

Office of the Independent Police Monitor

City of New Orleans

2016 Annual Report:

2016 OIPM Use of Force Monitoring and Review Activities



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INDEPENDENT POLICE MONITOR MISSION AND RESPONSIBILITIES

The Office of the Independent Police Monitor (OIPM) is an independent, civilian police oversight agency created by the voters in a 2008 charter referendum and which opened its doors for the first time in August of 2009. Its mission is to improve police service to the community, civilian trust in the NOPD, and officer safety and working conditions. The OIPM has six broad responsibilities:

- 1) To ensure that all complaints regarding police misconduct are classified and investigated or mediated at the appropriate level and that those investigations are fairly, timely and thoroughly handled; to ensure that discipline is fair, timely, appropriate and upheld upon appellate scrutiny. To make information about this review process available to the public.
- 2) To monitor NOPD investigations into use of force to identify violations of civil rights, concerns of officer tactics and safety, risks to life, liberty and property, and adherence to law and policy.
- 3) To review and analyze aggregate data from complaints, investigations, community concerns and public policy in crafting recommendations aimed toward improving the quality of services by the NOPD.
- 4) To reach out to inform the community about the OIPM, to listen and respond to broader community concerns, and prepare the community for engagement in NOPD policy and practice.
- 5) To mend police/community relationships by fostering effective police/community partnerships.
- 6) To collect police commendations, review and monitor police training and supervision issues and support a healthy and safe working environment for NOPD employees.

The OIPM is responsible for monitoring the New Orleans Police Department and only the New Orleans Police Department. Although OIPM works with other criminal justice system actors, it is not responsible for oversight of any other agency. However, OIPM is mindful of the impact of these other criminal justice actors upon the operations of NOPD and will attempt to analyze that impact in future reports. OIPM accomplishes its mission by focusing on three main activities: complaint and disciplinary system monitoring and review; use of force monitoring and review; and subject-specific analyses or audits. Our recommendations to improve NOPD's accountability systems originate from these activities.

A NOTE FROM THE INDEPENDENT POLICE MONITOR

Pursuant to New Orleans City Code Section 2-1121 (16) (the Police Monitor's Ordinance) The Office of Independent Police Monitor (OIPM) publishes an annual report each year. The Police Monitor's Ordinance provides as follows:

The independent police monitor shall be required to issue at least one public report each year, by March 31, detailing its monitoring and review activities and the appropriate statistical information from the internal investigations office, and other divisions of the New Orleans Police Department. The independent police monitor shall be required to report upon problems it has identified, recommendations made and recommendations adopted by the New Orleans Police Department. The report shall also identify commendable performance by the New Orleans Police Department and improvements made by the department to enhance the department's professionalism, accountability, and transparency.

This **"2016 OIPM Use of Force Monitoring and Review Activities"** is part of that report.

Herein the OIPM will publish the OIPM's statistics and the outcome of each case.

2016 OIPM USE OF FORCE MONITORING AND REVIEW ACTIVITIES

The OIPM is required by City Code § 2-1121 to monitor the quality and timeliness of NOPD’s investigations into use of force and in-custody deaths.

In 2016, there were eight (8) critical incidents, down from 14 Critical Incidents in 2015. Seven (7) of these Critical Incidents were Officer Involved Shootings (OIS), down from 12 OISs in 2015. The following table contains the types of Critical Incidents recorded in 2016 by the OIPM.

TABLE 1: 2016 CRITICAL INCIDENTS - 8 INCIDENTS

NOPD ASI #/FTN#/Item #	Date of Incident	Type of Incident
C-36671-16 / 2016-01	03/31/2016 / 10:06 A.M.	Accidental Discharge
D-09570-16 / 2016-02	04/09/2016 / 1:34 A.M.	OIS Dog
2016-03	4/23/2016 / 11:49 P.M.	OIS No Hits
G-32401-16 / 2016-04	7/30/2016 / 8:30 A.M.	OIS Dog
FTN2016-0393/H-01019-16	8/1/2016 / 9:08 P.M.	Hospitalization - Hands
H-22654-16 / 2016-05	8/21/2016 / 3:35 P.M.	OISs and ICD
I-04664-16 / 2016-06	09/05/2016 / 2:30 A.M.	Accidental Discharge
K-15166-16 / 2016-07	11/15/2016 / 12:17 A.M.	OIS No Hits

The OIPM responded to five (5) of the eight (8) Critical Incidents in 2016. Being able to review the scene and receive a walkthrough and briefing was essential for the OIPM to determine if the initial part of the investigation was being conducted properly. Reviewing the scene and receiving a walkthrough was also essential for the OIPM to make recommendations to improve the quality of NOPD critical incident investigations, accordingly.

