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THE HONORABLE JAMES L. ROBART

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA

Plaintiff,

vs.

CITY OF SEATTLE

Defendant.

CASE No. C12-1282-JLR

**MEMORANDUM SUBMITTING
REVISED BIAS-FREE POLICING
POLICY AND VOLUNTARY
CONTACTS TERRY STOPS AND
DETENTIONS POLICY**

Pursuant to paragraphs 177 through 181 of the Consent Decree and the Third-Year Monitoring Plan, Dkt. 195 at 15--16, the Parties and the Monitor have completed their annual review of Seattle Police Department ("SPD" or "the Department") Manual Sections 5.140 and 6.220, which set forth SPD's Bias-Free Policing Policy and Voluntary Contacts Terry Stops and Detentions Policy (the "Policies"). During the review, SPD and the Parties discussed ways to clarify, strengthen, or otherwise improve the Policies in light of the Department's experiences implementing the processes described therein. Those improvements are reflected in revised Sections 5.140 and 6.220, attached hereto as Exhibits A and B.

1 The Bias-Free Policing Policy aims to ensure that the Department “provide[s] equitable
2 police services,” “build[]s mutual trust and respect with Seattle’s diverse groups and
3 communities, “and, in so doing,” increase[s] the Department’s effectiveness as a law enforcement
4 agency.” Dkt. 118. at 21. It prohibits officers from “making decisions or taking actions that are
5 influenced by bias, prejudice, discriminatory intent,” or “discernible personal characteristics”
6 that are not “part of a specific suspect description based on trustworthy and relevant information”
7 *Id.* at 22, 23. It calls for documentation of, and supervisory response to the scene of, complaints
8 of bias. *Id.* at 24-25. It also “requires periodic analysis of data which will assist in identification
9 of SPD practices . . . that may have a disparate impact on particular protected classes relative to
10 the general population.” *Id.* at 27. The updates to the policy attached hereto involve attempts to
11 ensure that SPD’s consideration of disparate impact issues are sufficiently mindful of
12 institutional bias issues and that SPD engage in ongoing and dynamic two-way consultation with
13 CPC to analyze disparate impacts, their causes, and possible solutions. Ex. A at 3. This will
14 allow the Department to formally work with CPC but does not restrict either entity from
15 conducting their own, independent inquiries as necessary.

16 As described in the Monitor’s Fourth Semiannual Report, the Voluntary Contacts Terry
17 Stops and Detentions Policy provides officers with specific guidance about the distinction
18 between a voluntary contact and an investigatory detention. It offers specific guidance with
19 respect to limiting any *Terry* stop to a reasonable scope and reasonable duration, to when an
20 officer may conduct a frisk or pat-down pursuant to a stop, and to the prohibition on using traffic
21 violation as a pretext for investigating unrelated crimes for which the officer may lack reasonable
22 suspicion. The lone substantive changes in the updated policy involved removal of ambiguous
23 language concerning completed misdemeanors and clarifications on how civil infractions should
24 be handled.

1 The *Terry* stop policy specifically requires that officers document all *Terry* stops,
2 including documenting a number of critical elements and descriptions of the interaction, the
3 person stopped, and the basis for the stop. *See*, Dkt. 187 at 84-85. The process of gathering this
4 data has begun. In early March 2015, the Department began a 30 to 60 day pilot program the
5 functionality of its *Terry* stop documentation. The Department created an electronic
6 documentation format consistent with existing in-car computing systems in order to reduce the
7 learning curve for officers and integrate better with other departmental data. The initial results
8 from the pilot program have been encouraging. For example, the East Precinct has reported that
9 the estimated amount of time for officers to enter the required *Terry* stop information has only
10 been five minutes in most instances. The updated version of the *Terry* stop policy incorporates
11 language that anticipates the Department-wide roll-out of this information collection system.

12 The changes to the Policies reflect discussions among SPD, the Parties, and the Monitor
13 over the past 14 months as the Department has worked toward turning policy into practice. The
14 Monitoring Team will update the Court further on the implementation the Policies in the
15 upcoming semiannual report that will be filed in June 2015. In the meantime, the Monitor agrees
16 with the Parties that the revisions to the Policies are consistent with the letter and spirit of the
17 relevant substantive provisions of the Consent Decree, as well as with best practices.
18 Accordingly, the Monitor respectfully requests that this Court approve the revised Policies.

