

STOP AND FRISK IN CHICAGO

ACLU of Illinois

March 2015



ACLU

AMERICAN CIVIL LIBERTIES UNION
of ILLINOIS

I.

Executive Summary

In the past year, the nation’s attention has turned to police practices because of high profile killings, including Michael Brown in Ferguson, Missouri, Tamir Rice in Cleveland, Ohio, and Eric Garner in New York. But concerns about policing extend beyond the use of force and into the everyday interactions of police with community members.

In black and Latino communities, these everyday interactions are often a “stop and frisk.” Under the U.S. Supreme Court decision in *Terry v. Ohio*, 392 U.S. 1 (1968), officers are allowed to stop you if the officer has reasonable suspicion that you have been, are, or are about to be engaged in criminal activity. Once you are stopped, if an officer has reasonable suspicion that you are dangerous and have a weapon, the officer can frisk you, including ordering you to put your hands on a wall or car, and running his or her hands over your body. This experience is often invasive, humiliating and disturbing.

Chicago has failed to train, supervise and monitor law enforcement in minority communities for decades, resulting in a failure to ensure that officers’ use of stop and frisk is lawful. This report contains troubling signs that the Chicago Police Department has a current practice of unlawfully using stop and frisk:

- Although officers are required to write down the reason for stops, in nearly half of the stops we reviewed, officers either gave an unlawful reason for the stop or failed to provide enough information to justify the stop.

Contents

| | |
|---|----|
| I. Executive Summary | 2 |
| II. Chicago’s History of Stop and Frisk | 5 |
| III. Stop and Frisk in Chicago – What the Data Shows | 6 |
| IV. The Cost of Unconstitutional Stops and Frisks on the Relationship Between Police and the Community | 12 |
| V. Chicago’s Data Collection and Oversight of Stop and Frisks Is Insufficient | 14 |
| VI. Other Illinois Cities | 16 |
| VII. Recommendations | 17 |
| Appendix A: Stop and Frisk in Other Cities | 19 |

- Stop and frisk is disproportionately concentrated in the black community. Black Chicagoans were subjected to 72% of all stops, yet constitute just 32% of the city’s population. And, even in majority white police districts, minorities were stopped disproportionately to the number of minority people living in those districts.
- Chicago stops a shocking number of people. Last summer, there were more than 250,000 stops that did not lead to an arrest. Comparing stops to population, Chicagoans were stopped more than four times as often as New Yorkers at the height of New York City’s stop and frisk practice.

In the face of a systemic abuse of this law enforcement practice, Chicago refuses to keep adequate data about its officers’ stops. Officers do not identify stops that result in an arrest or ordinance violation, and they do not keep any data on when they frisk someone. This failure to record data makes it impossible for police supervisors, or the public, to identify bad practices and make policy changes to address them.

The abuse of stop and frisk is a violation of individual rights, but it also poisons police and community relations. As recognized by the Department of Justice, the “experience of disproportionately being subjected to stops and arrests in violation of the Fourth Amendment shapes black residents’ interactions with the [the police], to the detriment of community trust,” and “makes the job of delivering police services ... more dangerous and less effective.” See the Appendix, for summaries of DOJ reports.

In order to restore community trust, the City should make the following policy changes:

- **COLLECT DATA ON FRISKS AND MAKE IT PUBLIC.** Currently, officers are not required to record when they frisk someone. If there is no arrest, these searches are never subject to judicial review. Absent a record,

Chicagoans
were stopped
more than

4x

as often as
New Yorkers
at the height
of New York
City’s stop
and frisk
practice.

supervisors and the public have no means to determine whether officers' searches are lawful. Officers should record frisks, the reason for the frisk (which must be separate from the reason for the stop), and the results of the search (i.e., whether there was a weapon or other contraband and if so, what type). This should be accomplished by expanding and making permanent the Illinois Traffic Stop Statistical Study Act, which currently requires police departments to collect and publicly report data about traffic stops.

- **COLLECT DATA ON ALL STOPS AND MAKE IT PUBLIC.** Officers only record stops on contact cards when the stops do not lead to an arrest or ticket for an ordinance violation. Officers should record all stops, including those that lead to an arrest or ticket, and that data should be merged with the stops/contact card database or otherwise made identifiable and available to the public. In New York, this data proved to be a valuable benchmark to assess the legitimacy of the practice. Supervisors and the public should be able to compare how often officers' stops lead to an arrest.
- **REQUIRE TRAINING.** Officers should receive regular training on the legal requirements for stops and frisks and how to record them properly. In a response to a recent FOIA request to Chicago, the City was not able to identify a single officer who received follow-up training (post-police academy) on how to lawfully conduct a stop and frisk since May 2011. Given that half of the reviewed stops did not contain a legal justification, this training is necessary.
- **REQUIRE OFFICERS TO ISSUE A RECEIPT.** Officers should provide civilians with a receipt at the end of pedestrian stops, traffic stops, and consensual encounters. This receipt should state the officer's name, the time and place of the encounter, and the reason for the encounter. Receipts will ensure a record of the event and facilitate any civilian complaints regarding the encounter.

Supervisors and the public should be able to compare how often officers' stops lead to an arrest.

II.

Chicago's History of Stop and Frisk

A review of how *Terry* stops have been used in Chicago demonstrates a persistent problem – inadequate training, supervision and monitoring of law enforcement in minority communities.

In the early 1980s, the *Chicago Reporter* found that more than 100,000 citizens were arrested for “disorderly conduct” during sweeps of high-crime neighborhoods. These arrests were usually preceded by a stop and frisk. These cases almost never resulted in convictions because the police generally did not show up in court to defend the arrest. An ACLU lawsuit successfully challenged this practice and, as a result, disorderly conduct arrests and their accompanying stops and frisks plummeted.¹ However, these unnecessary stops and arrests created feelings of alienation in African American and Latino communities in Chicago.