The OIPM was unable to respond to the scene of three (3) Critical Incidents. In two (2) incidents the OIPM did not have personnel available to respond and in the 3rd incident OIPM was not notified in a timely manner of the incident by NOPD/Command Desk.

The OIPM considers an In-Custody Death to include any incident in which a surrounded or barricaded person dies. The person is not free to leave and his/her liberty has been curtailed at that point, even though they have not been arrested. The NOPD does not consider such deaths to be In-Custody Deaths pursuant to their internal rules and regulations. There was one In-Custody Death in 2016 according to the OIPM’s definition. In that incident, the decedent was wounded by the NOPD and LSP when they were trying to apprehend him. He shot and killed himself after he had been wounded, but before he could be taken into custody. The dash cam video of the incident may be found online at <https://youtu.be/Zu9L2JQadOw>.

TABLE 2: IN CUSTODY DEATH DEFINITIONS

New Orleans Police Department Operations Manual Chapter: 1.3 Title: Use of Force. Effective: 12/6/15	OIPM-NOPD MOU Signed 11/10/10
NOPD Policy defines an In-Custody death as “In-Custody Death— An incident in which an individual died while in, or as an apparent result of being in, the custody of NOPD.”	All deaths while the arrestee or detainee is in the custodial care of the NOPD, commonly referred to as an in-custody death or ICD;

TRENDS IN CRITICAL INCIDENTS 2011-2016

The following table provides a comparison of Critical Incidents since 2011, which is the first year that the OIPM began fully responding to Critical Incidents. The OIPM will continue to track Critical Incident trends.

TABLE 3: CRITICAL INCIDENTS 2011-2016

Year -	Total CIs	OISs	Hospitali- zations	ICD	Head Trauma	Other	Deaths
2011	19	19	0	0	0	0	2
2012	22	20	1	1	0	0	3
2013	17	12	1	2	0	2	2
2014	17	11	3	2	2	2	4
2015	14	12	1	1	0	0	5
2016	8	7	1	1	0	0	1
Totals	97	81	7	7	2	4	17

NOPD POLICY

The NOPD must make a determination in each critical incident as to whether the officer's use of deadly force violated NOPD policy. In some cases, the Orleans Parish District Attorney must make a determination as to whether the law has been violated.

The United States Supreme Court ruled that under the Fourth Amendment to the United States Constitution, police officers may only use that force which is reasonable and necessary to accomplish a lawful police objective such as an arrest, entry, or detention.¹ Additionally, under Louisiana law, police officers may be justified in using deadly force

¹ *Graham v. Connor*, 490 U.S. 386 (1989).

when authorized by their duties/law, in defense of a life, in defense of property, or to prevent great bodily harm.²

Under NOPD policy, a police officer has the authority to use deadly force under the appropriate Constitutional and state law standards. Additionally, NOPD policy requires officers to use an alternative to force, such as verbal persuasion, if reasonable under the circumstances.

Use of Force Review Board

In the 2012 Consent Decree, NOPD agreed to “develop and implement a Use of Force Review Board (UFRB) to review all serious uses of force and other FIT investigations.”³ According to the Consent Decree, the UFRB is to review FIT investigations, hear presentations from the lead investigator, determine whether force violated NOPD policies, and refer to PIB for discipline if the policy was violated. Additionally, the UFRB is to “determine whether the incident raises policy, training, equipment, or tactical concerns, and refer such incidents to the appropriate unit within NOPD to ensure they are resolved.”⁴

On December 6, 2015, NOPD implemented a chapter of its Operations Manual which established a “Use of Force Review Board.”⁵ According to the Operations Manual,

The Use of Force Review Board (UFRB) serves as a quality control mechanism to ensure timely reviews of all serious use of force investigations to determine the appropriateness of the investigative findings, and to quickly appraise use of force incidents from a tactics, training, policy, and agency improvement perspective.⁶

The voting members of the UFRB are the Deputy Superintendents of Field Operations Bureau, Public Integrity Bureau, and Investigations and Support Bureau.⁷ Other NOPD chiefs and commanders serve as non-voting members, and outside groups like OIPM and the Office of the Consent Decree Monitor have been invited to listen and participate in discussion.