19 DATED this 11th day of May, 2015.

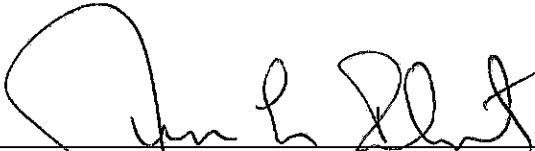
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21 Merrick J. Bobb, Monitor
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1 The Court hereby approves the Seattle Police Department's Bias-Free Policing Policy
2 and Voluntary Contacts Terry Stops and Detentions Policy filed herewith as Exhibits A and B.

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DONE IN OPEN COURT this 11th day of JUNE, 2015.



THE HONORABLE JAMES L. ROBART
UNITED STATES DISTRICT JUDGE

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CERTIFICATE OF SERVICE

I certify that on the 11th day of May, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following attorneys of record:

J. Michael Diaz	<u>michael.diaz@usdoj.gov</u>
Jonathan Smith	<u>jonathan.smith2@usdoj.gov</u>
Kerry Jane Keefe	<u>kerry.keefe@usdoj.gov</u>
Michael Johnson Songer	<u>michael.songer@usdoj.gov</u>
Rebecca Shapiro Cohen	<u>rebecca.cohen@usdoj.gov</u>
Emily A. Gunston	<u>emily.gunston@usdoj.gov</u>
Puneet Cheema	<u>puneet.cheema2@usdoj.gov</u>
Timothy D. Mygatt	<u>timothy.mygatt@usdoj.gov</u>
Christina Fogg	<u>christina.fogg@usdoj.gov</u>
Annette L. Hayes	<u>annette.hayes@usdoj.gov</u>
Jean M. Boler	<u>jean.boler@seattle.gov</u>
Peter Samuel Holmes	<u>peter.holmes@seattle.gov</u>
Brian G. Maxey	<u>brian.maxey@seattle.gov</u>
Gregory C. Narver	<u>gregory.narver@seattle.gov</u>
John B. Schochet	<u>john.schochet@seattle.gov</u>
Rebecca Boatright	<u>rebecca.boatright@seattle.gov</u>
Annette Hayes	<u>Annette.hayes@usdoj.gov</u>

DATED this 11th day of May, 2015.

/s/ Stefanie Jaswal
Stefanie Jaswal

EXHIBIT A

The Seattle Police Department is committed to providing services and enforcing laws in a professional, nondiscriminatory, fair, and equitable manner.

The Department recognizes that bias can occur at both an individual and an institutional level and is committed to eradicating both.

Our objective is to provide equitable police services based upon the needs of the people we encounter.

The intent of this policy is to increase the Department's effectiveness as a law enforcement agency and to build mutual trust and respect with Seattle's diverse groups and communities.

Bias-based policing is the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual. Such "discernible personal characteristics" include, but are not limited to, the following:

- Age
- Disability status
- Economic status
- Familial status
- Gender
- Gender Identity
- Homelessness
- Mental illness
- National origin
- Political ideology
- Race, ethnicity, or color
- Religion
- Sexual orientation
- Use of a motorcycle or motorcycle-related paraphernalia – RCW 43.101.419
- Veteran status

1. Every Employee is Responsible for Knowing and Complying With This Policy

The Chief of Police will reinforce that bias-based policing is unacceptable through specific yearly training regular updates, and such other means as may be appropriate.

Supervisors are responsible for ensuring all personnel in their command are operating in compliance with this policy.

2. Officers Will Not Engage in Bias-Based Policing

Employees shall not make decisions or take actions that are influenced by bias, prejudice, or discriminatory intent. Law enforcement and investigative decisions must be based upon observable behavior or specific intelligence.

Officers may not use discernible personal characteristics in determining reasonable suspicion or probable cause, except as part of a suspect description.

Employees shall not express—verbally, in writing, or by other gesture—any prejudice or derogatory comments concerning discernible personal characteristics.

No employee shall retaliate against any person who initiates or provides information or testimony related to an investigation, prosecution, OPA complaint, litigation or hearings related to the Department or Departmental employees, regardless of the context in which the allegation is made, or because of such person's participation in the complaint process as a victim, witness, investigator, decision-maker or reviewer.

Employees who engage in, ignore, or condone bias-based policing will be subject to discipline.

