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## **NOPD: Pre/Post Title 42 U.S.C. §14141**

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### Abstract

It is well known that black citizens have been the subject of disproportionate contact with police (Tonry, 2006). This paper explores contemporary policing, police discretion, and the use of lethal force conducting a spatial and temporal analysis of census tract level data of 64 fatal encounters with the New Orleans Police Department (NOPD) from 2000-2017. This study found most incidences of lethal force occurred in cumulatively disadvantaged neighborhoods and NOPD disproportionately used lethal force against black males. The goal of this project is to influence public policy surrounding police use of force incidences.

Two cases of officer shootings were cleared, two were justified, and 23 were unreported. According to Chaney & Robertson (2015) between 1995-2015 16% of cases led to an indictment of the officer. This study's samples findings determined hotspot police shootings occurred disproportionately, suggesting that young black males are particularly vulnerable to police shootings by NOPD. New Orleans is relatively small city at just over 393 thousand (2017) in comparison to Los Angeles, a city of over 2 million (2017). In a separate analysis of police misconduct complaints totaled 3,065. 2,033 publicly initiated & 1,032 internally "rank initiated", whereby only 326 complaints were sustained or upheld. NOPD's use of force policy incidences data also unveiled 4,143 total use of force incidences displayed a total of 9 of the 4,143 incidences were considered "unauthorized" use of force. The number of "unreported" cases (23). This impunity can be seen as a testament to the value of black life. Consequently, police are not held accountable because of the symbolic power given to law enforcement.

#### Assessing the Value of Federal Intervention

Spatial analysis can be used to observe the effects of federal intervention in 2013; where police killed only one person, a reduction from its higher than average rate of 2.9 per year. One of the more significant findings of this project is the argued significance of federal intervention in the reduction of fatal police shootings. In this analysis of Fatal Encounters, there was one reported police shooting by a federal officer in the year of federal intervention. These results suggest that federal intervention could perhaps serve as a solution for similar departments. Since "effectiveness" is measured as a reduction, federal intervention is regarded as impactful.

#### Power of Perception

This study was conducted by viewing the publicly displayed performances of NOPD. This paper provides perspective in regard to the need for federal intervention in similar demographic cities suffering from police violence. This study's findings possess value in improving which community's may lack cooperation and trust for its police departments ultimately reducing the ability of law enforcement to solve crimes effecting the safety or collective efficacy of that particular community. Communities with heightened levels of a lack of community cooperation are often further subjugated to police action (Goldkamp, 1982) instead of providing longstanding trust and aid in the form of sociostructural investments, which are shown to improve community cooperation and perception of police legitimacy (Tyler, 2004). Community perception is fundamental to the ability for police departments to effectively and efficiently operate (Bittner, 1970; Tyler, 2004). "It is certainly time to place legitimacy evaluations as a key outcome measure of hot spots policing interventions" (Weisburd & Telep, 2014, p. 208). America's history is littered with the deliberate enactment of disparate/discriminatory policies designed to covertly eliminate undesirable (nonwhite) growth (Gilbert & Ray, 2015). In over-policed community's, the police are viewed as a *quasi-military organization* and more of a threat than service provider. Focusing on eliminating unfavorable perceptions could fundamentally change how policing is conducted, shifting from crime-fighter to social servitude (Brunson & Miller, 2006).

#### Summary

There are developed nations that do not exercise zero tolerance policies or such aggressive policing strategies and maintain low crime rates (Tyler, 2004). These understandings could reestablish conversations around the advocacy of the demilitarization of police in such vulnerable communities. Future research could also assess the effectiveness of federal intervention upon police departments and whether they decrease police shootings within known hot spots (Holmes et al., 2018). Disproportionate marginalized contact is a national narrative that is derived from the unnecessary criminalization and incarceration of the poor, for "crimes" mostly nonviolent offenses (Huck, 2009). Findings from the study observed the disproportionate killings of nonwhite males perpetuated by NOPD. Critical criminologists argue via taxpayer resources with high-levels of impunity justified by "a war" on "crime", which simply does not exist yet thrives under the guise of public safety in order to appease white-male-patriarchal fears the loss of the white-American identity and the systems that perpetuate inequality through the invocation of law to "control" groups deemed threatening (Gilbert & Ray, 2015).

