

# NACOLE Case Studies on Civilian Oversight

## Office of the Independent Police Monitor

New Orleans, Louisiana  
Investigative-Focused Model

by Michael Vitoroulis



**COPS**  
Community Oriented Policing Services  
U.S. Department of Justice





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This project was supported, in whole or in part, by grant number 2016-CK-WX-K017 awarded to the National Association for Civilian Oversight of Law Enforcement (NACOLE) by the U.S. Department of Justice, Office of Community Oriented Policing Services. The opinions contained herein are those of the author(s) or contributor(s) and do not necessarily represent the official position or policies of the U.S. Department of Justice. References to specific individuals, agencies, companies, products, or services should not be considered an endorsement by the author(s), the contributor(s), or the U.S. Department of Justice. Rather, the references are illustrations to supplement discussion of the issues.

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Recommended citation:

NACOLE (National Association for Civilian Oversight of Law Enforcement). 2021. *Office of the Independent Police Monitor: New Orleans, Louisiana*. NACOLE Case Studies on Civilian Oversight. Washington, DC: Office of Community Oriented Policing Services.

Published 2021

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# Program Context

The New Orleans Office of the Independent Police Monitor (OIPM) is an auditor/monitor-focused oversight agency overseeing the New Orleans Police Department (NOPD), a force of 1,158 sworn officers serving a jurisdiction of 378,715. Created by ordinance in 2008 and responsible for overseeing a police department under federal consent decree (CD), the OIPM has the authority to actively monitor the NOPD's receipt and investigation of civilian and internally generated complaints conducted by the department's Public Integrity Bureau (PIB), critical incident investigations, and disciplinary processes. The OIPM is also authorized to review, analyze, and assess the quality of NOPD's data collection and early-warning system; mediate civilian complaints; and issue recommendations regarding NOPD policies, procedures, and training.

# History of Civilian Oversight in New Orleans

New Orleans' history with civilian oversight began with public outrage over a grand jury's decision not to indict 14 NOPD officers on charges tied to the infamous "Algiers Seven" incident, during which NOPD officers killed and injured several civilians while searching for suspects involved in the November 1980 fatal shooting of an NOPD officer.<sup>1</sup> Citizens and several community groups, including the National Association for the Advancement of Colored People (NAACP), Roman Catholic groups, and Protestant sects, testified before the New Orleans City Council advocating the creation of an independent agency to investigate NOPD misconduct.<sup>2</sup> In 1981, the city council voted to create an Office of Municipal Investigation (OMI) to investigate allegations of misconduct by city employees, including sworn officers of the NOPD.<sup>3</sup> According to a survey of civilian complaint systems published for the New York City Police Department in 1992, the OMI was authorized to investigate allegations of misconduct defined as follows:

"Bribery, theft of city property, improper discharge of firearms, coercion and/or excessive use of physical force . . . , the performance of a lawful, legal action in an illegal or improper manner, or the violation of a law, rule or regulation which may be considered as reasonable cause for reprimand, suspension or dismissal from public employment."<sup>4</sup>

More than half of the complaints received by the OMI alleged misconduct by NOPD officers.<sup>5</sup> The office nonetheless struggled to provide effective accountability and civilian oversight of the department because of limited awareness of its existence and limitations on its authority. The OMI retained only serious misconduct cases, did not investigate off-duty misconduct, and could not recommend discipline on sustained cases.<sup>6</sup> The OMI was further severely weakened

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1. Frontline, "Timeline: NOPD's Long History of Scandal," PBS, last modified August 25, 2010, <https://www.pbs.org/wgbh/pages/frontline/law-disorder/etc/cron.html>; "New Orleans Moves to Curb Misconduct of Officials," *The New York Times*, May 17, 1981, <https://www.nytimes.com/1981/05/17/us/new-orleans-moves-to-curb-misconduct-of-officials.html>.

2. "New Orleans Moves" (see note 1).

3. "New Orleans Moves" (see note 1).

4. *Survey of Civilian Complaint Systems* (New York: New York City Police Department Civilian Complaint Investigative Bureau, 1992), <https://www.ncjrs.gov/pdffiles1/Digitization/145205NCJRS.pdf>.

5. "New Orleans: Civilian Review," *Shielded from Justice: Police Brutality and Accountability in the United States*, Human Rights Watch, accessed August 11, 2020, <https://www.hrw.org/legacy/reports98/police/uspo95.htm>.

6. "New Orleans: Civilian Review" (see note 5).



by several mayoral administrations throughout the 1980s and 1990s. Staff positions remained unfilled as financial resources dwindled, its authority to investigate anonymous complaints was eliminated in 1997, and highly critical reports were defanged by city officials to the point where OMI investigators sought whistleblower protection in fear of retaliation.<sup>7</sup>

As the OMI stumbled, the NOPD earned a reputation for unchecked misconduct and corruption. Incidents including the 1990 in-custody death of Adolph Archie, in which police radio recordings revealed calls for him to be killed;<sup>8</sup> a Federal Bureau of Investigation (FBI) probe into NOPD extortion and corruption;<sup>9</sup> and an NOPD officer's ordering of a hit on a civilian who filed a complaint against him in 1994<sup>10</sup> culminated in severely strained relations between the NOPD and the New Orleans community. By 1996, the U.S. Department of Justice (DOJ) Civil Rights Division (CRD) initiated an investigation into the department's practices and potentially systematic civil rights violations.<sup>11</sup>

A catalyst for police reform and strengthened civilian oversight came in June 2001, following the fatal shooting of unarmed 18-year old Erik Daniels by NOPD officers in the predominantly African-American neighborhood of Algiers.<sup>12</sup> By September 2001, amid public outrage over the shooting, former New Orleans Mayor Marc Morial convened a 20-member Police-Civilian Review Task Force composed of clergy, community activists, civil rights organizations, police, attorneys, and academics to "evaluate [the] creation of a citizen's review board to consider complaints against police officers."<sup>13</sup> In addition to holding several public hearings throughout the city, the task force reviewed materials published by the National Institute of Justice (NIJ), DOJ, and nationally recognized practitioners of civilian oversight of law enforcement.<sup>14</sup>

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7. Michael Perlstein, "Staff Cutbacks, Neglect Make Investigators Powerless," *The Times-Picayune*, August 4, 2002.

8. Bob Herbert, "In America; Disgracing the Badge," *The New York Times*, September 18, 1995, <https://www.nytimes.com/1995/09/18/opinion/in-america-disgracing-the-badge.html>.

9. "FBI New Orleans History," Federal Bureau of Investigation, accessed August 11, 2020, <https://www.fbi.gov/history/field-office-histories/neworleans>.

10. Bob Herbert, "In America; Killer Cops," *The New York Times*, September 15, 1995, <https://www.nytimes.com/1995/09/15/opinion/in-america-killer-cops.html>.

11. Christopher Cooper, "NOPD Probe Set In Motion in 1992," *The Times-Picayune*, July 4, 1996.

12. Robert Nelson and Leslie Williams, "N.O. Chief Seeks Witnesses in Teen's Killing by Police," *The Times-Picayune*, June 5, 2001.

13. Natalie Pompilio, "Citizens' Review of Police Considered," *The Times-Picayune*, September 6, 2001; Police-Civilian Review Task Force, *Report of the Police-Civilian Review Task Force* (New Orleans: Police-Civilian Review Task Force, 2002), 1.

14. Police-Civilian Review Task Force, *Report*, 2 (see note 13).

The task force’s report, published in December 2002, reviewed and proposed several improvements to New Orleans’ already existing complaint mechanisms (NOPD’s PIB and the OMI),<sup>15</sup> assessed the appropriateness of new oversight structures for the New Orleans community,<sup>16</sup> and issued several recommendations regarding the revitalization of civilian oversight of the NOPD. The report’s primary recommendation called for the creation of an Independent Monitor that would do the following:

“Review and analyze the numbers and types of complaints being made by citizens, the quality of investigations conducted by [PIB] and OMI, adequacy of data collection & analysis, resource and staffing needs of [PIB] and OMI, and policies & procedures; conduct risk management review of policies & of lawsuits; review the operations and effectiveness of NOPD’s ‘early warning system’ (PPEP) [Professional Performance Enhancement Program]; look at specific issues regarding supervision, training and discipline; conduct pattern analysis; and review potential problem areas such as handcuff injuries, racial profiling in pedestrian/vehicle stops, effectiveness and use of integrity checks, etc., as the need arises.”<sup>17</sup>

The report also called for the establishment of an ombudsman “whose duties are to [ensure] that citizens are informed of their rights and duties as citizens, and to assist in [ensuring] that the process works fairly and appropriately,”<sup>18</sup> as well as opportunities for mediating complaints, recognizing that mediation “must not be allowed to become a technique to pressure someone into not filing a complaint.”<sup>19</sup> The task force report went further to state that it is “deeply concerned about the continued viability and effectiveness of the OMI . . . under its current structure.”<sup>20</sup> Several task force members believed that the OMI should be abolished, while others thought it should be completely overhauled.<sup>21</sup>

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15. Police-Civilian Review Task Force, *Report*, 8–16, 23–25 (see note 13).

16. Police-Civilian Review Task Force, *Report*, 30–34 (see note 13).

17. Police-Civilian Review Task Force, *Report*, 6 (see note 13).

18. Police-Civilian Review Task Force, *Report*, 7 (see note 13).

19. Police-Civilian Review Task Force, *Report*, 8 (see note 13).

20. Police-Civilian Review Task Force, *Report*, 15 (see note 13).

21. Police-Civilian Review Task Force, *Report*, 16 (see note 13).

The task force report also considered various scenarios in which a new civilian oversight mechanism would be created—including an independent investigative agency, a civilian review body, an appellate agency, or an auditor/monitor.<sup>22</sup> The task force felt that a monitor-type oversight model had merit given the relative ease and inexpensiveness of implementation and the NOPD’s use of CompStat,<sup>23</sup> which would provide ample data for the monitor to review and analyze.<sup>24</sup> Task force members preferred an independent monitor because it was determined that an investigative body would be redundant to the OMI and expensive to implement and manage; a review-focused model would not be ideal due to the number of criminal investigations into NOPD officers being undertaken by the FBI;<sup>25</sup> and that an appellate model would be a mere reinvention of existing services provided by the OMI.<sup>26</sup>

In February 2003, the New Orleans City Council unanimously pledged its support for establishing an Office of the Independent Police Monitor (OIPM) and referred the matter to the city council’s budget committee, which estimated roughly \$250,000 in start-up costs.<sup>27</sup> The proposal remained stagnant until March 2004 when the DOJ CRD completed an eight-year long investigation into the NOPD that led to numerous department-wide reforms and staved off, for the time

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22. The task force assessed four models of civilian oversight identified by the NIJ as found in Peter Finn, *Citizen Review of Police: Approaches and Implementation* (Washington, DC: U.S. Department of Justice, 2001), 6, <https://www.ncjrs.gov/pdffiles1/nij/184430.pdf>. Finn draws from Samuel Walker, *Citizen Review Resource Manual* (Washington, DC: Police Executive Research Forum, 1995). For a more contemporary approach to analyzing different models of civilian oversight, see Joseph D’Angelis, Richard Rosenthal, and Brian Buchner, *Civilian Oversight of Law Enforcement: Assessing the Evidence* (Tucson, AZ: National Association for Civilian Oversight of Law Enforcement, 2016), [https://d3n8a8pro7vhmx.cloudfront.net/nacole/pages/161/attachments/original/1481727974/NACOLE\\_AccessingtheEvidence\\_Final.pdf?1481727974](https://d3n8a8pro7vhmx.cloudfront.net/nacole/pages/161/attachments/original/1481727974/NACOLE_AccessingtheEvidence_Final.pdf?1481727974).

23. CompStat is a relatively common “performance management system that is used to reduce crime and achieve other police department goals.” For more information, see Police Executive Research Forum, *CompStat: Its Origins, Evolution, and Future in Law Enforcement Agencies* (Washington, DC: Bureau of Justice Assistance, 2013), <https://www.bja.gov/publications/perf-compstat.pdf>.

24. Report of the Police-Civilian Review Task Force. December 2002, 33.

25. As mentioned earlier in this section, in 1993 the FBI initiated a major corruption investigation into alleged criminal conduct by NOPD officers. Task force members expressed concern that the number of criminal investigations involving NOPD officers would undermine a review-focused model because information collected throughout the course of a criminal investigation cannot be shared with individuals outside law enforcement. A review-focused oversight entity composed of civilians would thus be constrained in its ability to review completed administrative investigations and issue subsequent recommendations on each case. The task force raised similar concerns regarding the OMI. Because it could only proceed with an administrative investigation at the conclusion of a criminal investigation, it was determined that reopening “cold” investigations would lead to long delays, inadequate findings, and frustration on behalf of complainants. Police-Civilian Review Task Force, *Report*, 32-33 (see note 13).