Supervisors and commanders who fail to respond to, document and review allegations of bias-based policing will be subject to discipline.

3. The Characteristics of an Individual May Be Appropriately Considered in Limited Circumstances

Officers may take into account the discernible personal characteristics of an individual in establishing reasonable suspicion or probable cause only when the characteristic is part of a specific suspect description based on trustworthy and relevant information that links a specific person to a particular unlawful incident.

Officers must articulate specific facts and circumstances that support their use of such characteristics in establishing reasonable suspicion or probable cause.

Officers are expected to consider relevant personal characteristics of an individual when determining whether to provide services designed for individuals with those characteristics (e.g., behavioral crisis, homelessness, addictions, etc.).

4. All Employees Share Responsibility for Preventing Bias-Based Policing

Employees who have observed or are aware of others who have engaged in bias-based policing shall specifically report such incidents to a supervisor, providing all information known to them, before the end of the shift during which they make the observation or become aware of the incident.

Supervisors, commanders and civilian managers have an individual obligation to ensure the timely and complete review and documentation of all allegations of violation of this policy that are referred to them or of which they should reasonably be aware.

5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing

If a person alleges bias-based policing, the employee shall call a supervisor to the scene to review the circumstances and determine an appropriate course of action. For purposes of this policy, an allegation of bias-based policing occurs whenever, from the perspective of a reasonable officer, a subject complains that he or she has received different treatment from an officer because of any discernible personal characteristic listed above.

If the person declines to speak with a supervisor or wishes to leave before the supervisor arrives, the employee will attempt to offer the person the supervisor's contact information and information on how to file a complaint with the Office of Professional Accountability.

Officers may not extend a detention solely to await the arrival of a supervisor.

If officers have completed their business with the person making the allegation, and the supervisor has not yet arrived, the officer will wait at the location for the supervisor to arrive.

6. Employees Will Document All Allegations of Bias-Based Policing

Where there has been an allegation of bias-based policing, the investigating supervisor will complete a Bias Review Blue Team entry to document the circumstances of the allegation and steps that were taken to resolve it. This review must include the following information, if the person is willing to provide it:

- The person's name,
- Address,
- Phone number, or email address, and
- Contact information for witnesses who observed the events.

The investigating supervisor must submit all documentation of an allegation of bias-based policing by the end of his or her shift. If the supervisor believes the matter has been resolved to the satisfaction of the person making the allegation, and that no misconduct was involved, the supervisor will complete a Bias Review Blue Team entry. The supervisor will then forward the Blue Team entry, via the chain of command, to the bureau chief.

7. Supervisors Conduct Preliminary Inquiry into Bias-Based Policing

If the person wishes to speak with the supervisor about the biased-policing concerns, the supervisor will discuss the incident with the complainant. If the complainant has left the scene the supervisor shall make efforts to contact the complainant by phone or letter.

The reviewing supervisor shall explain to the person making the allegation the option to refer the complaint to OPA. If the person making the allegation asks that the matter be referred to OPA then the reviewing supervisor shall refer it using the Complaint Blue Team entry, instead of the Bias Review Blue Team entry.

If the reviewing or approving supervisor determines that there may have been misconduct, that supervisor shall refer the matter to OPA using the Complaint Blue Team entry for further investigation.

When a supervisor sends a complaint to OPA, a Bias Review Blue Team entry will not be used. Bias Review Blue Team entries are only used when the supervisor believes that no misconduct occurred and that the matter has been resolved to the satisfaction of the complainant.

8. An Annual Report Will be Prepared for the Chief of Police and the Public

This report shall describe and analyze the year's bias-based policing allegations and the status of the Department's effort to prevent bias-based policing.

After review by the SPD command staff, and after names of individual officers have been removed, this report will be made available to the community.

9. Disparate Impacts

The Seattle Police Department is committed to eliminating policies and practices that have an unwarranted disparate impact on certain protected classes. It is possible that the long term impacts of historical inequality and institutional bias could result in disproportionate enforcement, even in the absence of intentional bias. The Department's policy is to identify ways to protect public safety and public order without engaging in unwarranted or unnecessary disproportionate enforcement.

In consultation with the Community Police Commission, the Department shall periodically analyze data which will assist in identification of SPD practices – including stops, citations and arrests – that may have a disparate impact on particular protected classes relative to the general population.

