

NOPD CONSENT DECREE MONITOR  
NEW ORLEANS, LOUISIANA



May 5, 2017

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File Number: 37PA-191555

The Hon. Susie Morgan  
U.S. District Court, Eastern District of Louisiana  
Room C322  
500 Poydras Street  
New Orleans, LA 70130

Dear Judge Morgan:

On behalf of the entire Consent Decree Monitoring Team, I am pleased to submit the attached Special Report focusing on NOPD Use of Force. As an initial matter, I want to thank Superintendent Harrison, Chief Noel, Chief Thomas, Chief Westbrook, and Chief Murphy for their full support and cooperation throughout our review.

Thank you for the opportunity to share our findings and to serve the people of New Orleans.

Very truly yours,

Jonathan S. Aronie  
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**Special Report of the Consent Decree Monitor  
For the New Orleans Police Department Consent Decree  
On NOPD Uses of Force**

**May 5, 2017**

**Office of the Consent Decree Monitor**  
**New Orleans, Louisiana**  
Sheppard Mullin Richter & Hampton, LLP  
Appointed By Order Of The U.S. District Court For The Eastern District Of Louisiana

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## I. CONSENT DECREE AUTHORITY

“The Monitor shall file with the Court quarterly written, public reports covering the reporting period that shall include:

- a) A description of the work conducted by the Monitoring Team during the reporting period;
- b) A listing of each [Consent Decree] requirement indicating which requirements have been: (1) incorporated into implemented policy; (2) the subject of sufficient training for all relevant NOPD officers and employees; (3) reviewed or audited by the Monitoring Team in determining whether they have been fully implemented in actual practice, including the date of the review or audit; and (4) found by the Monitoring Team to have been fully implemented in practice;
- c) The methodology and specific findings for each audit or review conducted, redacted as necessary for privacy concerns. An unredacted version shall be filed under seal with the Court and provided to the Parties. The underlying data for each audit or review shall not be publicly available but shall be retained by the Monitoring Team and provided to either or both Parties upon request;
- d) For any requirements that were reviewed or audited and found not to have been fully implemented in practice, the Monitor’s recommendations regarding necessary steps to achieve compliance;
- e) The methodology and specific findings for each outcome assessment conducted; and
- f) A projection of the work to be completed during the upcoming reporting period and any anticipated challenges or concerns related to implementation of the [Consent Decree].”

**Consent Decree Paragraph 457**

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## II. NOTES

“The Monitor shall be subject to the supervision and orders of the [United States District Court for the Eastern District of Louisiana], consistent with [the Consent Decree]. The Monitoring Team shall only have the duties, responsibilities, and authority conferred by [the Consent Decree]. The Monitoring Team shall not, and is not intended to, replace or assume the role and duties of the City and NOPD, including the Superintendent.”

**Consent Decree Paragraph 455**



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#### IV. GLOSSARY OF ACRONYMS

“ASU”	Administrative Services Unit
“AUSA”	Assistant United States Attorney
“AVL”	Automatic Vehicle Locator
“BWC”	Body Worn Cameras
“CIT”	Crisis Intervention Team
“CCMS”	Criminal Case Management System
“CD”	Consent Decree
“CIT”	Crisis Intervention Team
“CODIS”	Combined DNA Index System
“ComStat”	Computer Statistics
“COCO”	Community Coordinating [sergeants]
“CPI”	California Psychological Inventory
“CSC”	Civil Service Commission
“CUC”	Citizens United for Change
“DA”	District Attorney
“DI-1”	Disciplinary Investigation Form
“DOJ”	Department of Justice
“DV”	Domestic Violence
“DVU”	Domestic Violence Unit
“ECW”	Electronic Control Weapon
“EPIC”	Ethical Policing is Courageous (NOPD peer intervention program)
“EWS”	Early Warning System
“FBI”	Federal Bureau of Investigation
“FIT”	Force Investigation Team
“FOB”	Field Operations Bureau
“FTO”	Field Training Officer
“IACP”	International Association of Chiefs of Police
“ICO”	Integrity Control Officers
“IPM”	Independent Police Monitor
“KSA”	Knowledge, Skill and Ability
“LEP”	Limited English Proficiency
“LGBT”	Lesbian, Gay, Bi-sexual, and Transgender
“MMPT”	Minnesota Multiphasic Personality Inventory
“MOU”	Memorandum of Understanding
“NNDDA”	National Narcotics Detection Dog Association

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“NOFJC”	New Orleans Family Justice Center
“NOPD”	New Orleans Police Department
“NPCA”	National Police Canine Association
“OCDM”	Office of Consent Decree Monitor
“OIG”	Office of Inspector General
“OPSE”	Office of Public Secondary Employment
“PIB”	Public Integrity Bureau
“POST”	Police Officer Standards Training Counsel
“PsyQ”	Psychological History Questionnaire
“QOL”	Quality of Life [officers]
“RFP”	Request for Proposal
“SA”	Sexual Assault
“SART”	Sexual Assault Response Team
“SOD”	Special Operations Division
“SRC”	Survey Research Center
“SUNO”	Southern University of New Orleans
“SVS”	Special Victims Section
“UNO”	University of New Orleans
“USAO”	United States Attorney’s Office for the Eastern District of New Orleans
“VAW”	Violence Against Women



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## V. INTRODUCTION TO SPECIAL REPORT

As the Monitoring Team reported at the February 2017 public court hearing, NOPD continues to make significant progress in most every area of the Consent Decree. While the Department experienced a recent set-back in one area (recruit vetting), which was the subject of a Special Report issued by the Monitoring Team on January 18, 2017, most other areas continue to move forward with notable results. Among the areas where NOPD has made significant progress is in the way it uses, reports, and tracks force against civilians.

This Special Report focuses on NOPD uses of force – an area of particular attention in the U.S. Department of Justice NOPD Investigation Report that led to the formation of the Consent Decree.<sup>1</sup> In its 2010/2011 investigation into the NOPD, the DOJ “found that officers in NOPD routinely use unnecessary and unreasonable force in violation of the Constitution and NOPD policy.”<sup>2</sup>

The Monitoring Team has been reviewing NOPD uses of force, use of force policies and training, use of force recording keeping, use of force investigations, and use of force-related discipline since the outset of the Consent Decree. NOPD has made and continues to make significant progress in reducing excessive uses of force and in fully investigating potential improper uses of force. This Special Report summarizes our findings to date.

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<sup>1</sup> DOJ’s “Investigation of the New Orleans Police Department” (March 16, 2011) at [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) (DOJ Investigation Report).

<sup>2</sup> DOJ Investigation Report at vi.



## VI. EXECUTIVE SUMMARY

Since the outset of the Consent Decree, the Monitoring Team consistently has reviewed all serious uses of force by NOPD officers. Additionally, the Monitoring Team regularly conducts broader Use of Force audits to ensure uses of force are being accurately reported, meaningfully reviewed by supervisors, and, where necessary, fully evaluated by NOPD PIB. This Report includes the following Use of Force analyses:

- ***A comparative analysis of uses of force from 2012 through November 2016.*** The Monitoring Team analyzed a sizable amount of data covering this five year period. The trends that emerge from those data are important in evaluating NOPD's progress under the Consent Decree. The results of this analysis are set forth in Section X below.
- ***Multiple analyses aimed at assessing the integrity of NOPD's use of force data.*** These analyses, set forth at Section XI below, are important to determine whether NOPD's use of force data are reliable. Obviously, a data analysis is only as good as the integrity of the underlying data. Our analyses in this area give us strong comfort that NOPD's current and recent use of force data are reliable.
- ***A discussion of specific 2016 uses of force.*** The Monitoring Team reviews all serious uses of force by the NOPD. Section VIII below describes several illustrative uses of force analyzed by the Monitoring Team.
- ***A comprehensive historic analysis of 2015 uses of force.*** This analysis covers all material elements of uses of force, including NOPD's investigation into those uses of force. The results of this analysis are set forth in Section XII and XV.C below.

As will become evident, NOPD has made and continues to make significant progress in reducing excessive uses of force and in fully investigating potential improper uses of force. While the details are set out below, the following highlights significant aspects of our various findings based upon the totality of our audits, reviews, and observations:

- We found no incidents wherein force used to overcome resistance was not reported.
- We found no uses of force resulting in injuries unreported. Notably, this is an overall improvement from our prior audit, which identified several incidents of injuries and un-reported uses of force.
- We found no unreported uses of force when reviewing alleged excessive use of force lawsuits.

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- We found no unreported uses of force when cross-comparing against citizen or rank-initiated allegations of excessive use of force.

These audit findings give the Monitoring Team greater confidence in the integrity of NOPD's use of force data and gives greater weight to the Team's generally positive use of force findings discussed below. In short, the Monitoring Team found that NOPD does not appear to be underreporting its uses of force.

Notwithstanding these positive findings, the Monitoring Team identified areas for improvement by NOPD. For example,

- We found several cases where officers used boiler plate language to describe the actions of the subject of force, such as "the subject was combative," "subject struggled," and "the subject actively resisted." We previously recommended to NOPD that investigating supervisors should require officers to avoid boilerplate language and report the behavior of the subject they used force against in specific behavioral. Commanders, who are required to review and sign-off on the investigation should ensure supervisors carry out their investigative responsibilities, returning deficient reports for corrective action.
- In our audit of 2015 data, we found supervisors failed to respond to the scene of nearly 44% of the Level II use-of-force incidents. Supervisors responded to all Level IV uses of force and there were no Level III uses of force for this audit period. NOPD policy, the Consent Decree, and sound police practices require an on-scene investigation by the supervisor to investigate all Level II, III, and IV use of force events. (*Notably, NOPD has made significant improvement in this area, as reflected in our more recent audit of 2016 data, discussed below.*)
- As part of our BWC audit, we identified several instances where the involved officer used poor tactics that contributed to the need to use force, led to the need to use a higher level of force, or needlessly put officers and/or civilians at greater risk. For example, we found several cases where the BWC video revealed improper handcuffing of suspects; an officer responding to a domestic violence incident placing himself in a tactical disadvantage by allowing the offender to re-enter the residence unaccompanied; an officer placing a suspect in the rear of a squad car and transporting him without searching him for a weapon. These cases were brought to the Department's attention for remedial attention directed at improving civilian and officer safety.

While these findings are important and must be remedied by NOPD, they should not overshadow the very positive Use of Force findings overall, which are detailed below.



## VII. METHODOLOGY

To conduct our use of force audits, we reviewed supervisors' use of force reports and officer Force Statements for the relevant time period. But such an audit, obviously, is only as good as the underlying data. In other words, if one relies only on self-reported uses of force, one runs the risk missing unreported uses of force. To guard against this risk, the Monitoring Team conducted several audits to evaluate whether officers consistently are reporting uses of force. These audits included a review of

- Resisting Arrest cases.
- NOPD's Injury to Arrestee reports.
- All allegations of citizen-initiated complaints of excessive force.
- All allegations of rank-initiated complaints of excessive use of force.

Each of these audits is targeted at a data set where a use of force by a police officer was likely (or at least more likely than in other situations). By undertaking these targeted audits, the Monitoring Team can evaluate with a good degree of confidence whether officers are reporting their uses of force. If they are, then we can have greater confidence in the integrity of the underlying data.

In addition to these targeted "control audits" and our broader audits of NOPD's reported uses of force, the Monitoring Team also observed the implementation and operation of the Department's Use of Force Review Board ("UFRB") and reviewed random Body-Worn Camera ("BWC") recordings.



## VIII. DISCUSSION OF SPECIFIC USES OF FORCE

The Monitoring Team reviews all serious NOPD uses of force to ensure the Department complies with all Consent Decree obligations relating thereto, including fully investigating each serious use of force in an objective, fair, and unbiased manner. During this reporting period, the Monitoring Team reviewed the following uses of force, *among others*.

- We reviewed an internal use of force investigation involving an allegation of excessive force by a patrol officer. The Monitoring Team reviewed the underlying facts and the PIB/FIT investigation, and concluded NOPD correctly arrived at a disposition of “not sustained.” FIT handled the complaint investigation extremely well. The Monitoring Team also reviewed PIB’s administrative investigation, and identified a number of items that could have been handled more effectively by the investigator. While these items did not impact the overall outcome of the investigation, we promptly brought them to NOPD’s attention so they could be remedied going forward.
- We reviewed a use of force involving a suspect allegedly fighting with officers, and the subsequent use of a Taser by an officer. The Monitoring Team reviewed the entirety of the FIT investigation and made several recommendations to FIT focusing on the investigation and on the underlying police conduct. FIT did a very good job investigating in a fair, professional, and unbiased manner, and in incorporating several officer-safety recommendations in their report to the Use of Force Review Board.
- The Monitoring Team has been closely reviewing the NOPD’s handling of an officer-involved shooting of a teen driving a car allegedly seen at the scene of a murder. The Monitoring Team thoroughly reviewed PIB’s handling of the investigation. Over the course of our review, we identified a few minor items that could have been handled differently by NOPD’s FIT. In light of the ongoing investigation, we raised these issues with FIT and Judge Morgan, and all have been or are being corrected. At this time, none have impacted the integrity of the investigation.
- We closely monitored FIT’s investigation into a shooting by Jefferson Parish Sheriff’s deputies in Orleans Parish in 2016. While NOPD officers were not involved in the shooting, NOPD, over the initial objection of the Jefferson Parish Sheriff, nonetheless appropriately asserted control over the investigation. Over the course of our review, we identified a few items that could have been handled more effectively by NOPD’s FIT. In light of the ongoing investigation, we raised these issues with FIT and Judge Morgan, and all were corrected. None impacted the integrity of the investigation.

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- The Monitoring Team has been closely reviewing the NOPD's handling of an officer-involved shooting at the Carriage House Apartments. The Monitoring Team was at the scene immediately following the shooting, attended the autopsy, and reviewed PIB's handling of the investigation. Over the course of our review, we identified a few items that could have been handled more effectively by NOPD's FIT. In light of the ongoing investigation, we raised these issues with FIT and Judge Morgan, and all have been or are being corrected. At this time, none have impacted the integrity of the investigation.

These example are illustrations only. As noted above, the Monitoring Team reviews and analyses all serious uses of force and shares its analysis with NOPD, the DOJ, and the Court.



## IX. 2016 USE OF FORCE ANALYSIS

As noted above, the Monitoring Team's latest comprehensive Use of Force analysis took place over the course of 2016. The data analyzed, however, were 3rd quarter of 2015 data. To determine whether the positive results of our review still hold true today, the Monitoring Team conducted a supplemental audit during the first quarter of 2017.

The Monitoring Team sampled 30 use of force incidents (of 110 total incidents) reported by NOPD officers in the months of September and October 2016 (a sample review rate of 27.2%). The results are consistent with the more thorough, 2015 audit, described below (as well as in Appendix XV.C).

### A. Compliance with Reporting Requirements

Throughout this Report, we refer to an officer who uses force as the "involved" officer. An officer who witnessed the use of force, but did not use force, is referred to as a "witness" officer. The Consent Decree and Department policy requires all involved officers (for Levels 1 through 4 uses of force), and some witness officers (Levels 2 through 4 uses of force only), to submit a use of force statement prior to ending their duty shift. In the 30 incidents we reviewed, there were 58 officers who used force (i.e., involved officers) and 8 witness officers.<sup>3</sup>

**Table 1. Cross Tabulations of Force Statement Found and Involved and Witness Officers**

	Force Statement Found				
	Yes		No		Total
	<i>N</i>	%	<i>N</i>	%	<i>N</i>
Officer Involved	57	98.3%	1	1.7%	58
Officer Witness	6	75.0%	2	25.0%	8
Total	63	95.5%	3	4.5%	66

As reflected above, force statements were found for 98.3% of involved officers (57 of 58) and for 75% of witness officers (6 of 8). The 2016 data show a higher percentage of both involved and witness officers submitted the required force statements than in the 2015 sample (involved

<sup>3</sup> The small number of witness officers makes it difficult to draw more than generalized conclusions here.

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officers increased from 93.2% to 98.3% and witness officers increased from 71% to 75%). Although the Department is trending upward, some work still must be done to reach the goal of 100% submission of required force statements. During this review, the Monitoring Team noted all involved and witness officers who failed to fulfill their reporting obligations and shared this information with the Compliance Bureau.

### **B. Sufficiency of Force Statements**

Similar to our findings in the 2015 audit, although the Monitoring Team noted an increase in submission of use of force statements, several statements submitted by officers lacked a clear articulation of vital information, including, for example, the reason for the encounter, the type of resistance offered by the subject, and the type of force used by the officer. Two illustrative examples appear below.

- In two separate incident reports, the officer stated they needed to go “hands on” with a subject due to the subject’s actions. In neither case does the officer explain the meaning of “going hands on” or describe the type of force used.
- In another force statement, the Monitoring Team noted the name on the force statement was that of the victim as opposed to the officer who used force. The force statement was signed by the officer’s supervisor. The supervisor’s lack of attention to detail concerned the Monitoring Team.

### **C. Each Involved and Witness Officer Submitted Required Reports**

As stated above, the Consent Decree and Department policy requires all involved officers (Levels 1 through 4 uses of force) and some witness officers (Levels 2 through 4 uses of force) to submit a use of force statement prior to ending their duty shift. The following table shows the number of incidents in which all involved and witness officers complied with the reporting requirements for that specific incident. For example, if there were 2 involved officers and 2 witness officers for a specific incident, all 4 officers would have to submit the required statement to achieve a “yes” tally in the table below for that specific incident.