26. Police-Civilian Review Task Force, *Report*, 33 (see note 13).

27. Frank Doze, “Council Backs Police Monitor,” *The Times-Picayune*, February 21, 2003.

being, a CD.<sup>28</sup> Then Mayor Ray Nagin suggested that the conclusion of the federal investigation “lessen[ed] the need for [a monitor].”<sup>29</sup> Community advocacy for an OIPM nonetheless continued amid several deadly police-citizen encounters throughout the summer of 2004.<sup>30</sup>

Efforts to establish an OIPM were further delayed by New Orleans’ efforts to rebuild after Hurricane Katrina in 2005. It would not be until the fatal shooting of an individual who had a mental disturbance in late December 2005 that discussions of the OIPM were revived, with the NOPD’s newly appointed Superintendent Warren Riley publicly backing the proposal.<sup>31</sup> The New Orleans City Council re-raised the matter in April 2006<sup>32</sup> and, in an effort to kickstart the OIPM’s creation, approved \$200,000 in the city’s 2007 budget to fund the OIPM.<sup>33</sup> No ordinance outlining the OIPM’s structure or authority was put forward.

At nearly the same time, New Orleans officials were working on additional measures to root out misconduct and corruption throughout the city government. In November 2006, the city council passed an ordinance<sup>34</sup>—pursuant to a charter amendment that had been approved in November 1995<sup>35</sup>—creating a broadly powered Office of the Inspector General (OIG) to audit, investigate, review, and inspect city entities.<sup>36</sup> In June 2007, the seven-member civilian Ethics Review Board (ERB), responsible for enforcing the city’s code of ethics, appointed New Orleans’ first inspector general (IG).<sup>37</sup>

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28. Michael Perlstein, “Feds End 8-year NOPD Probe,” *The Times-Picayune*, March 30, 2004.

29. “A Necessary Safeguard,” *Gambit*, April 5, 2004, [https://www.nola.com/gambit/commentary/article\\_5c80475f-fe1e-5d51-aba6-613fb6f10917.html](https://www.nola.com/gambit/commentary/article_5c80475f-fe1e-5d51-aba6-613fb6f10917.html).

30. “A City on Edge,” *Gambit*, August 17, 2004, [https://www.nola.com/gambit/commentary/article\\_1cddd07e-631e-517e-946c-0dcc857dffc9.html](https://www.nola.com/gambit/commentary/article_1cddd07e-631e-517e-946c-0dcc857dffc9.html).

31. Bruce Nolan, “Police Chief Open to Change after Shooting,” *The Times-Picayune*, December 30, 2005.

32. Bruce Egger, “Independent Monitor Urged for N.O. Police,” *The Times-Picayune*, April 28, 2006.

33. Lolis E. Elie, “Someone to Watch Over Them,” *The Times-Picayune*, October 8, 2007.

34. City of New Orleans Code of Ordinances, §2-1120, [https://library.municode.com/la/new\\_orleans/codes/code\\_of\\_ordinances?nodeId=PTIICO\\_CH2AD\\_ARTXIII\\_OFINGEOI](https://library.municode.com/la/new_orleans/codes/code_of_ordinances?nodeId=PTIICO_CH2AD_ARTXIII_OFINGEOI).

35. This charter amendment, approved by New Orleans voters in November 1995, required city council to create ordinances establishing an Ethics Review Board and an Office of the Inspector General. In June 1996, the New Orleans city council passed an ordinance establishing the ERB. The ordinance establishing the OIG was not passed until November 2006.

36. “New Orleans City Council Approves Strong Inspector General,” *New Orleans CityBusiness*, November 13, 2006.

37. Bruce Egger, “City Names Official to Probe Fraud,” *The Times-Picayune*, June 13, 2007; City of New Orleans Code of Ordinances, §2-719, [https://library.municode.com/la/new\\_orleans/codes/code\\_of\\_ordinances?nodeId=PTIICO\\_CH2AD\\_ARTVIIET](https://library.municode.com/la/new_orleans/codes/code_of_ordinances?nodeId=PTIICO_CH2AD_ARTVIIET).

# Genesis and Evolution of the New Orleans OIPM

One year later, in June 2008, the New Orleans City Council unanimously voted in favor of creating the OIPM as a subdivision within the recently created OIG's office.<sup>38</sup> Community organizations and activists applauded the city council's proposal while the New Orleans Fraternal Order of Police (FOP) claimed that an OIPM would violate provisions of the Louisiana Police Officers' Bill of Rights.<sup>39</sup> The following month, the city council unanimously approved an ordinance creating an Independent Police Monitor Division within the IG's office.<sup>40</sup> The ordinance authorized the IG to appoint the independent police monitor (IPM) after considering three finalists selected by a search committee comprising the IG, chair of the ERB, and chair of the city council's criminal justice committee.<sup>41</sup> The ordinance empowered the OIPM to do the following:

“Review and analyze the numbers and types of complaints; assess the quality and timeliness of NOPD investigations; review the adequacy of data collection and analysis; review the PIB's policies, procedures, and resource needs; conduct risk management reviews; review the operations and effectiveness of the NOPD ‘early warning system;’ review specific issues regarding supervision, training, and discipline; conduct relevant pattern analysis; and other tasks to ensure NOPD accountability, transparency, and responsiveness to the community it serves.”<sup>42</sup>

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38. Richard A. Webster. “Behind the Badge: New Orleans FOP Opposes Creation of Independent Police Monitor,” *New Orleans CityBusiness*, June 16, 2008, <https://neworleanscitybusiness.com/blog/2008/06/16/behind-the-badge/>.

39. Louisiana Revised Statutes Tit. 40, § 2531; Webster, “Behind the Badge” (see note 38).

40. David Hammer, “Police Monitor's Powers Approved,” *The Times-Picayune*, July 11, 2008; City of New Orleans Code of Ordinances, § 2-1121.

41. City of New Orleans Code of Ordinances, § 2-1121.

42. City of New Orleans Code of Ordinances, § 2-1121.

In October 2008, New Orleans residents voted to approve a charter amendment formalizing the duties and authority of the IG, creating the Independent Police Monitor Division as a permanent fixture of the IG's office, and allocating 0.75 percent of the city's general fund to the OIG's budget.<sup>43</sup>

The OIPM's first independent monitor was appointed by New Orleans' interim IG in 2009 following a nationwide search for a candidate meeting the qualification requirements prescribed by ordinance.<sup>44</sup> Community members criticized the interim IG for not interviewing and appointing any of the finalists identified by the search committee.<sup>45</sup> The IPM resigned less than one month into his post, and the deputy independent monitor assumed responsibility for setting up the office while the search for a new IPM was initiated.<sup>46</sup> In February 2010, in response to public criticism over the first IPM selection process, the New Orleans City Council passed an ordinance amendment requiring the IG to appoint an independent monitor from the pool of three finalists identified by the search committee.<sup>47</sup> The amendment also added procedures for removal of the IPM: The IPM could be removed only through the IG's recommendation and subsequent approval by majority vote of the ERB.<sup>48</sup> In April 2010, an attorney with experience practicing civilian oversight in Los Angeles and in Austin, Texas, was appointed as IPM through the new selection process.<sup>49</sup>

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43. "New Orleans Police Monitor Charter Amendment, November 8, 2016," *On the Ballot* (New Orleans: Bureau of Governmental Research, 2016), [https://www.bgr.org/wp-content/uploads/2017/07/BGR\\_OrleansBallot\\_Nov-2016.pdf](https://www.bgr.org/wp-content/uploads/2017/07/BGR_OrleansBallot_Nov-2016.pdf).

44. City of New Orleans Code of Ordinances, §2-1121(2) lists the basic qualifications for the IPM as an attorney with experience in criminal, civil rights, labor law, or corporate and/or governmental investigations or possess at least five years' experience in law enforcement oversight, preferably with a graduate degree.

45. Brendan McCarthy, "Independent Police Monitor Named in New Orleans," *The Times-Picayune*, August 11, 2008.

46. *Annual Report: August 15, 2009 through March 31, 2010* (New Orleans: Office of Inspector General Independent Police Monitor's Office, 2010), 1, <http://nolaipm.gov/wp-content/uploads/2016/12/2009-IPM-annual-report.pdf>.

47. City of New Orleans Code of Ordinances §2-1121(13).

48. City of New Orleans Code of Ordinances §2-1121(13).

49. Brendan McCarthy, "Woman Chosen to Keep an Eye on the NOPD," *The Times-Picayune*, April 24, 2010.

The OIPM's appointment came at critical juncture for both the NOPD and the City of New Orleans. Two days after his inauguration in May 2010, then Mayor Mitch Landrieu wrote a letter to then U.S. Attorney General Eric H. Holder inviting the DOJ CRD to investigate and determine the changes necessary for the NOPD to "prevent, detect, and discipline misconduct as well as introduce best practices for public safety."<sup>50</sup> Several NOPD officers were already under investigation by the FBI for numerous serious misconduct incidents, including the Danziger Bridge shooting incident and subsequent coverup in the aftermath of Hurricane Katrina, as well as the New Years' Day officer-involved shooting of 22-year-old Adolph Grimes, Jr. in 2009.<sup>51</sup> Under intense scrutiny, the NOPD at this time refused to turn over the investigative files necessary for the OIPM to conduct its monitoring duties.

By November 2010, however, with a new superintendent in charge of the NOPD, significant progress was made in terms of cooperation with the OIPM. Both entities signed off on a memorandum of understanding (MOU) outlining the OIPM's authority, procedures, and information access regarding its monitoring activities of the department.<sup>52</sup> The MOU would become crucial for the OIPM's work moving forward.

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50. Mitch Landrieu, letter to U.S. Attorney General Eric H. Holder, May 5, 2010.

51. Laura Maggi, "FBI Looks at Cases Involving N.O. Cops," *The Times-Picayune*, June 2, 2009.

52. Susan Hutson, Ronal W. Serpas, and Arlinda Westbrook, Memorandum of Understanding between the NOPD and the OIPM, November 10, 2010, <http://nolaipm.gov/wp-content/uploads/2016/12/MOU-Signed.pdf>.

# New Orleans Police Department Under Consent Decree: 2012–present

The findings of the DOJ CRD’s investigation into the NOPD were published in March 2011.<sup>53</sup> The CRD report determined that “basic elements of effective policing . . . have been absent for years” and found “reasonable cause to believe that NOPD engages in patterns of misconduct that violate the Constitution and federal law.”<sup>54</sup> The report further identified systemic deficiencies in the department’s policies, recruitment, training, supervision, discipline, and accountability mechanisms that led to unconstitutional discrimination, uses of force, stops, searches, and arrests.<sup>55</sup>

The CRD’s report was the first pattern or practice investigation to include a dedicated section explicitly mentioning the benefits of robust and well-resourced civilian oversight.<sup>56</sup> It stated that “it is critical oversight mechanisms be sufficiently resourced and empowered”<sup>57</sup> and expressed concern “regarding whether the IPM has received sufficient resources and latitude to carry out its duties effectively. Adequate staffing, as well as the ability and authority to promptly obtain internal NOPD records on officer conduct, will be critical to the IPM’s success as an oversight mechanism.”<sup>58</sup> In concluding, the report stated:

“When combined with practices that ensure appropriate transparency in police department decisions related to misconduct and tactics, and with tools to measure, assess, and respond to changing community attitudes towards policing over time, civilian oversight can help create a powerful form of community engagement that will ensure that reforms are sustained over time, even after court-ordered oversight has ended.”<sup>59</sup>

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53. Civil Rights Division, *Investigation of the New Orleans Police Department* (Washington, DC: U.S. Department of Justice, 2011), [https://www.justice.gov/sites/default/files/crt/legacy/2011/03/17/nopd\\_report.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2011/03/17/nopd_report.pdf).

54. Civil Rights Division, *Investigation of the New Orleans Police Department*, vi (see note 53).

55. Civil Rights Division, *Investigation of the New Orleans Police Department*, vi–xviii (see note 53).

56. Prior CRD investigations into police departments have only tangentially mentioned the benefits of robust civilian oversight. The CRD investigation into the Los Angeles Police Department (LAPD), for example, included a finding that the Board of Police Commissioners (BOPC), the civilian head of the LAPD, and the Office of the Inspector General, the agency responsible for providing civilian oversight of the LAPD, “do not have the resources needed to conduct meaningful oversight of the LAPD in a consistent, ongoing manner.” See Bill Lann Lee, “LAPD Notice of Investigation Letter,” letter to James K. Hahn, May 8, 2000, <https://www.justice.gov/crt/lapd-notice-investigation-letter>.

