

Bias-Free Policing

Within 365 days of the Effective Date, and at least annually thereafter, NOPD agrees to assess all NOPD programs, initiatives, and activities to ensure that no program, initiative, or activity is applied or administered in a manner that discriminates against individuals on the basis of race, color, ethnicity, national origin, religion, gender, disability, sexual orientation, or gender identity. As part of its assessment, NOPD agrees to specifically include an assessment of misconduct complaints involving discrimination, use of force, motor vehicle and pedestrian stops, and arrests, including the selection or rejection of particular geographic deployment tactics or strategies based upon stereotype or bias. NOPD shall base its assessment of programs, initiatives, and activities on accurate, complete, and reliable data, including data contained in the EWS, stop and detention data, use of force analyses, crime trend analysis in relation to population demographics, enforcement practices based on community concerns, operations plans, and after-action reports. NOPD agrees to make this assessment publicly available. [Consent Decree ¶188]

The purpose of this report is to “assess all NOPD programs, initiatives, and activities to ensure that [they are not] administered in a manner that discriminates against individuals on the basis of race, color, ethnicity, national origin, religion, gender, disability, sexual orientation, or gender identity.” This report references assessments contained in other annual reports with a specific focus on bias-free policing. For example, the Stop and Search annual report contains extensive analysis of stop and search data, and the Misconduct annual report contains analysis of use of force complaints.

Relevant Policies

The NOPD’s current policy on bias-free policing was adopted and made effective June 30, 2013. The policy prohibits discriminatory and bias-based policing, including using factors such as race, ethnicity, religion, gender identity, sexual orientation, age, or disability as the sole basis for law enforcement action. However, the policy permits officers to consider some of these traits in combination with other aspects of a physical description, such as height and weight, when pursuing the suspected perpetrator of a crime. For example, the Department’s policy forbids racial profiling, or pulling over drivers on the basis of race alone. However, an officer searching for the perpetrator of an auto theft described by a witness as a “short, white, female teenager” could pull over a driver who fits that description. In that case, the legitimate consideration of a person’s race is not a violation of Department policy. The current policy (Policy/Procedure 402) has been revised (Chapter 41.13), but that provision remains a key element of the revised, draft policy.

The NOPD is currently seeking approval of two policies related to bias-free policing. The Department submitted its foundational bias-free policing policy, Chapter 41.13, to the Office of the Consent Decree Monitor (OCDM) and the Department of Justice for review and approval on August 12, 2015. OCDM returned the draft policy with comments on February 11, 2016. Among the many suggestions offered by OCDM and the DOJ was a proposal to create a separate policy for LGBT (Lesbian, Gay, Bisexual, and Transgendered) persons, elements of which had been included

in the overall bias-free policing policy. The Department complied, revising its policies and resubmitting the overall bias-free policing policy for review on March 21, 2016. The Department is currently revising its LGBT policy.

In addition, the Department has drafted a policy that prohibits discrimination, harassment, and retaliation in the workplace and community, Chapter 26.3. Once approved, this policy will operate in tandem with recently approved disciplinary policies, including Chapter 26.2, Adjudication of Misconduct, and Chapter 26.2.1, the Disciplinary Matrix and Penalty Schedule. The Disciplinary Matrix forbids discrimination and categorizes it as an offense that is punishable by dismissal in extreme cases. The Disciplinary Matrix also states that penalties shall be imposed “objectively, without favoritism or bias in any form. Similar penalties shall be imposed for similar violations, depending on the aggravating or mitigating circumstances of each case.”

Notably, various policies contain prohibitions against discrimination in the performance of law-enforcement duties. For example, the Department’s approved Search and Seizure policy, Chapter 1.2.4, provides that officers “shall not use race, color, ethnicity, national origin, religion, gender, disability, sexual orientation, or gender identity in exercising discretion to conduct a warrantless search or to seek a search warrant . . . except as part of an actual and apparently credible description of a specific suspect or suspects in any criminal investigation.” The same verbiage is used in Chapter 1.2.4.1, “Stops/Terry Stops” to make the same prohibition applicable to *Terry* Stops, i.e. the brief detention of a person based on reasonable suspicion. These policies, which are scheduled to be implemented this year, make clear that discrimination is unacceptable in stops, searches, arrests, and other police duties.