**Table H-2. Frequency of incidents where all involved and witness officers submitted force statements.**

Force statement submitted by all officers	<i>N</i>	%
Yes	28	93.3%
No	2	6.7%
Total	30	



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As reflected above, in 93.3% of the incidents reviewed (28 of 30), all involved and witness officers submitted the required force statement through the proper channels. The 2016 sample shows an increase in the overall compliance of both involved and witness officers submitting the required force statements (88.6% in 2015 compared to 93.3% in 2016). During this review, the Monitoring Team noted all involved and witness officers who failed to fulfill their reporting obligations and shared this information with the Compliance Bureau.

#### **D. Capturing Use of Force on BWC**

The Monitoring Team reviewed BWC video to analyze whether NOPD officers were meeting the requirements of the Consent Decree and Department policy to wear and use their BWC devices. Table 3 represents the number of incidents where at least one BWC video was found that captured all or part of the subject's resistance and/or the officer's use of force.

Table 3. Frequency of incidents where any application of force was captured on BWC

	<i>N</i>	<i>%</i>
Yes	25	89.3%
No	3	10.7%
Total	28	

In 89.3% of the incidents reviewed (25 of 28), one or more involved and/or witness officers activated a BWC that resulted in a video recording of portions of the event. Two incidents in the "N/A" category (note reflected in the table above) did not require a witness or involved officer to capture the use of force on the officer's BWC due to the rank of the officer, and therefore, even though they were compliant with Department policy, they were excluded from the analysis. Adding those two incidents to the "yes" tally shows the overall compliance with Department policy was 93.3%, an impressive increase in overall compliance from our review of the 2015 sample (86.3%). The Monitoring Team sent the Compliance Bureau and FIT the individual case information for those BWC's not located. FIT worked quickly to identify missing BWC videos by communicating directly to District personnel. One officer was recently redirected as a result of his failure to activate his BWC.

#### **E. Conduct of Investigation: Photographing Subjects of Force**

It is an important, common practice, and a requirement of NOPD policy for use of force investigations to include photographs of arrestees involved in the incident. Taking photographs

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of an injured arrestee properly documents the injuries that resulted from the use of force. Similarly, it is important that photographs are taken of an arrestee against whom force was used who is not injured. Photographing an arrestee with or without injuries resulting from a use of force is important to ensuring a complete and accurate investigation is conducted. Of the 30 arrestees against whom force was used by an NOPD officer, 3 were reported as injured by the use of force. (The Monitoring Team identified 6 additional arrestees who were injured when arrested, but not by actions of a police officer.) Table 4 presents a cross-tabulation of the number of arrestees injured by whether photos were taken of the injury.

Table 4

	Yes		No		Yes, but not by officer	
	<i>N</i>	%	<i>N</i>	%	<i>N</i>	%
<u>Photos taken of injury</u>						
Yes	1	33.3%	0	0.0%	1	16.7%
No	2	66.7%	20	95.2%	3	50%
Unknown	0	0.0%	1	4.8%	1	16.7%
N/A	0	0.0%	0	0.0%	1	16.7%
Total	3		21		6	

The Monitoring Team's review found photos were taken of only 1 of the 3 arrestees injured by an officer use of force (33.3%). Overall, photos were taken of only 2 of the 30 arrestees subject to an officer use of force (6.7%). The results of this 2016 sample are worse than the already problematic results of the 2015 sample (which showed an overall rate of 11.4% of arrestees subjected to an officer use of force were photographed). Additionally, the Department showed no progress in photographing arrestees who were injured by a source other than an officer (1 arrestee photographed in both the 2015 and 2016 sample).

The Monitoring Team sent the Compliance Bureau and FIT a listing of force tracking numbers, which indicated missing and required incident photographs, for their review and follow-up.



## F. Injuries to Arrestee or Officer

Table 5 illustrates the frequency and type of *arrestee injuries* found documented in force statements and use of force reports.

Table 5. Frequency and type of arrestee injuries

Type of injury	<i>N</i>	%
No Injury	3	10%
Unknown Treatment	1	3.3%
Treated by EMT	1	3.3%
Other Injury/ Treated & Released at Hospital	1	3.3%
Injury not caused by NOPD	6	20%
Missing	18	60.0%
Total	30	

Unfortunately, 60% of the investigation reports (18 of 30) failed to state whether the arrestee was injured or not, which resulted in a high percentage of incidents coded with “missing” injury data. All reports were signed by a reviewing supervisor, and therefore this finding reflects negatively on the sufficiency and completeness of the supervisor’s review of the reports submitted by the involved officers. The 2016 sample, however, showed a lower percentage of reports missing injury information than the 2015 sample (60% in 2016 compared to 72% in 2015).

It is important in all use of force investigations for the officer to report the nature of any injury to the subject of force. It is also important to document that the arrestee was not injured when that is the case. Similarly, a supervisor is required to independently determine if the subject of force was injured, and ensure the injury is properly documented in the case report, force statement and the supervisor’s use of force report of his investigation.

Table 6 depicts the number of *officers injured* during use of force incidents.



Table 6. Where any officers injured?

Type of injury	<i>N</i>	%
Minor Injury/No Treatment	1	3.3%
Treated and Released	2	6.7%
No injury	27	90.0%
Total	30	

Similar to the results of the 2015 audit, our review found a majority of force encounters did not result in the officer being injured.

### G. Conduct of the Investigation: Supervisor's Response to Scene

NOPD policy only requires a supervisor to respond to the scene of Level 2 through 4 use of force incidents. Nonetheless, on occasion NOPD sends a supervisor to the scene of a Level 1 use of force incident. Table 7 shows the frequency with which a supervisor responded to the scene of Levels 1 through 4 use of force incidents.

Table 7. Frequency of use of force incidents where a supervisor responded to the scene

Supervisor on scene	Level I	Level II	Level III	Level IV	Total
Yes	5	9	1	2	17
No	N/A	0	0	0	0
Total					17

Our review found that supervisors responded to the scene of all Levels 2 through 4 use of force incidents, a 100% compliance rate. Furthermore, although not required by Department policy, our review found that supervisors responded to the scene of 5 Level 1 use of force incidents. This 100% compliance rate shows significant improvement from the 2015 sample (supervisors responded to the scene of Level 2 use of force incidents at a rate of only 43.7% in 2015). The Department should be commended for this significant improvement.

### H. Conduct of Investigation: Sufficiency of Supervisor's Use of Force Report

Similar to our review of the force statements, the Monitoring Team found deficiencies in the quality of the supervisor reports in 10 of the 30 incidents reviewed. A few illustrative examples appear below.



- A sergeant arrived on the scene of an use of force incident between an intoxicated subject and an NOPD officer. The officer stated that, prior to the sergeant's arrival, the suspect swayed his arms and hands at the officer and the officer responded by striking the suspect in the mouth – a Level 3 use of force. The sergeant conducted a use of force investigation that was deficient in several respects: (1) although the sergeant conducted audio interviews, they were rolling and continued from one person to the next; (2) the sergeant asked several leading questions in his interviews of both the subject and the officer; (3) the supervisor failed to take photographs of the scene, officer, and suspect; and (4) the supervisor failed to inquire about the original complaint of a medical issue. In addition to the on-scene deficiencies, the supervisor did not adequately assess the level of force and whether there were lesser force options in the report.
- A supervisor responded to the hospitalization of a subject after a Level 4 use of force. Officers responded to a report of an altercation, and, upon arrival, one of the individuals fled. Officers pursued, located, and attempted to question the suspect. After a few moments, an officer stated he went “hands on” with the subject, placing him in a head lock and taking him to the ground (injuring both the officer and the suspect). The handcuffed suspect resisted being placed in the rear of the squad car and, when finally placed into the backseat, fell into the seat well. The suspect was returned to his seat and transported to the hospital. Upon arrival at the hospital, the supervisor requested to interview the suspect, but was informed the subject was placed into an induced coma due to his behavior. The supervisor failed to request any medical records or evaluate the use of force and suspect's injury. Additionally, Department policy requires the supervisor to notify FIT of a Level 4 use of force, which the supervisor failed to do.
- A supervisor failed to ensure all witness officers submitted force statements as a result of a Level 2 use of force.

Overall, the Monitoring Team's review of 2016 supervisor reports shows a marked improvement in the quality of those reports and an improved effort on the part of supervisors to track down all witness officers and include their information in the final report as compared to our review of the 2015 data.

### **I. Conduct of the Investigation: Reasonable Suspicion**

In addition to considering the propriety of the force used, the Monitoring Team also considered the propriety of the encounter that led to the use of force. Table 8 presents the frequencies of how each initial encounter was initiated and whether there was *reasonable suspicion* to initiate the encounter with the subject of the use of force.



Table 8. Cross-tabulation of how encounter was initiated by whether the officer had reasonable suspicion

How was encounter initiated?	Reasonable suspicion		
	Yes	No	Total
Dispatched	18	0	18
Flagged by Citizen	2	0	2
Crime in Progress	2	0	2
Terry Stop	3	0	3
Follow up investigation	2	0	2
Warrant Service	3	0	3
<b>Total</b>	<b>30</b>	<b>0</b>	<b>30</b>

As shown above, all encounters resulting in use of force incidents were supported by reasonable suspicion. This perfect score is slightly better than the near-perfect results of the 2015 sample (97.7% reasonable suspicion).

### J. Resistance Level by How the Encounter was Initiated

Table 9 cross-tabulates how the encounter was initiated by the level of resistance presented by the subject.

Table 9. Cross-tabulation of how the encounter was initiated and instrumentality of resistance

How the encounter was initiated	Instrumentality of resistance								Total
	Compliant	Verbal Resistance	Braced, stiffened	Attempted to flee	Pulled away/resisted cuffing	Strikes with hand, fist, or feet	Weapon (knife, club, etc.)	Other	
1-Dispatched	1	2	1	3	7	1	1	2	18
2-Crime in progress	0	1	0	0	0	1	0	0	2
3-Terry stop	0	0	0	1	1	0	0	0	2
4-Follow-up	0	0	0	3	0	0	0	0	3
5-Warrant service	0	0	0	1	1	0	0	0	2
6- Other	1	0	1	0	0	0	0	1	3
<b>Total</b>	<b>2</b>	<b>3</b>	<b>2</b>	<b>8</b>	<b>9</b>	<b>2</b>	<b>1</b>	<b>3</b>	<b>30</b>

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Our review found officers were dispatched to 18 of the 30 incidents. Subjects were compliant with the officer in only 6.7% of encounters that resulted in a use of force (2 of 30 use of force incidents), and subjects fled in 26% of encounters that resulted in a use of force (8 of 30 use of force incidents). The “compliant” category consists of use of force incidents where an officer drew and pointed their firearm at the subject, and the subject then complied with the officer’s direction.

### K. Instrumentality of Resistance by Instrumentality of Force

Officers use force in a variety of ways. The table below cross-tabulates the type of force used by the level of resistance offered by the subject.

Table 10. Cross-tabulation of instrumentality of resistance by instrumentality of force

Instrumentality of resistance	Instrumentality of force						CEW	Total
	CEW Laser Paining	Pointed firearm	Come along/ Pressure Point	Baton Strikes	Forcible Takedown	Hand/Fist Strikes		
Compliant	0	2	0	0	0	0	0	2
Verbal Resistance	2	0	0	0	1	0	0	3
Braced, stiffened	0	1	0	0	1	0	0	2
Attempted to flee	1	2	1	0	2	0	2	8
Pulled away/ resisted cuffing	2	1	4	1	0	1	0	9
Strikes with hand, fist or feet	0	0	0	0	0	2	0	2
Weapon (knife, club, etc.)	0	1	0	0	0	0	0	1
Other	1	2	0	0	0	0	0	3
Total	6	9	5	1	4	3	2	30

As the table shows, 30% of uses of force involved the pointing of a firearm (9 of 30 use of force incidents).<sup>4</sup> In 3 of the 9 incidents, the subject was either compliant (2) or passively resisting (1), yet the audit found the officers did not explain their justification for pointing the firearm at the subject.

<sup>4</sup> The small number of witness officers makes it difficult to draw more than generalized conclusions here.



### **L. Conduct of the Investigation: Interview the Subject of Force**

NOPD Policy and the Consent Decree requires Level 2 through 4 subjects of force to be interviewed. As reflected in table 11 below, we found inconsistency in supervisory efforts to interview the subjects of force.

Table 11. Subject interview status in use of force incidents

	<i>N</i>	<i>%</i>
Subject was interviewed	6	50%
Subject refused interview	1	8.3%
Unknown	4	33.3%
Subject was not available for interview	1	8.3%
Total	12	

Our audit found only 50% of subjects were interviewed (6 of 12 subjects), and it was unknown whether an additional 24% were interviewed (4 of 12). The Monitoring Team sent the Compliance Bureau and FIT a listing of force tracking numbers, which indicated missing and required incident photographs, for their review and follow-up.

### **M. Conduct of the Investigation: Investigative Findings**

The investigating supervisor is required to review of the evidence gathered and make a determination as to whether the officer's use of force was within NOPD policy and consistent with state and federal law. Also, the investigating supervisor is required to assess the incident for tactical and training implications, including whether the use of force may have been avoided through the use of de-escalation techniques or lesser force options. The table below cross-tabulates the conclusions reached by the supervising officer with the Monitoring Team's independent review.





Table 12. Cross-tabulation of NOPD findings by OCDM findings

NOPD findings	OCDM findings			Total
	Unreasonable	Reasonable	Intend to review later	
Justified	0	28	0	28
Not Justified	1	0	0	1
Further Review	0	0	1	1
Total	1	28	1	30

As reflected above, in 96.6% of the uses of force (28 of 29), the investigating supervisor found the use of force justified. Of the 28 cases found to be justified by NOPD investigators, the Monitoring Team determined the use of force reasonable in all 28 incidents. NOPD found the use of force unjustified in one incident, and the Monitoring Team also agreed. The Monitoring Team further confirmed the NOPD took appropriate corrective action.<sup>5</sup> One case is pending final assessment due to an on-going criminal investigation. Also, the Monitoring Team found an incident classified initially as a Level 2 use of force incident to be more appropriately classified as a Level 4 use of force incident. The Monitoring Team contacted FIT to notify them of the change in classification.

<sup>5</sup> To the Department's credit, the police district identified and took action on its own in advance of referral to PIB.



## X. ANALYSIS OF USES OF FORCE OVER TIME

The Monitoring Team analyzed NOPD data to examine trends in uses of force over time, as well as to compare the uses of force by type of activity, level of force, and other variables. Additionally, the data allow for the examination of trends in arrests for violent crimes and complaints against police, and an investigation of how these factors relate to the use of force. Before discussing the analyses, there are some important issues necessary to mention concerning the data.

First, the data provided by the Compliance Bureau on uses of force prior to 2012 are incomplete and insufficient for any meaningful analysis. For example, the data provided show there were three use of force incidents in 2009, with all three occurring in December. This limited number of use of force incidents contained within a single month of the year suggests that data for these years are incomplete. After January 2012, the data appear more consistent but still fluctuate significantly, as noted later in this report.<sup>6</sup>

Similar to the use of force data, information on arrests for violent crime are not included in the data prior to January 2012.

Finally, data on complaints against police officers are included from 2009 to the present. Unfortunately, only data on complaints after 2011 will be analyzed in the report because, again, reporting prior to January 2011 is incomplete. No month prior to January 2011 included more than four complaints with many months between January 2009 and December 2010 reporting 0 complaints. While not having any complaints filed against an officer in a month is an admirable goal, it is unlikely to occur. For this reason, data on complaints prior to January 2011 are noted here as being incomplete, and not analyzed further.

### A. Total Use of Force Incidents

A trend line showing the reported number of use of force incidents in the NOPD from January 2012 to November 2016 is presented in Figure 1. Two interesting observations can be drawn from this trend line.<sup>7</sup>

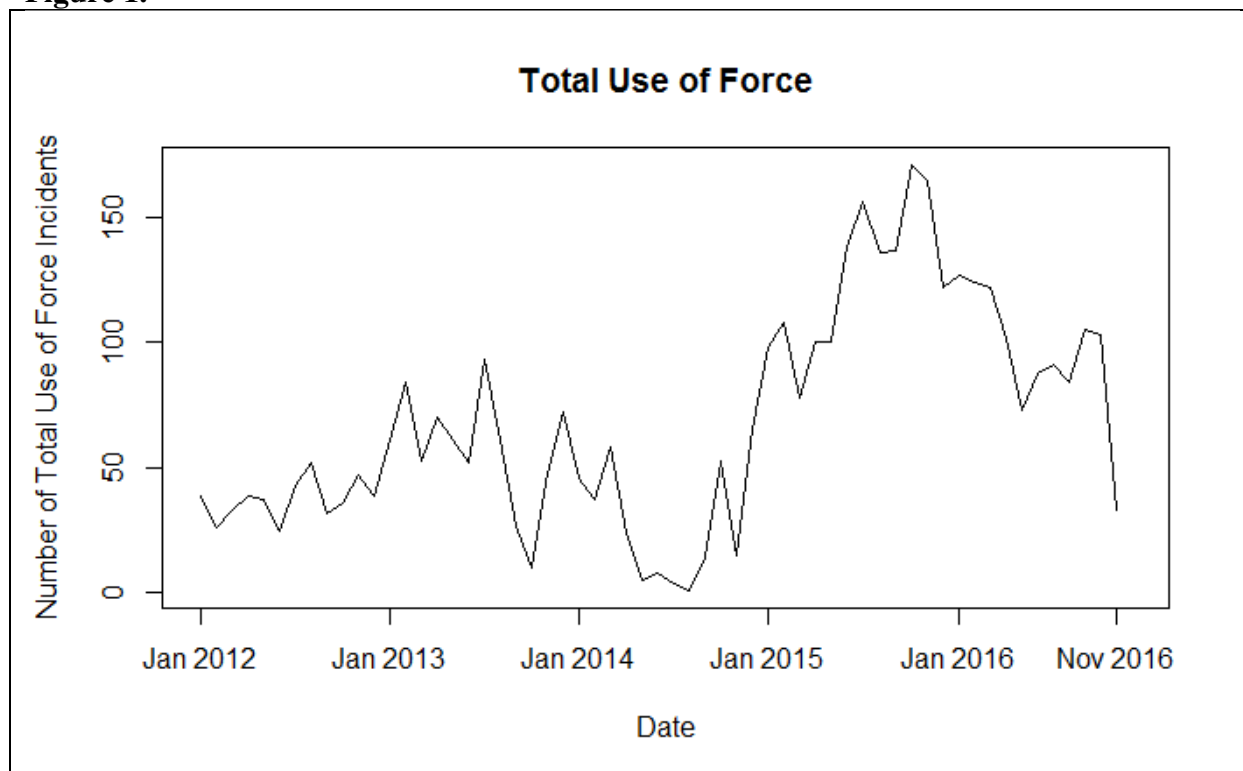
- First, the trend line appeared relatively stable prior to 2015 when the number of use of force incidents increased significantly. This increase almost certainly is due to improvements in reporting practices, which will be discussed in greater detail later in the report.