57. Civil Rights Division, *Investigation of the New Orleans Police Department*, xxi–xxii (see note 53).

58. Civil Rights Division, *Investigation of the New Orleans Police Department*, xxii (see note 53).

59. Civil Rights Division, *Investigation of the New Orleans Police Department*, xxii (see note 53).



In July 2012, the City of New Orleans entered<sup>60</sup> into what city officials touted as the most comprehensive and far-reaching CD with the DOJ to date.<sup>61</sup> The CD required significant changes to the department’s policies and procedures regarding use of force (UOF); stops, searches, and arrests; training; discipline; measures against biased policing; recruitment; supervision; secondary employment; handling of misconduct complaints; community outreach; data collection and public reporting; transparency; and oversight.<sup>62</sup>

Several parties—the FOP and Police Association of New Orleans (PANO), the bargaining units for FOP officers; Community United for Change, a community group; and the IPM—sought to weigh in on the CD’s terms prior to its approval by the U.S. District Court.<sup>63</sup> In particular, the IPM expressed concern that it was not sufficiently included in the CD: While it required the City and NOPD “to provide ready and timely access to the information necessary to fulfill its duties”<sup>64</sup> and memorialized the MOU signed with the department in November 2010, there were no provisions granting the OIPM a role in monitoring the implementation of reforms or requiring the city to allocate additional resources to the office.<sup>65</sup> This was in contrast with, for example, the Los Angeles Police Department’s CD, in which the BOPC and the OIG to the LAPD were given explicit oversight roles throughout the reform process.<sup>66</sup> Ultimately, the motions filed by all groups to formally join the CD process were denied, and the CD was approved by the court in January 2013.<sup>67</sup>

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60. Both parties entered the consent decree on July 24, 2012. The final terms of the consent decree were approved by the U.S. District Court for the Eastern District of Louisiana on January 11, 2013.

61. “Mayor Landrieu, Justice Department Announce Details of Consent Decree to Oversee Transformation of New Orleans Police Department,” press release, Office of the Mayor of New Orleans, July 24, 2012; John Schwartz, “New Orleans Police, Mired in Scandal, Accept Plan for Overhaul,” *The New York Times*, July 24, 2012, <https://www.nytimes.com/2012/07/25/us/plan-to-reform-new-orleans-police-department.html>.

62. Amended and Restated Consent Decree Regarding the New Orleans Police Department, *United States v. New Orleans City*, 2:12-cv-01924 (E.D. Louisiana 2012), <https://nola.gov/getattachment/NOPD/NOPD-Consent-Decree/Consent-Decree.pdf/>.

63. Laura Maggi, “Groups Seek Role in Police Decree,” *The Times-Picayune*, August 21, 2012.

64. Amended and Restated Consent Decree, ¶¶441–442 (see note 62).

65. Laura Maggi, “Federal Judge Hears from Police Officer Groups and Monitor about NOPD Consent Decree,” *The Times-Picayune*, September 21, 2012.

66. Consent Decree, *United States v. City of Los Angeles et al.* (C.D. Cal. 2000), 2:00-cv-11769-GAF-RC, ¶¶135–154, <https://www.justice.gov/crt/file/826956/download>.

67. “NOPD Consent Decree OK’d by Judge, Mayor Mitch Doesn’t Want It,” NOLA Defender, January 11, 2013.

On the same day the CD was approved, however, then Mayor Landrieu attempted to back out of the agreement entirely. In a motion filed with the federal court, the city claimed the high costs of the NOPD CD and the additional financial burden of the simultaneously negotiated Orleans Parish Prison CD were unmanageable.<sup>68</sup> The city council had expressed concerns over the cost of both CDs several months earlier, claiming that the OIPM could do most of the federal court monitor's work at a lower cost.<sup>69</sup> The mayor's request was denied,<sup>70</sup> and in August 2013, the law firm Sheppard, Mullin, Richter & Hampton, LLP was appointed as the consent decree monitor (CDM) responsible for overseeing the implementation of the reforms.

Tensions between the IPM and New Orleans OIG started brewing that summer after the IG claimed a report published by the IPM was "nitpick[y]" and "appears to be biased."<sup>71</sup> The IPM claimed the OIG was attempting to limit the office's independence.<sup>72</sup> Because the IPM was a division of the OIG's office, the IG asserted that the OIPM should seek the OIG's approval of its reports prior to publication.<sup>73</sup> The OIPM-OIG conflict reignited in July 2015 when the OIG awarded a no-bid contract to the Police Assessment Resource Center (PARC) to conduct a peer evaluation of the OIPM without discussing the selection of the evaluator, the scope of the evaluation, or the date of the evaluation with the IPM.<sup>74</sup> The discord peaked following the OIPM's release of a video of an NOPD officer kicking a shackled inmate and subsequent publication of

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68. Amended and Restated Consent Decree (see note 62).

69. Bruce Egler, "City Council Members Discuss Slashing NOPD Consent Decree Money, Hiring More Cops," *The Times-Picayune*, November 14, 2012.

70. Ramon A. Vargas, "Court Lifts Stay on Consent Decree," *The Times-Picayune*, June 7, 2013.

71. Gordon Russel and Laura Maggi, "Quatrevaux Slams Police Monitor," *The New Orleans Advocate*, August 8, 2013.

72. Russel and Maggi, "Quatrevaux Slams Police Monitor" (see note 71).

73. James Gill, "Watchdogs Fight Each Other," *The Advocate*, August 18, 2013.

74. Charles Maldonado, "Inspector General Awards No-Bid Contract to Evaluate Independent Police Monitor," *The Lens*, September 25, 2015, <https://thelensnola.org/2015/09/25/inspector-general-awards-no-bid-contract-to-evaluate-independent-police-monitor/>.

a highly critical review of the officer-involved shooting death of 20-year-old Wendell Allen.<sup>75</sup> The IG thereafter sent a letter to the Ethics Review Board requesting it hold a public hearing and vote on firing the IPM for what the IG called a pattern of “ethical misconduct and unprofessional conduct.”<sup>76</sup> Several community members filed a petition in support of the OIPM.<sup>77</sup>

In October 2015, with the city council’s assistance,<sup>78</sup> the OIG and IPM entered into an MOU that permanently separated the OIPM from the OIG.<sup>79</sup> The OIG agreed to rescind his request for the IPM’s termination, and both parties agreed to support charter and ordinance amendments allocating 0.16 percent and 0.59 percent of the city’s general fund to the OIPM and OIG, respectively.<sup>80</sup> The OIPM also agreed to relocate its office to a location outside of the Federal Reserve building that had previously housed both offices. The city council approved putting the charter amendment on the ballot, which passed with 71 percent approval of New Orleans voters in November 2016.<sup>81</sup>

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75. Susan Hutson, Independent Police Monitor, City of New Orleans, “Officer-Involved Shooting; IPM No. 2012-682; ASI No. 2012-10 [The Shooting Death of Wendell Allen],” letter to Deputy Superintendent Arlinda Westbrook, Director, Public Integrity Bureau, New Orleans Police Department, August 4, 2015, <http://nolaipm.gov/wp-content/uploads/2017/09/FINAL-Wendell-Allen-Report.pdf>; Jim Mustian and Matt Sledge, “New Orleans Inspector General Moves to Fire Independent Police Monitor as They Wage Political Warfare,” *The New Orleans Advocate*, September 28, 2015, [https://www.theadvocate.com/new\\_orleans/news/politics/article\\_fe07f900-7eb0-59d7-8281-e1dec966c12b.html](https://www.theadvocate.com/new_orleans/news/politics/article_fe07f900-7eb0-59d7-8281-e1dec966c12b.html).

76. Mustian and Sledge, “New Orleans Inspector General Moves” (see note 75).

77. Willie Muhammad, “We SUPPORT Susan Hutson, the New Orleans Police Monitor!” iPetitions, accessed August 12, 2020, <https://www.ipetitions.com/petition/we-support-susan-hutson-the-new-orleans-police>.

78. New Orleans City Council, Resolution No. R-15-507, October 15, 2015, [https://library.municode.com/la/new\\_orleans/munidocs/munidocs?nodeId=17272301b51e2](https://library.municode.com/la/new_orleans/munidocs/munidocs?nodeId=17272301b51e2).

79. *Office of the Inspector General and Office of the Independent Police Monitor, Agreement for Funding, Ordinance Change, and Charter Amendment*, Memorandum of Understanding, October 14, 2015.

80. Prior to this agreement, 0.75 percent of the city’s general fund was allocated to the OIG. Funding for the IPM came from the percentage allotted to the OIG and was determined by the IG.

81. Greg LaRose, “New Orleans Voters Split Funding for Inspector General, Police Monitor,” *The Times-Picayune*, November 8, 2016, [https://www.nola.com/elections/index.ssf/2016/11/new\\_orleans\\_voters\\_split\\_polic.html](https://www.nola.com/elections/index.ssf/2016/11/new_orleans_voters_split_polic.html).

# Organizational Structure

Although the OIPM was initially created as a subdivision of the New Orleans OIG’s office, it is now a standalone municipal agency operationally independent from any entity within the city of New Orleans. The OIPM is overseen but not governed by the New Orleans ERB. The ERB is established by the New Orleans city charter<sup>82</sup> and its composition and duties are prescribed by ordinance.<sup>83</sup>

## Ethics Review Board

The ERB is composed of seven members, six of whom are appointed by the mayor from lists of three nominees each submitted by the presidents or chancellors of several local universities: Dillard University, Loyola University, Southern University in New Orleans, Tulane University, University of New Orleans, and Xavier University.<sup>84</sup> One member is nominated by the mayor.<sup>85</sup> All appointments are subject to approval by a city council majority.<sup>86</sup> Members of the ERB may be removed by the mayor for reasonable cause or by the city council for lack of qualifications, incompetence, neglect of duty, failure to comply with a lawful directive of the Civil Service Commission, or gross misconduct.<sup>87</sup> Terms for ERB members are seven years.<sup>88</sup>

The ERB’s primary function is to “establish additional recommendations for code of ethics, issue advisory opinions, promulgate rules regarding the interpretation and enforcement of the city’s code of ethics, refer cases for investigation on referral or complaint, retain counsel, and impose fines.”<sup>89</sup> The ERB is authorized to appoint and remove both the OIG<sup>90</sup> and IPM.<sup>91</sup> The ERB is also a participant in annual quality assurance reviews of the OIG<sup>92</sup> and the OIPM.<sup>93</sup>

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82. Home Rule Charter of the City of New Orleans, §9-402, [https://library.municode.com/la/new\\_orleans/codes/code\\_of\\_ordinances?nodeId=PAI\\_HORUCH\\_ARTIXGEPR\\_CH4OFINGEETREBOOFINPOMO\\_S9-402ETREBO](https://library.municode.com/la/new_orleans/codes/code_of_ordinances?nodeId=PAI_HORUCH_ARTIXGEPR_CH4OFINGEETREBOOFINPOMO_S9-402ETREBO).

