [emphasis added]*

<sup>115</sup> Generally, *Terry* stops are limited to brief detentions during which police perform an investigation to "confirm or dispel their suspicions." *United States v. Sharpe*, 470 U.S. 675, 686 (1985). Therefore, by definition, a person who is stopped and then released is no longer under suspicion.

<sup>116</sup> In July 2010 New York's Governor Paterson signed legislation that prohibits the NYPD from keeping information that establishes the personal identity (name, address, SSN) of those persons stopped and released without further legal action taken in its stop and frisk database. See NY SB 7945-2009, NY CPL§ 140.50 (N.Y. 2011). Under the law, the database can still include a record of the stop and catalog its points of data, including where and when the stop took place, the race and gender of the person stopped, and the reason that prompted the officer to make the stop.

*Id*

<sup>117</sup> New York, New Jersey, Rhode Island, Colorado, and Florida are just a sampling of states that post the records retention policies for state and local police departments online.

*addresses and Social Security numbers of individuals stopped, questioned, and released without suspicion, citation, or arrest. Collecting personal information on all individuals stopped regardless of the outcome results in a database, whether one distinct database or two separate databases, sourced with the names and addresses of innocent individuals. Such a practice is violative of due process rights and privacy rights.*

*The New York “Stop and Frisk” law was passed specifically to address this problem. That legislation prohibits the retention, in an electronic database, of personal information of individuals who are stopped, questioned, or frisked by police but not issued a summons, citation, or arrested. The law does not prevent officers from entering generic information such as the race and gender of the individual and the location of the stop. Upon signing the legislation, Governor David Paterson compared the protection offered by the new legislation with the procedures in place to protect those accused of or charged with crimes: “There is a principle – which is compatible with the presumption of innocence, and is deeply ingrained in our sense of justice – that individuals wrongly accused of a crime should suffer neither stigma nor adverse consequences by virtue of an arrest or criminal accusation not resulting in conviction...Those accused of a crime are permitted to have their records sealed upon the dismissal of the charges. Therefore, simple justice as well as common sense suggests that those questioned by police and not even accused of a crime should not be subjected to perpetual suspicion.”<sup>118</sup>*

**FINDING 5: NOPD SEARCH DATA DOES NOT CLEARLY IDENTIFY WHO OR WHAT WAS SEARCHED DURING A STOP, AND OFFICERS ARE NOT REQUIRED TO RECORD A DESCRIPTION OF THE LEGAL BASIS FOR THE SEARCH.**

The design of the F.I.C does not allow officers to report on multiple searches that occurred during one stop. Officers are prompted by the database to record whether or not a search occurred, the type (vehicle, pat-down) the subject (driver, passenger—only relevant to vehicular stops), if evidence was seized, and what type of evidence (weapons, drugs, or other). Finally, the officer is asked to select a legal basis for the search from a list (consent, warrant, probable cause, inventory, incident to arrest, plain view).

The design of this system does not account for the fact that, during one stop, officers may conduct several pat-downs of separate individuals, or officers may conduct a pat-down and vehicle search. In both scenarios which occur frequently during police stops, the officer must articulate a legal justification for each search. Pat-downs must be supported by reasonable suspicion that a subject is armed and dangerous; vehicle searches are permitted with consent, warrant, or under strict legal guidelines.<sup>119</sup> The officers are not required to give any description of the circumstances that support reasonable suspicion or any legal justification for a search.

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<sup>118</sup> “Governor Patterson Signs ‘Stop and Frisk’ Bill into Law”, press release July 16, 2010 at [http:// www.governor.ny.gov/archive/patersonpress/07162010Stopand Frisk.html](http://www.governor.ny.gov/archive/patersonpress/07162010StopandFrisk.html).

<sup>119</sup> Officers may conduct an automobile search incident to a legal arrest with a warrant or with consent. An officer may also seize evidence of illegal activity that is in plain view in the vehicle. A warrantless search of a vehicle may occur in two instances: 1) when an officer arrests a driver or passenger of the vehicle the officer may search the

**NOPD RESPONSE:** *NOPD agreed that improvements should be made to the electronic F.I.C. system, but stated that the NOPD is awaiting technical support and funding provided through the Consent Decree.*

**OIPM COMMENT:** *Again, the New Orleans City Council approved the 2013 Budget including over \$134 million for NOPD Operations. The OIPM encourages the NOPD to move forward in seeking outside technical assistance to make improvements to the F.I.C. system.*

**FINDING 6: NOPD'S DATA AUDITING PRACTICES DID NOT ENSURE THAT F.I.C DATA IS ACCURATE OR COMPLETE.**

The NOPD does have protocols in place for supervisors to review F.I.Cs for completeness and accuracy, and to review squad car video footage and audio recordings from body microphones for potential officer misconduct and proper classification of encounters. However, information about whether or not a search occurred was frequently inaccurate, as was the listed ages of many of the persons being detained. The OIPM does not have any information evidencing the NOPD's efforts to ensure the accuracy and completeness of the data it collects from police-civilian encounters. The NOPD does not have a system in place to check the accuracy of F.I.C data after its collection. The NOPD also does not issue receipts to individuals after police encounters.

There is a lack of NOPD procedure in place to ensure officers are following protocol and creating F.I.Cs on the scene or shortly thereafter. Officers may be following proper protocol, but it is essential to have proper procedures in place to ensure compliance. There is a lack of NOPD standards for the type of data to be collected, for how long to keep the data, or for the purpose of maintaining such data. Additionally, there is a lack of procedure in place to ensure that the data collection and retention process is open and transparent.

Finally, a thorough audit would identify data integrity issues, but neither the NOPD nor the City of New Orleans have required a comprehensive audit of the department, internally or externally.<sup>120</sup>

**NOPD RESPONSE:** *NOPD stated that enhanced supervisory auditing processes were implemented in April 2011 under Field Operations Bureau Policy #8. This policy "defines the*

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arrestee's person and the area within his *immediate control*, which may include the vehicle and its contents, in order to ensure officer safety or to preserve evidence; (2) when an officer arrests a driver or passenger of a vehicle, the officer may search the vehicle if he/she has probable cause to believe the evidence pertaining to the crime for which the arrestee is being arrested may be found there. *Arizona v. Gant*, 556 U.S. 332 (2009).

<sup>120</sup> The July 24, 2012 Consent Decree requires the NOPD to develop a "protocol for comprehensive analysis, on at least an annual basis, of stop and search data collected."

*specific responsibilities of NOPD Integrity Control Officers and included measures addressing quality control requiring all F.I.C. undergo supervisory review and in perpetuity.”*

*The OIPM requested and received from NOPD a copy of the Field Operations Bureau Policy #8. The policy provided to the OIPM was made effective on September 23, 2012 and replaces and rescinds the F.O.B. Policy #8 revised on April 12, 2011.*

**OIPM COMMENT:** *The OIPM reviewed the updated FOB Policy #8. The policy establishes an Administrative Support Unit (ASU) within the Field Operations Bureau, for the purpose of monitoring compliance with departmental and F.O.B. policies. The personnel assigned to the FOB-ASU are assigned to ensure accountability and integrity standards by reviewing a wide range of reports and activities and monitoring compliance with all protocols, policies, rules and procedures governing NOPD operations. With regard to field interviews/stop and frisk, the policy states that the FOB-ASU shall review field interviews “as assigned by the FOB Commander.” The policy then states that the reviewer shall notify the District Commander in writing of any deficiency and provide a written recommendation to remedy any such deficiency.*

*The NOPD should be commended for implementing the above policy. However, in order for the policy to be effective it must: (1) require the FOB-ASU to review field interviews on a regular basis (preferably a certain number of random reviews each week) instead of only reviewing field interviews “as assigned by the FOB Commander”<sup>121</sup>; (2) include a specific standard required for field interviews; and (3) include a required action or remedy to be taken by the FOB-ASU if a field interview is found to be deficient.*

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<sup>121</sup> *Other reviews and inspections are required on a regular basis. As one example, the policy stated that FOB-ASU assigned personnel are required to monitor and inspect at least 5 paid details sites per week.*

## CONCLUSION AND RECOMMENDATIONS

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NOPD officers must conduct a stop and frisk of individuals suspected of criminal intent or behavior according to the Fourth Amendment of the U.S. Constitution. The NOPD should revise its policies and training to provide more practical guidance and real-life case examples of when and how to observe and articulate the specific facts and totality of the circumstances that may lead an officer to reasonably suspect an individual is engaged in criminal activity. Additionally, the NOPD should review model policies and best practice recommendations on implementing an effective policy of unbiased policing.