In the 1990s, *Terry* stops re-emerged under the guise of the so-called “gang loitering ordinance.” That ordinance – later struck down by the U.S. Supreme Court in another ACLU lawsuit – resulted in more than 40,000 arrests over 18 months of enforcement.² These massive numbers of people were arrested and searched ostensibly for refusing to follow dispersal orders, but the reality was that the ordinance was a vehicle for stopping and searching young men of color.

In the early 2000s, unwarranted stops and searches were still commonplace. In 2003, the ACLU filed a lawsuit on behalf of Olympic Gold medalist Shani Davis and several others, challenging

A review of how *Terry* stops have been used in Chicago demonstrates a persistent problem – inadequate training, supervision and monitoring of law enforcement in minority communities.

¹ *Michael Nelson v. City of Chicago*, 83-C-1168 (N.D. Ill.).

² See *City of Chicago v. Morales*, 527 U.S. 41 (1999).

a series of humiliating stop and frisk searches by Chicago police.³ Data collected in connection with that suit showed a pattern of unjustified stops and searches, resulting in the unnecessary detention of young people, mostly young people of color. As a result of the *Davis* lawsuit, the Chicago police made changes to their policy of stopping and searching on the streets, including a requirement to record why stops occur. However, the manner in which the City implemented the recordkeeping has proved insufficient.

Today, Chicago's reliance on stop and frisk has increased dramatically and legitimate doubts about the constitutionality of the City's method of executing these stops have only increased.

The CPD does not record stops that lead to arrests or tickets and makes no record of frisks.

III.

Stop and Frisk in Chicago – What the Data Shows

Chicago police officers are required to record and justify their stops on “contact cards.” However, as discussed in detail in Part IV, the Chicago Police Department's data collection presents problems with analyzing stops. For example, the CPD does not record stops that lead to arrests or tickets and makes no record of frisks. And prior to April 2014, officers used contact cards to record voluntary interactions with civilians, making it difficult to isolate stops and frisks.⁴ This report analyzes a sample of 250 written justifications for stops that occurred in 2012 and 2013. It also analyzes four months of contact card data from 2014, after a CPD policy change limited the use of contact cards to stops and the enforcement of loitering ordinances.

³ See Complaint for Plaintiffs, *Davis v. City of Chicago*, 219 F.R.D. 593 (N.D. Ill. 2004), (No. 03 C 2094), 2003 WL 23800673.

⁴ Compare Special Order S04-13-09, effective date Feb. 23, 2012, available at <http://www.chicagopolice.org/2013MayDirectives/data/a7a57be2-12a864e6-91c12-a864-e985efd125ff521f.html>, and Special Order, 04-13-09, I(C), April 3, 2014, available at directives.chicagopolice.org/lt2014/data/a7a57be2-12a864e6-91c12-a864-e985efd125ff521f.html (discontinuing the routine documentation of “Citizen Encounters.”). The ACLU of Illinois had repeatedly advocated with the City for this change, which was positive, but did not go far enough.

A. A SIGNIFICANT NUMBER OF STOPS ARE NOT JUSTIFIED BY REASONABLE SUSPICION.

According to the landmark Supreme Court case, *Terry v. Ohio*, 392 U.S. 1 (1968), police officers may only conduct stops when they have a reasonable suspicion that a person has committed or will commit a crime. They may only do a frisk if they have a reasonable suspicion that the person they stop is armed and dangerous. The basis for reasonable suspicion must go beyond an officer's vague "hunch" or personal biases, and the officer "must be able to point to specific and articulable facts" that justify such an intrusion.

We reviewed 250 randomly selected narrative fields from the contact card database.⁵ Even though the department requires that officers record the reasons for the stop, for *half* of the stops we reviewed, the officer did not record legally sufficient reasons to establish reasonable suspicion. Stops made without sufficient cause violate the Fourth Amendment guarantee against unreasonable searches and seizures.

In some narrative fields, the officers stated that they stopped people for reasons unrelated to a suspicion of a crime. For example, officers stopped people for associating with others who were suspicious⁶ or because they walked away from officers,⁷ neither of which would justify a *Terry* stop. In other narrative fields, officers failed to provide enough information for anyone, including their supervisors, to determine whether the stops were justified. For example, officers stopped many people who "matched a description," which would only be legitimate if there was a sufficient explanation of how they matched the description.⁸ In other cases, officers provided so little

For half of the stops we reviewed, the officer did not record legally sufficient reasons to establish reasonable suspicion.

⁵The Chicago Police Department's Freedom of Information Act office would agree only to produce the narrative sections of 300 contact cards, asserting there was a burden due to the need to redact personally identifying information from the narratives. The narrative section is the field where officers are to record the reasons for a stop. The ACLU randomly selected 300 entries from 18,943 contacts in the contact card database. These contacts were from June 1, 2012 through August 31, 2012 and March 1, 2013 through May 31, 2013. During this time period, the CPD included records of various kinds of police interactions in this database – not just stops. The CPD ran a word search of terms selected by the ACLU to identify stop and frisks in that broader database. It is possible that some records of stops did not contain the search terms. This resulted in the 18,943 cards from which the 300 entries were randomly selected. We identified 252 of the 300 narratives as describing stops.

⁶*People v. Lee*, 214 Ill. 2d 476, 486, 828 N.E.2d 237, 245 (2005) (finding probable cause "to arrest a particular individual does not arise merely from the existence of probable cause to arrest another person in the company of that individual"); *People v. Surlles*, 2011 IL App (1st) 100068, ¶ 34, 963 N.E.2d 957, 965 (2011) (applying *Lee* and finding that association with someone engaged in criminal activity not sufficient for reasonable suspicion under *Terry*).