83. City of New Orleans Code of Ordinances, §2-719.

84. City of New Orleans Code of Ordinances, §2-719(2).

85. City of New Orleans Code of Ordinances, §2-719(2).

86. City of New Orleans Code of Ordinances, §2-719(2).

87. City of New Orleans Code of Ordinances, §2-719(4).

88. City of New Orleans Code of Ordinances, §2-719(6).

89. Home Rule Charter of the City of New Orleans, §9-402(1).

90. City of New Orleans Code of Ordinances, §2-1120(3)–(4).

91. City of New Orleans Code of Ordinances, §2-1121(1)(a), §2-1121(20).

92. City of New Orleans Code of Ordinances, §2-1120(16).

93. City of New Orleans Code of Ordinances, §2-1121(22).

### *Selection and appointment of IPM*

To appoint the IPM, the ERB must initiate a nationwide search process for the position within 60 days of its vacancy.<sup>94</sup> The ERB may appoint an IPM by majority vote.<sup>95</sup> The chairperson of the ERB may appoint either the deputy IPM or other OIPM personnel as an interim IPM during the search process, except when the interim appointment is overruled by majority vote of the ERB and an alternative eligible candidate is appointed as the interim IPM instead.<sup>96</sup> The ERB approves the IPM's annual salary on an annual basis.<sup>97</sup> The IPM serves a four-year term and may be reappointed to a subsequent four-year term at the ERB's discretion.<sup>98</sup>

### *Removal of IPM*

The ERB may initiate proceedings to remove the IPM for cause, including abuse of power or authority; conviction of a state or federal felony; entry of a guilty or *nolo contendere* plea to a state or federal felony charge; discrimination; ethical misconduct in office; unprofessional conduct; or other acts tarnishing the integrity of the OIPM.<sup>99</sup> The ERB must conduct a public hearing on the matter, conduct a vote in which a two-thirds majority of the ERB moves to remove the IPM, and publicly report the reasons for removal to the city council.<sup>100</sup>

### *Annual external evaluation of OIPM*

By ordinance, the OIPM's "completed reports, inspections, performance reviews, public reports of investigation, and other records, shall be subject to an annual quality assurance review by a third-party advisory committee, known as the quality assurance review advisory committee for the [OIPM]."<sup>101</sup> This committee includes a representative from the ERB, a representative appointed by the mayor, and a representative from city council serving as the chair of the committee.<sup>102</sup>

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94. City of New Orleans Code of Ordinances, §2-1121(1)(a)(1)(a-b).

95. City of New Orleans Code of Ordinances, §2-1121(1)(a)(1)(c).

96. City of New Orleans Code of Ordinances, §2-1121(1)(a)(1)(d).

97. City of New Orleans Code of Ordinances, §2-1121(1)(a)(2).

98. City of New Orleans Code of Ordinances, §2-1121(1)(b).

99. City of New Orleans Code of Ordinances, §2-1121(20).

100. City of New Orleans Code of Ordinances, §2-1121(20).

101. City of New Orleans Code of Ordinances, 2-1121(22)(a).

102. City of New Orleans Code of Ordinances, 2-1121(22)(1).

## Office of the Independent Police Monitor

The OIPM leadership consists of the IPM, a deputy police monitor (DPM), and executive director of community relations.

### *Qualifications for IPM*

By ordinance, the IPM shall have the following qualifications:

“an attorney with substantial experience in criminal, civil rights, and/or labor law, or corporate and/or governmental investigations; or an individual with at least five years’ experience in law enforcement oversight, preferably with a graduate degree. Knowledge of law enforcement, particularly of internal investigations of wrongdoing and uses of force, is essential. The monitor shall possess impeccable integrity, sound judgment, and an ability to relate effectively with all those who have a stake in law enforcement including, but not limited to, residents of and visitors to New Orleans, the police department, other law enforcement agencies, and relevant parts of city government. The monitor shall possess an understanding of the city’s ethnic diversity, cultural traditions, and socio-economic situation.”<sup>103</sup>

### *Staffing*

In May 2018, the OIPM had a total of eight staff. This included the IPM, the deputy police monitor (DPM), one chief monitor, one auditor, one complaint intake specialist, one community-police mediation program director, and one office manager. The OIPM is also assisted by one attorney retained as general counsel and four attorneys contracted to conduct monitoring and review work. In the past, the OIPM has used law students and interns to assist the office’s research.

OIPM has a Use of Force Section and a Complaint Intake & Review Section. The Use of Force section consists of the IPM’s chief monitor and three contracted attorneys who review use of force cases and attend Use of Force Review Board hearings. The Complaint Intake & Review Section consists of the deputy police monitor, community-police mediation program director, and complaint intake specialist.

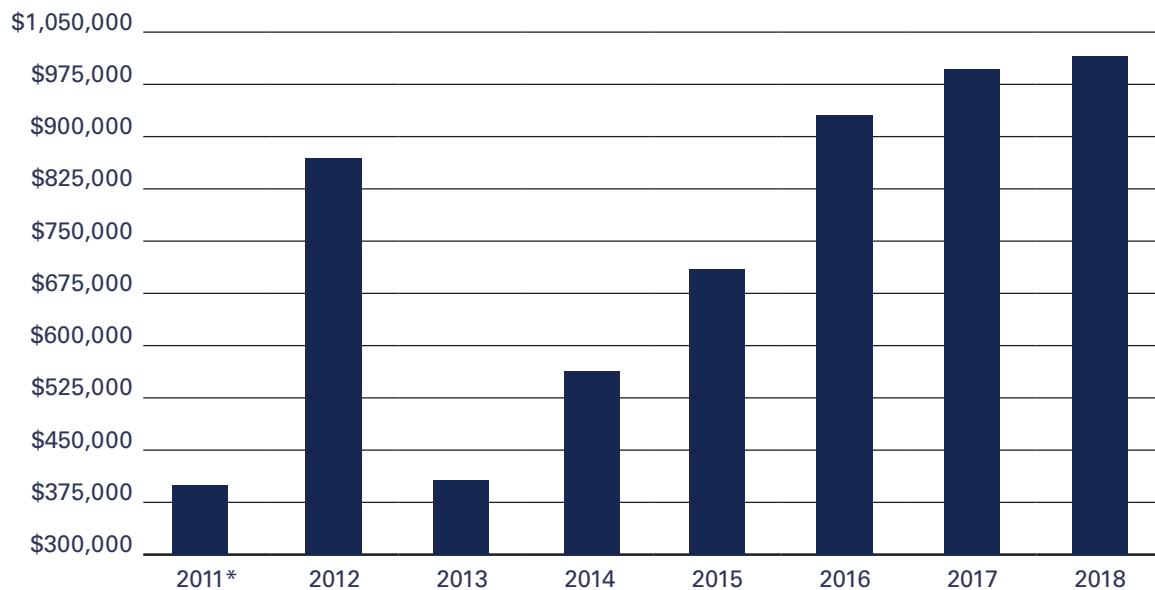
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103. City of New Orleans Code of Ordinances, §2-1121(2).

## Budget

Prior to the OIPM's separation from the OIG in 2016, the OIPM budget was determined at the discretion of IG, whose office was allocated 0.75 percent of the New Orleans General Fund. Following the separation and subsequent charter amendment in 2016, the OIPM is receive 0.16 percent of the 0.75 percent of the city's general fund.<sup>104</sup> Figure 1 depicts the OIPM's adopted annual budget from 2011 to 2018.

**Figure 1. OIPM adopted annual budget, 2011–2018**



\* 2011 estimate provided by the OIG include only personnel expenses and do not include operating expenses.

Source: 2011–2015, estimates provided by New Orleans Office of the Inspector General; 2016–2018, "City of New Orleans' Budget," City of New Orleans, accessed August 12, 2020.

104. Home Rule Charter of the City of New Orleans, §9-404.

# Duties and Scope of Authority

The duties of the OIPM according to the New Orleans city charter are to monitor the NOPD in the areas of civilian and internally generated complaints, internal investigations, discipline, uses of force, critical incidents, and in-custody death.<sup>105</sup> The charter furthermore states,

“The Office of Independent Police Monitor shall also review and analyze the numbers and types of complaints; assess the quality and timeliness of New Orleans Police Department investigations; review the adequacy of data collection and analysis; review the New Orleans Police Department Public Integrity Bureau’s policies, procedures, and resource needs; conduct risk management reviews; review the operations and effectiveness of New Orleans Police Department ‘early warning system;’ review specific issues regarding supervision, training, and discipline; and conduct relevant pattern analysis.”<sup>106</sup>

The OIPM’s annual reports summarize the agency’s duties as follows:

- To ensure that all complaints regarding police misconduct are classified and investigated or mediated at the appropriate level and that those investigations are fair, timely, and thorough; to ensure that discipline is fair, timely, and appropriate and can be upheld upon appellate scrutiny; to make information about this review process available to the public
- To monitor NOPD investigations into use of force and adherence to law and policy and to identify violations of civil rights; concerns of officer tactics and safety; and risks to life, liberty, and property
- To review and analyze aggregate data from complaints, investigations, community concerns, and public policy as it relates to crafting recommendations aimed towards improving NOPD policy and practice

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105. Home Rule Charter of the City of New Orleans, §9-403(2).

106. Home Rule Charter of the City of New Orleans, §9-403(2).



- To reach out to inform the community about the OIPM, to listen and respond to broader community concerns, and to prepare the community for engagement in NOPD policy and practice
- To mend police/community relationships by fostering effective police/community partnerships
- To collect police recommendations, review and monitor police training and supervision issues, and support a healthy and safe working environment for NOPD employees

The OIPM ordinance<sup>107</sup> further details its authority with regards to its monitoring duties as detailed throughout the remainder of this section. Elements of the OIPM’s authority are also included in the the 2010 memorandum of understanding between the NOPD and OIPM, which was negotiated as required by ordinance<sup>108</sup> and memorialized in the consent decree.

### **Misconduct complaint investigation monitoring and review**

The OIPM may receive complaints alleging misconduct by NOPD personnel<sup>109</sup> from civilians, NOPD staff and sworn officers, involved parties, third parties not directly involved in the incident, incarcerated individuals, individuals with pending criminal charges, and anonymous sources.<sup>110</sup> The OIPM is not authorized to independently investigate misconduct complaints, but it is authorized to review and recommend the classification of complaints to the NOPD’s internal affairs unit, the Public Integrity Bureau.<sup>111</sup>

Any internal investigation conducted by the PIB may be actively monitored by the OIPM.<sup>112</sup> Completed internal investigations may be reviewed by the OIPM on its own initiative or at the request of the complainant within 10 days of the OIPM’s receipt of the completed investigation.<sup>113</sup> If the OIPM deems that the investigation is not sufficiently thorough, fair, or timely,

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107. City of New Orleans Code of Ordinances, §2-1121.

108. City of New Orleans Code of Ordinances, §2-1121(18). This provision requires that “the independent police monitor and New Orleans Police Department shall be required to negotiate protocols within 90 days of the appointment of the independent police monitor.”

109. For the purposes of this report, NOPD personnel includes both nonsworn civilian employees and sworn officers.

110. City of New Orleans Code of Ordinances, §2-1121(4); New Orleans Police Department–Office of the Independent Police Monitor Memorandum of Understanding, ¶1.

111. City of New Orleans Code of Ordinances, §2-1121(5).

112. City of New Orleans Code of Ordinances, §2-1121(3).

113. City of New Orleans Code of Ordinances, §2-1121(8).

it may request that the PIB conduct additional investigation where further investigation is not prohibited by state law.<sup>114</sup> If the PIB declines to accept the OIPM’s request for reclassification, reopening an investigation, or conducting further investigation, it may issue a public report relative to the refusal.<sup>115</sup>

## **Use of force and critical incident monitoring**

The OIPM may monitor investigations into all NOPD uses of force and critical incidents.<sup>116</sup> This includes being present on scene at critical incidents, receiving a walk-through at the scene by the supervisor of the NOPD investigating unit, and viewing all evidence relevant to the incident and its investigation.<sup>117</sup> The OIPM may review each critical incident investigation and issue its own report regarding the quality of the investigation, tactics, departmental policy, training, and discipline prior to its adjudication by the department’s Use of Force Review Board (UFRB).<sup>118</sup>

## **Disciplinary review**

The NOPD and New Orleans Civil Service Commission are required to develop rules and regulations allowing the OIPM to attend disciplinary and non-disciplinary proceedings,<sup>119</sup> review disciplinary and nondisciplinary documents, issue determinations regarding violations

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114. New Orleans Police Department–Office of the Independent Monitor Memorandum of Understanding, ¶30, 36 (see note 110). Time limits on investigations are imposed by the Louisiana Police Officer’s Bill of Rights; Webster, “Behind the Badge” (see note 38).

115. City of New Orleans Code of Ordinances, §2-1121(6).

116. City of New Orleans Code of Ordinances, §2-1121(3); The NOPD defines a critical incident as a use of force resulting in hospitalization or death; an officer intentionally shooting a gun at a person(s); head strikes with an impact weapon; vehicular pursuits resulting in death or an injury of a person(s) requiring hospitalization; or in-custody deaths. See “Public Integrity Bureau,” New Orleans Police Department, accessed August 12, 2020, <https://www.nola.gov/nopd/about-us/bureaus/public-integrity/>.

117. New Orleans Police Department–Office of the Independent Monitor Memorandum of Understanding, ¶¶42, 45 (see note 110).