Alternatively, the Department may rely in whole or in part on the Community Police Commission's analysis of this data.

When unwarranted disparate impacts are identified and verified, the Department will consult with neighborhood, business, community groups, and/or the Community Police Commission to explore equally effective alternative practices that would result in less disproportionate impact. Alternative enforcement practices may include addressing the targeted behavior in a different way, de-emphasizing the practice in question or other measures. Initially, disparate impact analysis will focus on race, color, and national origin. The Department will consult with the Community Police Commission about whether to examine disparity with respect to other classifications.

The Disparate Impacts section of the policy is not a basis to impose discipline upon any employee of the Department, nor is it intended to create a private right of action to enforce its terms.

a. The Chief of Police or Designee Will Enforce Policy

The Chief or designee will ensure that this policy is in effect and carried out.

b. Officers Document Enforcement Activity

See Seattle Police Manual Section 6.220 – Voluntary Contacts, *Terry* Stops and Detentions.

c. The Department Analyzes Officer-Initiated Activity

The analysis focuses on enforcement practices (stops, citations, and arrests) that are not primarily driven by reports from crime victims. These include, but are not limited to:

- VUCSA
- Prostitution
- Obstructing
- Resisting arrest
- Driving crimes/infractions
- Pedestrian interference
- Illegal camping

- Pedestrian violations (e.g., "Jaywalking")
- Drinking in public
- Public consumption of marijuana
- Public urination/defecation

d. An Annual Report will be prepared for the Chief of Police and the Public

This report shall describe the year's data collection and analysis and efforts to address disparate impact of policing.

After review by the SPD command staff, and after names of individual officers have been removed, this report will be made available to the community.

5.110-PRO-1 HANDLING A BIAS-BASED POLICY ALLEGATION

Employee

1. **Receives** an allegation of bias-based policing.
 2. **Calls** a supervisor to the scene.
- 2a. If the officer's sergeant is not available, the officer **notifies** a sergeant from the officer's precinct.
- 2b. If no sergeant is available, the officer **notifies** a lieutenant who may assigns a specific sergeant or who will personally respond to conduct the same review as would have been required of a sergeant had one been available.

Next-Level Supervisor

3. **Responds** to the scene.
4. **Gathers** all relevant information from the person making the allegation and any witnesses, if they are willing to provide it.

Relevant information is defined as any information that may tend to explain, prove, or disprove the allegations being made.
5. **Provides** specific information to the person on how to file a complaint or, if warranted, **refers** the matter to OPA for further investigation

See Manual Section 5.002 – Public and Internal Complaint Process.
6. **Completes** a Blue Team entry
 - 6a. Uses the Complaint Blue Team entry for cases that are being referred to OPA for further investigation
 - 6b. Uses the Bias Review Blue Team entry for cases that are not being referred to OPA for further investigation
7. **Forwards** the Blue Team entry to the bureau chief via the chain of command

Bureau Chief

8. **Reviews** and **forwards** the Blue Team entry to OPA

EXHIBIT B

6.220 POL VOLUNTARY CONTACTS, *TERRY* STOPS & DETENTIONS

This policy applies to all voluntary contacts and *Terry* stops conducted by officers.

1. *Terry* Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful

A *Terry* stop must be based on reasonable suspicion and documented using specific articulable facts as described in this policy.

This policy prohibits *Terry* stops when an officer lacks reasonable suspicion that a subject has been, is, or is about to be engaged in the commission of a crime.

Searches and seizures by officers are lawful to the extent they meet the requirements of the 4th Amendment and Washington Constitution Art. 1, Section 7.^{1 2 3}

A *Terry* stop is a seizure for investigative purposes. A seizure occurs any time an officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen. A seizure may also occur if an officer uses words, actions, or demeanor that would make a reasonable person believe that he or she is not free to go.