<sup>6</sup> The Monitoring Team recognizes that understandable delays in inputting data into NOPD's *Insight* system could cause some data fluctuations.

<sup>7</sup> NOPD's new Use of Force Policy was implemented on December 6, 2015. *See* <http://nola.gov/getattachment/NOPD/NOPD-Consent-Decree/Chapter-1-3-Use-of-Force.pdf/> and <http://nola.gov/getattachment/NOPD/NOPD-Consent-Decree/Chapter-1-3-6-Reporting-Use-of-Force.pdf/>. The policy changed both what constitutes a use of force and the reporting requirements for uses of force.

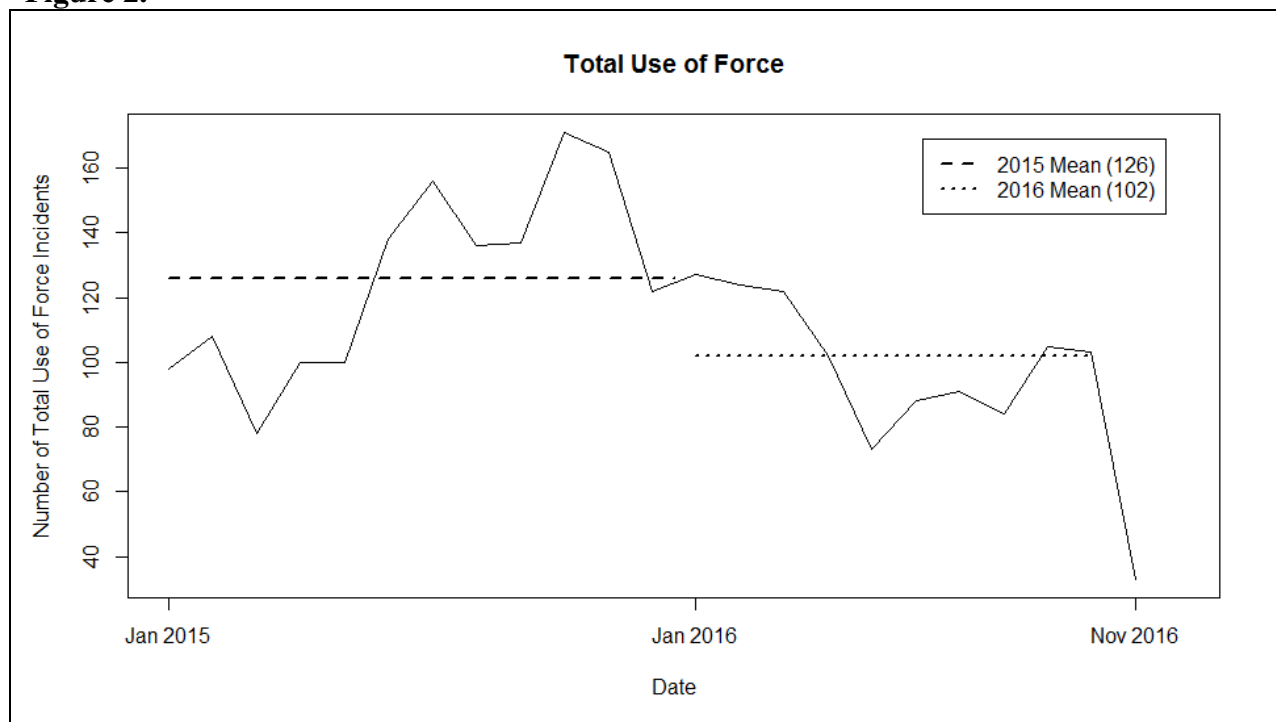


- Second, since 2015, use of force incidents seem to be decreasing, though it should be noted the data from November 2016 are incomplete.

**Figure 1.**

To investigate further the apparent decrease in the use of force incidents since January 2015, Figure 2 presents a similar trend line with only data from January 2015 to the present included. As observed in Figure 1, the trend line appears to show lower levels of use of force in 2016 than in 2015. Additionally, lines representing the average number of use of force incidents in a month for 2015 and 2016 are also displayed in Figure 2. The average number of force incidents in 2016 is calculated using only the first 10 months compared to 12 months in 2015. November and December were excluded from the analysis because data were collected in mid-November. Inclusion of these data points with partially collected data would have artificially deflated the average. Still, the average number of use of force incidents in a month decreased, with an average of 126 in 2015 and an average of 102 in 2016. ***This difference is statistically significant.***<sup>8</sup>

<sup>8</sup> An independent-samples t-test was conducted to test for statistical significance,  $t(18.62)=2.27, p<.05$ .

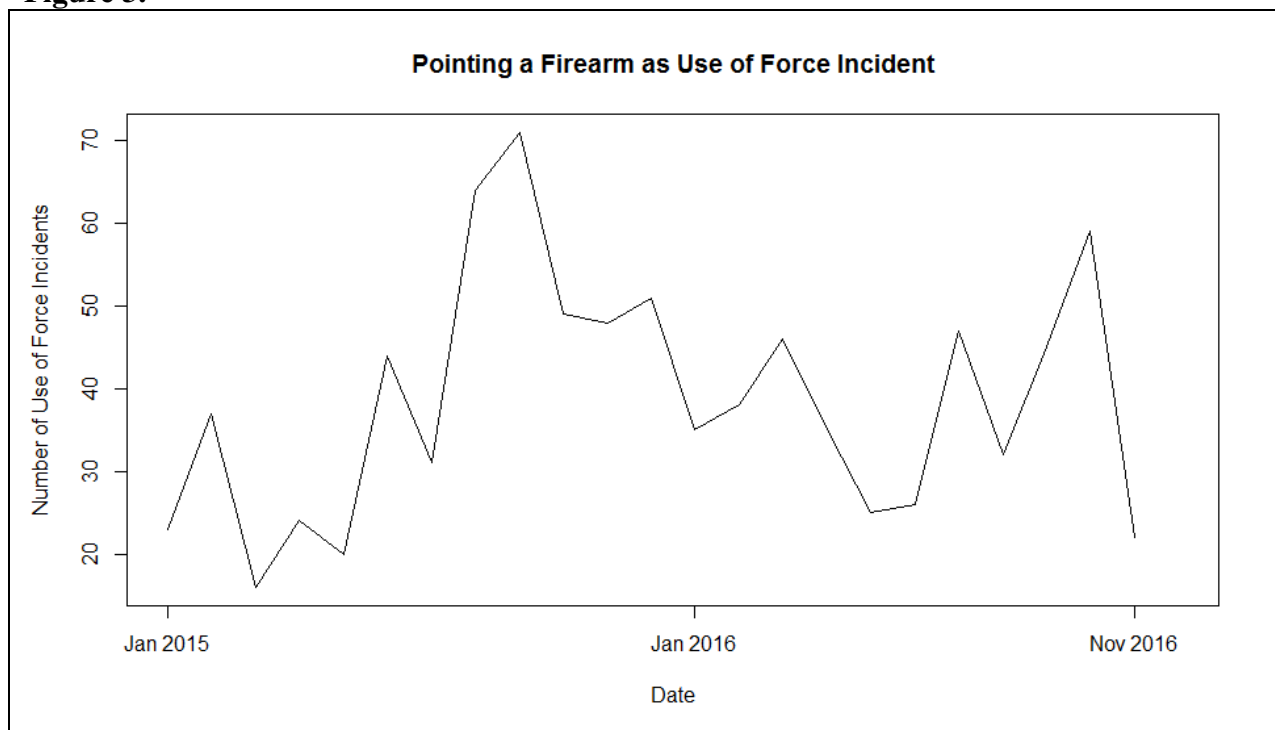
**Figure 2.**

### **B. Pointing a Firearm**

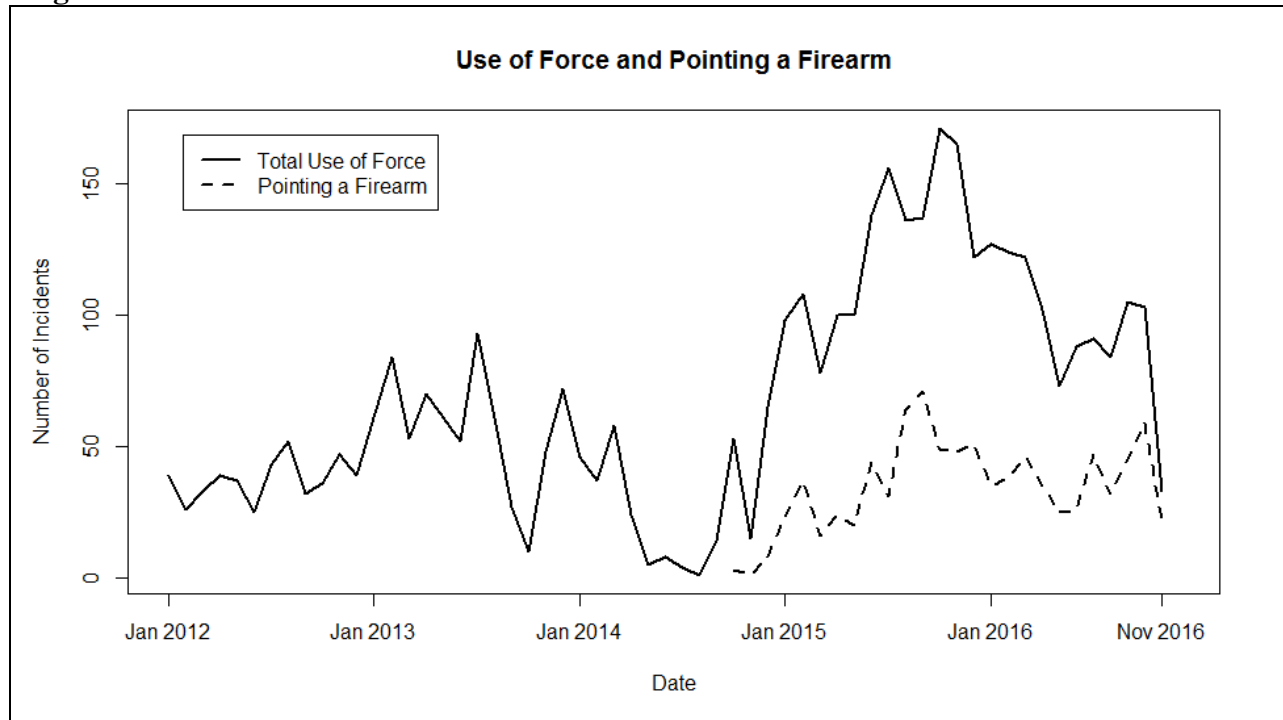
In an effort to improve the reporting of use of force incidents, the NOPD included the pointing of a firearm as a Level 1 use of force incident at the end of 2014. Consistent data on the pointing of a firearm is available from January 2015 to the present. The trend line for the number of times officers pointed a firearm as a use of force incident is presented in Figure 3. The trend line presented is very unstable, with wide variations from one month to the next. The line increases throughout 2015 before decreasing slightly and becoming relatively more stable in 2016. The instability in this trend line is not altogether unexpected because reporting the pointing of a firearm as a use of force incident was new in 2015. Inconsistencies in officers' reporting behaviors likely occurred throughout the early stages of the policy change. As officers and supervisors became more familiar with the requirements, reporting became more stable.



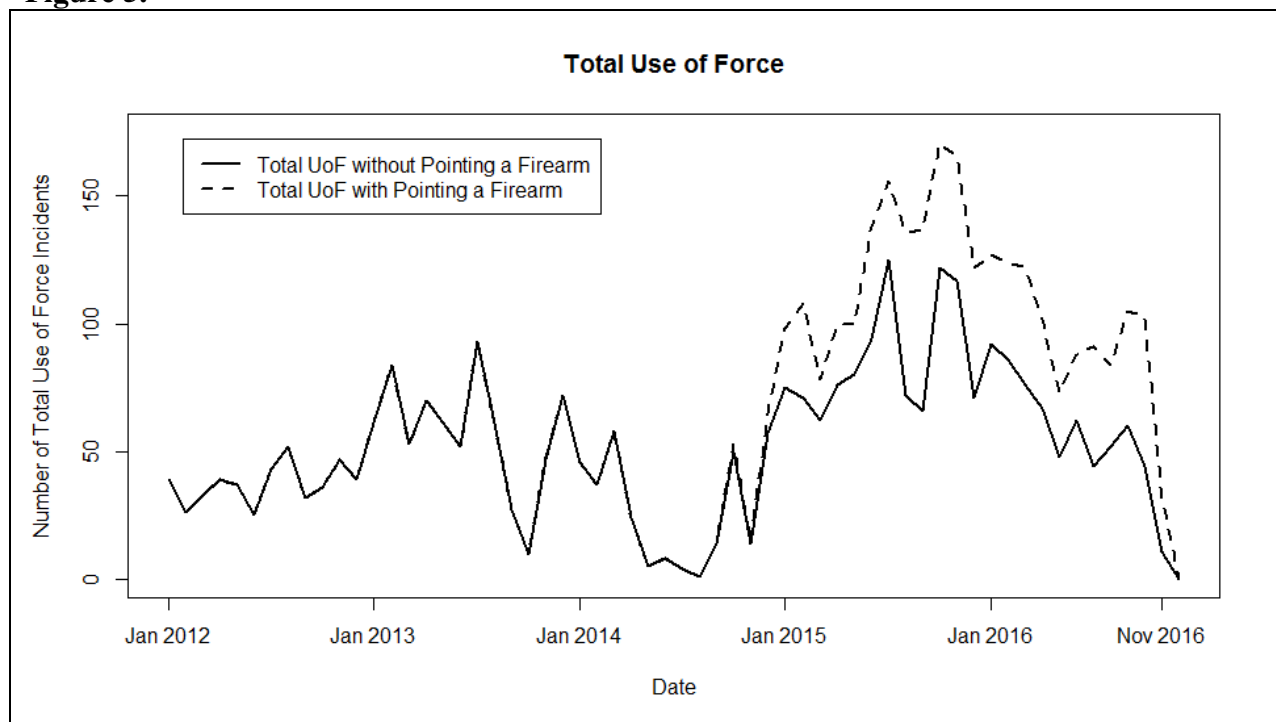
**Figure 3.**



As discussed earlier, Figure 1 showed a large increase in the total number of use of force incidents in 2015. This increase could be a result of the policy change to classify the pointing of a firearm as a use of force incident. Prior to this policy change, officers who pointed a firearm but did not use any other type of force against a suspect would not have reported any use of force and the incident would not have contributed to the total use of force numbers in Figure 1. After this change, this incident would be included in the total and it would have contributed to the use of force numbers in Figure 1. To demonstrate the impact of this policy change on the use of force numbers the total use of force trend line is included with the pointing a firearm trend line in Figure 4.

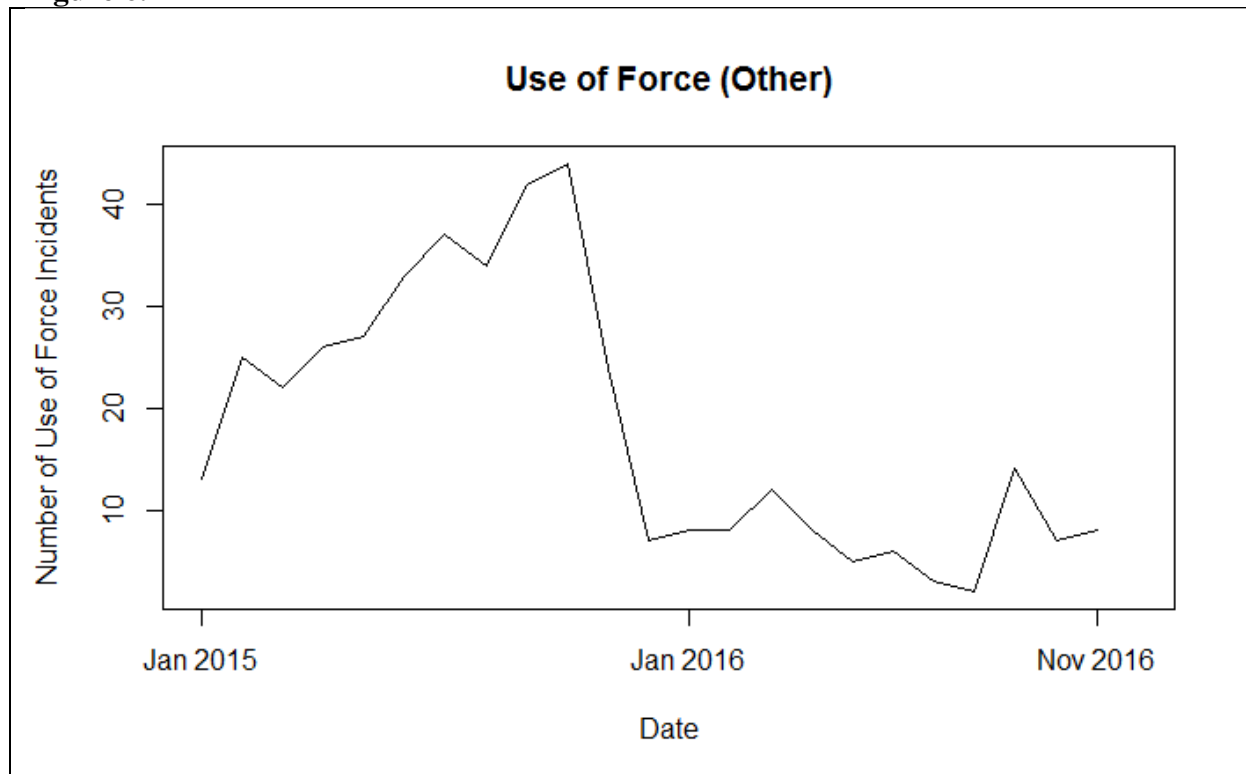
**Figure 4.**

As can be seen in Figure 4, the large increase in use of force incidents corresponds almost directly with the inclusion of pointing a firearm and the increases in reporting that followed. Figure 5 presents trend lines showing a similar conclusion. The dashed line is the same total number of use of force incidents presented in Figures 1 and 4. The solid line shows the total number of use of force incidents with incidents of pointing a firearm subtracted out. Thus, it is an attempt to approximate what the total use of force line would have looked like without the policy change. The line does not have the large increase seen in Figure 1 and is much more stable. It would appear then, that the apparent increase in the use of force starting in early 2015 was likely the result of improved reporting practices rather than actual increases in the use of force.