### References

Bittner, E. (1970). The functions of the police in modern society. Washington, DC: National Institute of Mental Health, Center for Studies of Crime and Delinquency.

Bostaph, L. G. (2007). Race and repeats: The impact of officer performance on racially biased policing. *Journal of Criminal Justice*, 35, 4, 405-417.

Brunson, R., & Miller, J. (2006). Gender, race, and urban policing. *Gender & Society*, 20, 4, 531-552.

Chaney, C., & Robertson, R.V. (2015). Armed and dangerous? An examination of fatal shootings of unarmed black people by police. *Journal of Pan African Studies*, 8, 4.

City of New Orleans, LA. (2018). New Orleans Police Department. <https://www.nola.gov/nopd/nopd-consent-decree/>

Correll, J.P., Judd, C.M., & Wittenbrink, B. (2002). The police officer's dilemma: Using ethnicity to disambiguate potentially threatening individuals. *Journal of Personality and Social Psychology*, 84, 1314-1329.

Dunham, R., Alpert, G., Stroschne, M., & Bennett, K. (2005). Transforming citizens into suspects: Factors that influence the formation of police suspicion. *Police Quarterly*, 8, 3, 366-393.

Eitle, D., Stolzenberg, L., & D'Alessio, S. (2005). Police organizational factors, the racial composition of the police, and the probability of arrest. *Justice Quarterly*, 22, 1, 30-57.

Elinson, Z., & Frosch, D. (2015). Cost of police-misconduct cases soars in big u.s. cities. *The Wall Street Journal*.

Fogelson, R. M. (1977). Big-city police. Cambridge, Mass: Harvard University Press.

Franklin, T. (2017). The state of race and punishment in america: Is justice really blind? *Journal of Criminal Justice*.

Gilbert, K., Ray, R., & Gilbert, R. L. (April 02, 2016). Why Police Kill Black Males with Impunity: Applying Public Health Critical Race Praxis (PHCRP) to Address the Determinants of Policing Behaviors and "Justifiable" Homicides in the USA. *Journal of Urban Health*, 93.

Goldkamp, J.S. (1982). Minorities as victims of police shootings: Interpretations of racial disproportionality and police use of deadly force. In J. J. Fyfe (Ed.), *Readings on police use of deadly force* (pp. 128-151). Washington, DC: Police Foundation.

Gottfredson, M. R., & Gottfredson, D. M. (1998). *Decision making in criminal justice: Toward the rational exercise of discretion*. New York: Plenum Press.

Holmes, M. D., Painter, M. A., & Smith, B. W. (2018). Race, Place, and Police-Caused Homicide in U.S. Municipalities. *Justice Quarterly*, 2, 1-36.

Huck, J. L. (2009). *Disproportionate Minority Contact and Confinement*. 2455 Teller Road, Thousand Oaks California 91320 United States : SAGE Publications, Inc.

Klahm IV, C.F. & Tillyer, R. (2010). Understanding police use of force: A review of the evidence. *Southwest Journal of Criminal Justice*, 7, 2, 214-231.

Maddox, K. (2014). Perspectives on racial phenotypicity bias. *Personality & Social Psychology Review*, 8, 4, 383-400.

Markowitz, F.E., Bellair, P.E., Liska A.E., & Liu, J. (2001). Extending social disorganization theory: Modeling the relationship between cohesion, disorder, and fear. *Criminology*, 39, 2, 293-319. <https://doi.org/10.1111/j.1745-9125.2001.tb00924.x>

Mastrofski, S. D., Reisig, M. D., & McCluskey, J. D. (2002). Police disrespect toward the public: An encounter-based analysis. *Criminology*, 40, 515-551.