2. Officers Must Distinguish Between Voluntary Contacts and *Terry* Stops

a. Voluntary Contacts Defined

There are two categories of voluntary contacts:

- *Social Contact*: A voluntary, consensual encounter between the police and a subject with the intent of engaging in casual and/or non-investigative conversation. The subject is free to leave and/or decline any of the officer's requests at any point; **it is not a seizure.**
- *Non-Custodial Interview*: A voluntary and consensual investigatory interview that an officer conducts with a subject during which the subject is free to leave and/or decline any of the officer's requests at any point. **It is not a seizure.**

Voluntary contacts are not seizures. During voluntary contacts, officers must not use any words, actions, demeanor, or other show of authority that would tend to communicate that a person is not free to go.

b. *Terry* Stops Defined

- *Terry Stop*: A brief, minimally intrusive seizure of a subject based upon articulable reasonable suspicion in order to investigate possible criminal activity. The stop can apply to people as well as to vehicles. The subject of a *Terry* stop is not free to leave. A *Terry* stop is a seizure under both the State and Federal constitutions.
- *Reasonable Suspicion*: Specific, objective, articulable facts, which, taken together with rational inferences, would create a well-founded suspicion that there is a substantial possibility that a subject has engaged, is engaging or is about to engage in criminal conduct.
- The reasonableness of the *Terry* stop is considered in view of the totality of the circumstances, the officer's training and experience, and what the officer knew before the stop. Information learned during a stop can lead to additional reasonable suspicion or probable cause that a crime has occurred, but cannot provide the justification for the original stop.

A *Terry* Stop is a detention short of an arrest. All other detentions must be made pursuant to the policies for arrests without a warrant (6.010- Arrests), warrant arrests, (6.280-Warrant Arrests), traffic stops (16.230-Issuing Tickets and Traffic Contact Reports), or seizure of a person for a psychological evaluation (16.110-Crisis Intervention). (hyperlinks)

3. During a *Terry* Stop, Officers Will Limit the Seizure to a Reasonable Scope

Actions that would indicate to a reasonable person that they are being arrested or indefinitely detained may convert a *Terry* stop into an arrest requiring probable cause or an arrest warrant.

¹ See *Terry v. Ohio*, 392 U.S. 1 (1968). (hyperlink)

² See Art. 1, Sec. 7 (hyperlink)

³ See 4th Amendment (hyperlink)

Unless justified by the articulable reasons for the original stop, officers must have additional articulable justification for further limiting a person's freedom during a *Terry* stop, such as:

- Taking a subject's identification or driver license away from the immediate vicinity
- Ordering a motorist to exit a vehicle
- Putting a pedestrian up against a wall
- Directing a person to stand or remain standing, or to sit on a patrol car bumper or any other place not of their choosing
- Directing a person to lie or sit on the ground
- Applying handcuffs
- Transporting any distance away from the scene of the initial stop, including for the purpose of witness identification
- Placing a subject into a police vehicle
- Pointing a firearm
- Frisking for weapons
- De minimis force

Taking any of these actions does not necessarily convert a *Terry* stop into an arrest.

4. During a *Terry* Stop, Officers Will Limit the Seizure to a Reasonable Amount of Time

Subjects may be seized for only that period of time necessary to effect the purpose of the stop. Any delays in completing the necessary actions must be objectively reasonable.

Officers may not extend a detention solely to await the arrival of a supervisor.

5. During all *Terry* Stops, Officers Will Take Reasonable Steps to Be Courteous and Professional, Including Identifying Themselves

When reasonable, as early in the contact as safety permits, officers will inform the suspect of the following:

- The officer's name
- The officer's rank or title
- The fact that the officer is a Seattle Police Officer
- The reason for the stop
- That the stop is being recorded, if applicable (See Seattle Police Manual Section 16.090 – In-Car Video System)

When releasing a person at the end of a stop, officers will offer an explanation of the circumstances and reasons for the stop. Officers will provide the person a business card with the event number as a receipt. Officers will not extend a detention to explain the stop or provide a receipt.

6. Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a *Terry* Stop

In general, subjects are not obligated to provide identification upon request and have the right to remain silent. However, there are certain statutory exceptions that do require the subject to provide identification:

- When the subject is a driver stopped for a traffic infraction investigation (RCW 46.61.021) (failure to provide identification is a misdemeanor)
- When the subject is attempting to purchase liquor (RCW 66.20.180)
- When the subject is carrying a concealed pistol (RCW 9A.41.050) (failure to provide CWP is a civil infraction)

Officers may not transport a person to any police facility or jail merely for the purpose of identifying them unless they have probable cause for arrest.

Officers may arrest subjects for false reporting (SMC 12A.16.040) when they provide false written or oral identification.

7. Officers Can Detain Subjects to Identify Them in Order to Issue a Notice of Infraction

Under SMC 12A.02.140, when an officer has probable cause to issue a Notice of Infraction for any City ordinance violation, the officer may detain the subject for a reasonable period of time to identify the subject. The subject does not have to identify themselves or provide identification when detained for a non-traffic infraction.