Training

In a critical step forward for the NOPD, the Department held two “bias-free policing” training sessions in 2015 with a nationally recognized expert on the subject, Dr. Lorie Fridell. The former director of research at the Police Executive Research Forum, Dr. Fridell has written books such as “Racially Biased Policing: A Principled Response” and “By the Numbers: A Guide for Analyzing Race Data from Vehicle Stops.” Dr. Fridell’s approach is based on the scientific study of human biases, informed by social psychologists. The NOPD’s Training Academy hosted Dr. Fridell for command staff training that included the Superintendent of Police, Bureau Deputy Superintendents, Police Commanders, Police Captains, and a Police Major. A separate “train the trainer” session through which about 30 key NOPD personnel received instruction was also held in 2015. This nationally recognized best-practices training program is scheduled to be delivered to all NOPD officers in 2016.

The “fair and impartial policing perspective” contends that biased policing is not necessarily based in racism or prejudice; instead, an implicit or unconscious bias may influence an officer’s perceptions and actions, even when the officer does not himself or herself hold a racist or prejudiced attitude. Dr. Fridell’s program emphasizes the need for a proactive approach to recognize and combat bias through a comprehensive approach that comprises recruitment and hiring, policy, training,

supervision, assessment, and outreach. The NOPD is incorporating components of the “fair and impartial policing perspective” into its programs, initiatives, and activities.

In January 2016, Public Integrity Bureau (PIB) personnel received additional instruction on the classification of discrimination complaints to ensure that allegations of discrimination or bias-based policing are properly classified and investigated. This instruction, given in collaboration with the Office of the Consent Decree Monitor, focused on the use of key terms that intake personnel may use when assessing complainants during interviews. Using these terms, PIB may be able to identify allegations that are not made explicitly.

Findings

As discussed above, misconduct complaints involving discrimination are currently investigated and assessed according to Policy/Procedure 402. As the following tables demonstrate, no complaints of discrimination were sustained in 2014 or 2015, although 11 of the 58 complaints lodged in that two-year period remain under investigation presently.

Discrimination complaint dispositions, 2014	Number	Percent
Sustained	0	0%
Pending (under investigation)	4	12%
Exonerated	4	12%
Not sustained	12	36%
No formal investigation merited	1	3%
Unfounded	12	36%
Cancelled	0	0%
Discrimination complaint dispositions, 2015	Number	Percent
Sustained	0	0%
Pending (under investigation)	6	18%
Exonerated	2	6%
Not sustained	3	9%
No formal investigation merited	0	0%
Unfounded	13	39%
Cancelled	1	3%

Notably, the majority of the discrimination complaints in the past two years involve allegations of racial discrimination, profiling, or policing with a racial bias. However, several complaints involved other forms of discrimination.

In both years, one complaint involved allegations of age-based discrimination. In 2014, a 30-year old complainant involved in a verbal altercation with a 71-year-old alleged that the officer who responded to the dispute “took the side” of the opponent in the dispute because of age.

One complaint in 2014 involved allegations of discrimination based on sexual orientation; the complainant alleged that he had been pulled over because he had a “gay” bumper sticker on his vehicle.

Two complaints in 2015 involved allegations of discrimination based on gender identity. The first complaint was made by a transgender individual who had a verbal altercation with a security guard at a club. The complainant was upset when the guard referred to her as a man after she had paid to enter the club, and she wanted her money refunded. She called police, but the complainant felt that the responding officers did not take her complaint seriously. She alleged that they harassed her, handcuffed her, and referred to her with an incorrect pronoun (using the incorrect gender). Similarly, the second complaint involved a transgender woman (“trans woman”) who alleged that an officer refused to address her as a female. The complainant was involved in a vehicle accident, and the officer who responded to the scene allegedly referred to her as “sir.” The complainant said she contacted the district station and asked to speak to a supervisor. When a lieutenant called her back, she informed him of the allegation but he never called her back, she alleged.