**Figure 5.**

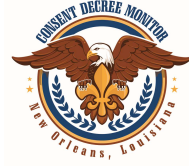
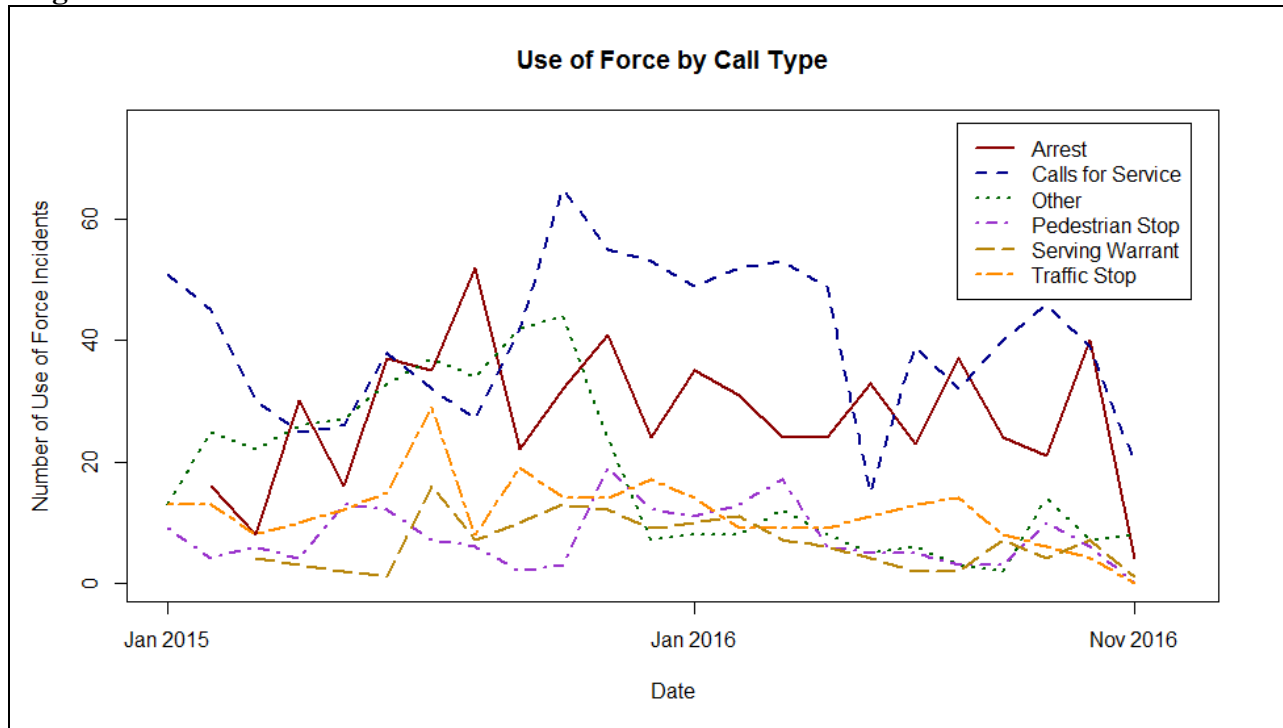
### C. Use of Force by Activity Type

The data provided also allowed for comparisons of trends in use of force by the type of activity the NOPD was engaged in at the time force was used. The previous analysis demonstrated that use of force reporting was drastically changed by the change in policy to include pointing a firearm. The limited number of use of force incidents reported prior to January 2015 as well as the change in policy makes comparisons of use of force by call type prior to January 2015 problematic. As a result, comparisons by call type are limited to data from January 2015 to the present. Individual trend lines for each call type from January 2015 to November 2016 can be found in Appendix B, however, each line is relatively stable with seemingly random peaks and valleys.

**Figure 6.**

One notable exception to this observation is the “Other” activity type. Figure 6 shows the individual trend line for “Other.” The line increases rapidly to a peak of 44 incidents in October 2015. After hitting this peak, “Other” incidents drastically decreased to a relatively stable line at around 10 incidents per month. This drastic change has two possible explanations. The first is that the NOPD had a drastic decrease in “Other” use of force incidents in November 2015. The second is that the NOPD improved their reporting practices and better classified use of force incidents beginning in November 2015. Thus, the drastic decrease is not a decrease in incidents per se, but is the result of “Other” incidents being placed into more descriptive categories.



**Figure 7.**

In addition to the individual trend lines shown in Figure 6 and Appendix B, the data allowed for the comparison of use of force incidents across different types of activities. Figure 7 presents this comparison in the form of multiple trend lines. Notably, calls for service make up the largest share of use of force incidents at most time points with arrests being the second largest and occasionally the largest. “Other” activities competed for the highest share of use of force incidents during the large increase leading up to October 2015, but then dropped to one of the lowest shares of use of force following the drastic decrease discussed above. Finally, pedestrian stops, serving warrants, and traffic stops had relatively similar shares of use of force incidents that remained stable over time.

Table 1 presents summary information for the trend lines presented in Figure 7. Please note that the sums and means presented in Table 1 are calculated using only data from January 2015 to October 2016, which is consistent with the earlier mean analysis of Figure 2. As with Figure 2, this is done to remove any artificial deflation that would occur from including incomplete data for the month of November 2016. As expected, the greatest share of use of force incidents came from calls for service (903, 41.05 per month). The second largest share came from arrests (605, 27.50 per month) with pedestrian stops, traffic stops, serving warrants, and other activities all averaging less than 20 use of force incidents per month.



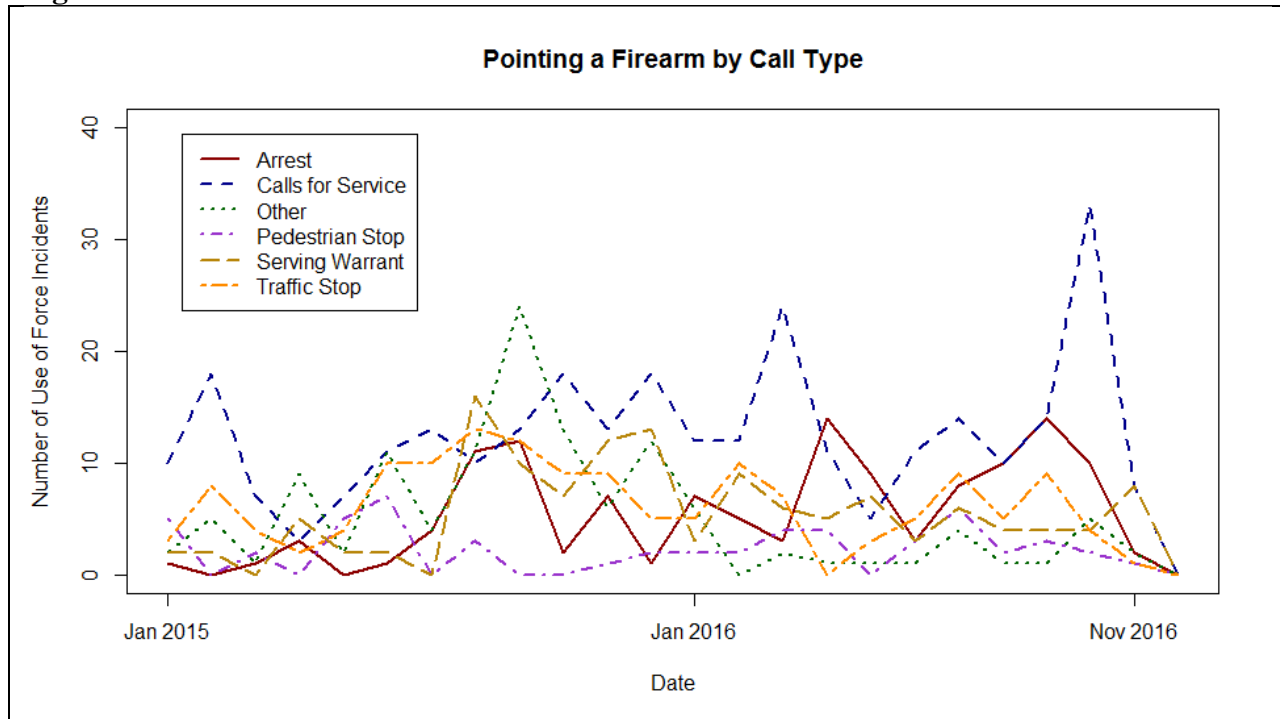
**Table 1. Use of Force by Activity Type**

	Average (monthly)	Total since 2015
Arrests	27.50	605
Calls for Service	41.05	903
Pedestrian Stop	8.00	176
Serving Warrants	6.41	141
Traffic Stop	12.23	269
Other	18.50	407
Unknown	1.23	27
<b>Total</b>	<b>114.91</b>	<b>2528</b>

**D. Pointing a Firearm by Activity Type**

Comparisons of use of force by type of activity can be broken down even further to compare incidents of officers pointing a firearm across the various policing activities examined previously. Analyses for the pointing of a firearm are limited to the time period from January 2015 to the present as the policy change that initiated the recording of these incidents did not take place until late 2014. Figure 8 presents the trend lines for these incidents.

**Figure 8.**



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Similar to total use of force, calls for service appears to make up the largest share of pointing a firearm incidents. It is difficult to draw any firm conclusions about the direction or shape of any of the trend lines presented here as they all appear to grow in both size and volatility across the period examined. This growth is likely due to officers becoming increasingly familiar with the new policy on reporting incidents of pointing a firearm. Despite these limited conclusions, the rapid increase and dramatic reduction in “Other” incidents can be seen in these incidents as well.

**Table 2. Pointing a Firearm by Activity Type**

	Average (monthly)	Total since 2015
Arrests	5.73	126
Calls for Service	13.05	287
Pedestrian Stop	2.41	53
Serving Warrants	5.55	122
Traffic Stop	6.64	146
Other	5.55	122
Unknown	0.45	10
<b>Total</b>	<b>39.36</b>	<b>866</b>

Table 2 presents similar information as Table 1, but with pointing a firearm rather than total use of force measured from January 2015 to October 2016. Consistent with Table 1 and the examination of the trend lines, calls for service (287, 13.05 per month) made up the largest share of pointing a firearm incidents. Surprisingly, however, the second largest share of pointing a firearm incidents was in the traffic stops category (146, 6.64 per month). All activity types, with the exception of calls for service, had a monthly average below 10 incidents per month.

It is important to provide a note of caution regarding the data in Tables 1 and 2. While these data can tell the story about which activity types involve a greater portion of use of force incidents, they are not able to speak to relative risk. In other words, it would be inappropriate to assume use of force is more likely to occur during a call for service than while serving a warrant because the data do not include any information on the frequency with which each activity type occurs in NOPD’s operations.

#### **E. Use of Force by Level of Force**

The data provided allow for analysis of the use of force by force level. As with the previous use of force data discussed here, reporting prior to January 2015 is incomplete and inconsistent. Examination of the raw data shows that prior to 2014 nearly every use of force incident was classified as level “N/A.” Some reporting improvements occurred during 2014, but a large portion of use of force incidents still fell within the “N/A” category. Since January 2015, however, only one use of force incident has been placed in this category. Thus, analyses reported below will be limited to the time period from January 2015 to the present.

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A trend line for Level 1 use of force incidents is presented in Figure 9. The trend line for Level 1 incidents is particularly interesting because it has a rapid increase and drastic fall that resembles the trend line for “Other” activity types examined above. Unfortunately, because data are reported at the month level, it cannot be definitively stated here that the spike in “Other” incidents and the spike in Level 1 incidents comes from the same incidents. However, this is a question that deserves attention by the NOPD Compliance Bureau.

**Figure 9.**

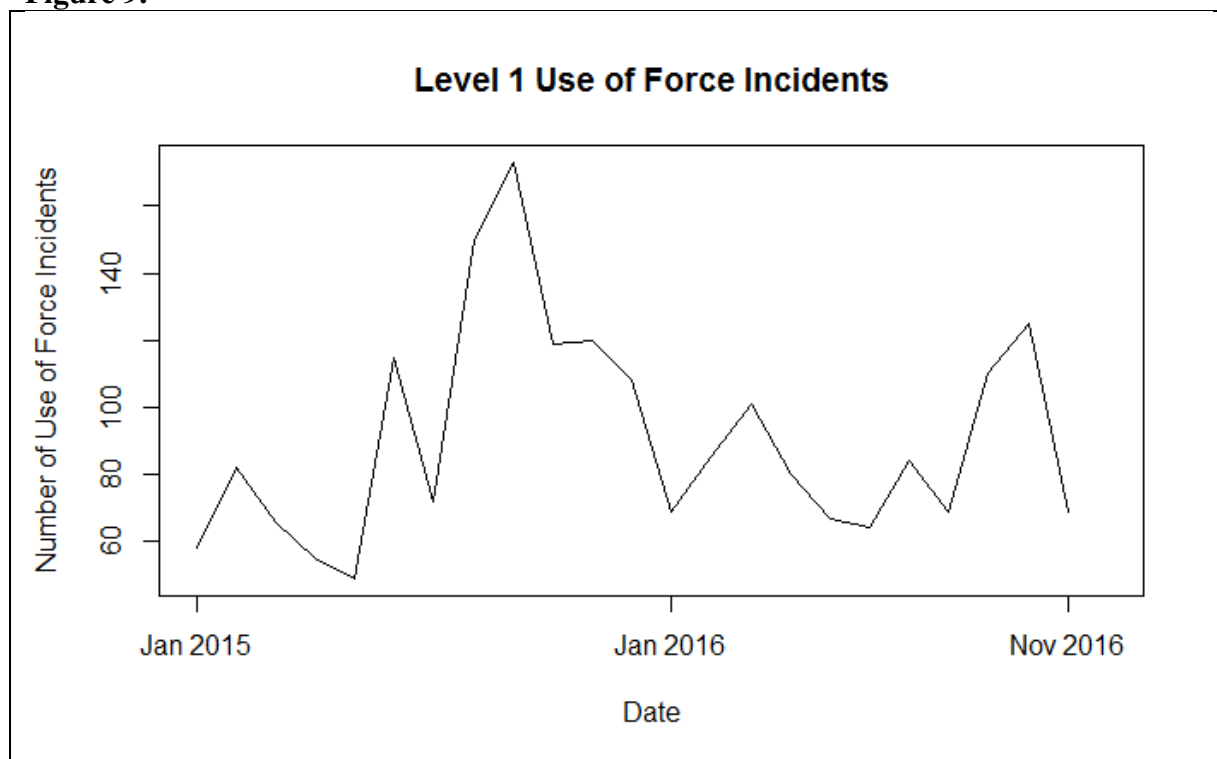
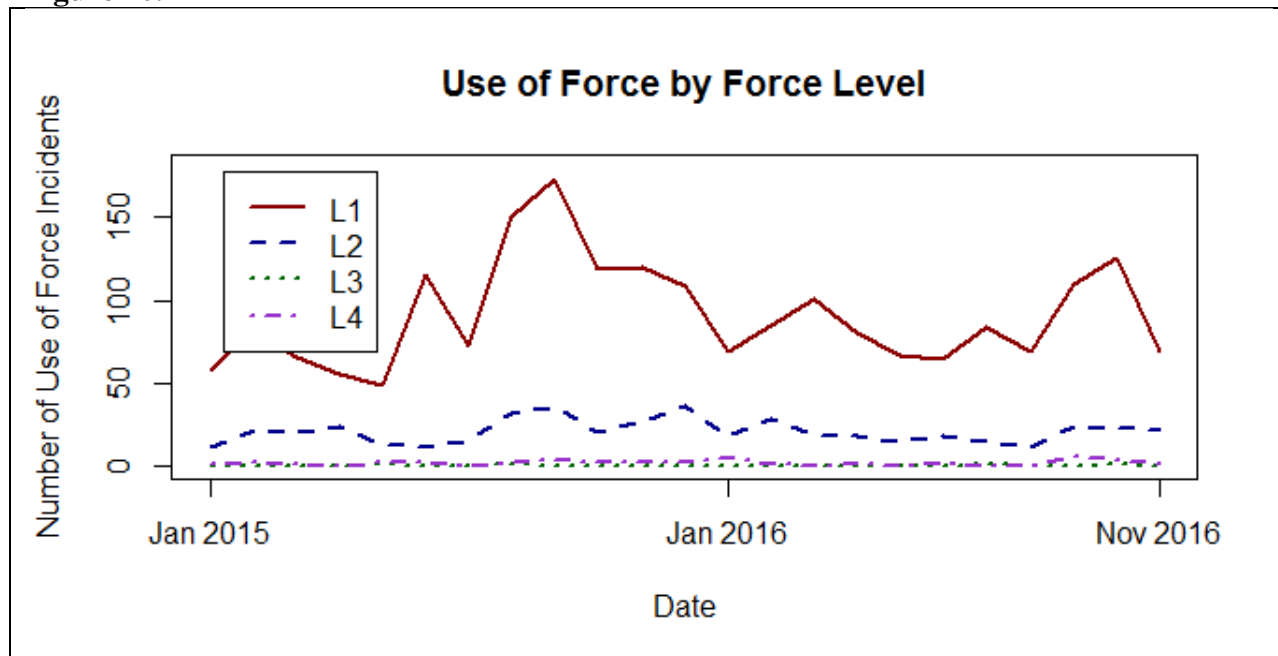


Figure 10 displays multiple trend lines for each level of force on the same plot. While the Level 1 plot has an interesting spike that was just discussed, the Level 2, Level 3, and Level 4 trend lines remain remarkably stable over time. Less serious use of force incidents appear to be more common when compared to more serious use of force incidents. However, the L4 trend line does appear to be slightly higher than the Level 3 trend line at various points during the period of interest.