Morenoff, J.D., Sampson, R.J., & Raudenbush, S.W. (2001). Neighborhood inequality, collective efficacy and the spatial dynamics of urban violence. *Criminology*, 39, 3, 517-558. <https://doi.org/10.1111/j.1745-9125.2001.tb00932.x>

Nowacki, J.S. (2015). Organizational-level police discretion: An application for police use of lethal force. *Crime & Delinquency*, 61, 5, 643-668.

Omi, M., & Winant, H. (1986). *Racial Formation in the United States: From the 1960s to the 1990s*. New York: Routledge & Kegan Paul.

Paoline, E., Myers, S., & Worden, R. (2000). Police culture: Individualism, and community policing. Evidence from two police departments. *Justice Quarterly*, 17, 3, 575-600.

Paoline, E., & Terrill, W. (2005). The impact of police culture on traffic stop searches: An analysis of attitudes and behavior. *Policing: An International Journal of Police Strategies & Management*, 28, 3, 455-472.

Paoline, E., & Terrill, W., & Rossler, M. T. (2015). Higher Education, College Degree Major, and Police Occupational Attitudes. *Journal of Criminal Justice Education*, 26, 1, 49-73.

Pollock, W., Menard, S., & Hill, M.C. (2016). Revisiting "measuring the problem": Separate examination of police contact in serious and non-serious offenders. *Criminal Justice Review*, 41, 3, 294-317.

Punch, M. (2011). *Shoot to kill: Police accountability, firearms and fatal force*. Bristol, UK: Portland, OR, USA: Policy Press at the University of Bristol.

Rikshheim, E.C. & Chermak, S.M. (1993). The causes of police behavior revisited. *Journal of Criminal Justice*, 21, 4, 353-383.

Rojek, J., Rosenfeld, R., & Decker, S. (2012). Policing race: The racial stratification of searches in police traffic stops. *Criminology*, 50, 4, 993-1024.

Rose, D., & Parks, P. (2009). Policing by consent: A new analysis of 42 U.S.C. 14141 and the new model for police accountability. *Police Practice and Research*, 10, 3, 199-208.

Schafer, J.A., Carter, D.L., Katz-Bannister, A.J., & Wells, W.M. (2006). Decision making in traffic stop encounters: A multivariate analysis of police behavior. *Police Quarterly*, 9, 2, 184-209.

Travis, L. F., & Langworthy, R. H. (2003). *Policing in America: A balance of forces*. Upper Saddle River, NJ: Pearson Prentice Hall.

Telep, M. D., & Weisburd, D. S. (2011). Hot spots policing: What we know and what we need to know. *Journal of Contemporary Criminal Justice*, 30, 2, 200-220. <https://doi.org/10.1177/104398621038255083>

Wilson, J. Q. (1978). *Varieties of police behavior: The management of law and order in eight communities*. Cambridge, Mass: Harvard University Press. <https://doi.org/10.1111/j.1745-9125.2001.tb00924.x>

Velez, M.B. (2001). The role of public control in urban neighborhoods: A multilevel analysis of victimization risk. *Criminology*, 39, 4, 837-864. <https://doi.org/10.1111/j.1745-9125.2001.tb00942.x>