Only one complaint in the two-year period involved a complaint of discrimination based on disability. In that complaint, an individual entered a laundromat accompanied by a dog. When the manager instructed her that dogs were not allowed, a dispute ensued. The complainant asserted that the animal was her service dog and that she had post-traumatic stress disorder. The officers who responded told the complainant that the establishment disallowed dogs, and the complainant alleged that they discriminated against her because of her disability.

In 2015, two complaints of discrimination involved allegations that NOPD officers who investigated vehicle accidents gave preferential treatment to drivers who were also employed in law enforcement; in both cases, the opposing drivers were allegedly sheriff’s deputies.

Finally, one discrimination complaint in 2015 concerned a trait not listed above. The complainant was homeless, and he alleged that when he called police to report a dispute with a woman who was walking her dogs, the officer who investigated discounted his report because of his homelessness.

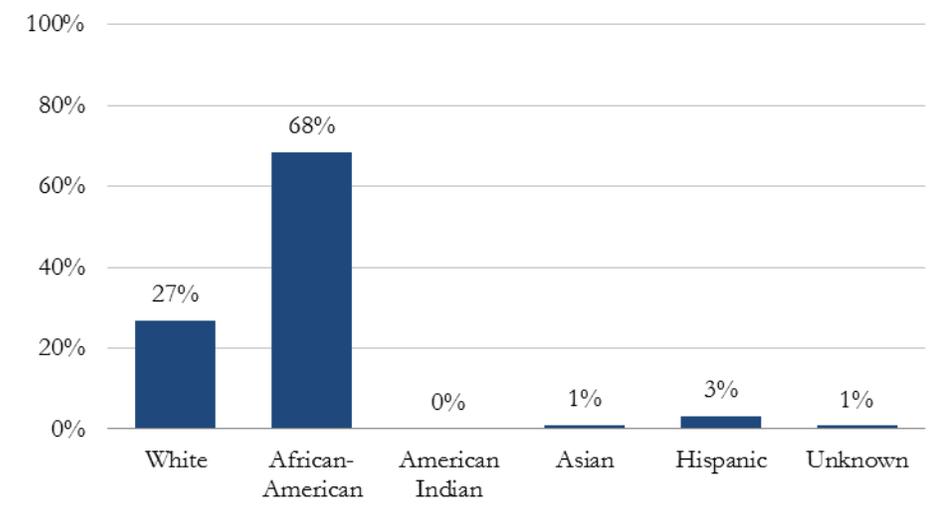
In total, nine of the 58 complaints lodged in 2014 and 2015 (16 percent) involved traits or personal aspects other than race. Approximately 85 percent of the discrimination complaints contained allegations of racism, profiling, or bias based on physical appearance. However, none of the allegations were sustained, i.e. proven.

The majority of the discrimination complaints (25 of 58, or 43 percent) originated from a motor vehicle or pedestrian stop (aka *Terry* stop). About 12 percent (seven out of 58) originated from an arrest of the complainant. Only two of the complaints involved a use of force. The relatively low number of discrimination complaints, combined with the disposition of the relevant

allegations, does not evidence discrimination in police tactics or strategies. Similarly, data from stops and searches do not yield any statistical indication of discrimination.

For example, analysis of pedestrian and vehicle stops in New Orleans by race/ethnicity shows percentages that are comparable to overall population. African-American persons represented 68 percent of all subjects stopped and 59.2 percent of the total population; White persons represented 27 percent of all subjects stopped and 30.7 percent of the total population; Hispanic persons represented 3 percent of all subjects stopped and 5.4 percent of the total population; Asian persons represented 1 percent of all subjects stopped and 2.9 percent of the total population; American Indians represented 0 percent of all stops and 0.1 percent of the total population.¹ For a more detailed analysis of stops, see the Stop and Search Annual Report, which includes the table shown below.