**Figure 10.**

To investigate further this comparison, Table 3 presents summary information on the use of force from January 2015 to October 2016. As with the previous tables, the total and averages are calculated using data from this time period because incomplete data from November 2016 would artificially lower these values. As anticipated, L1 incidents make up the majority of use of force incidents (2021, 91.86 per month), while L2 is the next most common use of force incident (459, 20.86 per month). L4 (41, 1.86 per month) does, in fact, make up a larger number of use of force incidents than L3 incidents (4, 0.18 per month).

**Table 3. Use of Force by Force Level**

	Average (monthly)	Total since 2015
L1	91.86	2021
L2	20.86	459
L3	0.18	4
L4	1.86	41
N/A	0.05	1
Total	114.82	2526

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## F. Non-Use of Force Outcomes

Besides use of force, the data provided allowed for examination of two other measures: complaints and arrests for violent crimes. Figure 11 presents the trend line for arrests for violent crimes. As mentioned in the introduction, data on arrests for violent crimes was only available for January 2012 to the present. The plot appears to show a trend of decreasing arrests for violent crimes from January 2012 to the present. The dashed line represents a fitted line estimating the overall trend in the data from January 2012 to September 2016 and appears to have a slight negative slope. Data after September 2016 were excluded from the fitted line because they were unusually low (possibly due to incomplete reporting) and represented outliers.

**Figure 11.**

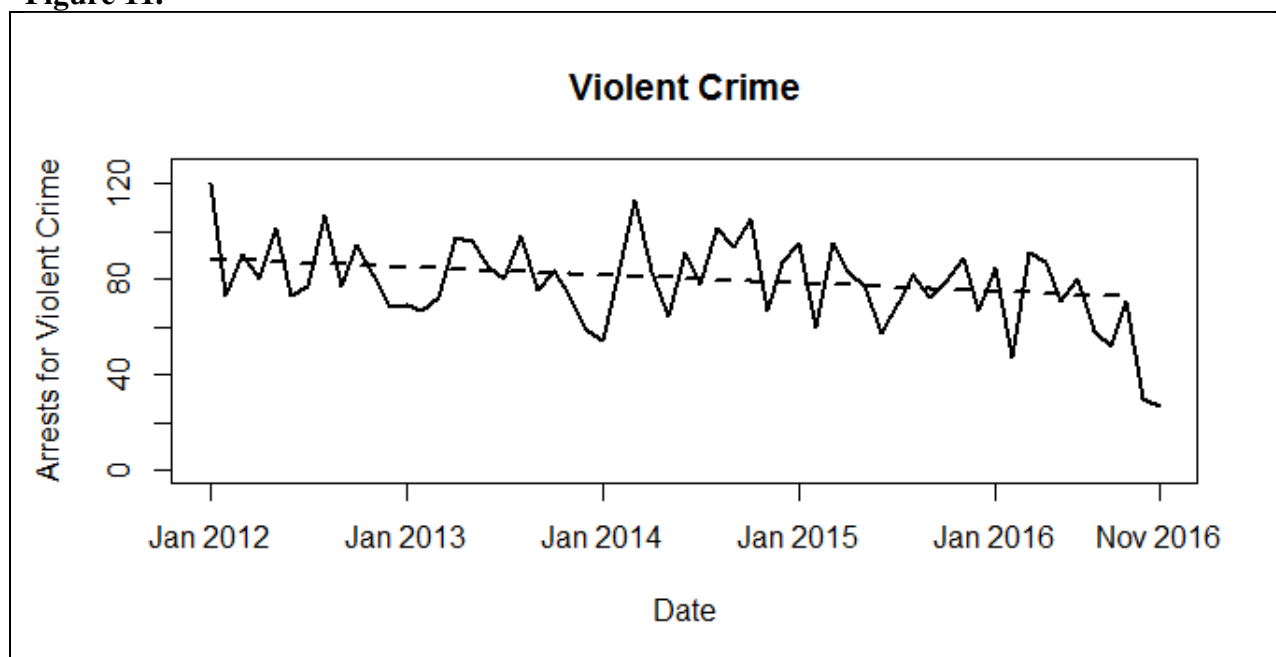
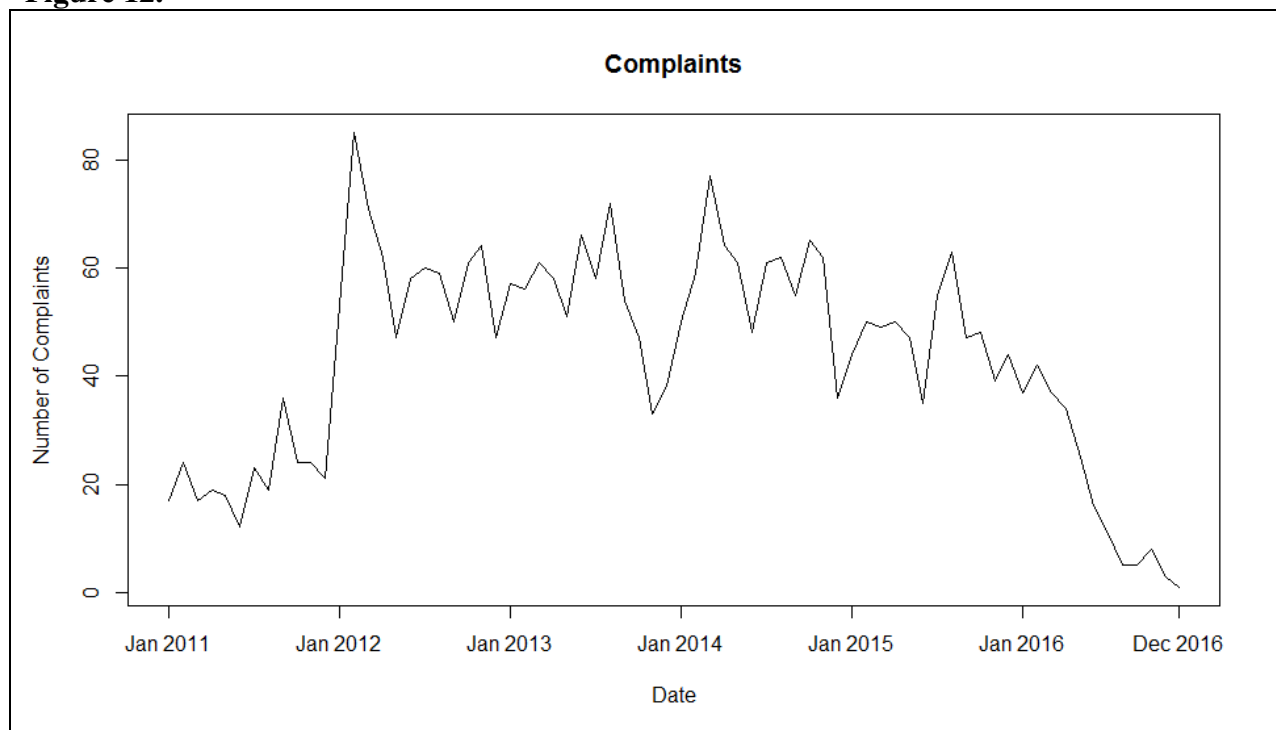


Figure 12 presents the trend line for complaints filed with the police department. As mentioned in the introduction, though data is available from prior to January 2011 only data after this point will be analyzed due to the incomplete nature of earlier data. The complaints trend line has two notable features. The first being a large spike in early 2012. One possible explanation for this spike could have been implementation of the Consent Decree, which was signed in 2012. While speculative, it could be that publicity surrounding the Consent Decree encouraged citizens to be more willing to file complaints. Prior to this point, citizens may have felt uncomfortable filing complaints or felt that complaints would have little effect. The other notable feature of the complaints trend line is an apparent decrease from January 2014 to the present.

**Figure 12.**

### G. Potential Relationships

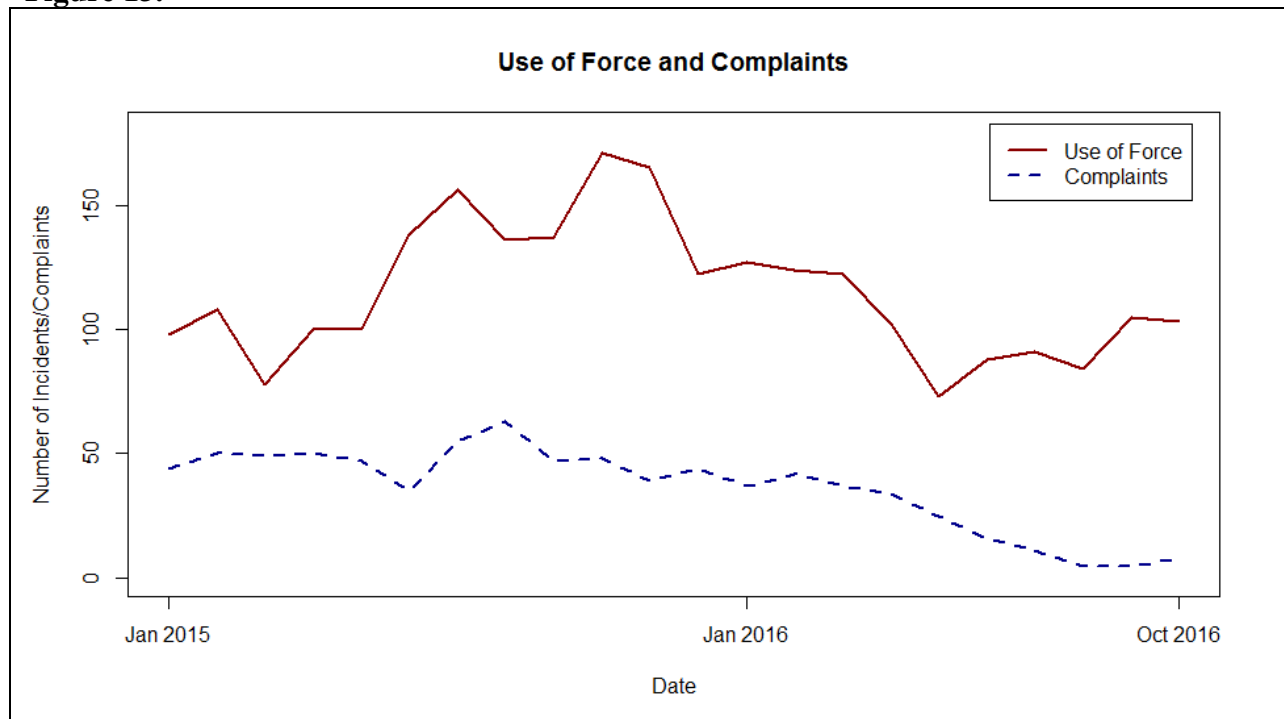
Finally, the data examined here provide an opportunity to explore potential relationships between use of force and violent crime arrests, and use of force and complaints. Before presenting any results, caution should be urged in drawing too many inferences from these analyses. The data are limited in their capabilities and any relationships discussed do not consider the possibility of influences coming from any other source. That is, some factor not included in the data could explain potential relationships between use of force and the factors explored here, but this possibility is beyond the scope of this analysis.

To explore potential relationships between use of force and violent crime arrests or complaints, Pearson correlations were estimated. Pearson correlations can range in value from -1 to +1. Negative correlations indicate that higher values on one measure are related to lower values on the other measure. Positive correlations indicate that higher values on one measure are related to higher values on the other measure. Values farther from 0 indicate stronger relationships, while values close to 0 represent weak or non-existent relationships. To test for correlation only data from January 2015 to October 2015 were used. The inclusion of pointing a firearm as a use of force incident drastically changed the way use of force was measured, and as a result, testing for correlations with data prior to this policy shift would bias the estimate.



No relationship between violent crime arrests and use of force was found in the Pearson correlation. The test produced an estimate of  $r=.08$  that was not statistically significant. However, a moderately strong relationship was found between complaints and use of force. The test produced an estimate of  $r=.48$  that was statistically significant.<sup>9</sup> This suggests that there are larger numbers of complaints when there are more use of force incidents. While it seems logical that citizens would be more likely to complain when more force is being used, caution should be used in making this inference as this relationship could be caused by other factors not included in this data. To illustrate the relationship between use of force and complaints, Figure 13 is a plot of the trend lines for both measures. The trend lines for both measures seem to be decreasing over time.<sup>10</sup>

**Figure 13.**



<sup>9</sup>  $p < .05$

<sup>10</sup> The Monitoring Team recognizes that understandable delays in inputting data into NOPD's *Insight* system could cause some data fluctuations.





## **XI. ASSESSMENT OF NOPD USE OF FORCE DATA INTEGRITY**

### **A. Resisting Arrest Analysis**

To verify that officers are complying with the mandated reporting requirements, the Monitoring Team obtained from NOPD a database of all police reports from the 3<sup>rd</sup> Quarter of 2015 wherein an arrestee was charged with battery of a police officer, assault of a police officer, or resisting arrest. We conducted a similar review in 2014. Such events are likely to involve the use of force to overcome the resistance or to defend against the assault or battery. The database we received identified 170 reports of events occurring in the 3<sup>rd</sup> Quarter of 2015 wherein an offender was charged with one of those offenses.

We randomly selected 27 of the reports to review. We read and reviewed the 27 police incident reports and determined 12 of them indicated force was used by an NOPD Officer during the arrest. We then matched the resulting item numbers to item numbers found in the listing of the use of force events logged on the FIT force log. Our comparison found that all 12 events were properly captured and logged on NOPD's FIT force log.

The Monitoring Team also audited the 15 reports that did not indicate any force was used. We reviewed the police reports and BWC videos to verify no force was used by the involved officers. We found no evidence that force was used against any subjects within these 15 case reviews.

Thus, our review of resisting arrest or battery of police officer charges found NOPD accurately reported uses of force when required in the 12 incidents where force was used, and accurately reported non-force encounters in the other 15 investigations.

### **B. Injury to Arrested Individuals**

To further verify that officers are complying with the mandated reporting requirements, and, thus, that data used by the Monitoring Team has integrity, we randomly sampled 42 injury incidents from a total of 421 injury-to-arrestee incidents for the 3<sup>rd</sup> Quarter 2015.

We accessed the Electronic Police Report ("EPR") system and IA Pro data base for case files. Several of the 42 incident reports contained additional summary reports, which we also reviewed. The Monitoring Team reviewed all reports associated with the 42 police incidents and determined force was used by an NOPD Officer in 5 of the arrests. For those five arrests, the Monitoring Team checked with the Force Investigation Team database to determine if the use of force was reported by the arresting officers. We found a Force Tracking Number, force statements and use of force reports for all 5 cases.

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### **C. New Orleans Police Department Lawsuits**

To verify officers are complying with mandated reporting requirements, the Monitoring Team conducted an audit of NOPD Officers named in State or Federal lawsuits alleging excessive use of force. We reviewed United States District Court Civil Actions and Civil District Court for the Parish of Orleans lawsuits filed in the spring and fall of 2016. We did not locate any filed lawsuits alleging excessive use of force. In fact, the Monitoring Team did not locate any litigation for the past two years alleging excessive use of force.

### **D. Citizen Allegations or Rank-initiated Excessive Use of Force Complaints**

The Monitoring Team conducted a review of misconduct allegations initiated by citizens or NOPD supervisors to identify possible un-reported use of force. With the cooperation of the Public Integrity Bureau, we identified five allegations of excessive force lodged during the 3<sup>rd</sup> Quarter of 2015. We obtained the associated case files through the Electronic Police Report (EPR) system and IA Pro data base. We reviewed all five citizen or rank-initiated complaints. We found no evidence that a use of force was not documented by the accused NOPD officer. In fact, where the investigation determined force was used, the involved officer and her/ his supervisor complied with NOPD reporting and investigation requirements.

Our audit, however, did identify opportunities for the improvement in the way NOPD investigates use of force complaints. The Monitoring Team shared these findings with NOPD and the Court, and NOPD has taken steps to further improve its processes.