At each of the approximately monthly UFRB hearings, PIB investigators make presentations regarding critical incidents involving NOPD officers and make a recommendation to the Board about whether the use of force was justified or not justified. The Board and other present representatives then discuss the use of force, and the Board then votes whether the use of force was justified or not. Often the Board

² Louisiana Revised Statutes 14:18, et. seq.

³ *United States v. City of New Orleans*, E.D. La. 12-cv-1924, R. Doc. 2-1 at 32.

⁴ *Id.* at 33.

⁵ NOPD Ops. Manual Chapter 1.3.7.

⁶ *Id.*

⁷ *Id.* at ¶ 2.

makes recommendations about needed training practices or considers whether changes to policy are needed.

A. OIPM Assessment of the UFRB Process

Based on what it observed in 2016, OIPM believes the UFRB is a positive, healthy, and worthwhile activity for NOPD.

At one of the early UFRB hearings, a NOPD officer cautioned the Board against “Monday morning quarterbacking” in reviewing the use of force. OIPM was pleased to hear Deputy Superintendent Paul Noel of Field Operations Bureau push back. He explained that the purpose of the Board is to do precisely that kind of Monday morning quarterbacking – to review past critical incidents and see what can be learned from them, independent of the process of officer discipline or criminal investigation.

This self-reflective process is a core part of creating an “organization skilled at creating, acquiring, and transferring knowledge, and at modifying its behavior to reflect new knowledge and insights.”⁸ Over the span of only a year, OIPM has watched the UFRB grow in terms of self-reflection and willingness to engage with areas of needed improvement.

B. OIPM Involvement and Results from the UFRB Process

OIPM has integrated itself into the UFRB process. This has provided an opportunity for OIPM to engage with various NOPD divisions – PIB, Field Operations, Policy, etc. – regarding issues of significant public concern.

Prior to each UFRB, OIPM investigators review the file of a critical incident and then meet or correspond with members of PIB to discuss identified areas of concern. For example, OIPM reviewers have discussed the OIPM’s questions about the NOPD’s use of Conducted Electrical Weapons (“CEW” aka Tasers).⁹ The OIPM will publish “*OIPM Observations on NOPD’s Use of Conducted Electrical Weapons (aka Tasers)*” at a later date.

PIB has been responsive in discussing these issues with OIPM and then raising many of them during the UFRB hearings. OIPM has also raised its concerns directly at the UFRB hearings, to varying levels of receptivity.

OIPM’s participation in the UFRB process has yielded important results by identifying patterns of use of force. One such pattern involves the use of CEW by NOPD officers, and will be discussed in more depth in a later report. Another identified pattern involves the tactical use of canine units against some persons. The OIPM will release its review of cases involving the use of canines at a later date.

⁸ David A. Garvin, “Building a Learning Organization”, Harvard Business Review, July-August 1993.

⁹ Ops Manual Ch. 1.7.1 § 29.

NOPD DETERMINATIONS FOR 2016

PIB provided the OIPM with the following criminal and administrative dispositions for the Critical Incidents, and use of force incidents, which occurred in 2016 and were reviewed by the UFRB in 2016. Appendix A contains a narrative for each of the cases included herein.

TABLE 4: NOPD DETERMINATIONS

NOPD Item#/ASI # or FTN #	Date of UFRB	Incident Type	Justified	Within Policy	OPDA Actions
C-36671-16 / 2016-01	June 9, 2016	Accidental Discharge	NO	N/A	Not Referred by NOPD.
D-09570-16 / 2016-02	September 8, 2016	OIS Dog	YES	YES	Not Referred by NOPD.
G-32401-16 / 2016-04	Pending	OIS Dog	Pending	Pending	Not Referred by NOPD.
FTN2016-0393/H-01019-16	October 13, 2016	Hospitalization - Hands	YES	YES	Not Referred by NOPD.
H-22654-16 / 2016-05	Pending	OISs and ICD	Pending	Pending	Not Referred by NOPD.
2016-03	October 13, 2016	OIS No Hits	NO	NO	Not Referred by NOPD.
I-04664-16 / 2016-06	Pending	Accidental Discharge	Pending	Pending	Not Referred by NOPD.
K-15166-16 / 2016-07	Pending	OIS No Hits	Pending	Pending	Referred by NOPD, but charges rejected by the Orleans Parish District Attorney's Office.