The benefits of data collection outweigh the potential drawbacks because of numerous complaints in New Orleans of incidents involving racially biased policing or stops without reasonable suspicion. In its review of NOPD arrests, the U.S. Department of Justice found that a significant number of arrests were constitutionally deficient. Vigorous data collection on the NOPD's stop and frisk policies would enable the OIPM and the NOPD to monitor police practices jointly and more effectively as required by the proposed Consent Decree. It would also enable the NOPD to institute policy and training reforms to prevent further constitutional violations.

**Based on the findings in this report, the OIPM believes the NOPD can begin to improve its stop and frisk data collection by implementing the following recommendations.**

## RECOMMENDATIONS

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### PART II: NOPD FIELD INTERVIEW DATA COLLECTION & ANALYSIS

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**RECOMMENDATION 1: NOPD OFFICERS SHOULD ONLY SUBMIT INFORMATION TO THE DEPARTMENT'S F.I.C. DATABASE WHEN THE INTERACTION IS THE STOP OF A PERSON SUSPECTED OF, OR CAUGHT ENGAGING IN CRIMINAL ACTIVITY.**

The purpose of the F.I.C database, according to NOPD staff, is to store personal identifying information about suspicious persons to aid the department in criminal investigations.

However, the NOPD should clarify the type of interaction reported by only completing F.I.Cs during valid field interviews, and submitting only these F.I.Cs into the field interview database.<sup>123</sup> If the NOPD prefers to collect information on every officer-civilian interaction, the

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<sup>123</sup> Professor Jeffrey Fagan recommends that agencies collect data on all citizen encounters, to determine whether officers' stop-and-frisk practices and policies are constitutionally viable. He believes that the more information an

department should save non-suspicious stops to a separate database, or rename the F.I.C database to indicate all interactions and information which it encompasses.

The U.S. Department of Justice noted in its report on its investigation of the NOPD that “it was apparent . . . that officers lack a uniform understanding regarding the completion, use, and preservation of F.I.Cs.”<sup>124</sup>

**NOPD RESPONSE:** *NOPD stated that the F.I.C. system is a “valuable investigative tool,” accessible only to authorized personnel. NOPD also commented that, “F.I.C. stop data can also be an effective and valuable tool used to address profiling complaints or to identify officers in need of additional training.”*

*In January 2013, the OIPM requested and received an updated 2013 NOPD Policy Manual, but Chapter 41.30 had not been revised since 2003. In response to further inquiries about certain policy chapter revisions, NOPD stated to the OIPM that Chapter 41.30 on Field Interviews was still being reviewed.*

**OIPM COMMENT:** *The OIPM reiterates concern that the NOPD does not have a clear policy statement for the purpose and use of F.I.C.s in Chapter 41.30. The OIPM also reasserts that officers do not need to collect personal identifying information during field interviews in order to use F.I.C. data to address profiling complaints or to identify officers in need of additional training.*

**RECOMMENDATION 2: NOPD SHOULD REQUIRE OFFICERS TO ARTICULATE IN A DESCRIPTIVE NARRATIVE THE SPECIFIC, OBSERVABLE BEHAVIORS THAT LEGALLY JUSTIFY THE STOP.**

Collecting inclusive information on predicate is integral for determining reasonable suspicion and preventing racially biased policing. However, the overwhelming belief of experts was that

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agency collects, the better the agency can understand officer practices on an individual level, as well as the department as a whole. Dr. Lorie Fridell, former Director of Research at the Police Executive Research Forum (PERF), recommends that agencies, at the very least, collect data on all vehicular stops (including those for suspicious activity). She argues that collecting data on all vehicle stops “achieve[s] the appropriate balance between producing information and expending resources.”<sup>123</sup> She believes that data collection on pedestrian stops and nonconsensual encounters is also helpful because those activities have great potential for racial bias (given that they are normally made in circumstances beyond a supervisor’s observation and that they involve the exercise of an officer’s discretion).<sup>123</sup> However, she points out that collecting data on pedestrian stops and nonconsensual encounters can be burdensome and costly.

<sup>124</sup> U.S. Dep’t of Justice, Civil Rights Division, *Investigation of the New Orleans Police Department*, 29 (March 16, 2011) (“Some officers stated they prepared FICs only in ‘special cases,’ while others said they prepared FICs on people they encountered during traffic stops and calls for service.”).

a narrative field in which the officers describe the circumstances for each stop would be the best way to gather information that will be used to analyze reasonable suspicion.<sup>125</sup>

For example, the city of Oakland, California recently revised its data collection system to include a narrative field in which officers are required to state, in their own words, their basis for having reasonable suspicion for a stop.<sup>126</sup> According to representatives from the Oakland Police Department (OPD), the OPD added this narrative field because it was the best way to evaluate whether individual officers possessed the requisite reasonable suspicion for a *Terry* stop.<sup>127</sup> Similarly, in response to litigation alleging discriminatory policing in Pennsylvania, the Philadelphia Police Department included in its field interview form a narrative field in which officers must write the basis for the stop.<sup>128</sup>

The NOPD requires officers to select their reason for stopping an individual from among a choice of factors.<sup>129</sup> Professor Jeffrey Fagan of Columbia Law School, who performed an analysis of the New York City Police Department's stop and frisk practices, found that the enormous number of combinations of checkboxes "made an analysis of the legal sufficiency of individual cases extremely difficult, unwieldy and uninformative."<sup>130</sup>

In addition, an Oakland Police Department representative criticized the multiple-choice format because it often results in officers misrepresenting their basis for the stop.<sup>131</sup> For example, officers may repeatedly check off a combination of boxes they believe will withstand constitutional scrutiny, regardless of whether or not the checkboxes accurately portray the reason for the stop.

Professor Fagan noticed such a trend in his study of the New York City Police Department's practices. He found that the majority of officers checked off "furtive movements" or "high crime rates" as one of their basis for the stop. When either of those two factors are checked off in combination with one or more other factors—such as "actions indicative of engaging in

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<sup>125</sup> Utilizing a narrative field, however, has its drawbacks. Officers must be trained to complete these fields accurately and to use language that is understandable and reviewable by analysts. Writing the circumstances of the stop may be time consuming. In addition, narrative fields present the risk of officers recording "canned answers" – repeated language that may not accurately describe the circumstances of the stop.<sup>125</sup> Finally, an analyst's review of narrative fields requires more time and expense than reviewing data collected in non-narrative or multiple choice formats.

<sup>126</sup> Conversation with Sergeant Tam Dinh, July 13, 2011.

<sup>127</sup> Conversation with Sergeant Tam Dinh, July 13, 2011.

<sup>128</sup> Conversation with David Rudovsky, July 15, 2011.

<sup>129</sup> For example, in New York, officers select from among the following choices: Carrying objects in plain view used in commission of crime (e.g., slim jim, pry bar, etc.); Fits description; Actions indicative of "casing" victim or location; Actions indicative of acting as a lookout; Suspicious bulge/object (describe); Actions indicative of engaging in drug transaction; Furtive movements; Actions indicative of engaging in violent crimes; Wearing clothes/disguises commonly used in commission of crime; Other reasonable suspicion of criminal activity (specify)

<sup>130</sup> Fagan at 49.