## **XII. COMPREHENSIVE HISTORIC USE OF FORCE ANALYSIS (3RD QUARTER 2015)**

As previously reported, the Consent Decree requires NOPD to develop and implement force policies, training, and review procedures that ensure force by NOPD officers is used in accordance with the rights secured and protected by the Constitution and laws of the United States, and any unreasonable use of force is identified and responded to appropriately. (CD III) This section provides a historic assessment of NOPD's compliance with those requirements.

The Monitoring Team readily recognizes the data upon which this analysis is based are historic, and much has changed since the events underlying these data took place, including the drafting of new policies, the development of new training, and the implementation of new practices. Our review of 2015 data encompasses uses of force that preceded the creation of these policies, training, and practices. Nonetheless, the Monitoring Team believes historic data are relevant as a means of comparison as NOPD progresses.

It is important to note much effort has been undertaken by the NOPD throughout 2016 on issues covered by this Report. It also is important to note that, though the Department's policies on Use of Force, Reporting Use of Force, and Use of Force Review Board were approved in March 27, 2015, it took the rest of 2015 to complete the training of all officers. Additionally, NOPD conducted its first Use of Force Review Board ("UFRB" or the "Board") hearing on January 22, 2016. We reported on the conduct of the Board in our August 2016 Quarterly Report, and provide an update later in this report. The UFRB meets regularly and undertakes focused and detailed assessments of the events, decisions, and actions that comprise each use of force incident. The findings of the Board have resulted in changes in policy, training, and equipment, all of which are having a positive effect in managing use of force by officers.

Previously, the Monitoring Team performed an audit of the NOPD's reported uses of force in 2014. In the 2014 audit, the Monitoring Team attempted to review all 413 uses of force reported by NOPD officers (although the resulting report only included a review of 178 uses of force). While the 2014 audit attempted to review all use of force events that occurred in 2014, the 2015 audit was more limited in scope. The 2015 audit consisted of a random sample of 44 use of force incidents (of 203 total incidents) reported by NOPD officers in the 3rd Quarter of 2015. No Level 3 uses of force were reported by NOPD officers in the 3rd Quarter of 2015, and therefore our review consisted entirely of Level 1 and 2 uses of force (note, however, due to their inherent seriousness, all Level 4 uses of force are reviewed by the Monitoring Team, and the findings of that review will be covered in a separate report).

Although the 2015 audit sample is smaller than the 2014 audit, the review served a similar purpose – to analyze NOPD's compliance with department policy and the requirements of the Consent Decree in properly documenting and investigating uses or force. It is also important to keep in mind that, with NOPD's increased emphasis on reporting uses of force, the likelihood of a use of force being reported has increased (as demonstrated by 203 use of force incidents being reported by NOPD officers in the 3<sup>rd</sup> Quarter of 2015 alone as compared to 413 reported uses of

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force in all of 2014). Through policy improvement, training, supervisory oversight, and monitoring, an increase in the number of reported use of force events was expected.

With the exception of the scope of the review, the 2015 audit adhered to the same review methodology as the 2014 use of force audit. For each of the 44 randomly selected files, the Monitoring Team captured approximately 100 data elements to assist in assessing the completeness and sufficiency of the investigation and the appropriateness of the Department's findings. This analysis included reviewing all available documentation, such as the investigating supervisor's use of force report, officer force statements, Body Worn Camera ("BWC") videos, audio/video taped interviews (if taken), photographs (if taken), and the Department's findings as to whether the use of force was justified or not. The Monitoring Team had full access to NOPD's Electronic Police Reporting ("EPR") system, the BWC videos, the Conducted Electrical Weapons ("CEWs," more commonly known as "Tasers"®) videos, and the "IA Pro" database – the NOPD's citizen complaint and force data management system (IA Pro maintains a digitized file of all records associated with each event, including – all case reports, video interviews, CEW downloads, photos, and other investigative files and reports).<sup>11</sup> These records enabled us to complete more comprehensive reviews of each use of force event, identify deficiencies in the investigations by supervisors, and assess the sufficiency of the various reports required from officers.

While the full results of our comprehensive use of force analysis are set forth in Appendix XV.C to this Report, the following summarizes the more significant findings:

- Although the data show a higher percentage of individual involved officers submitted the required force statements in the 2015 as compared to the 2014 sample (93.2% in 2015 compared to 90.6% in 2014), even after the additional training performed in 2015, not all involved officers are fulfilling their obligations. Furthermore, the data show a lower percentage of witness officers submitted the required force statements in 2015 as compared to 2014 (71% in 2015 compared to 76% in 2014).
- Of the 44 use of force incidents reviewed in the 2015 sample, every involved and witness officer in a specific incident complied with the reporting requirements in 88.6% of the incidents reviewed (39 of 44 incidents). The 2015 audit shows an increase in compliance at the incident level as compared to the 2014 audit (88.6% compliance at the incident level in 2015 as compared to 77.5% compliance at the incident level in 2014).

<sup>11</sup> NOPD implemented IA Pro field companion *Blue Team* in December 2015. This electronic reporting system allows supervisors to enter all reports submitted by and/or related to officers using or witnessing force electronically, including the supervisor's investigative report. Prior to *Blue Team*, field supervisors had to send investigative reports via email and/or inter-office mail. The case investigations were then uploaded into IA Pro by PIB FIT. As the Department transitioned to this new technology, many of the case files documents were not entered into the IA Pro database. Consequently, the Monitoring Team had to make several requests for specific reports not found in IA Pro, but necessary to complete our review. NOPD accommodated every Monitoring Team request.

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- In 86.3% of the use of force incidents reviewed (38 of 44), one or more involved and/or witness officers activated a BWC that resulted in a video recording of at least some portion of the incident. In 13.7% of the incidents reviewed (6 of 44), neither an involved nor a witness officer activated a BWC that captured all of part of the subject's resistance and/or the officer's use of force.
- Of the 16 Level 2 use of force incidents reviewed, supervisors either failed to respond to the scene or to document whether they responded to the scene in 43.7% of use of force incidents (7 of 16 use of force incidents).
- Our audit found only 56.25% of subjects of Level 2 through 4 uses of force were interviewed (9 of 16 subjects) in compliance with Department policy, while 25% either were not interviewed (3 of 16) or it was unknown whether they were interviewed (1 of 16).

In sum, the Monitoring Team's review of the 2015 sample use of force data showed the Department had room for further improvement in submitting use of force statements (at both the individual officer-level and the overall incident-level), ensuring the use of force statements submitted included the required information, and ensuring all information was gathered and submitted with their use of force statement (*e.g.*, photographs, interviews, supervisor determinations). ***As discussed previously in this Report, however, the Monitoring Team's review of more recent data has shown improvement in key areas.***

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### **XIII. ASSESSMENT OF NOPD'S USE OF FORCE REVIEW BOARD PROCESS**

In late 2015, the Monitoring Team began to provide technical assistance to NOPD FIT and Senior Level Executives for the implementation of the Use of Force Review Board. The Use of Force Review Board (UFRB) serves as a quality control mechanism to ensure timely reviews of all serious use of force investigations to determine the appropriateness of the investigative findings, and to quickly appraise use of force incidents from a tactics, training, policy, and agency improvement perspective.

NOPD conducted its first Use of Force Review Board hearing on January 22, 2016. We reported on the conduct of the Board in our Quarterly Report issued in August. The UFRB continues to engage in focused and detailed assessments of the events, decisions and actions that comprise each use of force incident. The Board's discussions are thoughtful, probing, introspective, and substantive. Deputy Chief Paul Noel facilitates the sessions and is an active participant. He ensures that every member of the Board and other participants are heard. Voting members of the Board, including PIB Chief Arlinda Westbrook and ISB Chief Rannie Mushatt, are active participants. Non-voting members and attendees, including the Academy Commander, a District Commander, the SWAT Commander, and other participants, also substantively and effectively contribute to the discussion. *In the view of the Monitoring Team, all are doing a great job.*

At each session of the Board, the Force Investigation Team provides a detailed presentation of the investigation and facts of each case before the Board. The investigators use visual aids in their presentation, and provide detailed descriptions of the actions of each participants in the use of force event, often starting with the actions of the 9-1-1 center call taker and ending with the first NOPD supervisor who arrives on the scene and establishes incident control.

NOPD FIT has designated a sergeant to serve as the Use of Force Review Board secretary. This person is responsible for assembling and distributing the investigative files for the Board's review in preparation for the hearing. He also records the minutes and findings of the Board and, most importantly, ensures the findings and recommendations of the Board are communicated to the responsible Department entity. He follows-up to ensure the recommendations are implemented and reports back to the Board at the next session on the actions taken.

To share just one example of actions taken by the Board in a serious use of force, consider the following case. In this incident, officers pulled up alongside a car of folks using drugs. The driver stepped outside the car at the request of the officer. The requesting officer proceeded to pat down the subject while his partner is talking with a second occupant of the vehicle. While the subject was being patted down, the subject bolted down a side street with a gun still in his belt. He then turned and shot at the pursuing officers. One of the pursuing officers returned fire, striking the subject.

The Board found the shooting justified, but avoidable. At the time the officer fired his weapon at the fleeing subject, the subject already had shot at the officers, which was confirmed by BWC video evidence. But the Board, to its credit, unanimously found that the involved officers

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employed bad tactics, which allowed the subject to flee while armed. If the officers had properly secured the subject and had conducted a proper search, they likely would have seized and secured the weapon before he was able to reach for it, thus avoiding the shooting. The Board identified other bad tactics that adversely affected the outcome as well. The Board gave very specific directions to the training commander on what they expected in terms of follow-up action, and they demanded reports back to them to ensure the actions were taken.

\* \* \*

To date, NOPD has conducted twelve Use of Force Board Hearings. The UFRB Secretary tracked and followed up with all Use of Force Board recommendations. The Monitoring Team has reviewed the Force Board Hearing Secretary files for compliance on Board recommendations and the files are well organized, accurate and reflect what the Board recommended. In one case, the Training Academy went beyond the training recommendation of the Board as a result of the performance of the officer in the remedial training. Training Academy personnel felt the officer required additional tactical training beyond what the Board requested due to observing deficiencies in the officer's performance during the training.

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#### **XIV. CONCLUSION**

As detailed above, NOPD has made and continues to make significant progress in reducing uses of force and in fully investigating potential improper uses of force. Notwithstanding the Department's significant progress, the Monitoring Team still sees officers occasionally making mistakes. NOPD observers and members of the community must keep in mind, however, that no police department is perfect – just like no member of the community is perfect. And while the Monitoring Team believes in holding the NOPD and its officers to a very high standard, we do not believe any police department should be held to an impossibly high standard of perfection. Police officers are human and are bound to make mistakes. What we all should expect, however, is that when mistakes are made, they are openly identified, honestly evaluated, and meaningful remedied.

We offer this distinction between a flawed department and flawed individuals because it is an important one. Just as we cannot let the Department's progress blind us to areas in need of further reform, we likewise cannot let the mistakes or misconduct of some blind ourselves to the progress the Department has made in so many areas, including in the extremely important Use of Force area.



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## **XV. APPENDIXES**

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**A. Appendix A: Use of Force Data**

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**Appendix A-1. Use of Force by Activity by Month**

Month	Year	Total	Arrests	Calls for Service	Not Used	Other	Pedestrian Stop	Serving Warrants	Traffic Stop	Unknown
January	2015	98	0	51	0	13	9	4	13	8
February	2015	108	16	45	0	25	4	0	13	5
March	2015	78	8	30	0	22	6	4	8	0
April	2015	100	30	25	0	26	4	3	10	2
May	2015	100	16	26	0	27	13	2	12	4
June	2015	138	37	38	0	33	12	1	15	2
July	2015	156	35	32	0	37	7	16	29	0
August	2015	136	52	27	0	34	6	7	8	2
September	2015	137	22	42	0	42	2	10	19	0
October	2015	171	32	65	0	44	3	13	14	0
November	2015	165	41	55	0	24	19	12	14	0
December	2015	122	24	53	1	7	12	9	17	0
January	2016	127	35	49	0	8	11	10	14	0
February	2016	124	31	52	0	8	13	11	9	0
March	2016	122	24	53	0	12	17	7	9	0
April	2016	102	24	49	0	8	6	6	9	0
May	2016	73	33	15	0	5	5	4	11	0
June	2016	88	23	39	0	6	5	2	13	0
July	2016	91	37	32	0	3	3	2	14	0
August	2016	84	24	40	0	2	3	7	8	0
September	2016	105	21	46	0	14	10	4	6	4
October	2016	103	40	39	0	7	6	7	4	0
November	2016	33	4	20	0	8	0	1	0	0

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**Appendix A-2. Pointing a Firearm by Activity by Month**

Month	Year	Pointing a Firearm	Arrests (PF)	Calls for Service (PF)	Other (PF)	Pedestrian Stops (PF)	Serving a Warrant (PF)	Traffic Stops (PF)	Unknown (PF)
January	2015	23	1	10	2	5	2	3	0
February	2015	37	0	18	5	0	2	8	4
March	2015	16	1	7	1	2	0	4	1
April	2015	24	3	3	9	0	5	2	2
May	2015	20	0	7	2	5	2	4	0
June	2015	44	1	11	11	7	2	10	2
July	2015	31	4	13	4	0	0	10	0
August	2015	64	11	10	11	3	16	13	0
September	2015	71	12	13	24	0	10	12	0
October	2015	49	2	18	13	0	7	9	0
November	2015	48	7	13	6	1	12	9	0
December	2015	51	1	18	12	2	13	5	0
January	2016	35	7	12	6	2	3	5	0
February	2016	38	5	12	0	2	9	10	0
March	2016	46	3	24	2	4	6	7	0
April	2016	35	14	11	1	4	5	0	0
May	2016	25	9	5	1	0	7	3	0
June	2016	26	3	11	1	3	3	5	0
July	2016	47	8	14	4	6	6	9	0
August	2016	32	10	10	1	2	4	5	0
September	2016	45	14	14	1	3	4	9	0
October	2016	59	10	33	5	2	4	4	1
November	2016	22	2	8	2	1	8	1	0

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**Appendix A-3. Use of Force by Level by Month**

Month	Year	L1	L2	L3	L4	NA
January	2015	58	12	0	1	0
February	2015	82	22	0	2	1
March	2015	66	21	0	1	0
April	2015	55	24	0	0	0
May	2015	49	13	1	3	0
June	2015	115	11	0	2	0
July	2015	72	16	0	0	0
August	2015	150	32	1	2	0
September	2015	173	36	0	4	0
October	2015	119	20	0	2	0
November	2015	120	27	0	2	0
December	2015	108	36	0	3	0
January	2016	69	18	0	5	0
February	2016	85	28	0	1	0
March	2016	101	18	0	0	0
April	2016	80	18	0	1	0
May	2016	67	15	0	0	0
June	2016	64	18	0	2	0
July	2016	84	15	1	0	0
August	2016	69	12	0	0	0
September	2016	110	24	0	6	0
October	2016	125	23	1	4	0
November	2016	69	22	0	1	0

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**Appendix A-4. Non-Use of Force Outcomes by Month**

Month	Year	Complaints	Violent Crime Arrests
January	2015	44	95
February	2015	50	60
March	2015	49	95
April	2015	50	83
May	2015	47	77
June	2015	35	57
July	2015	55	70
August	2015	63	82
September	2015	47	72
October	2015	48	79
November	2015	39	89
December	2015	44	67
January	2016	37	85
February	2016	42	47
March	2016	37	91
April	2016	34	87
May	2016	25	71
June	2016	16	80
July	2016	11	58
August	2016	5	52
September	2016	5	71
October	2016	8	30
November	2016	3	27