When officers have probable cause to issue a Notice of Infraction, and the subject refuses to identify themselves, the officer may request that a fingerprinting kit be delivered to the scene and detain the subject for a reasonable amount of time to facilitate the fingerprinting (approximately twenty minutes.)

- Subjects who refuse or physically resist being fingerprinted or who attempt to leave while waiting for the fingerprinting kit can be arrested for obstructing (SMC 12A.16.010).

8. Officers May Conduct a Frisk or Pat-Down of Stopped Subject(s) Only if They Reasonably Suspect That the Subject(s) May Be Armed and Presently Dangerous

The purpose and scope of the frisk or pat-down is to discover weapons or other items which pose a danger to the officer or those nearby. It is not a generalized search of the entire person. The decision to conduct a frisk or pat-down is based upon the totality of the circumstances and the reasonable conclusions drawn from the officer's training and experience.

- A weapons frisk is a limited search determined by the state and federal constitutions.
- All consent searches must be conducted and memorialized pursuant to Manual Section 6.180.
- Officers may not frisk for weapons on a social contact or noncustodial interview.
- A frisk or pat down may not be used as a pretext to search for incriminating evidence.
- The fact that a *Terry* stop occurs in a high-crime area is not by itself sufficient to justify a frisk.

In addition to the basis for the stop itself, the officer must have reasonable suspicion that the subject may be armed and pose a threat to the officer and/or others. This may include, but is not limited to:

- Prior knowledge that the subject carries a weapon
- Suspicious behavior, such as failure to comply with instructions to keep hands in sight
- Observations, such as suspicious bulges, consistent with carrying a concealed weapon

The frisk for weapons is strictly limited to what is necessary for the discovery of weapons which might be used to harm the officer or others nearby. Generally, the frisk must be limited to a pat-down of outer clothing. Once the officer ascertains that no weapon is present after the frisk or pat-down is completed, the officer's limited authority to frisk is completed. (i.e. the frisk must stop).

9. Under State Law, Traffic Violations May Not Be Used as a Pretext to Investigate Unrelated Crimes for Which the Officer Lacks Reasonable Suspicion

- Pretext is stopping a suspect for an infraction to investigate criminal activity for which the officer has neither reasonable suspicion nor probable cause.
- The Washington State Constitution forbids use of pretext as a justification for a warrantless search or seizure.
- Officers must actually, consciously, and independently determine that a traffic stop is reasonably necessary in order to address a suspected traffic infraction.
- Reasonableness of the stop is based on an objective view of all the facts, not the officer's subjective belief.

10. Officers Must Document All *Terry* Stops

Officers must be able to clearly articulate the objective facts they rely upon in determining reasonable suspicion.

Officers must document all *Terry* stops on the *Terry* Stop Data Collection Template attached to either a GO Report or Street Check. Officers must use a separate template for each person seized during a *Terry* stop.

Officers must submit all *Terry* Stop Templates before they leave at the end of their shift. The documentation should contain all information requested in the *Terry* Stop Template, but at a minimum must contain at least the following elements:

- Original and subsequent objective facts for the stop or detention
- The reason (including reasonable suspicion or probable cause) and disposition of the stop (including whether an arrest resulted; and whether a frisk or search was conducted and the result of the frisk or search)
- Demographic information pertaining to the subject, including perceived race, perceived age, and perceived gender; and
- Any complications or delays that contributed to an inability to fill out all information on the *Terry* Stop Template.

11. Supervisors Shall Approve the Documentation of *Terry* Stops

Absent extenuating circumstances, by the end of each shift, supervisors will review their officers' GO Reports and Street Checks that document the *Terry* stops made during the shift to determine if they were supported by reasonable suspicion and are consistent with SPD policy, federal and state law.

If a supervisor concludes that a *Terry* stop appears to be inconsistent with SPD policy, the supervisor, in consultation with the commander, shall address the concern with the officer involved and take action as may be appropriate. Such action may include PAS documentation and/or referral to OPA. The supervisor shall document these concerns and any actions taken on a supplemental when approving the GO Report or Street Check.

If a supervisor finds the documentation to be insufficient, that supervisor first shall require that the officer supplement the documentation before the end of that shift.