<sup>131</sup> Conversation with Sergeant Tam Dinh, July 13, 2011.

drug transaction”—the stop is more likely to pass constitutional scrutiny, despite that neither basis, alone, is sufficient under New York law to justify a stop. Professor Fagan then tested the likelihood that stops justified by either of those factors actually were based on reasonable suspicion by examining whether they resulted in a citation or arrest. The data showed that stops in which either box was checked off were less likely to result in a citation or an arrest than stops in which neither box was checked off. As a result, Fagan concluded that stops in which officers check off either of those factors were likely not justified by reasonable suspicion. He explained, “If the initial basis for suspicion leading to the stop was thin, then adding on either of these subjective and ill-defined factors, both of which are constitutionally problematic, provided a post hoc justification to a stop that was most likely erroneous with respect to whether crime was afoot.”<sup>132</sup>

NOPD officers must be required to record, in their own words, the basis for determining reasonable suspicion for the stop. Recording officers’ basis for suspicion would allow analysts, for the first time, to examine the constitutionality of the NOPD’s *Terry* stops.<sup>133</sup> As discussed above, experts believe that multiple-choice formats are less likely to result in correct determinations of reasonable suspicion than narrative formats. This narrative can then be checked against the categorical designation and the specific code violation recorded on the same F.I.C. The narrative, however, must include details about the circumstances involved in leading the officer to conduct the stop, rather than merely restating the code violation.

**NOPD RESPONSE:** *NOPD stated that “some revisions” have been made to the F.I.C. system and additional modifications are forthcoming under the Consent Decree.*

**OIPM COMMENT:** *The NOPD did not provide further information or details as to the manner in which the F.I.C. system has been modified. The OIPM encourages the NOPD to move forward with seeking assistance to make additional modifications to the F.I.C. system. Specifically, the NOPD should implement the recommendation to include the narrative field on the field interview card in accordance with the policy requirement for officers to provide a description of the circumstances that justify the stop.*

**RECOMMENDATION 3: NOPD SHOULD NOT COLLECT THE SOCIAL SECURITY NUMBERS FROM PERSONS STOPPED FOR A FIELD INTERVIEW.**

The NOPD should continue to collect information about general subject characteristics (e.g. race, gender, and age) and personal identifying information on persons cited or arrested; such information can help the department monitor officer activity, identify crime patterns in the

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<sup>132</sup>Fagan at 49.

<sup>133</sup>Analysts may also be able to determine whether there are racial/ethnic differences in the presence of pre-stop indicators of suspicion reported by officers that might explain some of the racial/ethnic disparities of stop and search rates. *See Tillyer supra* at 76.

City, and locate potential criminals. However, officers should discontinue the request of any subject stopped for his or her Social Security number.

Requesting a Social Security number during a field interview can lead to adverse reactions from individuals and deteriorating relations between officers and the individuals they encounter.<sup>135</sup> NOPD leadership should emphasize, in training and written policy, that the refusal to disclose a Social Security number does not in itself support reasonable suspicion of criminal activity and does not establish probable cause to arrest.

***NOPD RESPONSE:*** *NOPD disagreed with this recommendation and stated that an individual's Social Security number is a unique identifier and "is beneficial to an investigator, and in some instances, may also aid in eliminating an individual as a possible suspect in a criminal investigation."*

***OIPM COMMENT:*** *The OIPM recommends strongly that NOPD includes a clear policy statement for the purpose and use of all the information collected during field interviews. In the absence of eliminating the process of requesting a social security number from a person, the NOPD policy must require that officers inform the person stopped that giving a Social Security Number is a voluntary process. Furthermore, in accordance with the requirements of the Federal Privacy Act<sup>136</sup>, NOPD policy should explain the rationale for requesting a Social Security number and the particular use for such information by the Department. Officers should be able to provide such information to individuals who inquire about the collection of Social Security numbers.*

**RECOMMENDATION 4:** **NOPD SHOULD NOT RETAIN PERSONALLY IDENTIFYING SUBJECT INFORMATION ON INDIVIDUALS STOPPED WHO ARE NOT CITED OR ARRESTED AS A RESULT OF FIELD INTERVIEWS; FURTHERMORE, NOPD SHOULD DEVELOP A FORMAL RECORDS RETENTION POLICY REGARDING ALL INFORMATION COLLECTED AND STORED IN THE FIELD INTERVIEW DATABASE.**

The NOPD Policy Manual sets forth the limitations on the maintenance and use of criminal intelligence files, which are defined as information compiled, analyzed and disseminated in an effort to anticipate, prevent or monitor criminal activity. Under this definition, F.I.C data constitutes "criminal intelligence." However, subjects who are not cited or arrested for violations of municipal or state laws are not subject to further investigation and their personal information (name, date of birth, address) should not be entered in the F.I.C database.

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<sup>135</sup> In a letter to Superintendent Serpas dated October 6, 2010, Marjorie Esman, Executive Director of the Louisiana ACLU, raised concerns about "what information is being gathered, and for what purposes the information is being used." See also Milwaukee Police Department, FPC Informational Memorandum: Social Security Numbers (8/26/09).

<sup>136</sup> 5 U.S.C. §552a, Sec. 7(b) states "Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it."

For the purposes of monitoring and evaluating the police practice of stops in these instances, NOPD should collect descriptive subject information (race, ethnicity, gender, and age) along with the descriptive, narrative reason for the stop, other situational information (time, location, stop type), and the stop outcome.

As previously mentioned, the NOPD does not have a formal records retention schedule for the F.I.C data, and therefore, F.I.C data is retained for a minimum of three years as required by state law. NOPD should develop and submit to the Louisiana Secretary of State a records retention schedule for all NOPD records, including but not limited to F.I.C data. Without a formal retention schedule, under Louisiana law NOPD may dispose of records kept for longer than three years, except where federal guidelines may require preservation of certain records for a longer period.<sup>137</sup> If there is no applicable superseding federal guideline on police data, we recommend the NOPD purge all F.I.C data that has been kept for longer than three years.

**NOPD RESPONSE:** *NOPD reiterated that the F.I.C. system is a valuable investigative tool, and “This information source helps protect communities and, in the case of the NOPD, has provided significant leads, resulting in the clearance of some of the most infamous crimes committed.” NOPD also asserted that the F.I.C. database is a “critical component” of the Early Warning System used to analyze officer performance related to complaints of racial profiling.*

**OIPM COMMENT:** *The OIPM reasserts that the collection of personally identifying information (i.e. name, address, SSN) of individuals who are not cited or arrested is not necessary for the creation and implementation of an effective Early Warning System. The practice is also a direct violation of the non-arrested individual’s privacy and due process rights. Additionally, the NOPD indicated that the records retention policy is the same as that of the City of New Orleans. The OIPM recommends the NOPD develop records retention policies specific to NOPD databases.*

**RECOMMENDATION 5:** **NOPD OFFICERS MUST BE REQUIRED TO DESCRIBE PARTICULARLY WHO AND WHAT WAS SEARCHED, THE LEGAL BASIS OF ANY SEARCH CONDUCTED, AND THE SPECIFIC TYPE OF EVIDENCE SEIZED.**

NOPD officers must be comprehensive and explicit when reporting search information. Multiple searches often occur during one stop, but the manner in which search information was reported in the F.I.C database mixes important information, making any assessment of legal cause for each search impossible. The F.I.C should prompt officers to record information about

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<sup>137</sup> “If a formal retention schedule has not been executed and no period is otherwise proscribed by law, public records must be preserved and maintained for a period of at least three years from the date on which the public record was made.” La R.S. 44:36; However, the Louisiana Secretary of State cautions against disposal without checking Federal guidelines on preserving certain types of records. *see* Public Records Law F.A.Q. La 44:1-44:41, Louisiana Legislative Auditor (10/24/2008).

each search separately. Upon selecting the type of evidence seized, officers should be required to describe the evidence (i.e. type of weapon, type/amount of contraband, details of “other” evidence).

Most important, the officers must record the legal basis for each search, including a description of the circumstances leading to the search. As a result of the year long investigation, the Department of Justice found that officers routinely conducted pat-downs during every stop, without any articulable reasonable suspicion that the subject was armed or dangerous.<sup>139</sup> The OIPM also has received numerous complaints from individuals about pat-downs and vehicle searches without sufficient legal basis.