Stops in New Orleans by race/ethnicity of the subject, 2015

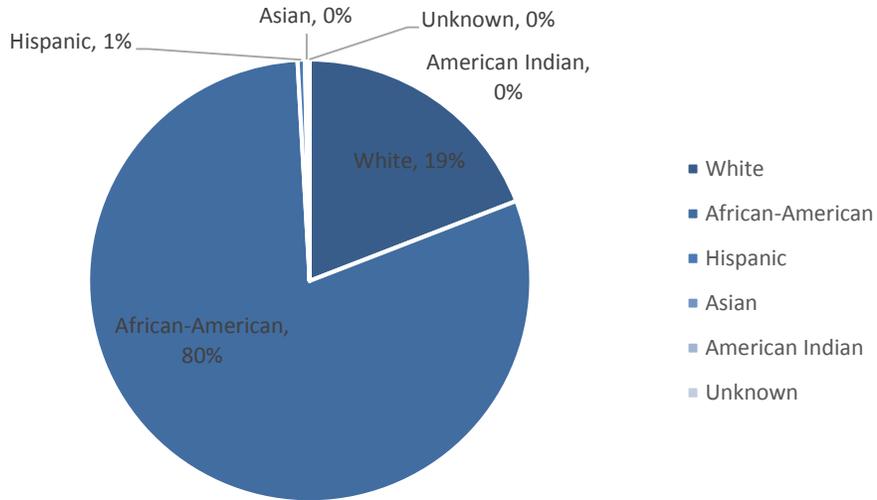


Analysis of arrest data likewise does not clearly demonstrate discrimination in police tactics or strategies. For example, the tables on the next page illustrate the percentages, by race and gender, of subjects arrested by the New Orleans Police Department in 2014 and 2015. With respect to gender these percentages were the same from year to year, marking no increase or decrease. Of all the persons arrested by NOPD in 2014, 23 percent were female and 77 percent were male. Those percentages remained identical in 2015. Of all the persons arrested by NOPD in 2014, 80 percent were African-American subjects; 19 percent were white subjects; 1 percent were Hispanic subjects; and less than 1 percent were American Indian subjects or of unknown race. Of

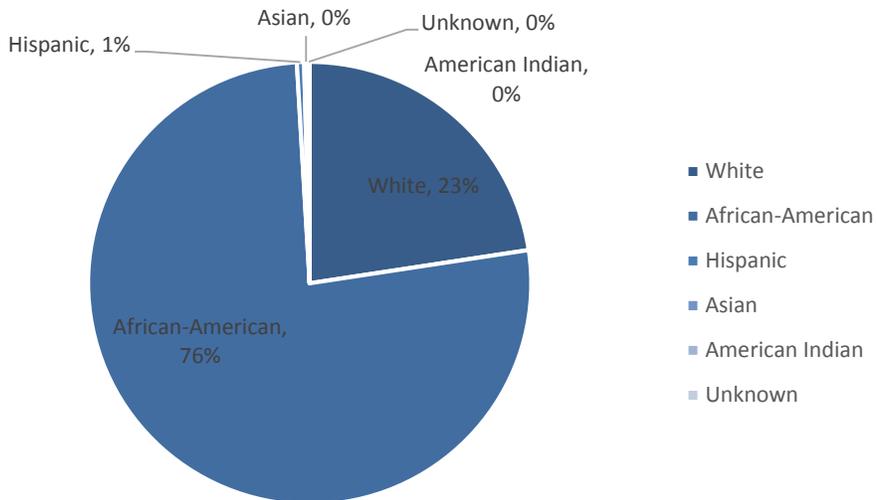
¹ U.S. Census Bureau, 2010-2014 American Community Survey 5-Year Estimates.

all the persons arrested by NOPD in 2015, 76 percent were African-American subjects; 23 percent were white subjects; 1 percent were Hispanic subjects; and less than 1 percent were American Indian subjects or of unknown race.