⁷*In re Rafeal E.*, 2014 IL App (1st) 133027, ¶ 29, *reh'g denied* (Aug. 19, 2014), *appeal denied*, No. 118281, 2014 WL 5619892 (Ill. Oct. 30, 2014) (refusing to expand *Wardlow* to circumstances where the individual is "walking" rather than engaging in a "headlong flight").

information that it was impossible to determine if the stop could be justified, such as merely labeling a person as “suspicious” without additional facts.⁹

The following are examples of officers’ narrative explanations that do not justify a stop:

suspicious person. name check clear

field interview conducted with the subject regarding a recent home invasion in the area. protective pat down conducted. name check clear.

Subject observed loitering on the corner of Augusta/ Monticello. As R/Os approached for F/I subject looked in R/Os direction and began walking southbound on Monticello.

SUSPECT NARCOTIC ACTIVITY

ABOVE MATCHED DESCRIPTION OF SUSPICIOUS PERSON CALL FI NC CLR.

suspicious person loitering in high narcotics area.

IN SUMMARY: SUBJECT WAS DETAINED FOR PICKPOCKETING ON A PREVIOUS OCCASSION. NAME CHECK CLEAR AND RELEASED.

ABOVE WAS PART OF A GROUP WALKING THROUGH THE ALLEY AT THE ABOVE LOCATION. ABOVE WAS DETAINED AFTER AN UNKNOWN INDIVIDUAL FLED WITH POSSIBLE NARCOTICS. NAME CHECK CLEAR.

ABOVE STOPPED AFTER R/O’S OBSERVED A BULGE PROTRUDING FROM HIS RIGHT SIDE.¹⁰ R/O’S PROFROMED [sic] A PROTECTIVE PAT DOWN AND LEARNED THAT THE BULGE WAS A LARGE CELL PHONE. NAME CHECK CLR LBT.

All of the narratives are available on the ACLU of Illinois’ website.

Supervisors are required to review the facts and circumstances of each individual stop, correct the officer, and if necessary, recommend training or discipline to officers who have failed to provide a legal justification for a stop.¹¹ Based on our review of

⁸ *People v. Washington*, 269 Ill. App. 3d 862, 867, 646 N.E.2d 1268, 1272 (1995) (“Because no evidence of the offender’s appearance had been introduced, the trial court had no opportunity to determine whether the description of the offender and the physical characteristics of the defendant were similar enough to justify the detention of the defendant.”).

⁹ *People v. Croft*, 346 Ill. App. 3d 669, 676, 805 N.E.2d 1233, 1240 (2004) (“stopping an individual because he looks ‘suspicious’ ... without more, is insufficient to establish reasonable suspicion”). See also *Terry v. Ohio*, 392 U.S. 1, 21 (1968) (“And in justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.”).

¹⁰ *People v. Slaymaker*, 2015 IL App (2d) 130528, ¶ 20 (finding no reasonable suspicion for a stop and search because of “bulging”).

¹¹ Special Order, 04-13-09, V(C)(1)(c), effective Jan. 7, 2015.

these stops, both police officers and supervisors need additional training on when a stop is legally justified and more resources should be dedicated to officer supervision.

In a response to a recent FOIA request to Chicago, the City was not able to identify a single officer who received follow-up training (post-police academy) on how to lawfully conduct a stop and frisk since May 2011.

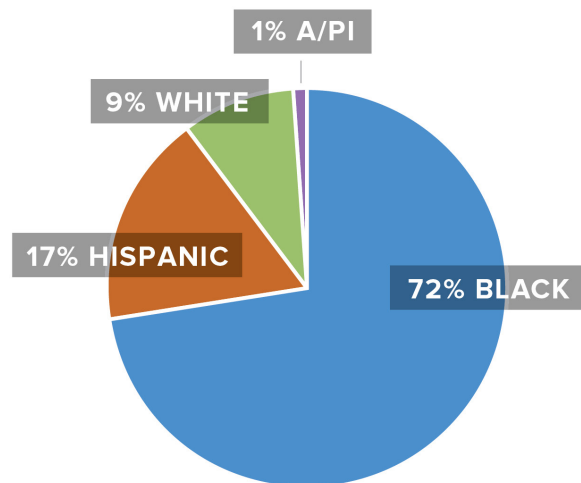
B. AFRICAN AMERICANS ARE PROPORTIONALLY STOPPED AT A HIGHER RATE.

A review of the contact card database for the four-month period of May through August 2014 indicates that African Americans are disproportionately subjected to stops when compared to their white counterparts.¹² Black Chicagoans were subjected to 72% of all stops, yet constitute just 32% of the city's population.¹³

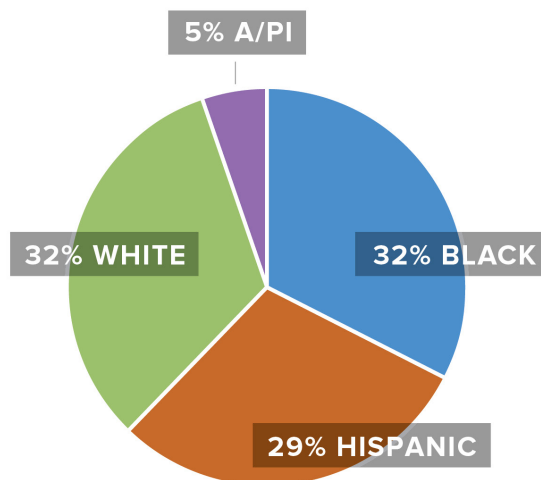
Also, there are more stops per capita in minority neighborhoods. For example, in the minority district Englewood there were 266 stops per 1000 people, while in the predominately white district Lincoln/Foster there were 43. While this may be the result of a plan to address crime in those neighborhoods, we strongly question the legitimacy of this enforcement approach. We defer an empirical analysis of this practice to our next report on Chicago Police Department practices.