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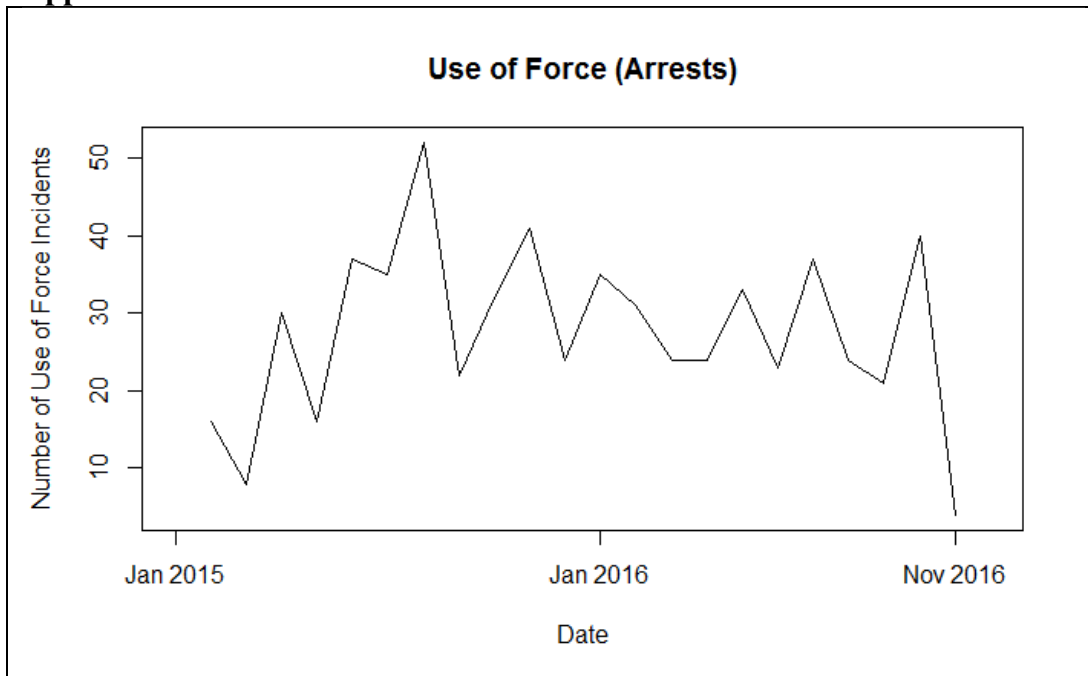
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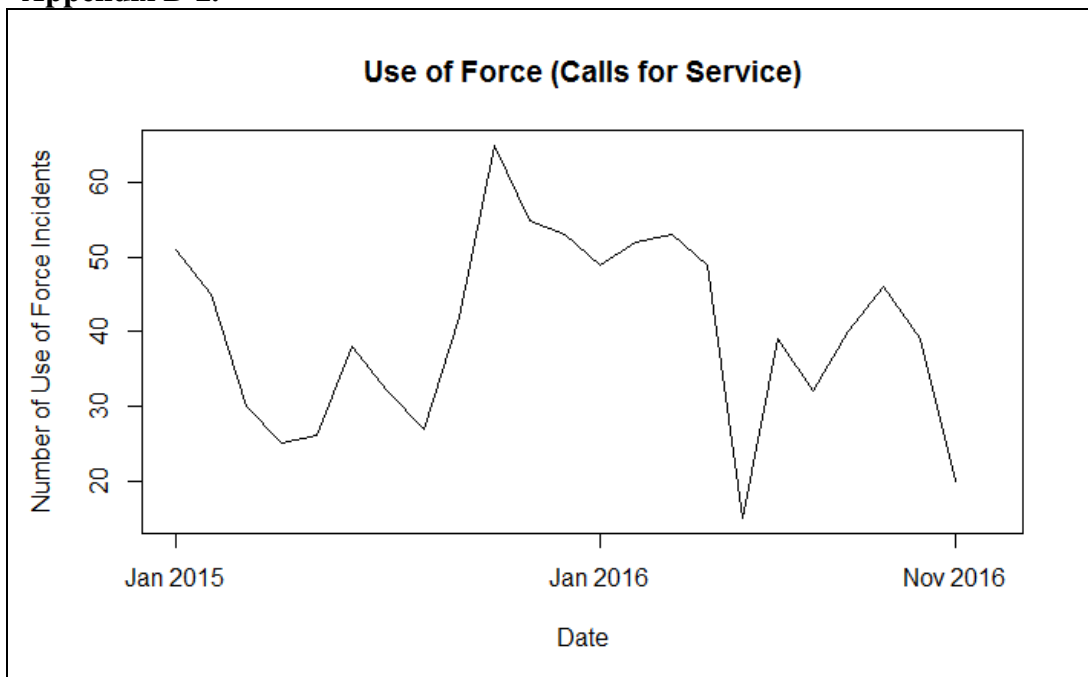
**B. Appendix B: Use of Force Graphs**



**Appendix B-1.**



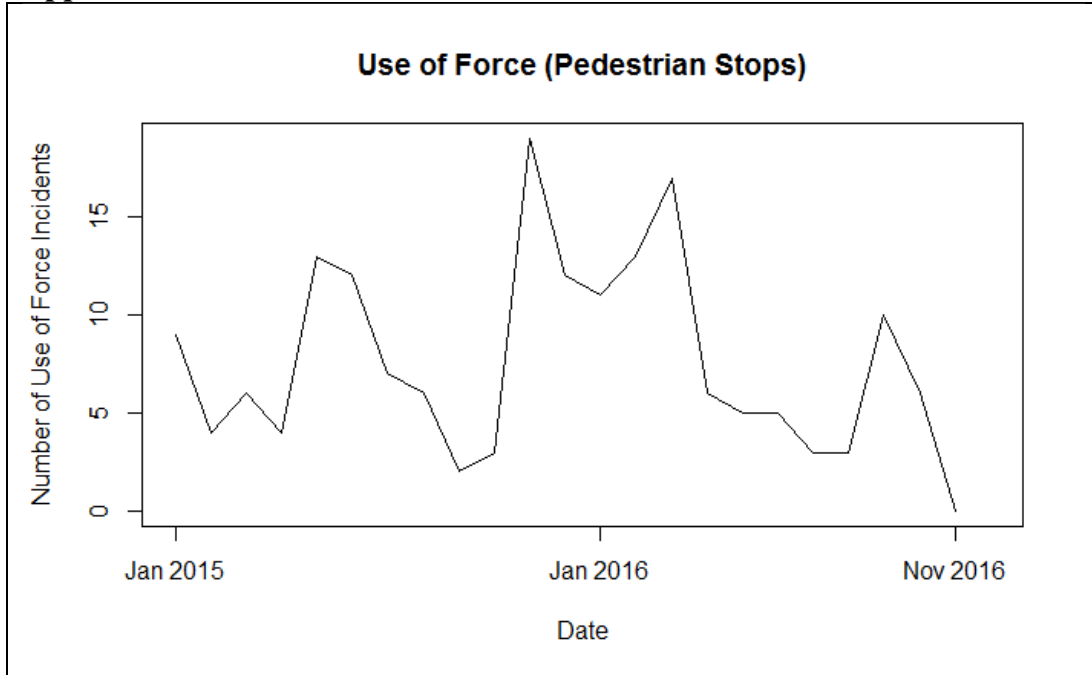
**Appendix B-2.**



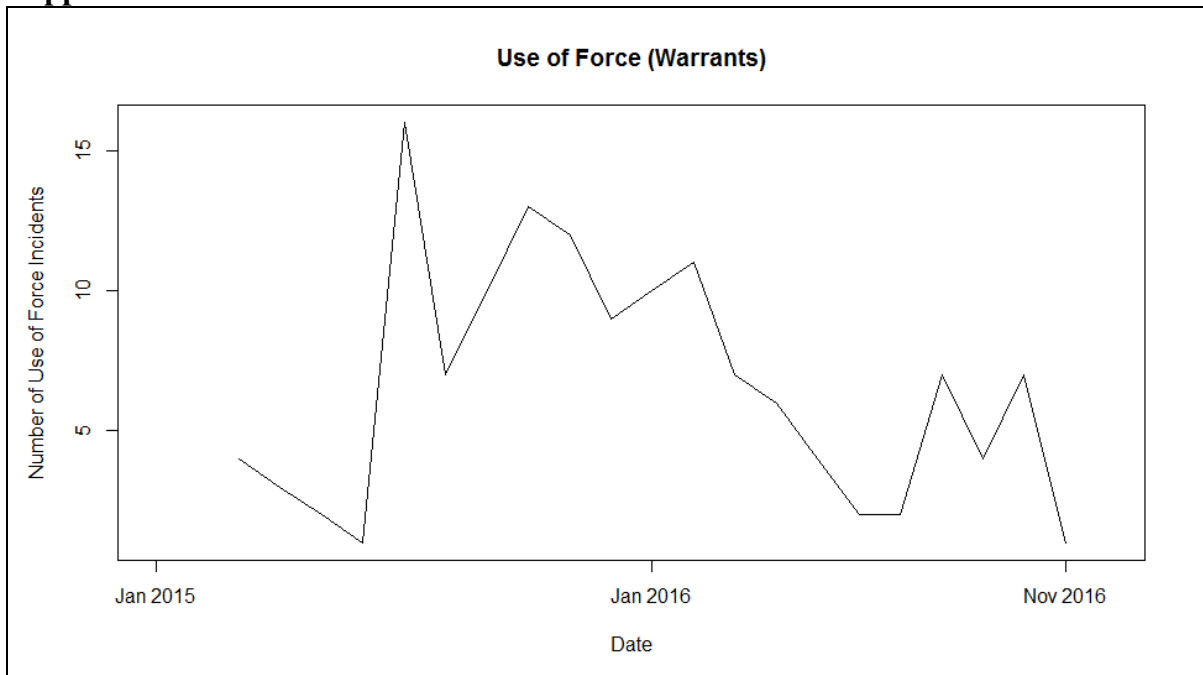




**Appendix B-3.**

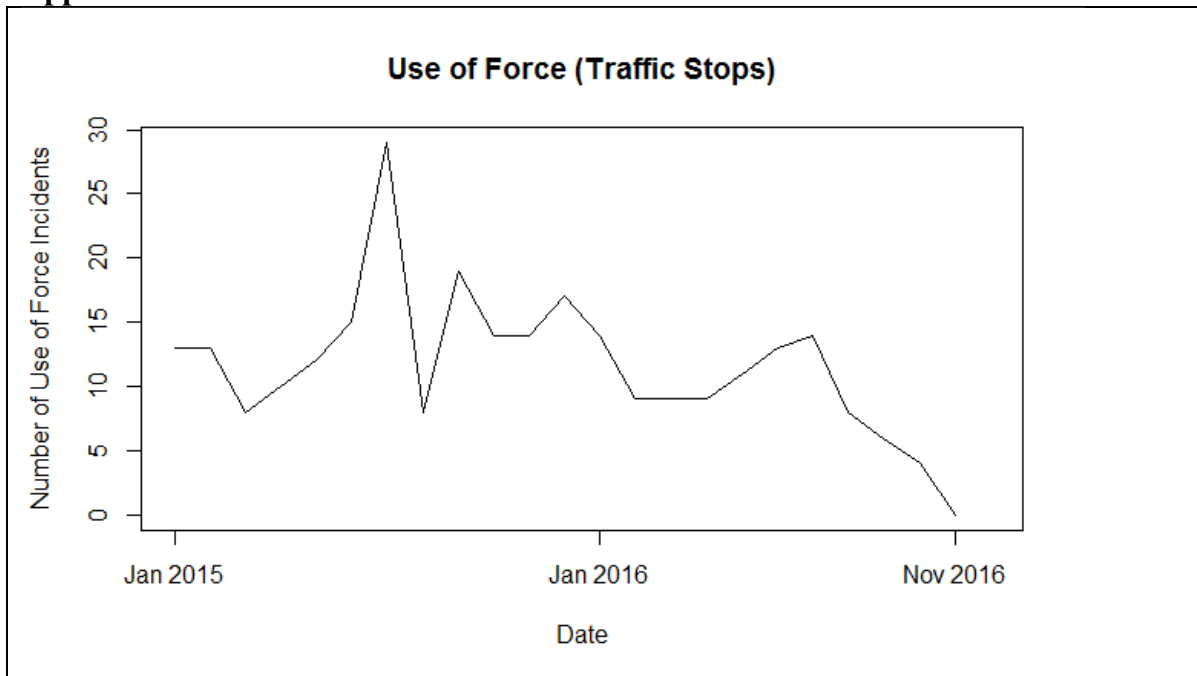


**Appendix B-4.**

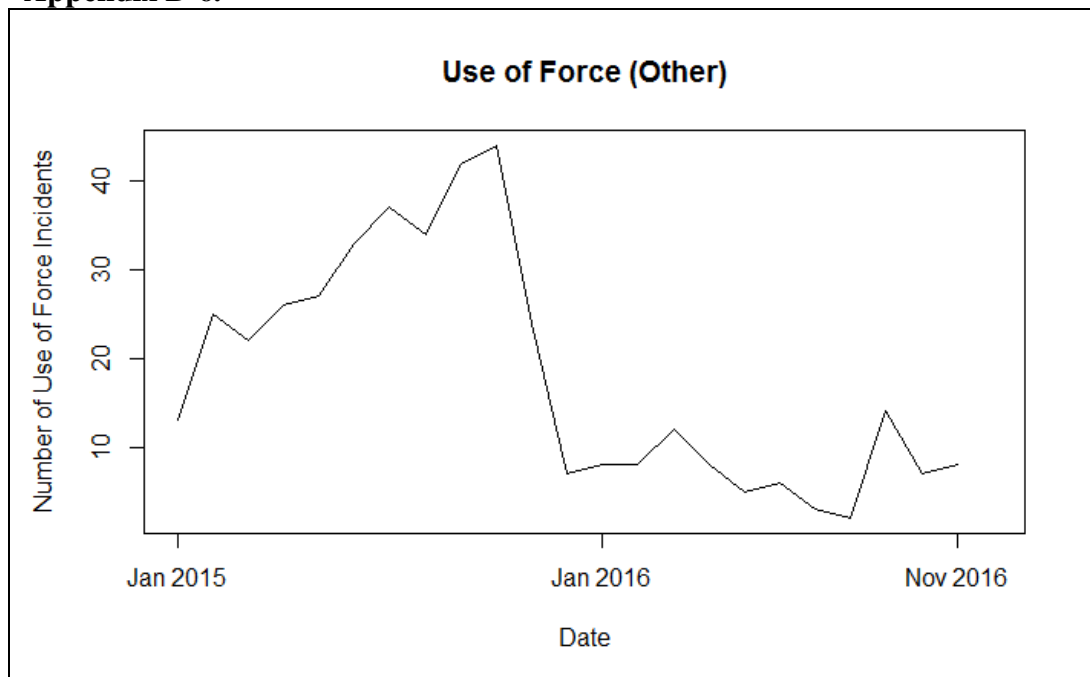




**Appendix B-5.**



**Appendix B-6.**





**C. Appendix H: 2016 Comprehensive Use Of Force Analysis (2015 Data)**

NOPD uses of force are divided into four levels:

- **Level 1** uses of force include pointing a firearm at a person and hand control or escort techniques (e.g., elbow grip, wrist grip, or shoulder grip) applied as pressure point compliance techniques or that result in injury or complaint of injury.
- **Level 2** uses of force include use of an CEW (including where a CEW is fired at a person but misses); use of an impact weapon to strike a person but where no contact is made; use of a baton for non-striking purposes (e.g., prying limbs, moving or controlling a person); and weaponless defense techniques (e.g., elbow strikes, kicks, leg sweeps, and takedowns).
- **Level 3** uses of force include any strike to the head (except for a strike with an impact weapon); use of impact weapons where contact is made (except to the head), regardless of injury; or the destruction of an animal.
- **Level 4** uses of force include all serious uses of force, as defined by [the Consent Decree], and shall be investigated by NOPD's Force Investigation Team.

Each officer who uses a Level 1 force is required to prepare a force statement that completely and accurately describes the force used, including: (1) a detailed account of the incident from the officer's perspective; (2) the reason for the initial police presence; (3) a specific description of the acts that led to the use of force; (4) the level of resistance encountered; and (5) a description of every type of force used. (CD 78) Supervisors also may require witness officers to prepare a force statement at their discretion, and these statements must be submitted by the end of the work day. The force statement must be reviewed by a supervisor who was neither involved nor a witness to the incident. (CD 83)

Similarly, each officer who uses or witnesses a Level 2 or Level 3 use of force is required to prepare a force statement. In such events, a non-involved supervisor is required to respond to the scene, conduct a thorough investigation into the use of force, and document her/his investigation in a Use of Force Report within 72 hours. (CD 86, 87)

Whenever an officer uses a reportable level of force, the officer must notify a supervisor. Once notified, the supervisor must contact NOPD's Force Investigations Team ("FIT"). Upon notification, FIT assigns a unique force tracking number ("FTN") and records sufficient information about the event to enable tracking of the completion of the required reports. The name of the involved and witness officers, the incident report number, the name of the subject the force was used against, and the type and level of force used are recorded on a "force log."



## 1. Compliance with Reporting Requirements

Throughout this Report we refer to an officer who uses force as the “involved” officer. An officer who witnessed the use of force, but did not use force, is referred to as a “witness” officer. The Consent Decree and Department policy requires all involved officers (for Levels 1 through 4 uses of force), and some witness officers (for Levels 2 through 4 uses of force), to submit a use of force statement prior to ending their duty shift. In the 44 incidents we reviewed, there were 88 officers who used force (i.e., involved officers) and 31 witness officers.

**Table H-1. Cross Tabulations of Force Statement Found and Involved and Witness Officers**

	Force Statement Found				
	Yes		No		Total
	<i>N</i>	<i>%</i>	<i>N</i>	<i>%</i>	<i>N</i>
Officer Involved	82	93.2%	6	6.8%	88
Officer Witness	22	71.0%	9	29.0%	31
Total	104	87.4%	15	12.6%	119

As reflected above, force statements were found for 93.2% of involved officers (82 of 88) and for 71% of witness officers (22 of 31). Although the data show a higher percentage of involved officers submitted the required force statements in the 2015 as compared to the 2014 sample (93.2% in 2015 compared to 90.6% in 2014), even after the additional training performed in 2015, not all involved officers are fulfilling their obligations. Furthermore, the data show a lower percentage of witness officers submitted the required force statements in 2015 as compared to 2014 (71% in 2015 compared to 76% in 2014).

During this review, the Monitoring Team noted all involved and witness officers who failed to fulfill their reporting obligations and shared this information with the Compliance Bureau. The Compliance Bureau then coordinated with the Public Integrity Bureau (“PIB”) Force Investigation Team (“FIT”) to ensure the specific officers received discipline and additional training as appropriate, as determined by the District Command Officers.



## 2. Sufficiency of Force Statements

Although our 2015 review showed an increase in compliance with involved officer force statement reporting requirements, several of these reports lacked clear articulation of the reason for the encounter, the type of resistance encountered, and the type of force used. For example:

- One officer stated he ran after a suspect and took him to the ground. The officer does not describe how he took the suspect to the ground.
- One officer stopped an automobile because the driver disregarded a traffic signal and was driving recklessly. The officer does not explain what he meant by driving “recklessly.” The driver ultimately stopped the automobile and the officer pointed his firearm at the driver. The officer did not explain the reason(s) for pointing a firearm at the driver.
- Multiple officers stopped a suspect for a possible drug law violation. After the arrest, the suspect refused to get into the back seat of the police vehicle. The officers state the suspect was “irate” and “pulled away” from officers in a struggle to place the suspect in the squad. The officers do not specify what the “irate” behavior was or describe in detail how he “pulled away” from officers.
- Multiple officers chased a shoplifter running out of a store. As they pursued the suspected shoplifter, two additional officers enter the store. The two officers stated in their force statement they performed “a takedown” on the fleeing suspect. The officers did not describe how they performed the takedown or describe the resistance from the suspect.
- Multiple officers performed a takedown of a suspect, and in their force statement report stated the suspect was “combative” and “aggressive.” The officers do not explain, in terms of the suspect’s actions, what constituted “combative” and or “aggressive” behavior.