### Introduction/Related Literature

#### Discretion in Policing

Policing varies across jurisdictions and is generally conducted independently (Gottfredson & Gottfredson, 1988; Klahm & Pollock et al., 2016). According to Gottfredson & Gottfredson, (1988) officers arrest to enforce the law and protect the public. According to Nowacki (2015) levels of discretion are vital to police decision making. The nature of discretion has three core components: a goal, alternatives, and information (Gottfredson & Gottfredson, 1988). According to Schafer et. al. (2006) there are four explanations for officer's propensities in taking police discretionary action(s); officer-based, citizen-based, place-based, and organizational-based explanations. Officer attitudes are a popular measure for policing (Eitle & D'Alessio, 2005; Mastrofski, 2002). Researchers have found that limiting the range of decision options for officers improves their decisions (Eitle et. al, 2005). White U.S. citizens perceive the police as favorable, while unfavorability is prevalent among nonwhites (Cullen, et. al., 2018; Walker et. al, 2003). Discretion is the power to be able to selectively enforce. According to Travis and Langworthy (2003) selective enforcement contributes to corruption (Travis & Langworthy, 2003). Researchers also found that relatively few hot spots produce the most crime (Bowers & Johnson, 2003; Sherman, 1989) and that adding more officers, may in-fact, simply displace crime (Weisburd & Telep, 2014). Spatial analytic research has found that higher rates of incarceration produce increased rates of crime (Clear et. al., 2003). In traffic stops, Paoline & Terrill (2005) found that officer's racial attitudes play a factor but, officer's individual characteristics do not (Paoline et. al, 2000). Dunham et. al. (2005) found that citizen behavior mostly affects officers on the job choices. Research has shown that in motor vehicles stops race is a significant predictor in the decision to search (Rojek et. al, 2012) along with traffic stops (Bostaph, 2007). Research suggests that racial profiling occurs at more than just traffic stops, but also extends to other police actions (Bostaph, 2007; Cullen et. al, 2018; Gallagher, 2007). Race influences the decision to use lethal force (Correll, 2002; Nowacki, 2015; Punch, 2011). The role of this infinite discretion and virtual impunity in policing remains controversial. According to Travis and Langworthy (2003) selective enforcement contributes to corruption (Travis & Langworthy, 2003) which results in litigation costing taxpayers in hundreds of millions of dollars annually (Elinson & Frosch, 2015). The leading one cause of death for black males ages 15 to 35 is homicide and the fourth leading cause of death across the life course, whereby at the age of 40, cardiovascular disease (CVD) becomes the leading cause of death, likely the result of living in socially disorganized environments (Gilbert & Ray, 2015).

#### 42 U.S.C. § 14141

This study examines legislative policy and its response to police corruption. It is vital to critically observe various approaches to government influence in sustainability of the collective efficacy of a community. The value of improving a community's perception of its local police is essential to establishing collective efficacy of that particular community. Therefore, reducing fatal police shootings is an adequate measure for "police effectiveness". Within society, there exists complex social problems that require states to develop social structures to support its citizens. In this particular case, the federal government intervened to improve NOPD's historical inability to maintain fair and effective order, specifically to reduce shootings and improve a pattern of external and internal levels of accountability. This paper conceptualizes "policing effectiveness" as a reduction of police shootings. The court attempted to remedy police officer misconduct through federal intervention in the form of consent decree (CD) or memorandum of agreements (MOA). An extension of *Mapp v. Ohio* (1961), Title 42 U.S.C. § 14141, as part of the Clinton Administration's Violent Crime Control and Law Enforcement Act of 1994 extended 4th Amendment (search and seizure), 5th Amendment (self-incrimination), and 6th Amendment (right to counsel) rights' providing a legal mechanism for police violence (Holmes et. al, 2019).

### Methodology

#### Informal/Formal Social Controls

Social Disorganization Theory (SDT) is the theoretical foundation of this paper and uses previous research that observes the concentrations of police shootings in neighborhoods labeled as low SES, or cumulatively disadvantaged (Markowitz et al., 2001; Morenoff et al., 2001). According to Markowitz et al. (2001) the three components of crime are 1) population turnover 2) heterogeneity 3) and SES which effect neighborhood cohesion. A community's collective efficacy can be measured with its level of trust and perception of one another and the reduction of victimization (Velez, 2001). Naturally, police shootings are unable to produce more trust within a community by tearing apart formal public social controls and informal social controls, instead of bringing together the public and the police. Markowitz et. al. (2001) also acknowledges the importance of fear and its interplay with the perception of crime. SDT proclaims, "The conditions of poverty undermine the institutions that socialize people into conventional, law abiding ways of life. As a result, the values and behaviors leading to delinquency and crime are passed on from one generation to another" (Walker, Spohn, & DeLone, 2007, p. 115-116). This paper utilizes collective efficacy as a macro-level measure to theorize fatal encounters with law enforcement. This paper adopts an integrative approach that attempts to account for Critical Race Theory's (CRT) most criticized features which are the macro-theory's inability to account for micro-level variables. Because of a lack in uniformity and unfamiliarity in police use of fatal force, it was also necessary to conduct a separate analysis of police misconduct complaints and use of force policy incidences, observing for general trends within the data to see what levels of accountability are found.