To best evaluate whether NOPD officers are conducting valid, constitutional searches, officers should be required to describe the legal basis in narrative form. New York Police Department and Philadelphia Police Department are among several departments that require officers to record the specific circumstances that constitute the basis for any search of a person or vehicle.

**RECOMMENDATION 6: NOPD SHOULD IMPLEMENT ADEQUATE DATA AUDITING PRACTICES.**

### Data Auditing

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1. ***Cross-checking and Spot-checking data.*** The NOPD should implement the spot-checking methods listed below and used in other departments. None of these methods are overly burdensome, and would provide the NOPD, the OIPM, and external auditors an opportunity to ensure the data being collected is accurate and complete. If any of these spot-checks reveal any kind of discrepancy, further investigation should be automatic.
  - a. **Issue “Receipts” to Stopped Individuals.** For pedestrian and traffic stops, the department should issue “receipts,” which the individual must acknowledge by signing. Currently, individuals only receive a copy of a citation or summons. The OIPM suggests that a copy of the field interview card be issued to the individual stopped. Alternatively, a receipt may be given to the individual that would allow the individual to contact NOPD within a few days to receive a copy of the F.I.C (in a similar manner to requesting a police report).
  - b. **Review Associated Documentation (Where Applicable).** In the event that a field interview results in a summons, citation, or arrest, the external auditor must have the opportunity to compare the information in the F.I.C with the other paperwork (arrest report, citation, etc.), to ensure that every detail is identical.
  - c. **Periodically Review DMVR/ Audio Recordings and Expand Camera Use.** The NOPD has a departmental policy of periodically reviewing video footage from squad cars equipped with cameras, and any audio recordings from officers

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<sup>139</sup> U.S. Dep’t of Justice, Civil Rights Division, *Investigation of the New Orleans Police Department*, 29 (March 16, 2011)

wearing “body microphones.” The recommended policy, which calls for periodic and random review of recorded events, would allow supervisors the opportunity to compare the information describing the encounter in the F.I.C with actual video or audio footage of the encounter.<sup>140</sup>

The proposed consent decree requires the NOPD “to maintain and operate video cameras... in all marked or unmarked vehicles that are assigned to routine calls for service, task forces, tactical units, prisoner transport, or SOD canine...” The OIPM also recommends that the NOPD require every police officer in the field to wear a body microphone. The NOPD should also consider adopting the practice of requiring officers to actually wear cameras, so as to better capture both audio and video of encounters that take place out of the view of a squad car camera. At this point, the NOPD does not engage in this practice. Additionally, the NOPD as required by the proposed consent decree, should adopt a policy to enforce the use of cameras and microphones, as well as mete out stiff disciplinary penalties for officers who do not properly record their contacts with the public.

- d. Periodically Review Dispatcher Records. The NOPD should reiterate its policy of requiring officers to tell dispatchers basic demographic information during every stop and to input F.I.C. data into the computer system as soon as possible after the stop. These dispatcher records would provide yet another chance for supervisors to cross-check F.I.C data.
2. ***Require Supervisors to Review F.I.Cs.*** The NOPD policy requires supervisory review of field interview cards. According to such procedure, the Integrity Control Officers within each District are responsible for reviewing the F.I.Cs and reporting any deficiencies to the District Commander. However, there is no requirement that either the ICO or the District Commander actually ‘sign-off’ on each F.I.C. This recommended review is necessary to ensure the F.I.C has been completed, and that the data formatting is standardized. The supervisory review policy also ensures a supervisor takes at least a cursory glance at the information to make sure it seems accurate – the supervisor might not be able to detect every irregularity, but some things will stick out, such as the failure to comply with the standard form for entry of data. If anything appears inaccurate, the supervisor can work with the officer to fix the F.I.C’s irregularities. The proposed consent decree requires supervisors to review investigatory stops and detentions within 12 hours of receiving a report. However, one way to ensure that this review actually

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<sup>140</sup> It is critically important that these devices not only be used with regularity, but also that they are in working order and not tampered with in any way. The NOPD informed us that there is a multi-tier protocol within each District for ensuring that each camera is in working order: individual officer, immediate supervisor, District System Administrator, and Integrity Control Officer. NOPD stated that all cameras are tamper proof in the manner in which they are triggered and also the recordings are wirelessly transferred from each device to the corresponding server with no officer involvement.

occurs is to follow Oakland's lead and require the supervisor or district crime analysis officer to sign off on every F.I.C before the officer can finish his or her tour of duty.<sup>141</sup>

3. **Create Clear Guidelines on Who Can Access Data and for What Purposes.** NOPD should establish clear guidelines regarding the purpose of collected data and who should be able to access that data. This data should be used for purposes of self-reflection and self-improvement by the department and for external monitoring by auditors and the public. The NOPD should keep data on stops it conducts that result in arrests or citations, but keeping data simply because it might be relevant in the future is inappropriate and a violation of department policy and the stopped individual's personal freedom.<sup>142</sup>
4. **Conduct a comprehensive, professional audit on a yearly basis.** Based on the expert recommendations discussed in this report and the experiences of other departments, an external auditor would provide a meaningful, independent review of the NOPD's data.<sup>143</sup>

The auditor's report should include a detailed review of the department's data collection and retention policies, as well as an objective look at the data itself, to assess its accuracy and completeness.
5. **Engage the Community by Releasing Data by Neighborhood.** The NOPD should release stop data to the public, as it will allow the community to feel engaged in the process and offer suggestions for improvement. It would also allow the department the opportunity to correct problems in particular areas of the city and efficiently allocate resources. The proposed consent decree requires the NOPD to analyze and report publicly about the stop and search data collected each year. NOPD should release data by District to reveal, at the very least, how many stops resulted in citations and arrests.

**NOPD RESPONSE:** *NOPD referred the OIPM to Field Operations Bureau Policy #8A on enhanced auditing processes and supervisory responsibilities to ensure accuracy and completeness. The NOPD disagreed specifically with the recommendation to issue a receipt to*

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<sup>141</sup> See Settlement Agreement Re: Pattern and Practice Claims: *Delphine Allen v. City of Oakland*, Master Case No. C00-4599 TEH (JL) (N.D. Cal. 2008).

<sup>142</sup> It should be noted that some personal data, even for people who were stopped by NOPD and not arrested or cited, might be necessary for audit purposes, especially if the auditors plan to conduct any of the cross-checks mentioned in this memo. That said, this data can be limited to only what is absolutely required to contact those people (i.e. there is no reason why a social security number would ever be kept for this purpose). See generally U.S. Dep't of Justice, *A Resource Guide on Racial Profiling Data Collection Systems: Promising Practices and Lesson Learned* (Nov. 2000).

<sup>143</sup> See Taslitz, *supra* note 3. Taslitz compares and contrasts internal and external audits: "Internal government audits and external audits reach a wider audience, bringing marketplace pressures (such as from investors who will not buy stock in a financially shaky company) and political pressures (from legislative oversight, the media, and interested members of the public) to bear on poorly performing institutions."

each individual stopped and stated that this would not provide “any practical benefit to audit controls.” The OIPM requested and received, in February 2013, a copy of the Field Operations Bureau Policy #8A.

**OIPM COMMENT:** The OIPM reviewed the FOB Policy #8A. The FOB-Administrative Support Unit (FOB-ASU) is responsible for monitoring compliance with all FOB policies and Departmental rules, policies and procedures. Among these responsibilities, FOB-ASU shall review field interviews “as assigned,” shall review at least one summons, ticket or affidavit per day per district or division, and shall review at least one in car camera video daily. For each review, the policy stated that any deficiencies must be reported in writing and that a written recommendation must be provided to the District Commander with a copy to the FOB Commander. This policy did not address what constituted a deficiency nor state the significance, consequence, or remedy for deficiencies.

In reference to the OIPM recommendation of “Issuing Receipts to Stopped Individuals,” the OIPM recommends that the NOPD institute a practice by which the individual stopped has a record of the encounter and a means to provide feedback about the encounter. The Denver Police Department’s Policy 118.02(4), for example, requires officers (without being asked by the stopped civilian) to provide a business card to any person the officer has detained in a traffic stop and to provide at least the officer’s name and badge number when requested during a pedestrian stop. Such a practice allows the Department to monitor compliance with both a specific police procedure, such as stop and frisk, and with rules of conduct, such as professionalism.