In any event, the difference in stop rates among different races also occurs outside minority communities. In Chicago's predominantly white police districts—Near North, Town Hall, and Jefferson Park—the disparity between black population and percentage of stops is even starker than city-wide data. For example, as seen in the charts below, although Jefferson Park's African American population is just 1%, African Americans make up almost 15% of all stops.

Stops by Race



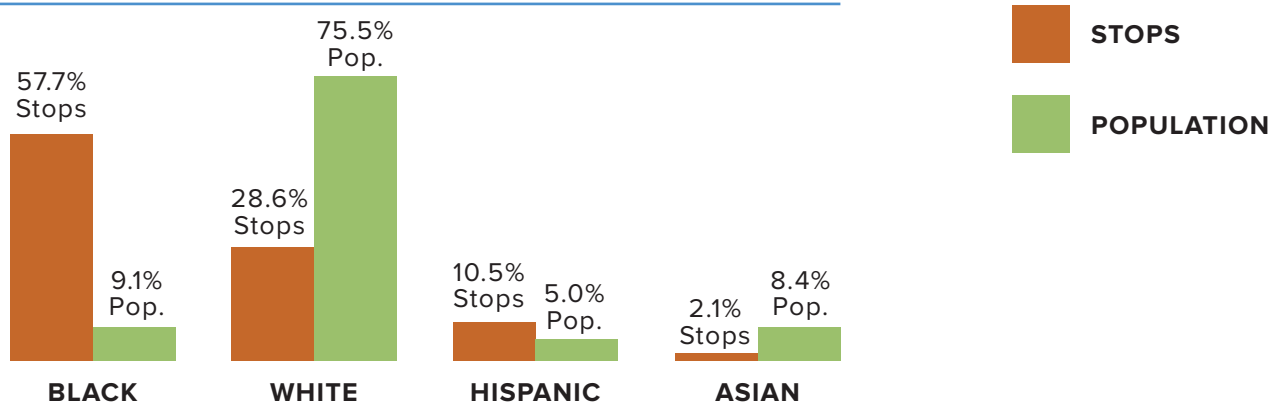
Chicago Population by Race



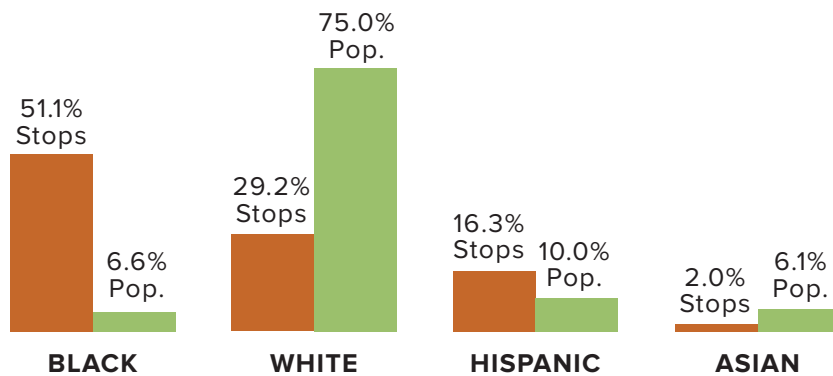
¹² This dataset does not include cards categorized as "dispersals." Similar patterns are found in the truncated 2012-2013 data described in footnote 5.

¹³ Chicago population of 2,684,481 and race percentages come from 2011 census data of police beat populations as analyzed and made available by Professor Wesley Skogan of Northwestern University. It does not include populations at Cook County Jail, Metropolitan Correctional Center of Chicago, or the Cook County Juvenile Center. Unrounded percentages equal less than 100 due to a small number of individuals with "unknown" race.