118. New Orleans Police Department–Office of the Independent Monitor Memorandum of Understanding, ¶51 (see note 110).

119. A nondisciplinary proceeding is defined as “A non-punitive process used to correct a subordinate’s behavior that is not fully compliant with Department rules, regulations, Chapters, or policies but is not sufficiently egregious to elevate the action to formal discipline. A supervisor must meet with the non-compliant member, explain the manner in which his or her actions are not compliant, and review the relevant policy (or Chapter, rule, or regulation) with him or her. The non-disciplinary counseling shall be documented in the Supervisor Feedback Log.” For more information see “Chapter 52.1.1. Misconduct Complaint Intake and Investigation,” *New Orleans Police Department Operations Manual* (New Orleans: New Orleans Police Department, 2015), <https://nola.gov/getattachment/NOPD/NOPD-Consent-Decree/Chapter-52-1-1-Misconduct-Complaint-Intake-and-Investigation.pdf/>.

of departmental policy, make disciplinary recommendations, and review the appropriateness of any disciplinary decision.<sup>120</sup> The OIPM may also issue recommendations to the Civil Service Commission regarding improvements to the NOPD disciplinary process.<sup>121</sup>

## **Mediation**

The OIPM is required to establish and administer a program for mediating civilian complaints conducted by a trained, neutral mediator outside the NOPD.<sup>122</sup> Consent of the civilian, involved officer(s), and NOPD is required for a complaint to be mediated.<sup>123</sup>

## **Review and analysis of NOPD data collection, civil claims, and lawsuits**

The OIPM is required to track trends in types and sources of civilian and internally-generated complaints; complaint processing and investigation; complaint adjudications; discipline in relation to complaint type; and NOPD's use of its early-warning system to identify officers in need of additional training, supervision, or other forms of intervention as determined by the OIPM.<sup>124</sup>

The OIPM is also required to review patterns in civil claims and lawsuits regarding NOPD misconduct, including payouts over time, units disproportionately represented as subjects in such claims or lawsuits, related training, and other issues. This may include reviewing the investigation of the underlying incidents described in such claims and lawsuits, regardless of whether those investigations predated the filing of a claim or if the investigation was initiated following such filing.<sup>125</sup>

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120. City of New Orleans Code of Ordinances, §2-1121(13).

121. City of New Orleans Code of Ordinances, §2-1121(13).

122. City of New Orleans Code of Ordinances, §2-1121(15).

123. City of New Orleans Code of Ordinances, §2-1121(15).

124. City of New Orleans Code of Ordinances, §2-1121(14).

125. City of New Orleans Code of Ordinances, §2-1121(9).

## Policy and training recommendations

Based on its observations and analysis of NOPD data, the OIPM may issue recommendations to the NOPD superintendent regarding improvements to the department’s policies and practices.<sup>126</sup> The OIPM may also review training sessions and schedules to identify best practices and any needs for improvements to the department’s training curriculum or frequency.<sup>127</sup>

## Access to information

The OIPM’s access to NOPD records and information is largely spelled out in the NOPD-OIPM MOU. The protocols outlined in NOPD-OIPM MOU, while themselves not legally binding, are required by ordinance to be negotiated between the department and OIPM<sup>128</sup> and must be adhered to by department members, city employees, and OIPM staff by ordinance:

“It shall be the duty of all city employees, classified or unclassified, to cooperate with the independent police monitor in his work pursuant to this section. Any city employee who violates any provision of this chapter shall be subject to investigation, and if warranted, to discharge or such other discipline consistent with civil service rules and procedures in addition to any other penalty provided in the City Charter or ordinances.”<sup>129</sup>

The NOPD-OIPM MOU grants the OIPM “complete electronic access to the IPM/PIB database in order to retrieve, print and download information to which it is legally entitled.”<sup>130</sup> With regard to non-PIB information relevant to the OIPM’s monitoring duties, the MOU requires that both the OIPM and NOPD “jointly establish procedures for the IPM to access the Department’s data/information which is necessary to conduct risk management reviews and pattern analyses pursuant to paragraph 3 of the Ordinance.”<sup>131</sup> With regard to the ordinance, “The [NOPD] shall provide the appropriate database and personnel to facilitate this section.”<sup>132</sup>

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126. City of New Orleans Code of Ordinances, §2-1121(10).

127. City of New Orleans Code of Ordinances, §2-1121(11).

128. City of New Orleans Code of Ordinances, §2-1121(18).

129. City of New Orleans Code of Ordinances, §2-1121(17).

130. New Orleans Police Department–Office of the Independent Monitor Memorandum of Understanding, ¶60 (see note 110).

131. New Orleans Police Department–Office of the Independent Monitor Memorandum of Understanding, ¶65 (see note 110).

132. City of New Orleans Code of Ordinances, §2-1121(14).

In practice, the OIPM has varying levels of direct access to NOPD records and information. The OIPM and PIB have separate IAPro databases. PIB does not have access to the OIPM's IAPro database, but the OIPM has "daily user" (i.e., read-only) access to the PIB's main IAPro interface. The OIPM has back-end access to a replica of the PIB's IAPro database that allows it to run custom queries and manipulate the database.<sup>133</sup> Officer personnel files are housed in the PIB's primary IAPro database and are thus fully accessible to the OIPM. The OIPM also has regular access to the NOPD's early-warning system called INSIGHT.<sup>134</sup> The NOPD field interview card database is similarly accessible to the OIPM. Body-worn camera footage is accessible to the OIPM and OIPM's chief monitor after notifying the NOPD and ensuring the footage is not part of an open criminal case.

### **Public reporting and external accountability**

OIPM is required to issue at least one report to the ERB and city council detailing its monitoring and review activities annually. Such reports must contain appropriate statistical information from the PIB; problems it has identified; recommendations issued and recommendations adopted by the NOPD; commendations; and improvements made by the department to enhance its professionalism, accountability, and transparency.<sup>135</sup> The city council's criminal justice committee shall conduct a hearing on each annual report 30 days after its submission. Any additional reports published by the OIPM shall also be submitted to the ERB and city council criminal justice committee at the same time they are issued to the public.<sup>136</sup>

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133. To better understand the nature of this access to IAPro, consider that an IAPro database is hosted on a remote SQL server that may contain multiple databases. The PIB's IAPro software is connected to one database to which the OIPM has read-only (i.e., it may only view, but not edit or add cases to the database) access. The PIB's IAPro database is replicated on the SQL server and made fully accessible in the OIPM's installation of the IAPro software. This form of access allows the PIB to ensure the integrity of its primary IAPro database while providing the OIPM with a copy that it can view, edit, and manipulate for its own analyses.

134. For more information on INSIGHT, see New Orleans Police Department Operations Manual "Chapter 35.1.9 INSIGHT: Early Intervention System," *New Orleans Police Department Operations Manual* (New Orleans: New Orleans Police Department, 2016), <https://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/Chapter-35-1-9-INSIGHT.pdf/>.

135. City of New Orleans Code of Ordinances, §2-1121(16).

136. City of New Orleans Code of Ordinances, §2-1121(16).

OIPM must hold one community outreach meeting in each city council district of the city at least every four months.<sup>137</sup> Similarly, it must meet with each police association representing NOPD officers a minimum of three times each year.<sup>138</sup>

The OIPM is subject to regular external evaluations and peer reviews. A committee consisting of representatives from the ERB, city council, and mayor must conduct an evaluation of the OIPM's work product on an annual basis,<sup>139</sup> as described in the Ethics Review Board subsection in the Organizational Structure section of this report. The OIPM is also required by ordinance to be peer reviewed every three years, paid for by the OIPM.<sup>140</sup> The findings and recommendations arising from the peer review must be shared with the ERB and, following the ERB's approval, must be implemented by the OIPM within 90 days.<sup>141</sup> The peer reviewer's final report must be shared with the ERB, mayor, city council, and public.<sup>142</sup>

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137. City of New Orleans Code of Ordinances, §2-1121(12).

138. City of New Orleans Code of Ordinances, §2-1121(12).

139. City of New Orleans Code of Ordinances, §2-1121(22)(a).

140. City of New Orleans Code of Ordinances, §2-1121(22)(b).

141. City of New Orleans Code of Ordinances, §2-1121(22)(b).

142. City of New Orleans Code of Ordinances, §2-1121(22)(b).

# Procedures

## Complaint intake and classification

The NOPD's PIB is primarily responsible for the intake, review, classification, assignment of complaints to the appropriate bureau for investigation and preliminary adjudication of complaints alleging misconduct against members of the NOPD.<sup>143</sup> The PIB typically investigates allegations of serious misconduct, while nonserious misconduct allegations are investigated at the command level of the subject officer. Allegations of serious use of force, uses of force indicating apparent criminal conduct by an officer, or uses of force by NOPD personnel of a higher rank than sergeant are investigated by the NOPD's Force Investigation Team (FIT), described in greater detail in the Monitoring Critical Incidents section of this report. If the PIB becomes aware of possible criminal activity by an NOPD officer or employee, the PIB must notify the superintendent, PIB commander, IPM, district attorney, or United States Attorney's office.<sup>144</sup>

Complaints may be submitted to the NOPD (including to any NOPD member, directly to the PIB, in person at any police station or facility, at the complainant's location at their request, at the NOPD website, by email, by fax, or by U.S. mail), at City Hall, at Orleans Parish courthouses, at all Orleans Parish public libraries, at the Orleans Parish Public Defender's office, at the district attorney's office, or at community group locations. The OIPM accepts complaints in person at its office, by phone or email, online, through Facebook, or via Twitter.<sup>145</sup> Complaint forms are available in English, Spanish, and Vietnamese.

Complaints submitted to the OIPM are transmitted to the PIB by email within four days of receipt.<sup>146</sup> Complaints submitted to the NOPD's PIB are referred to the OIPM within seven days of receipt, complete with copies of complaint intake and classification forms.<sup>147</sup>

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143. "Chapter 52.1.1 Misconduct Complaint Intake and Investigation," §39-41 (see note 119).

144. "Chapter 52.1.1 Misconduct Complaint Intake and Investigation," §40 (see note 119).

145. The OIPM does not systematically scan social media for complaints but will initiate intake procedures if a complainant has contacted the OIPM through social media.

146. New Orleans Police Department–Office of the Independent Monitor Memorandum of Understanding, ¶6 (see note 110).

147. New Orleans Police Department–Office of the Independent Monitor Memorandum of Understanding, ¶13 (see note 110).

When the OIPM transmits a complaint to the PIB, it will suggest the appropriate categorization for the complaint and submit a list of allegations and potential policy violations to be considered. In certain cases, the OIPM may review the officer's personnel file and recommend reassignment to manage potential retaliation or corrective action through the NOPD Professional Performance Enhancement Program (PPEP).<sup>148</sup>

When a complaint is transmitted to the PIB from a supervisor or the OIPM or when a complainant files a complaint directly with the PIB, the PIB will review and classify the complaint as (a) a public complaint to be formally investigated, (b) an internally generated complaint to be formally investigated, (c) a minor violation resolved through counseling or training, or (d) a complaint in which no formal investigation is merited (NFIM).<sup>149</sup>

Public or internally generated complaints are further categorized as use of force, criminal, or administrative complaints.<sup>150</sup> Administrative complaints are thereafter subcategorized as (1) serious misconduct,<sup>151</sup> (2) other (nonserious) misconduct,<sup>152</sup> (3) allegations eligible for negotiated settlement, or (4) allegations eligible for community-police mediation. Allegations of serious misconduct are retained by the PIB for investigation.<sup>153</sup> Once classified, the PIB may refer non-serious misconduct allegations to the subject officer's bureau or unit of assignment for investiga-

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148. Susan Hutson, *2016 Annual Report: Complaints and Discipline* (New Orleans: Office of the Independent Police Monitor, 2017), 5, <https://nolaipm.gov/wp-content/uploads/2017/09/2016-Complaint-and-Discipline-Report-FINAL-3-31-17.pdf>.

149. NFIM refers to complaints in which the allegation on its face does not constitute a violation of NOPD policy, procedure, verbal or written instruction, or criminal or civil law. The NFIM categorization may only be used for (a) complaints disputing traffic citations, unless they contain an allegation of other misconduct (e.g., racial profiling, illegal search, excessive force), in which case those allegations are classified and investigated according to their merits; (b) complaints alleging delayed police service in which a preliminary investigation demonstrated the delay was due to workload; (c) complaints regarding the conduct in a civil incident of an off-duty employee, unless the alleged conduct or its effects constitute misconduct or had a substantial nexus to the employee's employment; and (d) complaints in which a preliminary investigation demonstrates that the subject did not work for the NOPD at the time of the incident or in which the identity of the subject employee cannot be determined despite the best efforts of the PIB investigator. "Chapter 52.1.1. Misconduct Complaint Intake and Investigation" (see note 119).