## APPENDIX A

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### LOUISIANA CASE LAW ON STOP AND FRISK

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Federal and state courts evaluate the constitutionality of actual police practices on a case-by-case basis, and NOPD officers should know how police practices have been scrutinized under the law and how their actions will be examined. As examples of how the NOPD stop and frisk practices have been examined under Louisiana law, we briefly discuss two cases from the Louisiana Fourth Circuit Court of Appeal in Orleans Parish.

In *State v. Lange*, the court affirmed the trial court's decision to suppress evidence based upon a lack of reasonable suspicion for the initial stop.<sup>148</sup> The officer testified that he and his partner were on patrol when they observed the defendant showing another man something that he held in his hand. When the defendant noticed the officers he closed his hand, put something in his pocket and started walking away from the officers. The officer testified that these actions prompted them to stop the defendant, but the officer provided no further information about the surrounding circumstances. In holding that the officer did not articulate reasonable suspicion to justify the stop, the court reasoned that:

[N]o testimony was presented that the area where the officers spotted Lange was known for drug trafficking or testimony of any recent complaints of drug activity in the area. ... In addition, no evidence that Lange was known to the officers, or that they had any information linking him to drug trafficking. Finally, the officers observed no money and could not even see, much less identify, the object, if any, in defendant's hand as they observed the two men. A hunch or suspicion is simply insufficient to establish reasonable grounds to stop a person.<sup>149</sup>

In *State v. Jerrold Francis*, two NOPD officers conducted a late night proactive patrol of a "high crime area," when they observed the defendant "pacing in front of closed businesses."<sup>150</sup> The officers decided to make an investigatory stop, and as they approached the defendant, they noticed he had his right hand in his pocket. They asked him to remove his hand from the pocket, and as he did so, the officers noticed him holding a cigarette lighter. "The officers then asked for some identification, and when he told them that he had none, the officers put him on the car and patted him down."<sup>151</sup> At that point, the officers observed the defendant holding a bag of cocaine and arrested him for possession.

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<sup>148</sup> *State v. Lange*, 832 So.2d 397 (La. App. 4 Cir. 2002).

<sup>149</sup> *Id.* at 401.

<sup>150</sup> *State v. Francis*, 60 So.3d 703 (La. App. 4 cir. 2011).

<sup>151</sup> *Id.* at 707.

On appeal, the court held the stop of the individual to be constitutional based on the officer's particular description of facts leading to the stop that included 1) the late night hour, 2) police knowledge that the location was a high crime area, 3) closed businesses, making the defendant's presence in that location to appear inappropriate, and 4) the defendant's pacing.

However, the court found that the frisk was completely unsupported by the reasonable belief that the defendant was armed and potentially dangerous.

[R]ather than connecting the need for this particular frisk with his own prior experience, [the officer] instead stated that it was his standard procedure to frisk everyone he approached for every pedestrian encounter that took place at night. ... Indeed the officers arguably conducted a frisk on something less than a hunch: pursuant to a systematic policy of frisking. ... Such a policy, although it may be efficient, is not constitutional.<sup>152</sup>

These two cases illustrate that officers must be able to articulate their observations and justification for a stop and frisk. Reviewing such cases can give officers better insight into the necessity of meeting constitutional standards. If the constitutional standard of reasonable suspicion is not met by police officers in the course of the stop and frisk, then the evidence against a defendant will be suppressed and the criminal charges could be dismissed.

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<sup>152</sup> *Id.* at 712.

## VIII. OFFICIAL COMMENTS FROM THE NEW ORLEANS POLICE DEPARTMENT

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City Ordinance section 2-1120(9)(c) provides that a person or entity who is the subject of a report shall have 30 working days to submit a written explanation or rebuttal of the findings before the report is finalized, and that such timely submitted written explanation or rebuttal shall be attached to the finalized report.

An Internal Review Copy of this report was distributed on December 14, 2012 to the entities who were the subject of the evaluation in order that they would have an opportunity to comment on the report prior to the public release of this Final Report.

### A. GENERAL COMMENTS

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*While the New Orleans Police Department ("NOPD") recognizes the time and effort the Office of the Independent Police Monitor ("O/IPM") has devoted to compiling this report since July 2011 we are somewhat unclear as to the substantive benefit of providing observations I which seem for the most part to be a repetitive accounting of a study already conducted by the U.S. Department of Justice 'DOJ'. The DOJ Findings Report released in March 2011 cited a number of problematic issues and concerns over policy, training, data collection and auditing directly related to NOPD stop and frisk practices. The OIPM report itself points to many of these observations. The pending Consent Decree, which is now before a Federal Judge, not only offers an identifiable means to address these previously identified issues and concerns, but also mandates the technical assistance and financial support necessary to push forward with sustainable reform measures. The NOPD has openly agreed to and supported the unprecedented oversight that will be provided by both the U. S. Department of Justice and Federal Court Monitor as we continue through the process of redeveloping our policies, training and data collection protocols in accordance with 'best practice' standards.*

*This City's top leadership and its police department have openly demonstrated that the 'status quo' is not an acceptable means of providing service the citizens of this community; they deserve only the best. The police department's commitment to change was evidenced in August 2010 with the release of our '65 Point Plan' for rebuilding the New Orleans Police Department. This plan was a structured blueprint for changing the culture within NOPD which echoes much of what is now in the pending Agreement before a Federal Judge. With the release of the DOJ's Finding Report in March 2011, we immediately took steps to begin addressing each of the 147 recommendations referenced at the end of the DOJ study and, by June 2012, believed we had*

*made significant process in addressing over 40% of these recommendations, all while working through a lengthy Consent Decree negotiation process.*

*As we move forward in our efforts to reform the New Orleans Police Department, we would hope to work with the Office of the Independent Monitor in developing new and fresh ideas that go even further than those requirements spelled out in the pending Consent Decree. We also feel it would be important prior to this report's release to sit down with the OIPM in an attempt to resolve significant disagreements, misunderstandings or misrepresentations used as the basis for both the findings and recommendations.*

*The following pages include our direct comments addressing the specific findings and corresponding recommendations referenced in the OIPM report.*

## **B. PART I**

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### **1. FINDINGS**

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#### **A. OIPM FINDING 1**

THE NOPD'S FIELD INTERVIEW POLICY LISTED CERTAIN FACTS FOR OFFICERS TO CONSIDER WHEN JUSTIFYING A STOP AND PAT DOWN, OR FRISK, BUT (A) PROVIDED NO CASE LAW OR PRACTICAL EXAMPLES; AND (B) DID NOT EXPLAIN THAT ANY ONE FACT, BY ITSELF, WOULD BE INSUFFICIENT LEGAL JUSTIFICATION FOR A STOP OR A FRISK.

***NOPD COMMENT:*** *There are two separate issues referenced in this finding, policy and training. Policy is not designed to be an 'all encompassing' reflection of training. Policy is designed to provide general knowledge to our members on the "why and how" they are expected to perform their duties and guide them towards making good tactical decisions. Further, we feel strongly that NOPD's State accredited training program does offer the requisite case law and practical examples referenced in this finding.*

#### **B. OIPM FINDING 2**

NOPD TRAINING AND LEGAL UPDATE COURSE MATERIALS PROVIDED INCOMPLETE INFORMATION ON THE CURRENT FEDERAL AND STATE LAW GOVERNING STOPS AND FRISKS.