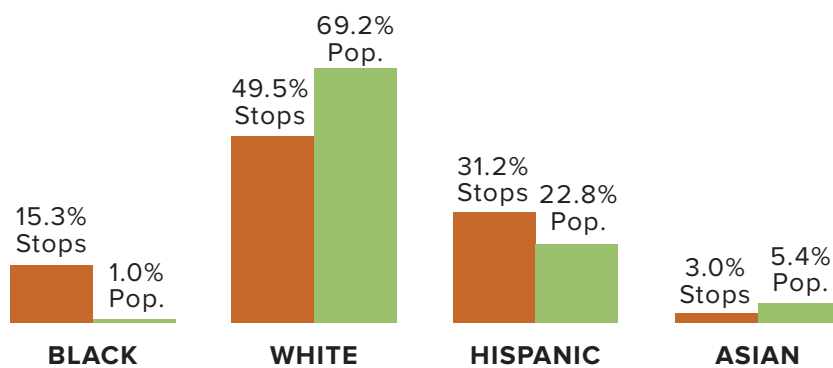
District 18: Near North



District 19: Town Hall



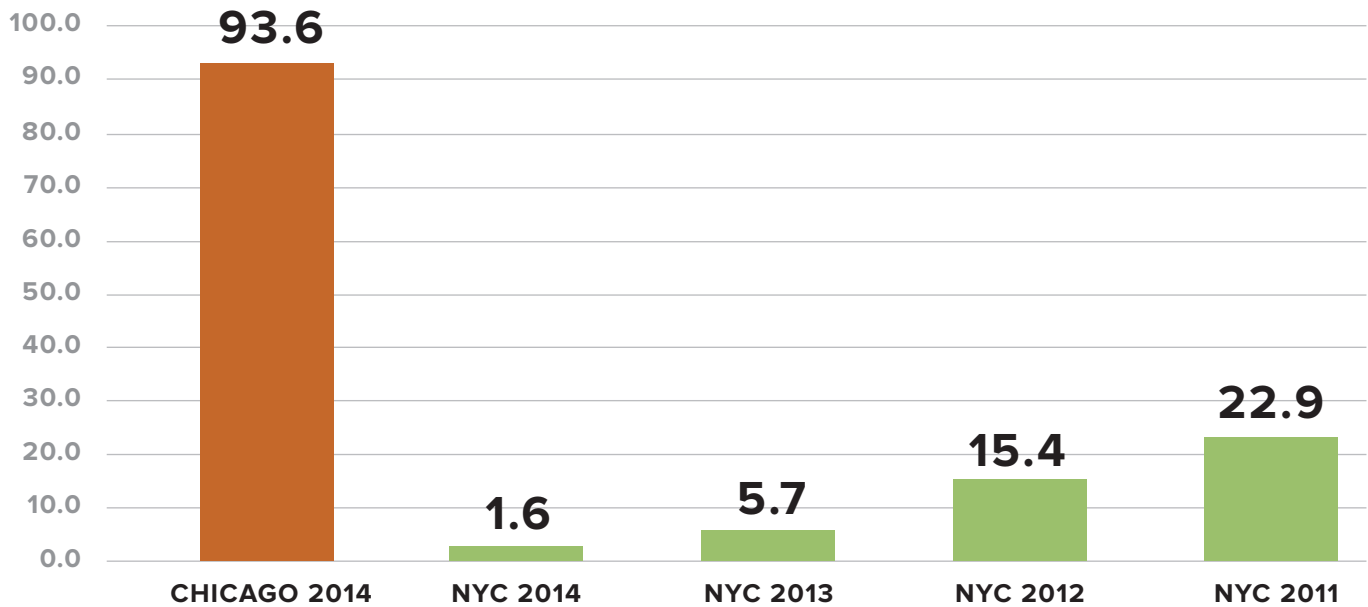
District 16: Jefferson Park



C. CHICAGO OUTPACES NEW YORK IN RATE OF STOPS

There were more than 250,000 stops that did not lead to an arrest in Chicago for the time period of May 1, 2014 through August 31, 2014. Comparing stops to population, Chicagoans were stopped at a far higher rate than New Yorkers at the height of New York City's stop and frisk practice in 2011.¹⁴

Stops Per 1000 People May-Aug



¹⁴ NYPD Stop, Question and Frisk Report Database, NYC.GOV, available at http://www.nyc.gov/html/nypd/html/analysis_and_planning/stop_question_and_frisk_report.shtml. We have removed the stops that resulted in summons or arrest from the New York database so we are comparing similar datasets. New York City population of 8,405,837 is the 2013 estimate from www.quickfacts.census.gov, accessed on January 30, 2015.

IV.

Unconstitutional Stops and Frisks Damage the Relationship Between Police and the Community

Black Chicagoans disproportionately bear the highest numbers of stop and frisks, and half of stops are not justified by the officers. The United States Department of Justice (“DOJ”) has recognized that when stop and frisk programs do not comply with constitutional principles and minorities are disproportionately stopped, there is a grave impact on the relationship between police and the community. The DOJ recently wrote a report on Newark, New Jersey, finding that the stop and frisk program failed to comply with constitutional principles and disproportionately stopped African Americans.¹⁵ The DOJ found that the “experience of disproportionately being subjected to stops and arrests in violation of the Fourth Amendment shapes black residents’ interactions with the NPD, to the detriment of community trust, and makes the job of delivering police services in Newark more dangerous and less effective.”¹⁶ The same can be said for Chicago.

¹⁵ *Investigation of the Newark Police Department*, UNITED STATES DEPARTMENT OF JUSTICE, CIVIL RIGHTS DIVISION, at 2 (July 22, 2014) <http://www.justice.gov/usao/nj/Press/files/pdf/files/2014/NPD%20Findings%20Report.pdf> [hereinafter *Newark DOJ Report*].

¹⁶ *Newark DOJ Report supra* note 25, at 2; see also Statement of Interest of the United States, at 10, *Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013) (No. 08 CV 1034), 2013 WL 8017535 (“Officers can only police safely and effectively if they maintain the trust and cooperation of the communities within which they work, but the public’s trust and willingness to cooperate with the police are damaged when officers routinely fail to respect the rule of law.”).

These disparities might be explained by racial profiling, or by officers' implicit bias. The Chicago Police Department has a written policy that "expressly prohibits 'racial profiling' and 'other bias based policing.'"¹⁷ But often, especially when decisions are subjective, people can be unknowingly influenced by implicit bias and not realize their decisions are influenced by race.¹⁸ In assessing the Seattle Police Department, the DOJ recognized that sometimes "biased policing is not primarily about the ill-intentioned officer but rather the officer who engages in discriminatory practices subconsciously. ... Understanding this phenomenon is the first step toward safe and effective policing."¹⁹ Federal law and Illinois law prohibit not just intentional discrimination, but also policies that result in discrimination – even when a person does not make a conscious decision to discriminate.²⁰

Despite its legal obligation to refrain from policies that cause a racially disparate impact, the Chicago Police Department's recordkeeping is a barrier to determining whether officers are engaged in biased policing. Neither police supervisors nor members of the public can do comprehensive analysis. Under existing CPD policy, there is no way to identify all stops – including stops which lead to arrests. Further, officers do not record or justify frisks. Therefore, unlike in other cities, we cannot assess how often the stops lead to an arrest, who is frisked and why, or how often frisks result in contraband.