150. "Chapter 52.1.1. Misconduct Complaint Intake and Investigation," §45 (see note 119).

151. Serious misconduct allegations include discriminatory policing, false arrest, planting evidence, untruthfulness/false statements, unlawful search, retaliation, sexual misconduct, domestic violence, misconduct implicating the conduct of the supervisory or command leadership of the subject employee, and allegations requested by a commander to be investigated by the PIB rather than the accused employee's bureau.

152. Nonserious misconduct allegations include discourtesy, neglect of duty, service complaints, missed court, and lack of professionalism.

153. "Chapter 52.1.1. Misconduct Complaint Intake and Investigation," §51 (see note 119).



tion.<sup>154</sup> Use of force complaints alleging serious use of force,<sup>155</sup> a use of force indicating apparent criminal conduct by an NOPD officer, or uses of force by NOPD personnel higher than the rank of sergeant are investigated by the PIB's FIT.<sup>156</sup>

The OIPM reviews the categorization and classification of all uses of force and the classification of all cases designated for monitoring or review. If the OIPM disagrees with the categorization or classification of any complaint flagged for monitoring, it will notify the PIB in writing within seven days its receipt of the complaint and recommend the reclassification of the complaint.<sup>157</sup> The PIB has seven days (subject to a mutually agreed-upon extension) to respond to the OIPM's request for reclassification.<sup>158</sup>

All administrative investigations must be initiated within 14 days of receipt and completed within 60 days of the date the complaint was classified unless an extension of 60 days is granted by the New Orleans Civil Service Department.<sup>159</sup>

## **Monitoring and reviewing NOPD internal investigations**

The OIPM may actively monitor investigations conducted by the PIB and review completed investigations conducted by either the PIB or the subject officer's assigned unit prior to final adjudication. Because of staffing and capacity constraints, only select cases are actively monitored. This includes all critical incident investigations,<sup>160</sup> cases determined to be of community interest, and cases requested to be monitored by the complainant.

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154. "Chapter 52.1.1. Misconduct Complaint Intake and Investigation," §52 (see note 119).

155. A serious use of force is defined as all uses of lethal force by an NOPD officer; all critical firearm discharges by an NOPD officer; all uses of force by an NOPD officer resulting in serious physical injury or requiring hospitalization; all neck holds; all uses of force by an NOPD officer resulting in a loss of consciousness; all canine bites; more than two applications of a conducted electrical weapon (CEW) on an individual during a single interaction, regardless of the mode or duration of the application and whether the applications are by the same or different officer or CEW application for 15 seconds or longer, whether continuous or consecutive; and any strike, blow, kick, CEW application, or similar use of force against a handcuffed subject. "Chapter 1.3.2. Force Investigation Team (FIT)," *New Orleans Police Department Operations Manual* (New Orleans: New Orleans Police Department, 2015), <https://www.nola.gov/getattachment/NOPD/Policies/Chapter-1-3-2-Force-Investigation-Team-EFFECTIVE-4-1-18.pdf/>.

156. "Chapter 52.1.1. Misconduct Complaint Intake and Investigation," §48 (see note 119).

157. New Orleans Police Department–Office of the Independent Monitor Memorandum of Understanding, ¶18 (see note 110).

158. New Orleans Police Department–Office of the Independent Monitor Memorandum of Understanding, ¶19 (see note 110).

159. "Chapter 52.1.1. Misconduct Complaint Intake and Investigation," §82–83 (see note 119).

160. Hutson, *2016 Annual Report: Complaints and Discipline*, 6 (see note 148).

While monitoring a PIB investigation, the OIPM will confer with investigators to obtain interview schedules and additional information that may not yet be incorporated into the IAPro case file. The OIPM has ongoing access to all documentation and evidence relevant to the case as it becomes available.<sup>161</sup> The OIPM will also submit any additional evidence or information provided by complainants to the investigators assigned to the case within three days of its receipt.<sup>162</sup>

The OIPM observes officer and witness interviews in real time and is given the opportunity to ask questions and issue recommendations regarding the interview during breaks.<sup>163</sup> PIB investigators may follow the OIPM's recommendations regarding the interviews at their own discretion. Throughout the course of the investigation, the OIPM can recommend that additional investigation be conducted until it determines that the investigation is sufficiently thorough and complete.<sup>164</sup>

Investigators append recommended preliminary dispositions of either unfounded, sustained, not sustained, exonerated, or resigned/retired under investigation for each allegation based on a finding of fact and the totality of circumstances.<sup>165</sup> The OIPM does not recommend dispositions at this time. All completed investigations are then reviewed by the PIB Deputy Superintendent before proceeding to the adjudication and disciplinary process described in the Monitoring Disciplinary Process section of this report.<sup>166</sup>

## **Monitoring critical incident investigations**

All documented uses of force by NOPD officers are placed into one of four categories; Level 1 uses of force encompass low-level uses of force, while Level 4 uses of force encompass all instances of serious use of force described in the following sections.<sup>167</sup> Uses of force categorized

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161. New Orleans Police Department–Office of the Independent Monitor Memorandum of Understanding, ¶122 (see note 110); Hutson, *2016 Annual Report: Complaints and Discipline*, 6 (see note 148).

162. New Orleans Police Department–Office of the Independent Monitor Memorandum of Understanding, ¶128 (see note 110).

163. New Orleans Police Department–Office of the Independent Monitor Memorandum of Understanding, ¶128 (see note 110).

164. New Orleans Police Department–Office of the Independent Monitor Memorandum of Understanding, ¶124 (see note 110).

165. “Chapter 52.1.1. Misconduct Complaint Intake and Investigation,” §95 (see note 119).

166. “Chapter 52.1.1. Misconduct Complaint Intake and Investigation,” §100 (see note 119).

167. “Chapter 1.3.6 Reporting Use of Force,” *New Orleans Police Department Operations Manual* (New Orleans: New Orleans Police Department, 2015), § 6, <https://www.nola.gov/getattachment/NOPD/Policies/Chapter-1-3-6-Reporting-Use-of-Force-EFFECTIVE-4-01-18.pdf/>.

as Levels 1–3 are typically investigated by supervisors at the district level unless reassigned to the PIB’s FIT by the superintendent or his or her designee or the deputy chief of PIB.<sup>168</sup> When any use of force by NOPD officers is documented, the OIPM reviews the propriety of the use of force’s categorization to ensure it is investigated by the appropriate entity.

The FIT was created following the OIPM’s recommendation<sup>169</sup> that a specialized team within the PIB be created to investigate critical incidents.<sup>170</sup> It is responsible for investigating all Level 4 uses of force including all serious uses of force,<sup>171</sup> force indicating apparent criminal conduct, force by an NOPD member ranked higher than sergeant, force resulting in death or serious physical injury requiring treatment at a hospital associated with police pursuit, or any force incident reassigned to the FIT by the superintendent or his or her designee or the PIB.<sup>172</sup> FIT investigators are also responsible for identifying any policy, training, equipment, or tactical deficiencies related to the use of force.<sup>173</sup> The FIT is divided into a criminal section and an administrative section, the latter of which is responsible for conducting investigations and determining whether a use of force violated NOPD policy and procedure.<sup>174</sup>

As a result of the consent decree, the FIT responds to and investigates a range of force incidents broader than those defined as a critical incidents in the NOPD-OIPM MOU.<sup>175</sup> The MOU defines a critical incident as all incidents involving the use of deadly force; all uses of force resulting in injury requiring hospitalization; all head strikes with an impact weapon, whether intentional or not; all uses of force resulting in death; and all deaths while the arrestee or detainee

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168. "Chapter 1.3.6. Reporting Use of Force," §54 (see note 167).

169. Susan Hutson, Independent Police Monitor, City of New Orleans, "Re: Critical Incident Investigations," letter to Ronal Serpas, Superintendent of Police, New Orleans Police Department, et al., October 15, 2010, <http://nolaipm.gov/wp-content/uploads/2017/09/Memo-Critical-Incident-Recommendation-10-15-10.pdf>.

170. Susan Hutson, *2014 Annual Report* (New Orleans: Office of the Independent Police Monitor, 2015), 49–50, <https://nolaipm.gov/wp-content/uploads/2016/12/2014-Annual-Report.pdf>.

171. For the definition of a serious use of force, see note 155.

172. "Chapter 1.3.2 Force Investigation Team (FIT)," §1 (see note 155).

173. "Chapter 1.3.2 Force Investigation Team (FIT)," §1 (see note 155).

174. "Chapter 1.3.2 Force Investigation Team (FIT)," §4–10 (see note 155).

175. As of June 2018, the NOPD-OIPM MOU definition of a "critical incident" has not been updated to reflect the broader range of force incidents defined as "serious uses of force" as per NOPD policy.

is in NOPD custody.<sup>176</sup> The OIPM is authorized to respond on scene and actively monitor FIT investigations into the critical incidents defined earlier on the same basis and using the same procedures utilized for monitoring civilian and internally generated complaints.<sup>177</sup>

The FIT responds to the scene of every instance of force described above. In the event of a critical incident, the NOPD command desk notifies the IPM or his or her designee within one hour to respond to the scene.<sup>178</sup> On scene, FIT supervisors provide the OIPM with a walk-through of the incident location and present to them any evidence processed on scene.<sup>179</sup> Within seven days of the critical incident, the PIB provides the OIPM with complete access to the subject officer's (or officers') complaint and disciplinary history and early-warning system records.<sup>180</sup> FIT investigators are required to keep the OIPM apprised of any relevant updates throughout the course of the investigation. Similar to the procedures for monitoring civilian and internally generated complaint investigations, the OIPM observes and provides input on all police and witness interviews.

At the conclusion of its investigation, FIT issues determinations regarding violations of NOPD policy, state law, and federal law.<sup>181</sup> Within seven days of receipt of the completed investigation but prior to review by the department's UFRB, the OIPM submits a written report to the PIB containing an evaluation of the completeness of the investigation, tactics used during the incident, potential violations of NOPD policies, deficiencies in training, and any recommended discipline.<sup>182</sup> The OIPM uses a critical incident use of force review matrix to document and assess the quality of the investigation.<sup>183</sup>

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176. New Orleans Police Department–Office of the Independent Monitor Memorandum of Understanding, ¶9 (see note 110).

177. New Orleans Police Department–Office of the Independent Monitor Memorandum of Understanding, ¶43 (see note 110).

178. New Orleans Police Department–Office of the Independent Monitor Memorandum of Understanding, ¶42 (see note 110).

179. New Orleans Police Department–Office of the Independent Monitor Memorandum of Understanding, ¶45 (see note 110).

180. New Orleans Police Department–Office of the Independent Monitor Memorandum of Understanding, ¶48 (see note 110).

181. “Chapter 1.3.2 Force Investigation Team (FIT),” §37 (see note 155).

182. New Orleans Police Department–Office of the Independent Monitor Memorandum of Understanding, ¶51 (see note 110).

183. New Orleans Police Department–Office of the Independent Monitor Memorandum of Understanding, appendix H (see note 110).

## Monitoring disciplinary process

If a completed investigation approved by the PIB Deputy Superintendent contains an allegation that has been preliminarily sustained by either PIB or bureau-level investigators, the process of determining the final adjudication and any associated discipline for policy violations begins with either a PIB or bureau-level predisposition conference, depending in most cases on which entity PIB delegated the responsibility of conducting the investigation.<sup>184</sup> Predisposition conferences provide subject employees with a summary of the investigative findings and an opportunity to present written statements to dispute or defend from the allegations. At the conclusion of the conference, each allegation is assigned another recommended disposition to be reviewed by the deputy superintendent of PIB. Investigations with violations of departmental policy sustained at the predisposition conference thereafter proceed to a predisciplinary conference where disciplinary sanctions are determined and presented to the superintendent for final approval.

At least one week before the scheduled conference date, the accused employee is presented with a written Notice of Completed Investigation and a predisposition conference is scheduled. At the same time the subject employee is notified, the appropriate investigating entity will provide the OIPM with a memorandum containing a summary of the investigation for review and an opportunity to attend the predisposition conference.<sup>185</sup>

A PIB predisposition conference is attended by the subject employee and his or her legal counsel; the OIPM or his or her designee; and the PIB deputy superintendent or his or her designee, who serves as the hearing officer. The PIB deputy superintendent's designee may be any PIB supervisor ranked sergeant or higher, provided that the designee's rank is higher than the rank of the accused.<sup>186</sup> The PIB deputy superintendent or his or her designee may also consult or invite the subject employee's immediate supervisor, commander, or deputy superintendent.<sup>187</sup>

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184. The PIB retains the discretion to delegate a bureau-level investigation to a PIB predisposition conference. Only bureau-level investigations are eligible for bureau predisposition conferences.