***NOPD COMMENT:*** *To expound on what was briefly referenced above, the NOPD Academy is an accredited facility as provided under the oversight authority of the Louisiana Peace Officer Standards & Training Council (POST). NOPD curricula and lessons plans are reviewed and certified by POST. The POST Council is responsible for developing and evaluating the curriculum of mandatory training courses for municipal officers, deputy sheriffs, state police, wildlife agents and all other persons commissioned as peace officers, defined by state law (RS 40:2402).*

*Further, the Council establishes minimum requirements for instructors, certifies trainees who successfully complete a basic course of instruction, accredits peace training facilities, approves in-service, specialized and advanced training courses, and encourages the educational advancement of police personnel. Staff functions of the POST Council are carried out by Louisiana Commission on Law Enforcement (LCLE) personnel assigned to the POST Program.*

*Also in response to the finding we would like to note that beginning in April 2012, updates governing current case law have routinely been presented to our members by the NOPD Office of Policy & Planning. These legal updates are provided to law enforcement agencies by the Public Agency Training Council and address recent Court decisions based on the specific actions taken by an officer. The legal update materials that have been issued to our members to date include:*

- *FEATURED TRAINING ON ARREST, SEARCH & SEIZURE 6 SUPREME COURT DECISIONS*
- *NINTH CIRCUIT UPHOLDS PAT DOWN SEARCH OF SUSPECTS GROIN AREA*
- *REASONABLE SUSPICION, HIGH CRIME AREAS AND A SUSPECT~SFLIGHT*
- *FIFTH CIRCUIT DENIES QUALIFIED IMMUNITY FOR OFFICER IN NO KNOCK EXECUTION OF SEARCH WARRANT*
- *SIXTH CIRCUIT UPHOLDS INVENTORY SEARCH OF AUTO*
- *US SUPREME COURT EXIGENT ENTRY BASED ON BELIEF OF IMMINENT VIOLENCE*
- *US SUPREME COURT 2011-2012 END OF SESSION LEGAL UPDATE FOR LAW ENFORCEMENT*
- *US SUPREME COURT -INTENTIONAL VIOLATIONS OF MIRANDA AND THE IMPACT ON SUBSEQUENT WARNED CONFESSION*
- *WARRANTLESS AUTOMOBILE SEARCH*
- *FOURTH CIRCUIT UPHOLDS EVIDENCE FOUND BY K9 SNIFF DURING TRAFFIC STOP*
- *NINTH CIRCUIT AFFIRMS SUMMARY JUDGMENT IN FAVOR OF OFFICERS IN TASER CASE*
- *GEORGIA COURT UPHOLDS ROADBLOCK INITIATED BY A FIELD SUPERVISOR*
- *NINTH CIRCUIT HOLDS GUN POINTING AT END OF VEHICLE PURSUIT REASONABLE*
- *INTERNET SERVICE PROVIDER INFORMATION AND THE FOURTH AMENDMENT*
- *SIXTH CIRCUIT UPHOLDS K9 SEARCH WHERE DOG JUMPED INTO CAR*
- *PROTECTIVE SWEEPS OF RESIDENCES: A REVIEW*
- *TASER USED TO SUBDUE NON-COMPLIANT 73 YEAR OLD*
- *PRIVATE ACTOR HIRED BY GOVERNMENT ENTITY FOR INTERNAL AFFAIRS INVESTIGATION GETS TREATED AS GOVERNMENT OFFICIAL FOR PURPOSES OF QUALIFIED IMMUNITY*
- *INVOCATION OF RIGHT TO COUNSEL. DURING INTERVIEW MUST BE UNAMBIGUOUS*
- *INFORMATION FROM SECURITY GUARD PROVIDED REASONABLE SUSPICION TO JUSTIFY STOP & EIGHTH CIRCUIT HOLDS BULGE UNDER CLOTHING NOT PROBABLE CAUSE FOR SEARCH*

*Furthermore, we disagree with several of the mischaracterizations the OIPM has offered in reference to our Academy's training programs. First, elements of training referenced in this*

report as inadequate are covered in the stop and frisk portion of recruit training which is mandated by the Peace Officer Standards & Training ("POST") Council. In particular, recruits are taught concepts justifying a stop and subsequent actions that can result based on circumstances surrounding the stop. This information can be found on page 124 of the Rolando V. Del Carmen textbook used in the Academy's Recruit Training Program. Secondly, the statement that the term 'reasonable suspicion' is not explained is simply not true. Once again this issue is discussed in the stop and frisk portion of recruit training which is mandated by the POST. This information can be found on page 126 of the Rolando V. Del Carmen textbook used in our Recruit Training Program. Finally, the department takes exception to the statement that there is no mention of the stop and frisk concept being shown as two separate acts. Again, this issue is discussed in the stop and frisk portion of recruit training required by the POST Council. This information can be found on page 127 of the Rolando V. Del Carmen textbook used in our Recruit Training Program. Recruits are taught that a frisk/pat down is not automatically justified based on the same reasonable suspicion standard which may have led to the stop.

We feel the OIPM report provides an inaccurate portrayal of training and fails to recognize the distinct differences between our Recruit Training and In-Service Training Programs. The Recruit Training Program provides members with the comprehensive level of skill and knowledge needed to perform the duties of a police officer. The current Recruit Training Program is 26 weeks in length, followed by extended monitoring under our Field Training Officer Program. In-Service Training lectures are geared towards veteran officers who already have a working knowledge of legal concepts. The 40 hour annual In-Service Training curriculum introduced in 2011 is primarily designed to address current issues impacting law enforcement and reinforce required skill sets. For example, in both 2011 and 2012, our In-Service Training Programs have continued to dedicate specific blocks of training targeting legal updates, which include 1<sup>st</sup> Amendment issues, reasonable suspicion and probable cause.

### C. OIPM FINDING 3

NOPD POLICY AND TRAINING MATERIALS WERE INCONSISTENT WITH NATIONAL BEST PRACTICES ON STOPS AND FRISKS AND BIASED POLICING.

**NOPD COMMENT:** In May of 2011, the Director of the U.S. Department of Justice Community Oriented Policing Services ("COPS"), through direct discussions and a request made by the Superintendent, provided on-site technical assistance and support to the NOPD Academy. In addition to providing a comprehensive analysis of our Recruit Training Program, COPS also specifically redesigned curricula and lesson plans related to biasfree and community oriented policing for use in our In-Service Training Program. We believe COPS is a recognized authority on 'best practices' and our Academy began using the revised curricula and lesson plans in January 2012.

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## 2. RECOMMENDATIONS

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### A. OIPM RECOMMENDATION 1

NOPD POLICIES AND TRAINING SHOULD PROVIDE PRACTICAL GUIDANCE ON WHEN AND HOW THE TOTALITY OF THE CIRCUMSTANCES MAY OR MAY NOT RISE TO THE LEVEL OF LEGALLY JUSTIFIED REASONABLE SUSPICION.

**NOPD COMMENT:** *We wish to reiterate, the NOPD Academy is an accredited facility as provided under the oversight authority of the Louisiana POST Council. NOPD curricula and lesson plans are reviewed and certified by POST. The POST Council is responsible for developing and evaluating the curriculum of mandatory training courses for municipal officers, deputy sheriffs, state police, wildlife agents and all other persons commissioned as peace officers, defined by state law (RS 40:2402). Further, the Council establishes minimum requirements for instructors, certifies trainees who successfully complete a basic course of instruction, accredits peace training facilities, approves in-service, specialized and advanced training courses, and encourages the educational advancement of police personnel. Staff functions of the POST Council are carried out by LCLE personnel assigned to the POST Program.*

*In order to qualify as an instructor at our Academy, members must successfully complete a F.B.I. Instructor Development Course. We believe NOPD's policies and the Louisiana POST certified training materials presented by our certified instructors do provide the 'practical guidance' referenced in this recommendation. However, we also recognize the critical importance in protecting the rights of all citizens. That is why, under the pending Federal Consent Decree, NOPD willingly accepts a comprehensive review and restructuring of both its policy and training in consideration of 'best practices'. The OIPM's overall analysis appears reflective of observations made in both the DOJ Findings Report from March 2011 and pending Consent Decree which provides for remedies already agreed to by the City and NOPD.*

### B. OIPM RECOMMENDATION 2

NOPD SHOULD RE-DESIGN THEIR TRAINING MATERIALS TO PROVIDE REAL-LIFE AND CASE LAW EXAMPLES THAT EXPLAIN THE IMPORTANCE OF OBSERVING AND ARTICULATING THE SPECIFIC FACTS AND CIRCUMSTANCES LEADING THE OFFICER TO REASONABLY SUSPECT AN INDIVIDUAL IS ENGAGED IN CRIMINAL ACTIVITY.