Consistently, when faced with similar constitutional violations and disparities in other cities like Newark, Seattle, and LA, the DOJ has required better data collection to provide transparency and to ensure better practices.²¹

Unlike in other cities, we cannot assess how often the stops lead to an arrest, who is frisked and why, or how often frisks result in contraband.

¹⁷ See CPD General Order G02-04, effective date Feb. 22, 2012.

¹⁸ See e.g., Linda Hamilton Krieger & Susan T. Fiske, *Behavioral Realism in Employment Discrimination Law: Implicit Bias and Disparate Treatment*, 94 Cal. L. Rev. 997, 1030-31 (2006).

¹⁹ *Investigation of the Seattle Police Department*, UNITED STATES DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION, at 34 (Dec. 16, 2011) http://www.justice.gov/crt/about/spl/documents/spd_findletter_12-16-11.pdf [hereinafter *Seattle DOJ Report*].

²⁰ See 42 U.S.C. § 2000d; 42 U.S.C. § 3789d(c)(1); 740 ILCS 23/5(a)(2) (creating a cause of action for disparate impact discrimination).

²¹ See e.g. *Newark DOJ Report supra* note 25, at 4 ("The NPD further must collect and analyze data related to stops, searches, and arrests, so that it can minimize the disparate impact of its enforcement efforts and avoid bias in policing."); *Seattle DOJ Report supra* note 29, at 8; Consent Decree, *United States v. City of Los Angeles*, LAPDONLINE.ORG, http://assets.lapdonline.org/assets/pdf/final_consent_decree.pdf; see also Third Report to Court and Monitor on Stop and Frisk Practices for *Plaintiff, Bailey v. City of Philadelphia* (2013) (C.A No 10-5952), available at http://www.aclupa.org/download_file/view_inline/1015/198/ (report on data recorded as part of settlement with a lawsuit brought by the ACLU of PA).

V.

Chicago's Data Collection and Oversight of Stop and Frisks Is Insufficient

Even though there are troubling signs that the Chicago Police Department's use of stop and frisk is unlawful, the Chicago Police Department does not record stop and frisks in a way that reflects the full picture of what is happening on the streets of Chicago. Chicago does not have a single database of all stops available to the public and officers make no records of frisks.

The City is well aware of the problems associated with the lack of a comprehensive stops database. The ACLU has repeatedly asked the City to set up such a database and to conform to best practices as outlined by the United States Department of Justice. WBEZ has also reported on how the City's poor data practices have kept the practice hidden from appropriate scrutiny.²²

Chicago's recordkeeping practices place our city increasingly out of step with other major cities across the country. New York City and Newark, New Jersey have made their stop and frisk data publicly available online.²³ Other cities like Philadelphia, New Orleans, and Los Angeles have collected this data for review by the Department of Justice.²⁴ See Appendix for a review DOJ investigations and remedies. Chicago too should have a public, comprehensive database of stops and frisks to aid police supervisors in their review of officers and to make this practice more transparent to the public.

²² See Elliott Ramos, *Poor data keeps Chicago's stop and frisk hidden from scrutiny*, WBEZ, (Sept. 12, 2013), available at <http://www.wbez.org/news/poor-data-keeps-chicagos-stop-and-frisk-hidden-scrutiny-108670>.

²³ See Newark Police Department General Order, Transparency Policy, 2013-03, S-3 (July 8, 2013), available at https://archive.org/stream/725268-newark-police-dept-general-order/725268-newark-police-dept-general-order_djvu.txt; see also N.Y. Code § 14-150.

²⁴ See also Investigation of the New Orleans Police Department, UNITED STATES DEPARTMENT OF JUSTICE, CIVIL RIGHTS DIVISION, (Mar.16, 2011) available at www.justice.gov/crt/about/spl/nopd.php.

Chicago's recordkeeping practices place our city increasingly out of step with other major cities across the country.

A. THERE IS NO SINGLE DATABASE CONTAINING ALL STOP AND FRISKS.

In Chicago, police officers are required to record *Terry* stops on “contact cards.”²⁵ However, they are only required to use a contact card to record when and why they stop someone if it does not lead to an arrest.²⁶ For arrest reports, there is no instruction for officers to identify arrests that were based on a *Terry* stop.²⁷ As a result, not all *Terry* stops are recorded in the contact card database or otherwise identified as stops.

This recordkeeping deficiency makes it impossible to calculate an important measure of the abusiveness of the stops – the rate of innocent people stopped compared to all stops. In New York City, where such data is available to the public, it was possible to compare the number of stops of innocent people to the number of all stops, including those that led to arrest. Studies showed that 88% of people stopped between January 2004 and June 2012 were never arrested or issued a summons.²⁸ In Chicago, it is impossible for the public – or the police department itself – to determine how often people who are stopped are charged with a crime.

²⁵ Special Order, S04-13-09, Part III (B), effective Jan. 7, 2015. Chicago Police Department Special Orders, General Orders, and the forms cited in this report are available at <http://directives.chicagopolice.org/directives/>.

²⁶ *Id.*

²⁷ See CPD-11.420, Form Preparation Instructions, available at <http://directives.chicagopolice.org/lt2014/forms/CPD-11.420-A.pdf>.

²⁸ *Floyd v. City of New York*, 959 F. Supp. 2d 540, 558-9 n. 16 (S.D.N.Y. 2013), *appeal dismissed* (Sept. 25, 2013).