While the Monitoring Team’s review of these uses of force confirmed the applications of the force were appropriate to the circumstances and consistent with NOPD policy, the lack of clear documentation and the use of non-descriptive, boilerplate statements warrants further attention by NOPD. The Monitoring Team has confirmed these shortcomings are being remedied through enhanced training at the NOPD Police Academy. After collaborating with the Monitoring Team for several months, the NOPD Academy implemented a new, 185 page Integrated Use of Force Lesson Plan. The new and enhanced lesson plan is thorough, covers essential use of force components, and comports to adult-learning principles.

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### 3. Each Involved and Witness Officer Submitted Required Reports

As stated above, the Consent Decree and Department policy requires all involved officers (Levels 1 through 4 uses of force) and some witness officers (Levels 2 through 4 uses of force) to submit a use of force statement prior to ending their duty shift. The following table shows the number of incidents in which all involved and witness officers complied with the reporting requirements for that specific incident. For example, if there were 2 involved officers and 2 witness officers for a specific incident, all 4 officers would have to submit the required statement to achieve a “yes” tally in the table below for that specific incident.

**Table H-2. Frequency of incidents where all involved and witness officers submitted force statements.**

Force statement submitted by all officers	<i>N</i>	%
Yes	39	88.6%
No	5	11.4%
Total	44	

As reflected above, of the 44 incidents reviewed in the 2015 sample, every involved and witness officer in a specific incident complied with the reporting requirements in 88.6% of the incidents reviewed (39 of 44 incidents). The 2015 audit shows an increase in compliance at the incident level as compared to the 2014 audit (88.6% compliance at the incident level in 2015 as compared to 77.5% compliance at the incident level in 2014).

It is important to note that, for each of the 5 incidents in which all officers did not submit the required force statements, at least one officer *did* submit a statement (i.e. there were zero uses of force where no officer submitted a use of force statement). During this review, the Monitoring Team noted all involved and witness officers who failed to fulfill their reporting obligations and shared this information with the Compliance Bureau. The Compliance Bureau then coordinated with the Public Integrity Bureau (“PIB”) Force Investigation Team (“FIT”) to ensure the specific officers received discipline and additional training as appropriate, as determined by the District Command Officers.

### 4. Capturing Uses of Force on BWC

The Monitoring Team reviewed BWC video to analyze whether NOPD officers were meeting the requirements of the Consent Decree and Department policy to wear and use their BWC



devices. Table 3 represents the number of incidents where at least one BWC video was found that captured all or part of the subject's resistance and/or the officer's use of force.

**Table H-3. Frequency of incidents where the application of force was captured on BWC**

	<i>N</i>	%
Yes	38	86.3%
No	6	13.7%
Total	44	

In 86.3% of the incidents reviewed (38 of 44), one or more involved and/or witness officers activated a BWC that resulted in a video recording of portions of the event. In 13.7% of the incidents reviewed (6 of 44), neither an involved nor a witness officer activated a BWC that captured all or part of the subject's resistance and/or the officer's use of force. During this review, the Monitoring Team noted all involved and witness officers who failed to activate their BWC and shared this information with the Compliance Bureau. The Compliance Bureau then coordinated with the Public Integrity Bureau ("PIB") Force Investigation Team ("FIT") to ensure the specific officers received discipline and additional training as appropriate, as determined by the District Command Officers.

### **5. Conduct of Investigation: Photographing Subjects of Force**

It is an important and common practice, and a requirement of NOPD policy, for use of force investigations to include photographs of arrestees involved in the incident. Taking photographs of an injured arrestee properly documents the injuries that resulted from the use of force. Similarly, it is important that photographs are taken of an arrestee against whom force was used who is not injured. Photographing an arrestee with or without injuries resulting from a use of force is important to ensuring a complete and accurate investigation is conducted. Of the 44 arrestees against whom force was used by an NOPD officer, 5 were reported as injured by the use of force. (The Monitoring Team identified 7 additional arrestees who were injured when arrested, but not by actions of a police officer.) Table 4 presents a cross-tabulation of the number of arrestees injured by whether photos were taken of the injury.



Photos Taken of Injury?	Arrestee Injured?					
	Yes		No		Yes, but not by officer	
	<i>N</i>	%	<i>N</i>	%	<i>N</i>	%
Yes	4	80%	1	2.6%	1	14.3%
No	1	20%	38	97.4%	2	28.6%
Unknown	0	0.0%	0	0.0%	4	57.1%
Total	5		39		7	

The Monitoring Team's review found photos were taken of 80% of the arrestees injured by an officer use of force (4 of the 5 arrestees). Overall, however, only 11.4% of arrestees subject to a use of force were photographed (5 of 44), demonstrating the Department needs to make significant improvement in documenting when arrestees are not injured by a use of force. Additionally, only 1 of the 7 arrestees who were injured by something other than the officer's use of force were photographed. Again, the Department must improve its documentation of injuries not caused by an officer use of force.

The Monitoring Team advised the Compliance Bureau of these findings. The Compliance Bureau, in coordination with PIB FIT, is performing additional oversight of force investigations at the District level to ensure photographs are taken when officers use force or when arrestees are injured irrespective of cause.

## 6. Conduct of Investigation: Injuries to Officer or Arrestee

Table H-5 illustrates the frequency and type of *arrestee injuries* found documented in force statements and use of force reports.





**Table H-6. Frequency and type of arrestee injuries**

Type of injury	N	%
Other injury/treated and released at hospital	5	11.4%
Injury not caused by NOPD	7	15.9%
Injury information missing from report	32	72.7%
Total	44	

Unfortunately, 72% of the investigation reports (32 of 44) failed to state whether the arrestee was injured or not, which resulted in a high percentage of incidents coded with “missing” injury data. All reports were signed by a reviewing supervisor, and therefore this finding reflects negatively on the sufficiency and completeness of the supervisor’s review of the reports submitted by the involved officers. The Monitoring Team previously raised this problem with NOPD, and the Department has taken corrective action or is working to remedy this shortcoming.

It is important in all use of force investigations for the officer to report the nature of any injury to the subject of force. It is also important to document that the arrestee was not injured when that is the case. Similarly, a supervisor is required to independently determine if the subject of force was injured, and ensure the injury is properly documented in the case report, force statement and the supervisor’s use of force report of his investigation.

Table H-6 depicts the number of *officers injured* during use of force incidents. Our audit showed a majority of force encounters did not result in the officer being injured.

**Table H-6. Frequency and type of officer injuries**

Type of injury	N	%
No injury	41	93.2%
Injured/declined treatment	1	2.3%
Treated and released	2	4.5%
Total	44	



As reflected in the table above, injuries to officers occurred in 6.8% of use of force incidents (3 of 44 incidents), and the Monitoring Team's review found that none of these injuries to officers were of a serious nature.

## 7. Conduct of the Investigation: Supervisor's Response to Scene

NOPD policy only requires a supervisor to respond to the scene of Level 2 through 4 use of force incidents. Nonetheless, on occasion NOPD sends a supervisor to the scene of a Level 1 use of force incident. Table H-7 shows the frequency with which a supervisor responded to the scene of Level 1 and 2 use of force incidents.

**Table H-7. Frequency of Level 1 and 2 use of force incidents where supervisor responded to the scene**

	Level I	Level II	
Supervisor on scene?	<i>N</i>	<i>N</i>	<i>N</i>
Yes	10 (35.7%)	9 (56.3%)	19
No (or undocumented)	18 (64.3%)	7 (43.7%)	25
Total	28	16	44

Of the 16 Level 2 use of force incidents, supervisors either failed to respond to the scene or to document whether they responded to the scene in 43.7% of use of force incidents (7 of 16 use of force incidents). This failure to respond or document the response is a violation of NOPD policy. The Monitoring Team advised the Compliance Bureau of these findings, and will work with both the Compliance Bureau and District commanders to ensure supervisors are responding to the scene of, and documenting their response to, all Level 2 through 4 use of force incidents.

## 8. Conduct of The Investigation; Sufficiency of Supervisor's Use of Force Report

As with force statements, we found deficiencies in the quality of the reports completed by supervisors. We found that the reports compiled by supervisors were deficient in significant areas in 10 of the 44 use of force investigations. Illustrative deficiencies include the following:

- A sergeant arrived on the scene of a domestic dispute without back up officer assistance and was confronted by the victim of the incident and an angry suspect. The sergeant spoke to both individuals and then allowed the suspect to walk back into the residence. The sergeant walked into the residence and a few minutes later both the suspect and sergeant exited the residence. The behavior by the sergeant



is a significant tactical issue and officer safety concern. The sergeant was then assisted by back-up officers and an attempt was made to arrest and handcuff the suspect. The suspect was escorted off the front porch from the residence by the sergeant and back-up officer. The suspect broke away from the officers and fled from the officers into street. He was eventually apprehended by an additional officer with the use of a CEW. The involved sergeant commenced to investigate the use of force, when he should have called for a non-involved supervisor to conduct the investigation. The force statement provides the suspect was “actively resisting” and there is no further clarification on the suspect’s actions. It is left to interpretation as to the meaning of “actively resisting.” The sergeant interviewed the suspect, whom he initially conversed with at the onset of the incident. Finally, the investigation lacked a witness canvass, a download of CEW video, lack of overall assessment of the force based on tactics, equipment and policy.

- Officers were dispatched to an area when an individual was attempting to break into automobiles. Officers located the subject, but he fled. Officers pursued the subject by foot and eventually pushed the subject to the ground. Initially, NOPD categorized the force used as Level 1, but the Monitoring Team believes a Level 2 classification is more appropriate. Because of the initial misclassification, a supervisor was not requested and did not respond to the scene.
- Officers responded to a call about someone in a canal armed with a metal object. When officers arrived on the scene, the suspect approached one of the officers with a pipe and stated “he was God.” The suspect would not communicate with officers so one officer deployed his CEW on the individual and then handcuffed him. The suspect remained on his stomach for some time after being handcuffed. A supervisor responded and investigated the incident. The supervisor’s use of force report made no mention of a review of the CEW video, and did not include an overall assessment of force used and if other options were available to officers. Additionally, there is no mention and/or requested assistance from a CIT officer.

It is important to remember each of these incidents took place in 2015. Each incident was discussed with NOPD both at the time of the use of force and at the conclusion of this audit. Our more recent use of force reviews identified fewer such incidents.

## **9. Conduct of The Investigation: Reasonable Suspicion**

In addition to considering the propriety of the force used, the Monitoring Team also considered the propriety of the encounter that led to the use of force. Table H-8 presents the frequencies of how each initial encounter was initiated and whether there was *reasonable suspicion* to initiate the encounter with the subject of the use of force.

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**Table H-8. Cross-tabulation of how encounter was initiated by whether the officer had reasonable suspicion**

How was encounter initiated?	Reasonable suspicion		
	Yes	No	Total
Dispatched	21	0	21
Crime in progress	9	0	9
Terry stop	4	1	5
Follow-up investigation	2	0	2
Warrant service	2	0	2
Other	5	0	5
<b>Total</b>	<b>43</b>	<b>1</b>	<b>44</b>

Our review found officers had reasonable suspicion to initiate encounters with subjects against whom they eventually used force in 97.7% of the use of force incidents we sampled (43 of 44 incidents). The one incident lacking reasonable suspicion occurred when officers came upon an adult riding what they believed to be a child's bicycle. The officers assumed the bicycle was stolen due to the size of the bicycle relative to the size of the rider. Suspecting the bicycle was stolen, the officers approached the subject, who then fled. Officers performed a takedown on the individual. The subject later complained of shoulder pain. The Department's documentation failed to include adequate detail regarding the reasonable suspicion for the stop or the level of force used by the officer. The Monitoring Team brought this particular incident to the attention of the Compliance Bureau and FIT. As a result of the ongoing monitoring efforts, FIT has increased its coordination with District personnel to ensure their compliance with NOPD use of force policy and the requirements of the Consent Decree.



## 10. Resistance Level by How the Encounter Was Initiated

Table 9 cross-tabulates how the encounter was initiated by the level of resistance presented by the subject.

**Table H-9. Cross-tabulation of how the encounter was initiated and the level of resistance**

How the encounter was initiated	Level of resistance									
	Compliant	Verbal	Braced, stiffened	Attempt to flee	Pulled away	Strikes	Weapon	Display firearm	Discharged firearm	Total
Dispatched	2	1	0	7	6	2	1	2	0	21
Crime in progress	1	1	1	3	0	1	0	2	0	9
Terry stop	0	0	0	3	1	1	0	0	0	5
Follow-up	2	0	0	0	0	0	0	0	0	2
Warrant service	1	0	1	0	0	0	0	0	0	2
Other	0	0	0	3	0	0	0	1	1	5
Total	6	2	2	16	7	4	1	5	1	44

Our review found officers were dispatched to 21 of the 44 incidents and came across a crime in progress in 9 of the 44 incidents that resulted in a use of force. Subjects were compliant with the officer in only 13.6% of encounters that resulted in a use of force (6 of 44 use of force incidents), and subjects fled in 36.3% of encounters that resulted in a use of force (16 of 44 use of force incidents). The “compliant” category consists of use of force incidents where an officer drew and pointed their firearm at the subject, and the subject then complied with the officer’s direction.

## 11. Instrumentality of Resistance by Instrumentality of Force

Officers use force in a variety of ways. The table below cross-tabulates the type of force used by the level of resistance offered by the subject.

**Table H-10. Cross-tabulation of level of resistance by level of force**

LEVEL OF RESISTANCE	Instrumentality of force					CEW	Total
	Laser point	Point firearm	Come-a-long	Forcible takedown	Hand/fist strike		
Compliant	0	6	0	0	0	0	6
Verbal	0	1	0	0	0	1	2
Braced, stiffened	0	1	1	0	0	0	2
Attempted to flee	1	5	2	7	0	1	16
Pulled away	0	0	4	2	1	0	7
Strikes	0	0	1	1	1	1	4
Weapon	0	0	0	0	0	1	1
Displayed firearm	0	5	0	0	0	0	5
Discharged firearm	0	0	1	0	0	0	1
Total	1	18	9	10	2	4	44

As the table shows, 41% of uses of force involved the pointing of a firearm (18 of 44 use of force incidents). In 7 of these 18 incidents, the officer reported the subject of the force was either compliant (5 of 7) or passively resisting (2 of 7). In 6 of the 18 incidents, the subject of force attempted to flee. None of the force statements we reviewed, however, provided an explanation for pointing the weapon at a compliant, passively resisting, or fleeing subject. The officer may have had justification and reasonably felt threatened, but the force statement did not sufficiently indicate the reason(s) for the use of force. The Compliance Bureau was notified of these findings.

## 12. Conduct of The Investigation: Interviewing the Subject of Force

NOPD Policy and the Consent Decree requires Level 2 through 4 subjects of force to be interviewed. As reflected in table H-11 below, we found inconsistency in supervisory efforts to interview the subjects of force.



**Table H-11. Subject interviews in use of force incidents**

	<i>N</i>	<i>%</i>
Subject was interviewed	9	56.25%
Subject was not interviewed	3	18.75%
Subject refused interview	2	12.5%
Subject was not available for interview	1	6.25%
Unknown	1	6.25%
<b>Total</b>	<b>16</b>	

Our audit found 56.25% of subjects were interviewed (9 of 16 subjects), while 25% either were not interviewed (3 of 16) or it was unknown whether they were interviewed (1 of 16). The Monitoring Team notified the Compliance bureau and PIB FIT of the 4 specific incidents where subjects were not interviewed. Current audit lacks consistent compliance with this supervisory requirement. The Monitoring Team and the Compliance Bureau plan to visit individual Districts in June to convey the results of this audit and to provide guidance on how to enhance supervision of these use of force investigations to ensure interviews are conducted.

### **13. Conduct of the Investigation: Investigative Findings**

The investigating supervisor is required to review of the evidence gathered and make a determination as to whether the officer's use of force was within NOPD policy and consistent with state and federal law. Also, the investigating supervisor is required to assess the incident for tactical and training implications, including whether the use of force may have been avoided through the use of de-escalation techniques or lesser force options. The table below cross-tabulates the conclusions reached by the supervising officer with the Monitoring Team's independent review.



**Table H-12. Cross-tabulation of NOPD findings by OCDM findings**

NOPD findings	OCDM findings			Total
	Unreasonable	Reasonable	Unable to determine	
Justified	3	33	2	38
None Included	0	4	2	6
Total	3	37	4	44

As reflected above, in 86.4% of the uses of force (38 of 44), the investigating supervisor found the use of force justified. Of the 38 cases found to be justified by NOPD investigators, the Monitoring Team determined the use of force reasonable in 86.8% (33 of the 38 incidents). In 5.26% of those incidents (2 of 38), the investigative reports provided insufficient information for the Monitoring Team to reach a conclusion as to whether the force was reasonable. Furthermore, in 7.9% use of force incidents supervisors concluded were justified (3 of 38), the Monitoring Team disagreed with NOPD's conclusion.

In 6 of the 44 investigations we reviewed, the NOPD supervisor failed to include a conclusion as to whether the force was justified or not. In 4 of these cases, the Monitoring Team was able to reach a conclusion and found the use of force to be reasonable. In the other 2 cases, there was insufficient information gathered by the investigating supervisor for the Monitoring Team to reach a conclusion.

Each case where NOPD and the Monitoring Team reached different conclusions on whether the force was justified or reasonable and where the NOPD supervisor failed to include a conclusion was referred to NOPD's Compliance Bureau for further review. The Monitoring Team and the Compliance Bureau will meet in the coming months to discuss and resolve any differing conclusions.