**NOPD COMMENT:** *We believe the legal update materials provided to our members that were previously referenced under this recommendation's related finding demonstrates our commitment to provide our officers with the 'real-life and case law examples' specifically suggested by the OIPM.*

*Also, the implementation of NOPD's new 'Daily Training Bulletin' program through the LEXIPOI system exposes our officers to scenario based learning exercises based on real-life situations.*

Officers are currently required to take 20 training scenarios per month via a web based interactive program that is monitored by the Academy and requires a 100% pass rate.

The pending Consent Decree requires a comprehensive review of our training programs, curricula and lesson plans consideration of 'best practices'.

### C. OIPM RECOMMENDATION 3

NOPD SHOULD ADOPT A DETAILED POLICY ON UNBIASED POLICING TO BE INCLUDED IN THE CODE OF CONDUCT AND THE DEPARTMENTAL POLICY ON FIELD INTERVIEWS AND PAT-DOWN SEARCHES.

**NOPD COMMENT:** *We believe both our Code of Conduct and Stop & Frisk policies do provide our members with guidance based on Constitutional police practices. While the NOPD has already accepted a comprehensive review of bias-free policy under the pending Consent Decree, current NOPD policy related to unbiased policing (Chapter 41.6, Profiling) clearly states:*

*"The New Orleans Police Department is responsible for protecting the rights of each individual, regardless of race, ethnicity, gender, sexual orientation, physical handicap, religion, or other belief system. Along with this right to equal protection is the right to be free from unreasonable searches and seizures by government agents. Individuals are free to travel our streets, roadways, and visit other public places without police interference as long as they obey the law."*

Several additional excerpts of this same policy include:

**Definition:** *"Profiling - The detention of any vehicle, pedestrian, or person, or investigatory treatment thereof, where the stop or detention was based solely on the racial, ethnic, socioeconomic, gender, sexual orientation, or belief system of the individual detained."*

**Definition:** *"Reasonable suspicion - Also known as articulable suspicion. Suspicion that is more than a mere hunch, but is based on a set of articulable facts and circumstances that would warrant a person of reasonable caution in believing that an infraction of the law has been committed, is about to be committed, or is in the process of being committed, by the person or persons under suspicion. This can be based on the observations of a police officer combined with his/her training and experience, and/or reliable information received from credible outside sources. NOTE: Information received via the police radio from unidentified complainants should not be considered as being from a credible outside source. Officers may use this information to further observe the actions of the suspects, and if from their observations lead to articulable suspicion, the suspects may be detained."*

**General Instructions:** *"Commissioned personnel will patrol in a proactive manner, and aggressively investigate suspicious persons and circumstances, enforcing all municipal,*

state, and federal laws. Citizens will only be stopped or detained when there exists reasonable suspicion to believe the individual(s) have committed, are committing, or are about to commit, a violation of the law."

General Instructions: "In the absence of a credible police report, relayed information from a police broadcast, articulable suspicion, or information from a credible outside source, an individual's race, gender, sexual orientation, or ethnicity or any combination thereof, shall not be a factor in determining probable cause for an arrest, the reasonable suspicion for a stop, or asset seizure and forfeiture efforts."

## C. PART 2

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### 1. FINDINGS

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#### A. OIPM FINDING 1

NOPD DEPARTMENTAL POLICIES WERE INTERNALLY INCONSISTENT ON THE MATTER OF WHEN OFFICERS WERE REQUIRED TO COMPLETE FIELD INTERVIEW CARDS (F.I.C) DURING POLICE-CITIZEN INTERACTIONS.

**NOPD COMMENT:** *As previously indicated, all of NOPD policies and procedures are undergoing comprehensive review and revision in support of Consent Decree recommendations. The revised policy specifically related to F.I.C.'s is currently being reviewed by the City Attorney's Office for compliance with Consent Decree Agreement mandates.*

#### B. OIPM FINDING 2

NOPD'S OPERATIONS MANUAL REQUIRED OFFICERS TO ARTICULATE THE EXPLICIT REASON FOR INITIATING A FIELD INTERVIEW; HOWEVER, THE DEPARTMENT'S FIC DID NOT INCLUDE A NARRATIVE FIELD TO BE COMPLETED BY THE OFFICER AT THE TIME OF THE STOP.

**NOPD COMMENT:** *We agree, however, in late 2010, and before the DOJ Findings report was released, NOPD began looking for ways to improve its electronic F.I.C. format. With funding available during this period, NOPD was able to retain the services of an IT Analyst who assisted in the redesign of our program which added a drop-down menu component to our system for officers to use in recording the legal basis for a stop. Regrettably, funding to continue with other improvements to system has since been unavailable.*

*We agree that a free-form narrative would provide added benefits and are well aware of this same recommendation that was already contained in both DOJ's March 2011 Finding Report and pending Consent Decree. Costly reprogramming concerns that have inhibited our previous*

attempts to improve our F.I.C. format should be rectified with technical support funding and assistance directed through the Consent Decree.

### C. OIPM FINDING 3

FIC DATA ENTRY FIELDS ALLOWED FOR INCONSISTENT OR INACCURATE DATA AND BLANK FIELDS.

**NOPD COMMENT:** *Not all fields in the electronic F.I.C. are mandatory. Also under this finding, the OIPM references a separate report that was conducted by the Office of the Inspector General which cited difficulties with interpreting the data provided by NOPD. However, in 2011 when the OIPM first requested this data, NOPD informed their office that F.1.c. data is gathered using Microsoft SQL (an industry standard in data collection) and accurate analysis would require an individual familiar with this system. The original requestor from the OIPM explained that she was not familiar with Microsoft SQL and requested that the NOPD provide the data in Microsoft Excel format. It is our belief that this data conversion has led to OIPM and OIG difficulties in interpreting the data.*

### D. OIPM FINDING 4

NOPD'S FIELD INTERVIEW CARD (FIC) PROMPTED OFFICERS TO REPORT THE SOCIAL SECURITY NUMBERS OF PERSONS STOPPED, RAISING CONCERNS ABOUT PRIVACY VIOLATIONS.

**NOPD COMMENT:** *We disagree with concerns regarding possible Federal Privacy Act violations based on OIPM's interpretation. Any response to an officers request is voluntary, not compulsory, and we know of no instances involving NOPD where a person's failure to disclose has resulted in any consequence that has denied an individual any right, benefit or privilege. As previously pointed out, 38% of these records do not contain a social security number entry.*

### E. OIPM FINDING 5

NOPD RETAINED IDENTIFYING INFORMATION FOR ALL PERSONS STOPPED IN ITS FIELD INTERVIEW DATABASE FOR A MINIMUM OF THREE YEARS, VIOLATING ITS OWN POLICIES.

**NOPD COMMENT:** *The information cited in determining this finding has been misinterpreted and is contained in a separate -standalone NOPD policy governing those records maintained under the authority of the Commander of the Specialized Investigations Division. Chapter 51.1, Criminal Intelligence, specifically addresses an annual audit and purging of S.I.D. records related to intelligence data gathered in support of 'criminal enterprises and gong activity ' under the guidance of standards set forth in the Code of Federal Regulations (28 CFR, Part 23, Section 23.3 c).*

*F.I.C. system records are not a part of the criminal intelligence files being referenced under this finding.*

#### **F. OIPM FINDING 6**

NOPD OFFICERS WERE ONLY REQUIRED TO COMPLETE ONE FIC PER STOP, RATHER THAN FOR EACH PERSON STOPPED, MAKING IT IMPOSSIBLE TO DETERMINE STOP OUTCOMES OR ACTIONS TAKEN AGAINST SUBJECTS DURING STOPS OF MULTIPLE PERSONS.