APPENDIX A – OIPM Critical Incidents for 2016

	Date/Time	2016 Critical Incidents Summaries
1.	03-31-2016 / 10:06 A.M.	Detective Kent was leaving an apartment in JP while carrying his personally-owned firearm in his right hand and his two cell phones/keys in his left hand. Kent lost his footing and the firearm discharged once, striking the bathroom mirror. No injuries.
2.	04/09/2016 / 1:34 A.M.	Officer Stokes and his partner were in the rear yard of a residence on a domestic disturbance call when Officer Stokes, who was around the corner from his partner, was charged by an aggressive 8-year-old male Pitbull. Officer Stokes attempted to retreat, but the dog continued to advance towards the officer. Officer Stokes fired twice at the dog, striking it in the head. The dog was later euthanized by SPCA.
3.	4/23/2016 / 11:49 P.M.	During the course of a domestic disturbance with his girlfriend at their residence in JP, P/O Shubert discharged a firearm into a closet at the residence. The round went through the closet wall and struck a crib, where his 2-year-old daughter was crying. No one was injured as a result of the incident. PIB was not notified until 4/24/16 at 9:23 P.M. P/O Shubert resigned from NOPD on 4/25/16. Shubert later committed suicide.
4.	7/30/2016 / 8:30 A.M.	Officer Daggs responded to a call of a loose pit bull dog attacking people in the neighborhood. When the officer located the dog, it was inside the residence's side yard with an open gate. The officer and the neighbor devised a plan to lure the dog further into the yard, so he could secure the gate. The plan was successful until the officer went to close the gate and realized the gate could not be secured (no latch). The dog charged at the officer, who fired twice, striking it in the shoulder. The dog was transported by SPCA for treatment.

5.	8/1/2016 / 9:08 P.M.	P/O Freeman & P/O Reiter responded to a domestic call. The arrested subject was handcuffed and when they were trying to put him in the police car, he passively resisted, tensing his body. The door was closed on the subject's leg without the officers realizing it, and he received a dislocated left knee and a laceration to the left foot. The subject is being treated at Touro hospital.
6.	8/21/2016 / 3:35 P.M.	Officers Rotton and Williams separately responded to an LSP Trooper's call for assistance after three subjects in a stolen vehicle he was pursuing fled on foot and one of the subjects, later identified as Mr. Porche, fired at the Trooper as he fled and shot another LSP Trooper in the arm. Officers Rotton and Williams encountered Mr. Porche at New Orleans at Law as he again fired at officers in the area. Officer Rotton fired several rounds at Mr. Porche with his patrol rifle, striking him twice and causing "potentially survivable" wounds, according to the coroner's office. Officer Williams also fired once at Mr. Porche with his duty handgun, missing him. Mr. Porche then placed his firearm to his head and committed suicide.
7.	09/05/2016 / 2:30 A.M.	SWAT was responding to a signal 108 involving a barricaded suspect inside a residence. While establishing a perimeter, Officer Rousseve took a position in the rear of the target residence. Officer Rousseve had to transition his patrol rifle (on a sling) from a forward position to a rearward position so he could re-position tires contained in the yard for a better vantage point. During this transition, the rifle's trigger caught onto his gear and discharged one round into the ground. No one was injured as a result of the incident.
8.	11/15/2016 / 12:17 A.M.	Officer Lewis and Recruit Cravatta responded to a call of a sexual assault in progress at a residence. After knocking on the residence's front door and receiving no response, the officers moved to the side of the residence to knock on an additional door. As they did, Mr. Doyle exited the residence via the front door, but quickly ran back in as the officers approached him. The officers forced entry into the residence and made their way up the stairs, where they encountered an armed Mr. Doyle. As Mr. Doyle leveled his handgun at the officers, Officer Lewis fired one shot at him, missing him. The officers then exited the residence and ordered Mr. Doyle out of the residence, where he was taken into custody without further incident. Mr. Doyle was the roommate of the victim, but was not the perpetrator of the sexual assault. The perpetrator of the sexual assault fled the scene prior to the officers' arrival.