185. "Chapter 26.2, Adjudication of Misconduct" New Orleans Police Department Operations Manual (New Orleans: New Orleans Police Department, July 18, 2016), §14 and 25, <https://nola.gov/getattachment/NOPD/Policies/Chapter-26-2-Adjudication-of-Misconduct-EFFECTIVE-7-18-16.pdf/?lang=en-US>.

186. "Chapter 26.2," §13 (see note 185).

187. "Chapter 26.2," §14 (see note 185).

Bureau-level predisposition conferences are attended by the subject employee and his or her legal counsel; the OIPM or his or her designee; and, as delegated by the superintendent through the PIB deputy superintendent, either the subject employee's commander,<sup>188</sup> a deputy superintendent within the subject employee's bureau,<sup>189</sup> a superintendent's committee,<sup>190</sup> or the superintendent of police.<sup>191</sup> If convened, a superintendent's committee consists of three to five deputy superintendents or district or division commanders, with the subject employee's deputy superintendent serving as the chair of the committee.<sup>192</sup>

For both PIB and bureau-level predisposition conferences, the OIPM is permitted to review the completed investigation, attend the conference, make determinations regarding departmental policy violations, recommend discipline, and review the appropriateness of the recommendations of the presiding parties.<sup>193</sup> Subject employees are not permitted to cross-examine the investigator or present mitigating circumstances during the predisposition conference.<sup>194</sup>

At the conclusion of the predisposition conference, the PIB deputy superintendent (for PIB predisposition conferences) or presiding bureau deputy superintendent (for bureau-level predisposition conferences) may either remand the case for further investigation<sup>195</sup> or issue final dispositions for each violation and recommend disciplinary sanctions for each sustained violation.<sup>196</sup> The PIB deputy superintendent has the final authority over dispositions during a PIB predisposition conference and the deputy superintendent of the subject employee's bureau has the final authority for bureau-level predisposition conferences. The OIPM submits a memo explaining its concurrence or nonconcurrence with the recommended dispositions.

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188. The subject officer's commander cannot serve as the hearing officer if the violation involves criminal activity or if he or she initiated or conducted the investigation. See "Chapter 26.2," §26(A) (see note 185).

189. The subject officer's deputy superintendent cannot serve as the hearing officer if he or she initiated or conducted the investigation being considered. See "Chapter 26.2," §26(1) (see note 185).

190. "Chapter 26.2," §26(2) (see note 185).

191. "Chapter 26.2," §26(3) (see note 185).

192. "Chapter 26.2," §26(2) (see note 185); all recommendations by the superintendent's committee concerning the disposition of each allegation must be conducted by majority vote. Only committee members who voted to sustain a violation may vote on the penalty recommendation in that case.

193. New Orleans Police Department–Office of the Independent Monitor Memorandum of Understanding, ¶41 (see note 110).

194. "Chapter 26.2," §16 (see note 185).

195. "Chapter 26.2," §§ 18, 30 (see note 185).

196. "Chapter 26.2," §16 (see note 185).

If a predisposition conference results in a sustained disposition for any violation, a predisciplinary (or penalty) hearing is convened to determine the appropriate disciplinary penalty in accordance with the NOPD disciplinary matrix. The OIPM is notified and invited to all predisciplinary hearings to recommend discipline and review the appropriateness of the final order of discipline.<sup>197</sup> In practice, the OIPM attends predisciplinary hearings only when the potential discipline includes a suspension greater than three days.<sup>198</sup>

Present at the predisciplinary hearing are the accused employee and his or her legal counsel; the case investigator; the accused employee's district/division, section, or unit-level commander;<sup>199</sup> and (as described in the previous paragraph) the OIPM.<sup>200</sup> At the hearing, the accused employee is provided the opportunity to present any mitigating or aggravating circumstances to be considered in the determination of discipline.<sup>201</sup> The accused may, at the discretion of the presiding officer, call a witness to testify on his or her behalf.<sup>202</sup> During the hearing, the presiding officer may cross-examine the investigator and PIB representative, the accused employee, or the accused employee's commander. Following any discussion and cross-examination, the hearing officer recommends a disciplinary penalty for each sustained violation. The PIB then reviews each disposition and recommended penalty before submitting them to the superintendent of police for final approval. The disciplinary process is illustrated in figure 2 on page 34.

## **Mediation**

In 2012, the OIPM began studying best practices in mediation<sup>203</sup> and convened a Mediation Planning Committee consisting of two NOPD police associations; city council; representatives from New Orleans' religious, business, education, and legal communities; grassroots organizations; and youth services providers to begin designing and developing a program for mediating

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197. "Chapter 26.2," §42 (see note 185).

198. Hutson, *2016 Annual Report: Complaints and Discipline* (see note 148).

199. Only for any employee subordinate to the commander.

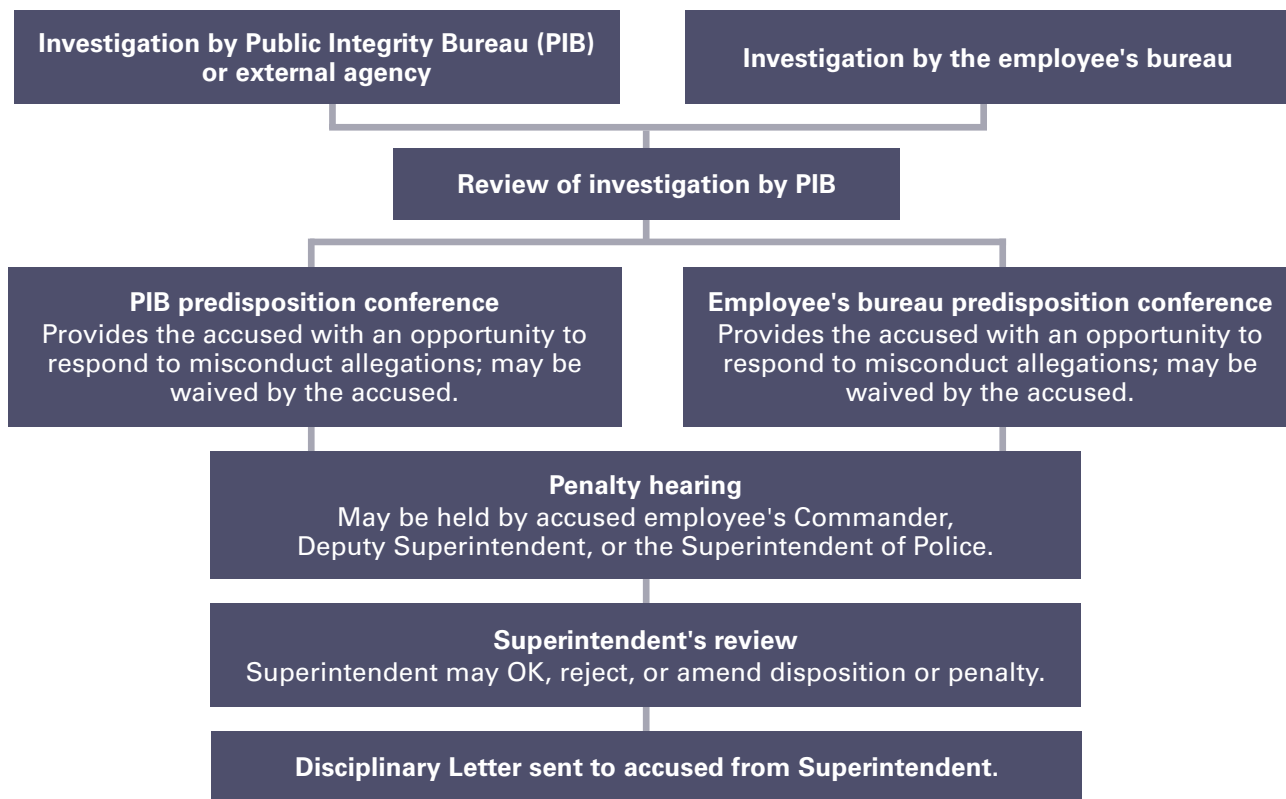
200. "Chapter 26.2," §39-42 (see note 185).

201. "Chapter 26.2," §43 (see note 185).

202. "Chapter 26.2," §44 (see note 185).

203. Alison McCrary, *Community-Police Mediation Program: 2015 Annual Report* (New Orleans: Office of the Independent Police Monitor, 2016), 9, <http://nolaipm.gov/wp-content/uploads/2016/12/2015-Mediation-Annual-Report.pdf>.

**Figure 2. New Orleans Police Department disciplinary process from completion of investigation to disciplinary letter**



Source: "Chapter 26.2," 4 (see note 185).

civilian complaints against NOPD officers.<sup>204</sup> The community-police mediation program launched in 2014 with grant funds from the DOJ's Office of Community Oriented Policing Services (COPS Office) and was funded for another two years through grant funds awarded by Baptist Community Ministries.<sup>205</sup> From March 2017 onward, the mediation program has been fully funded by the OIPM.<sup>206</sup>

Mediations follow the Inclusive Mediation Framework,<sup>207</sup> which is designed to facilitate difficult conversations and guide a problem solving process that meets the needs of participants. Mediators do not set ground rules; participants are encouraged to share the situation,

204. Susan Hutson, *2012 Annual Report* (New Orleans: Office of the Independent Police Monitor, 2013), 39, <https://nolaipm.gov/wp-content/uploads/2016/12/2012-Annual-Report.pdf>.

205. McCrary, *Community-Police Mediation Program: 2015 Annual Report*, 9 (see note 203).

206. Hutson, *2016 Annual Report*, 12 (see note 148).

207. For more information on the Inclusive Mediation Framework, see Maryland Program for Mediator Excellence, "Mediation Descriptions," May 19, 2010, <https://www.courts.state.md.us/sites/default/files/import/macro/pdfs/mediationframeworkdescriptions.pdf>.



clarify what is important, identify topics they want to resolve, identify goals participants want to achieve, brainstorm options for achieving them, consider options that would achieve participants' goals, and, if possible, determine areas of agreement.<sup>208</sup>

Complaints eligible for mediation are generally low-level allegations of misconduct, such as discourtesy, lack of professionalism, or neglect of duty.<sup>209</sup> More serious allegations such as criminal activity, unauthorized use of force, or unlawful search are not eligible to be mediated.<sup>210</sup> The NOPD's PIB is initially responsible for referring complaints to the OIPM's community-police mediation program coordinator, who screens the case for misclassification and determines the propriety of a mediation.<sup>211</sup> The mediation program coordinator then contacts the officer and civilian to explain and offer a mediation session. If the officer and the civilian agree, the case is screened again for threats or fear of retaliation. The program coordinator coordinates a time and neutral community location for the mediation to take place and selects two mediators for the session based on availability and demographic similarity to both the officer and civilian.<sup>212</sup> All mediators have participated in a specialized mediation training and reflect the community's diversity in terms of race, ethnicity, age, education, and income.

OIPM also contracts with a cadre of community mediators who come from diverse backgrounds reflecting the demographic makeup of New Orleans. The race, age, and gender of the mediator are matched with the officer and civilian as much as possible. Backgrounds include teachers, social workers, attorneys, store assistants, and college students. Skills such as listening, brainstorming, and facilitating positive interaction are key. The OIPM provides each mediator 50 hours of initial training and 12 hours of training and skills practice each year thereafter.

Officers and civilians are invited to bring a nonspeaking support person to the mediation session.<sup>213</sup> Support persons may speak during the mediation only if they were present during the interaction that led to the complaint. After signing confidentiality agreements, the mediation session begins and the officer and civilian discuss the interaction and potential solutions moving

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208. McCrary, *Community-Police Mediation Program: 2015 Annual Report*, 13 (see note 203).

209. McCrary, *Community-Police Mediation Program: 2015 Annual Report*, 12 (see note 203).

210. McCrary, *Community-Police Mediation Program: 2015 Annual Report*, 12 (see note 203).

211. McCrary, *Community-Police Mediation Program: 2015 Annual Report*, 12 (see note 203).

212. McCrary, *Community-Police Mediation Program: 2015 Annual Report*, 15 (see note 203).

213. McCrary, *Community-Police Mediation Program: 2015 Annual Report*, 13 (see note 203).

forward. Once the 60- to 90-minute session is over, the officer, civilian, and mediators complete an anonymous survey and all notes taken by the mediator are destroyed. A follow-up survey is administered by phone 30 days after the mediation.<sup>214</sup>

In 2016, 41 of 104 referred cases were mediated.<sup>215</sup> That same year, 96 percent of civilians and 92 percent of officers agreed that they were satisfied with the mediation process.<sup>216</sup> The OIPM's annual reports contain information on the types of cases referred to mediation, officer, civilian, and mediator demographics and summary results of the feedback surveys completed by participants.