### Project Abstract

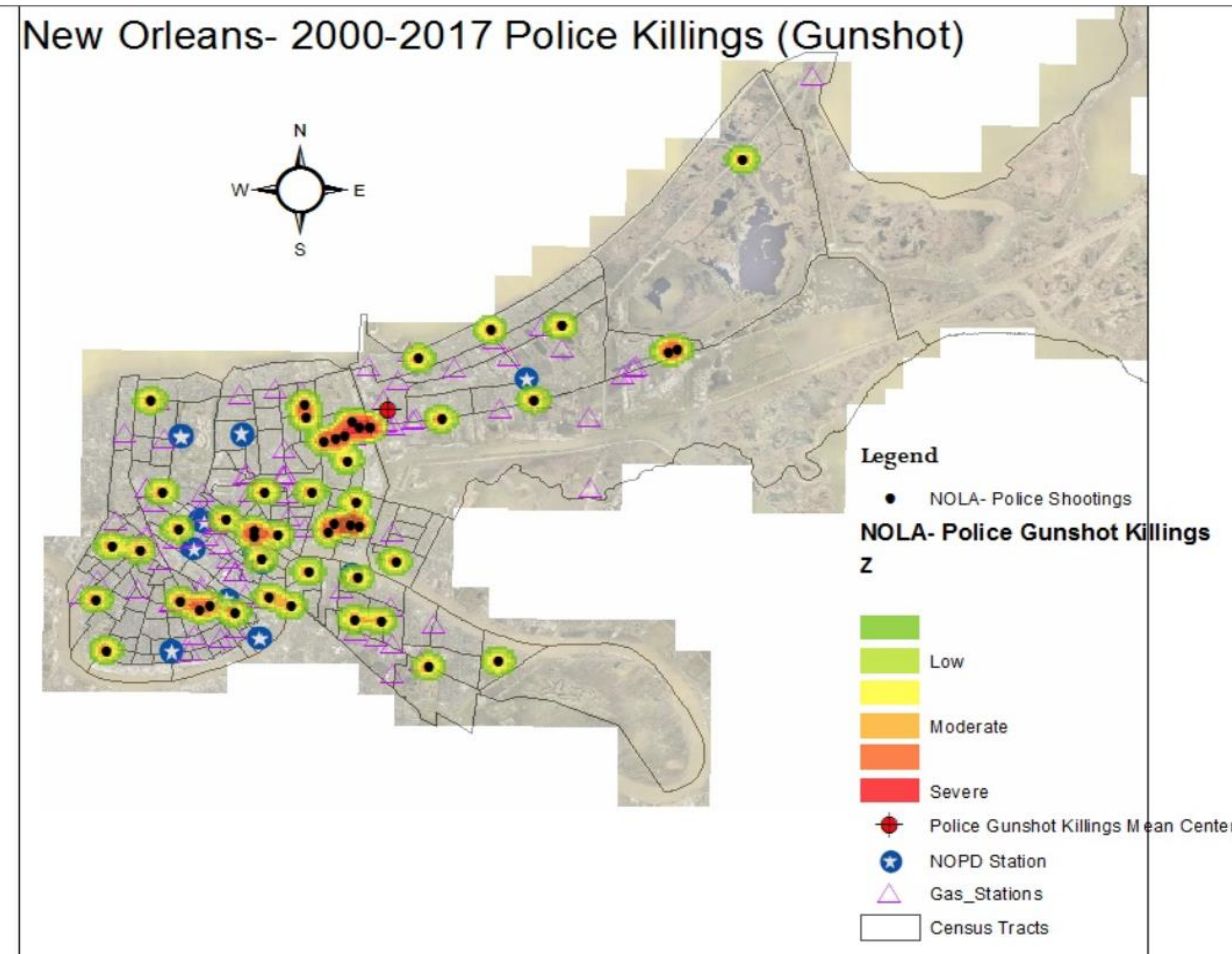
It is well known that black citizens have been the subject of disproportionate contact with police (Tonry, 2006). This paper explores contemporary policing, police discretion, and the use of lethal force conducting a spatial and temporal analysis of census tract level data of 64 fatal encounters with the New Orleans Police Department (NOPD) from 2000-2017. A separate analysis of 4,143 use of force complaints and 3,065 misconduct complaints was also conducted observing for patterns in levels of police accountability. This study found most incidences of lethal force occurred in cumulatively disadvantaged neighborhoods and NOPD disproportionately used lethal force against black males. The goal of this project is to influence public policy surrounding police use of force incidences.