B. THE CHICAGO POLICE DEPARTMENT DOES NOT MONITOR WHEN AND WHY PEOPLE ARE FRISKED.

The Chicago Police Department's order on contact cards does not require officers to record when they frisk or pat down a civilian. Also, officers are not required to record all facts establishing reasonable suspicion that the subject is armed and dangerous. If a stop and frisk does not lead to criminal charges, no judge will ever review whether it was lawful. And since stops and frisks occur on the street, without proper documentation, supervisors cannot assess whether they are lawful. Supervisors thus have no opportunity to review the constitutionality of these frisks, and there is no disclosure of this information to the public.

Officers are also not required to separately identify when a frisk is associated with an arrest. Therefore, there is no record of the total number of frisks or how often weapons or other contraband are found as a result. The frequency of how often weapons or other contraband is found is one benchmark of the propriety of a stop and frisk program. For example, in New York City, fewer than 2% of frisked people were found with weapons.²⁹

If a stop and frisk does not lead to criminal charges, no judge will ever review whether it was lawful.

VI.

Other Illinois Cities

We have begun the process of sending FOIA requests to other Illinois cities about their use of stop and frisk and about data collection by their police departments. This will be the subject of a future report.

To date, we have learned that while some cities do not collect any information when an officer conducts a stop and frisk, several other Illinois cities use forms similar to Chicago's contact cards to record

²⁹ *Id.* at 559 n. 16.

this data. We have not identified any city in Illinois that records comprehensive stop and frisk data and regularly makes its data public as a means to promote transparency in policing. This indicates that the data collection problems are not just a Chicago issue, but need to be addressed statewide.

VII.

Recommendations

This report is one of many recent reports showing ongoing racial disparities in encounters between police and members of the general public in Illinois. The lack of data collection is a major impediment to understanding how stop and frisk policy is actually carried out on the streets. Several improvements need to be made to provide greater transparency and make it possible for supervisors to fully review stops and frisks.

- a. **Expand the Illinois Traffic Stop Statistical Study Act to cover sidewalk stops and frisks.** The Study Act requires police departments to collect and publicly report data about traffic stops.³⁰ This critical law, which was sponsored in 2003 by then-State Senator Barack Obama, should be expanded to collect data on pedestrian stops and frisks and make the data public. Expanding the Study Act would solve several problems: (1) Chicago and other cities across Illinois currently do not maintain a comprehensive public record of *Terry* stops; (2) Chicago and other Illinois cities have no record of frisks—including the basis for the frisk or whether contraband was obtained; and (3) Chicago, unlike several other major cities, does not make regular public disclosures about stops and frisks. Data collection is a critical supervisory tool and necessary for the transparency needed to build public trust.

The Study Act should be expanded to collect data on pedestrian stops and frisks and make the data public.

³⁰ Illinois Public Act 98-0686 (Ill. 2014). The ACLU of Illinois recently published a report about the CPD's traffic stops, based on Study Act data, which showed racial disparities similar to those documented in this report on CPD sidewalk stops. See CPD Traffic Stops and Resulting Searches in 2013, ACLU OF ILLINOIS (Dec. 26 2014), <http://www.aclu-il.org/cpd-traffic-stops-and-resulting-searches-in-2013/>.

- b. **Require all police to issue a receipt (or other documentation) to all civilians they interact with, including during traffic stops, sidewalk stops, and consensual encounters.** This receipt should state the officer's name, the time and place of the encounter, and the reason for the encounter. Such receipts will facilitate any civilian complaints regarding the encounter.

- c. **Require training on the legal requirements for a stop and frisk and how to properly document them.** In a response to a recent FOIA request to Chicago, the City was not able to identify a single officer who received follow-up training (post-police academy) on how to lawfully conduct a stop and frisk since May 2011. FOIAs on this issue to other cities in Illinois are pending.

Appendix A:

Stop and Frisk in Other Cities

NEWARK, NJ

In 2011, the U.S. Department of Justice launched an investigation into the stop and frisk practices of New Jersey's largest city, Newark. Much of the data reviewed was collected under the leadership of Garry McCarthy, who now heads the Chicago Police Department.³¹

The DOJ reviewed thousands of officers' "field inquiry reports" and found that officers did not write down any reason at all for 16% of all stops.³² Of the reports that did contain the rationale for the stop, officers failed to articulate reasonable suspicion 75% of the time.³³ The DOJ found that "black people in Newark have been stopped and arrested at a significantly higher rate than their white and Hispanic counterparts [and] [t]his disparity is stark and unremitting."³⁴ Between January 2009 and June 2012, 80% of stops were of black individuals, yet Newark's population was just 54% black.³⁵

In February 2014, the ACLU of New Jersey released a report that showed that there continues to be an unreasonably high number of stop and frisks in Newark, especially of black citizens, and that only 25% of all stops result in an arrest or summons.³⁶

³¹ *Newark DOJ Report supra* note 25, at 10 n. 9 (explaining time period of the data); Robert Wildeboer, *Interview: Gary McCarthy on the future of the Chicago Police Department*, WBEC.ORG, (Aug. 15, 2011) <http://www.wbez.org/story/interview-garry-mccarthy-future-chicago-police-department-90445>.

³² *Newark DOJ Report supra* note 25, at 8.

³³ *Newark DOJ Report supra* note 25, at 9 n.7.

³⁴ *Newark DOJ Report supra* note 25, at 16.

³⁵ *Newark DOJ Report supra* note 25, at 16.

³⁶ *Stop and Frisk: A First Look, Six Months of Data on Stop-and-Frisk Practices in Newark*, at 10 (Feb. 2014) https://www.aclu-nj.org/files/8113/9333/6064/2014_02_25_nwksnf.pdf.