Arrests in New Orleans by race/ethnicity of the subject, 2014



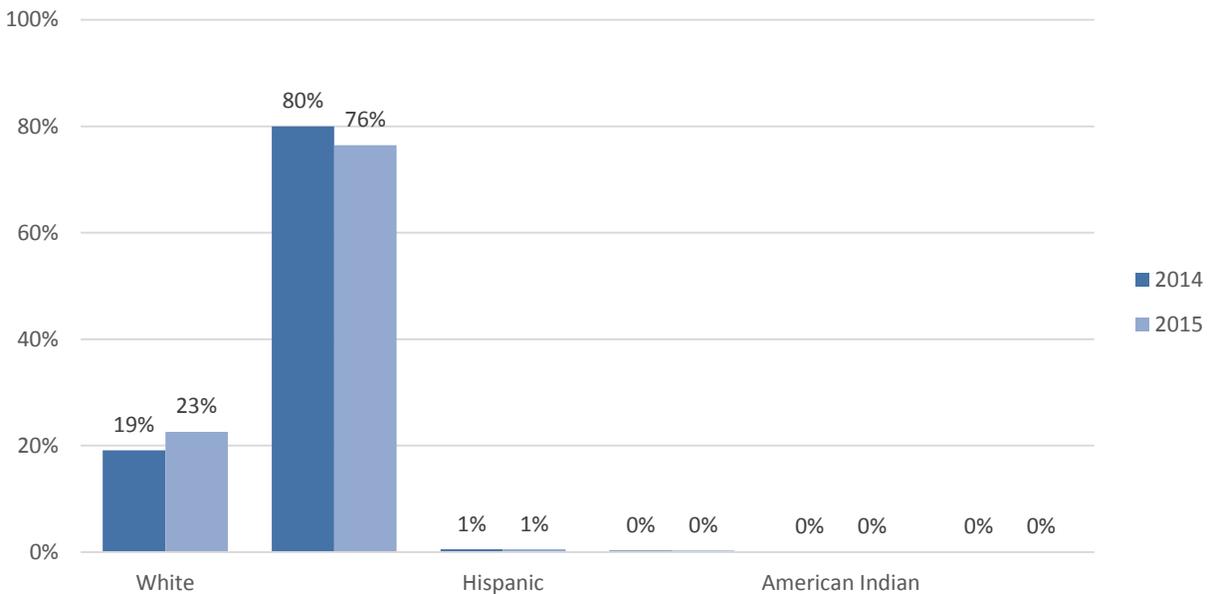
Arrests in New Orleans by race/ethnicity of the subject, 2015



To draw sound conclusions regarding the relationship between race/ethnicity and arrest, regression analysis is necessary. In other words, comparison of these percentages in isolation

would not yield any valid conclusions regarding bias. For example, one cannot compare the overall percentage of African-American subjects arrested in 2015 to the overall population of African-American New Orleans residents in 2015 and determine the presence (or absence) of bias. Neither can one infer bias from the change in percentage of African-American subjects arrested in 2014 to 2015.

Arrests in New Orleans by race/ethnicity of the subject, year-to-year comparison



These data may be used as points of reference but do not provide enough information to draw statistically valid conclusions regarding bias or lack thereof with respect to arrest percentages based on a subject’s race/ethnicity or gender. In other words, a statement such as the following is not valid based on these data: “Because a higher percentage of African-American persons were arrested in 2015 than white persons, there is racial bias in the arrest data.” Similarly, it is not possible to draw statistically valid conclusions regarding bias with respect to the arrested persons’ gender.

As discussed above, NOPD continues to develop and implement more robust anti-discrimination policies, and the Department is improving its intake procedure for misconduct complaints. Specific demographic data are not available from the Department’s early warning system, Insight, because it is not currently operational. However, Insight is expected to become operational by the end of 2016, and future annual reports will contain more extensive bias-free analysis of demographic data.