### Proposed Hypotheses

Policing, itself is a widely unaddressed public health challenge. Understanding policing and discretion is integral when discussing the sustainability of a city, therefore, policing must continue to be examined as a public health challenge. Also, within this work is a historical account of the intersectionality of discretion, race, and policing. In this case possible alternatives for improvement; limit police discretion as a preventative measure for reducing officer involved shootings, as shown in policy like hiring college educated officers (Paoline, Terrill, & Rossler, 2015), but also to acknowledge the way police "deal" with the public (Bittner, 1970). The study predicted to find the greatest portion of fatalities to be absorbed by low SES, overpoliced areas, by predominantly young black males, and in predominantly black communities. This study used an integrative approach looking at the concentrations of police shootings by NOPD in New Orleans, LA 2000-2017.

- H<sub>1</sub>: Federal intervention (pre/post CD) would see increase police gunshot killings due to an assumed presence of increased contact.
- H<sub>2</sub>: There would be increased levels of police gunshot killings among young males.
- H<sub>3</sub>: There would be increased levels of police gunshot killings among black citizens.
- H<sub>4</sub>: A hot spot analysis would display increased killings in poor or low SES areas.
- H<sub>5</sub>: High concentrations of police shootings exist in predominately heterogeneous neighborhoods.

### Findings/Discussion



(Figure 1- NOLA: Police Fatal Shootings 2000-2017- Hotspot Analysis)

#### What Does This Image Represent?

This cartographic study gives insight into issues of spatial variation of community sustainability by observing Fatal Encounters data from a spatial analytical perspective using CRT and SDT. Criminologists and social ecologists alike, use geospatial analysis to measure the spatial and temporal aspects of a particular environment (in this case New Orleans, LA). This study used an integrative approach looking at the concentrations of police shootings by NOPD in New Orleans, Louisiana 2000-2017 using census tract data from 1980 and census block data from 2000 to examine spatial and temporal variables surrounding 64 fatal confrontations. Using census tract data Nowacki (2015) found:

"Negative binomial regression results indicate that administrative policy predicts lethal force incidents for total and Black-specific population models but not White-specific models, and department size predicts lethal force incidents for total and White-specific models but not Black-specific models. Organizational correlates of police discretion seem crucial for understanding officer behavior," (p. 643).

For this study Excel, Stata, and ArcGIS were used to clean, code, explore, and analyze the data. Observations of directional distributions and their relationship to spatial characteristics of hot spots were also explored. A mean center analysis of the distribution was also completed. For consistency and objective purposes, the choice to eliminate beating/bludgeoning's (1), taser (1), vehicle (11), and asphyxiation (1) deaths resulted in a final sample size of 50. 33 individuals were African-American/black, 5 were European-American/white, 1 Asian-American and 11 were "race unspecified". The study uncovered "hotspots" or concentrations of police shootings. Black persons made up the greatest number of police shooting victims (66%), which is consistent with the bulk of CRT and police shooting analyses (Holmes et. al., 2018).