## Policy recommendations

The OIPM regularly conducts data-driven analyses of the NOPD's policies and procedures for the purposes of issuing recommendations for their improvement. While the OIPM regularly includes recommendations regarding the complaint and disciplinary processes throughout its annual reports, it also publishes detailed subject matter reports and thematic reports as stand-alone documents. The OIPM often sends copies of both its annual reports and its policy-related reports to the NOPD to provide them with an opportunity to respond to its recommendations. When available, the OIPM includes the department's response to each recommendation and provides follow-up commentary on each response. In instances where the NOPD responds to recommendations in a separate document, it is published on the OIPM's website alongside the original report.<sup>217</sup>

In 2013, the OIPM published a review of the NOPD's field interview (or *Terry stop*<sup>218</sup>) policies, practices, and data.<sup>219</sup> The purpose of the review was to assess whether NOPD policy at the time was consistent with federal and state law, to review the adequacy of the NOPD's collection of

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214. McCrary, *Community-Police Mediation Program: 2015 Annual Report*, 24 (see note 203).

215. Susan Hutson, *2016 Annual Report: Community-Police Mediation Program* (New Orleans: Office of the Independent Police Monitor, 2017), 19, <https://nolaipm.gov/wp-content/uploads/2017/09/2016-Annual-report-mediation-FINAL1-1.pdf>.

216. Hutson, *2016 Annual Report: Community-Police Mediation Program*, 25–26 (see note 215).

217. The OIPM's recommendations can be found at "Recommendations," Independent Police Monitor, accessed August 12, 2020, <http://nolaipm.gov/category/recommendations/>.

218. *Terry stop* refers to the Supreme Court Decision in *Terry v. Ohio* which gave police the authority to briefly detain a person if their is reasonable suspicion of criminal activity.

219. Susan Hutson, *Review of the New Orleans Police Department's Field Interview Policies, Practices, and Data* (New Orleans: Office of Inspector General Independent Police Monitor, 2013), <http://nolaipm.gov/wp-content/uploads/2017/09/FINAL-STOP-AND-FRISK.pdf>.

field interview-related data, and to recommend improvements to the department's policies and practices.<sup>220</sup> In conducting its review, the OIPM reviewed relevant NOPD policies and training materials; interviewed NOPD officers and national experts in police stop and frisk practices; attended in-service trainings; and consulted legal, academic, and policing literature to identify best practices.<sup>221</sup>

The first section of the OIPM's report examined whether the NOPD's field interview policies and training materials provided sufficient guidance on conducting constitutional *Terry* stops, accompanied by several recommendations. The OIPM's recommendations included revising the NOPD's field interview policy to provide additional practical guidance on conducting constitutional stops, updating training materials to include real-life and case law examples of legally justified reasonable suspicion, and adopting an impartial policing policy to be incorporated into NOPD's code of conduct and policies regarding field interviews and pat-down searches.<sup>222</sup>

The second section of the OIPM's report on field interviews involved a review and audit of the NOPD's stop and search data. The OIPM included an overview of the types of stop- and search-related data collected by the department as well as other related materials. The review identified several inconsistencies and deficiencies in the NOPD's data collection practices. The OIPM then issued several data and information collection-related recommendations. Among the recommendations were limiting the amount of personal information collected when an individual is not engaging in criminal activity and updating stop report forms to include a narrative section for officers to articulate the observable behaviors justifying the stop. The NOPD's responses to all recommendations were included in the final report, along with the OIPM's comments regarding the department's response.

In a separate policy report, OIPM conducted a review of civilian and internally generated complaints of retaliation for reporting officer misconduct.<sup>223</sup> OIPM provided a statistical breakdown of alleged retaliatory actions, complainant and subject officer demographics, subject

220. Hutson, *Review of the New Orleans Police Department's Field Interview Policies, Practices, and Data*, 9 (see note 219).

221. Hutson, *Review of the New Orleans Police Department's Field Interview Policies, Practices, and Data*, 9 (see note 219).

222. Hutson, *Review of the New Orleans Police Department's Field Interview Policies, Practices, and Data*, 24–27 (see note 219).

223. Susan Hutson, Independent Police Monitor, City of New Orleans, "RE: OIPM # 2012-850; NOPD Retaliation Policy, Pattern and Practice," letter to Deputy Superintendent Arlinda Westbrook, Director, Public Integrity Bureau, New Orleans Police Department, July 30, 2014, <http://nolaipm.gov/wp-content/uploads/2017/09/Retaliation-Letter-FINAL-7-30-14.pdf>.

officer rank and assignment, and the types of allegations brought against the accused by PIB when complaints were filed.<sup>224</sup> It then reviewed retaliation provisions included in several consent decrees, model policies from various police departments across the country, and relevant research from various academic journals on policing and public policy. Among the OIPM's recommendations in this report were including concise definitions and examples of retaliatory conduct in the department's retaliation policies, improving protections for civilians who have reported or were victims of retaliation, providing counseling or other services to NOPD employees who have been retaliated against, and emphasizing the responsibility of supervisors to monitor employees for instances of retaliation.<sup>225</sup>

Among the OIPM's other policy-related reports have been a publication on the department's use of Tasers,<sup>226</sup> mandating de-escalation training for all officers,<sup>227</sup> and recommending that the department seek technical assistance regarding the servicing of warrants.<sup>228</sup>

## Public reporting

The OIPM's website hosts several publications related to its reporting duties prescribed by ordinance, including annual reports, subject matter reports, and letters to the NOPD and relevant stakeholders. Prior to publication online, the OIPM forwards its reports to NOPD to ensure that all data and information reported are correct.<sup>229</sup>

Annual reports to date have typically contained a "year in review" section summarizing the OIPM's accomplishments for the year; a summary of the status of the OIPM's recommendations from the previous year; and sections on the NOPD's complaint intake, the OIPM's complaint intake, the OIPM's use of force reviewing and monitoring activities, and community engagement.

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224. Hutson, "RE: OIPM # 2012-850," 6-9 (see note 223).

225. Hutson, "RE: OIPM # 2012-850," 18-23 (see note 223).

226. Susan Hutson, *OIPM Observations on NOPD's Use of Conducted Electrical Weapons (aka Tasers)* (New Orleans: Office of the Independent Police Monitor, 2017), [http://nolaipm.gov/wp-content/uploads/2017/12/Observations\\_on\\_NOPD%E2%80%99s\\_Use\\_of\\_Tasers.pdf](http://nolaipm.gov/wp-content/uploads/2017/12/Observations_on_NOPD%E2%80%99s_Use_of_Tasers.pdf).

227. Susan Hutson, Independent Police Monitor, City of New Orleans, "Re: De-escalation Training," letter to Michael Harrison, Superintendent, New Orleans Police Department, October 5, 2015, <http://nolaipm.gov/wp-content/uploads/2017/09/OIPM-De-Escalation-letter-FINAL.pdf>.

228. Susan Hutson, Independent Police Monitor, City of New Orleans, "Re: Tactical and Warrant Service Training," letter to Mitchell J. Landrieu, Mayor, and Ronal Serpas, Superintendent, New Orleans Police Department, March 14, 2012, <http://nolaipm.gov/wp-content/uploads/2017/09/IPM-Interim-Recommendations-for-Training-3-14-12.pdf>.

229. This forwarding is a courtesy, and in no way is NOPD given editorial control over the contents of the OIPM's reports.

Consistent with its obligation to analyze NOPD data,<sup>230</sup> relevant sections throughout the OIPM’s annual reports include statistical summaries of data such as officer and civilian demographics; incident dates, times, and locations; complaint classifications and allegations; use of force and critical incident classifications; and disciplinary outcomes. Annual reports also summarize the OIPM’s observations regarding patterns and trends in complaints, use of force, and discipline. Similarly, annual reports include recommendations and observations emerging from the OIPM’s reviewing and monitoring activities.

The OIPM also publishes special subject matter reports containing observations and recommendations that are outside the typical structure of its annual reports. These publications often include in-depth, data- and research-driven analyses of NOPD policies and practices that are of community concern, as described in greater detail in the preceding section of this report.

In certain cases, the OIPM will publish letters it has sent to city and NOPD officials. In 2010, for example, the OIPM relayed concerns regarding the sufficiency of critical incident investigations and recommended that the NOPD create a specialized FIT responsible for such investigations.<sup>231</sup> In other letters to the NOPD administration, the OIPM recommended expanded de-escalation training for NOPD officers<sup>232</sup> and revised tactics and warrant servicing training based on its observations of critical incidents.<sup>233</sup>

## **Community outreach**

To increase awareness of its work, the OIPM conducts outreach to both the NOPD and the New Orleans community. In 2014, the OIPM held or attended 82 community outreach events to strengthen police-community relationships.<sup>234</sup> The OIPM publishes information on its annual outreach findings and accomplishments in its annual reports.

The OIPM partners with several community organizations—including BreakOUT!, an LGBTQ advocacy group; Women With A Vision, a women and family advocacy group; Silence is Violence, a crime victims’ advocacy organization; the American Friends Service Committee; the

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230. City of New Orleans Code of Ordinances, §2-1121(14).

231. Hutson, “Re: Critical Incident Investigations” (see note 169).

232. Hutson, “Re: De-Escalation Training” (see note 227).

233. Hutson, “Re: Tactical and Warrant Service Training” (see note 228).

234. Hutson, *2014 Annual Report*, 71 (see note 170).

Justice and Accountability Center; Human Rights Watch; the Urban League of New Orleans; Justice and Beyond; and the National Lawyers Guild.<sup>235</sup> These partnerships give the OIPM the opportunity to facilitate complaint intake, make the public aware of the community-police mediation program, and solicit public input on NOPD policies. The OIPM also works with several local community groups to deliver “know your rights” trainings to community members. Local partnerships are also used to provide community members with classes and training on mediation. In partnership with the Louisiana Public Health Institute, Community Mediation Services, the Center for Restorative Approaches, and Loyola University College of Law Skills Courses, the OIPM trained more than 150 people on community mediation skills in 2015.<sup>236</sup> Print and social media, radio, and television are also significant elements of the OIPM’s local outreach efforts.<sup>237</sup>

To reach New Orleans’ non-English speaking community, Spanish-speaking staff conduct outreach to New Orleans’ Spanish-speaking community; the office has also started conducting outreach to Vietnamese speakers in the city.<sup>238</sup>

The OIPM’s outreach to the NOPD largely takes the form of trainings at the NOPD police academy and presentations at roll calls. More than 150 field training officers, PIB supervisors, lieutenants, and sergeants have been trained on approaches to conflict resolution, mediation, and active listening skills.<sup>239</sup> Day watch, second watch, and night watch shifts at all NOPD districts have received presentations on the community-police mediation program by OIPM staff.<sup>240</sup> In addition, mediation program staff have provided the NOPD with 10 free hours of mediation services to resolve internal conflict and have conducted a three-hour group mediation between one NOPD district and the community.<sup>241</sup>

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235. Hutson, *2014 Annual Report*, 70 (see note 170).

236. McCrary, *Community-Police Mediation Program 2015 Annual Report*, 30 (see note 203).

237. Susan Hutson, *2010 Annual Report* (New Orleans: Office of Inspector General Independent Police Monitor, 2011), 5 <https://nolaipm.gov/wp-content/uploads/2017/09/2010-annual-report-3-31-11-Final.pdf>.

238. Hutson, *2016 Annual Report: Complaints and Discipline*, 5 (see note 148).

239. McCrary, *Community-Police Mediation Program 2015 Annual Report*, 28 (see note 203).

240. McCrary, *Community-Police Mediation Program 2015 Annual Report*, 29 (see note 203).

241. McCrary, *Community-Police Mediation Program 2015 Annual Report*, 29 (see note 203).



The wave of high-profile incidents in 2020 between police and community members prompted widespread calls for greater community oversight of law enforcement agencies. **Civilian Oversight of Law Enforcement: Report on the State of the Field and Effective Oversight Practices**, a white paper by the National Association for Civilian Oversight of Law Enforcement, outlines the history of civilian oversight including reference to this case study of the New Orleans Police Department and eight others.



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