**NOPD COMMENT:** *We agree and believe we have worked out a viable solution using our CAD System that allows us to accurately record data associated with the 15% of F.I.C.'s prepared which involved more than one person per entry. But as previously indicated costs involved in making the necessary modification to programming have delayed implementation. Technical support assistance and funding stipulated under the pending Consent Decree should provide the necessary resources to push forward.*

#### **G. OIPM FINDING 7**

NOPD SEARCH DATA DID NOT CLEARLY IDENTIFY WHO OR WHAT WAS SEARCHED DURING A STOP AND OFFICERS WERE NOT REQUIRED TO RECORD A DESCRIPTION OF THE LEGAL BASIS FOR THE SEARCH.

**NOPD COMMENT:** *We agree, as evidenced by actions already initiated under this Superintendent back in 2010 and as raised in the 2011 DOJ Findings Report. It was this administration that first attempted to improve the F.I.C. system by working with a former City IT Analyst to incorporate drop-down menu fields and refinements associated with the 'electronic' F.I.C. system. Unfortunately, the services provided by this IT support expert and private vendor required 'pay-as-you-go' funding to continue. We expect in the near future we will be able to resume modifying the 'electronic' FIC system with technical support and funding provided through the Consent Decree.*

#### **H. OIPM FINDING 8**

NOPD'S DATA AUDITING PRACTICES DID NOT ENSURE THAT FIC DATA WERE ACCURATE OR COMPLETE.

**NOPD COMMENT:** *Enhanced supervisory auditing processes to verify accuracy and completeness were implemented in April 2011 (F.O.B. Policy #8) based on NOPD decisions and recommendations contained within the DOJ Findings Report released in March 2011. This policy defines the specific responsibilities of NOPD Integrity Control Officers and included measures addressing quality control requiring all F.I.C. undergo supervisory review and in perpetuity.*

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## 2. RECOMMENDATIONS

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### A. OIPM RECOMMENDATION 1

NOPD OFFICERS SHOULD ONLY SUBMIT INFORMATION TO THE DEPARTMENT'S FIC DATABASE WHEN THE INTERACTION IS THE STOP OF A PERSON SUSPECTED OF, OR CAUGHT ENGAGING IN CRIMINAL ACTIVITY.

**NOPD COMMENT:** *The F.I.C. system has and continues to be a valuable investigative tool for law enforcement purposes and the information captured within an F.I.C. database is only accessible to authorized law enforcement personnel. Furthermore, the F.I.C. database only contains information on contacts which rise to the level of a 'Terry Stop' and was not developed for the purpose of recording personnel information on the hundreds of routine citizen contacts our officers make each day. During the OIPM's measured period of analysis, there were 36,898 records provided regarding F.I.C. stop data. During this same period, NOPD reported an additional 50,243 stops which did not result in an F.I.C. entry. For the purposes of those stops made for a legitimate law enforcement concern meeting a reasonable suspicion standard, agencies must be able to accurately track who their officers are engaging. In some cases, information contained within the F.I.C. database may actually clear a person of criminal suspicion.*

*As part of an Early Warning System, F.I.C. stop data can also be an effective and valuable tool used to address profiling complaints or to identify officers in need of additional training. The F.I.C. database is the only system that provides NOPD the means to manage and assess profiling concerns in relation to specified data sets.*

### B. OIPM RECOMMENDATION 2

NOPD SHOULD REQUIRE OFFICERS TO ARTICULATE IN A DESCRIPTIVE NARRATIVE THE SPECIFIC, OBSERVABLE BEHAVIORS THAT LEGALLY JUSTIFIED THE STOP.

**NOPD COMMENT:** *This recommendation is reflective of analyses already outlined in both the DOJ Findings Report released in March 2011 and pending Consent Decree which provide for remedies already agreed to by the City and NOPD.*

*Some revisions to data fields used in the 'electronic' F.I.C. system have been completed with additional modifications forthcoming through compliance mandates specified under the Consent Decree.*

### C. OIPM RECOMMENDATION 3

NOPD SHOULD STANDARDIZE THE INPUT OF INFORMATION INTO THE FIC AND IMPLEMENT

## AUDITING PROCEDURES TO IDENTIFY AND CORRECT INACCURATE INFORMATION.

**NOPD COMMENT:** *The input method currently used does contain certain standardized fields, however as we have previously indicated, additional modifications will be addressed as funding provided through the pending Consent Decree becomes available.*

*In April 2011, the department enhanced its auditing control measures through our Integrity Control Officer program with specific focus directed towards ensuring all F.I.C.'s were being completed in accordance with NOPD procedure.*

### **D. OIPM RECOMMENDATION 4**

NOPD SHOULD NOT COLLECT THE SOCIAL SECURITY NUMBERS FROM PERSONS STOPPED FOR A FIELD INTERVIEW.

**NOPD COMMENT:** *We disagree with this recommendation. A social security number is a unique identifier similar to a person's date of birth. This information can be used to confirm an individual's identify that is beneficial to an investigator, and in some instances, may also aid in eliminating an individual as a possible suspect in a criminal investigation.*

*Individuals are not sanctioned. In fact, relative to the specific F.I.C. information provided to the OIPM for the period they requested, 38% of these records did not contain a social security number entry.*

### **E. OIPM RECOMMENDATION 5**

NOPD SHOULD NOT RETAIN PERSONALLY IDENTIFYING SUBJECT INFORMATION ON INDIVIDUALS STOPPED WHO ARE NOT CITED OR ARRESTED AS A RESULT OF FIELD INTERVIEWS; FURTHERMORE, NOPD SHOULD DEVELOP A FORMAL RECORDS RETENTION POLICY REGARDING ALL INFORMATION COLLECTED AND STORED IN THE FIELD INTERVIEW DATABASE.

**NOPD COMMENT:** *As previously s stated, the F.I.C. system is a valuable investigative tool for law enforcement purposes and information housed within the F.I.C. database is only accessible to authorized law enforcement personnel. We do not support the collection and maintenance of an individual's personnel information where there is no legal basis for a stop. As part of an Early Warning System, F.I.C. stop data can also effectively be used to identify officers in need of additional training or who discriminate law enforcement agencies across the country have been using stop data systems for decades in support of the crime fighting efforts and to accurately track who their officers are engaging. This information source helps protect communities and, in the case of NOPD, has provided significant leads resulting in the clearance of some of the most*

*infamous crimes committed.*

*The legally obtained information housed within the F.I.C. database is a critical component of any effective Early Warning System as it provides a method of analyzing officer performance in relation to data sets associated to complaints involving racial profiling or discrimination.*

*The City of New Orleans has a 'record retention policy' on file with the Louisiana Secretary of State's Office as required by law. NOPD is in compliance with the City's policy.*

#### **F. OIPM RECOMMENDATION 6**

NOPD SHOULD REQUIRE OFFICERS TO REPORT A SEPARATE FIC FOR EACH PERSON STOPPED DURING STOPS OF MULTIPLE PERSONS.

**NOPD COMMENT:** *While 85% of F.I.C. records involve only a single contact, adjustments to the electronic F.I.C. system to capture multiple stop data can be made with the assistance of technical support and funding provided for under the pending Consent Decree. Once again, an issue previously recognized by both the New Orleans Police Department and the U.S. Department of Justice.*

#### **G. OIPM RECOMMENDATION 7**

NOPD OFFICERS MUST BE REQUIRED TO DESCRIBE PARTICULARLY WHO AND WHAT WAS SEARCHED, THE LEGAL BASIS OF ANY SEARCH CONDUCTED, AND THE SPECIFIC TYPE OF EVIDENCE SEIZED.

**NOPD COMMENT:** *With technical support funding available under the pending Consent Decree, previously recognized reprogramming issues can and will be addressed.*

#### **H. OIPM RECOMMENDATION 8**

NOPD SHOULD IMPLEMENT ADEQUATE DATA AUDITING PRACTICES.

**NOPD COMMENT:** *NOPD has previously taken steps to enhance its auditing processes which already include many of the "spot-checking" steps listed above. Since April 2011, structured review of F.I.C. data entry, DMVR records, etc., are defined responsibilities assigned to our Integrity Control Officers. Additionally, the pending Consent Decree already spells out requirements for NOPD to consider in developing a protocol for comprehensive analysis of stop/search collection data.*

*We do not believe a 'receipt' provides any practical benefit to audit controls.*