PHILADELPHIA

In 2010, the ACLU of Pennsylvania filed a lawsuit against the city of Philadelphia alleging that the city's police were illegally stopping and frisking thousands of civilians without reason and based on their race.³⁷ The lawsuit was settled in 2011 when the police department agreed to collect data on their stop and frisk practices and make the information available in an electronic database.³⁸ The settlement agreement also mandated that police officers not stop civilians based only on vague rationale like "loitering" or "acting suspiciously," and that they limit investigative stops to when there is reasonable suspicion.³⁹ After the police officers were retrained on these issues and new protocols were adopted regarding stop and frisks, plaintiffs continued monitoring the electronic data for thousands of stops. As of February 2015, plaintiffs and the police agreed that over 30% of stops lacked a sufficient rationale and that the significant racial disparities in stops and frisks could not be explained by other factors such as localized crime rates.⁴⁰

NEW YORK CITY

New York City may prove to be the best lesson in the inefficacy of stop and frisks. NYPD has conducted more than 5 million stops since 2002. Almost nine out of ten times, the person was not arrested, and fewer than 2% of frisked people were found with weapons.⁴¹

This rampant misconduct was challenged in a five-year-long lawsuit that concluded in 2013 when NYPD's stop and frisk policy was found to violate Fourth Amendment rights and constitute a "policy of indirect racial profiling." The judge stated that the NYPD "deliberately maintained and even escalated policies and practices that predictably resulted in even more widespread Fourth Amendment violations. ...The NYPD has repeatedly turned a blind eye to clear evidence of unconstitutional stops and frisks."⁴²

³⁷ See Complaint for Plaintiffs, *Bailey v. City of Philadelphia*, 2010 WL 4662865 (E.D.Pa.) (No. 210CV05952) available at http://www.aclupa.org/download_file/view_inline/669/198/.

³⁸ Settlement Agreement, Class Certification and Consent Decree at 3, *Bailey v. City of Philadelphia* (2011) (C.A. No. 10-5952) available http://www.aclupa.org/download_file/view_inline/744/198/.

³⁹ *Id.* at 4.

⁴⁰ Plaintiffs' Fifth Report to Court and Monitor on Stop and Frisk Practices, at 3, 21, *Bailey v. City of Philadelphia* (2013) (C.A. No. 10-5952), available at http://www.aclupa.org/download_file/view_inline/2230/198.

⁴¹ *Floyd v. City of New York*, 959 F. Supp. 2d 540, 558 (S.D.N.Y. 2013), *appeal dismissed* (Sept. 25, 2013). See also Stop-and-Frisk During the Bloomberg Administration (August 2014), available at http://www.nyclu.org/files/publications/08182014_Stop-and-Frisk_Briefer_2002-2013_final.pdf.

⁴² *Id.* at 658-659.

The New York Police, under the Bloomberg administration, had often raised the specter of an exponential surge in violent crime if the practice of stop and frisk was put to rest. However, the numbers of violent crime and robberies fell in the year following this court ruling.⁴³ In fact, New York saw just 332 murders in 2014—the lowest recorded number in the city’s history—even as the number of stop and frisks plummeted.⁴⁴

SEATTLE

Highly-publicized instances of excessive force and discriminatory policing in Seattle drew the attention of the DOJ, which began investigating the Seattle Police Department in 2011.⁴⁵ The DOJ found “a pattern or practice of unnecessary or excessive force in violation of the Fourth Amendment,”⁴⁶ which led to serious concerns that “some SPD policies and practices, particularly those related to pedestrian encounters, could result in discriminatory policing.”⁴⁷ Regarding street stops, the DOJ stated that “some data and citizen input suggest that inappropriate pedestrian encounters may disproportionately involve youth of color.”⁴⁸ It was noted that the police department failed to collect or analyze data about pedestrian encounters, which made it impossible to conclusively find that they were engaging in biased policing. Consequently, the DOJ brought a lawsuit against the City of Seattle, which resulted in a consent decree in 2012.⁴⁹ One requirement of that agreement was the collection of data to enable the analysis of trends.⁵⁰ However, the most recent monitor’s report stated that such a system of data collection has only recently begun to be developed.⁵¹ According to the report, the police department should develop and “robustly use a high-quality system and defined process for systematically analyzing data on stop activity,

⁴³ J. David Goodman, *New York Crime Keeps Falling, Mayor de Blasio Says; Cites years of ‘Momentum’*, N.Y. TIMES, (Dec. 2, 2014), <http://www.nytimes.com/2014/12/03/nyregion/violent-crime-in-new-york-has-dropped-to-historic-low-mayor-de-blasio-says.html>.

⁴⁴ City of New York Police Department, CompStat Volume 22, No. 9, available at http://www.nyc.gov/html/nypd/downloads/pdf/crime_statistics/cscity.pdf.

⁴⁵ See *Seattle DOJ Report*, *supra* note 29.

⁴⁶ *Seattle DOJ Report*, *supra* note 29, at 4.

⁴⁷ *Seattle DOJ Report*, *supra* note 29, at 3.

⁴⁸ *Seattle DOJ Report*, at 6.

⁴⁹ See Order Provisionally Approving Settlement Agreement, *United State v. City of Seattle* (2012), (NO. C12-1282JLR) available at http://www.justice.gov/crt/about/spl/documents/spd_docket8_8-30-12.pdf.

⁵⁰ *Id.*

⁵¹ *Fourth Semiannual Report*, SEATTLE POLICE MONITOR, at 4 (Dec. 14, 2014) available at http://www.justice.gov/crt/about/spl/documents/spd_fourthrpt_12-14.pdf [hereinafter *Fourth Seattle Monitor Report*].

as well as other law enforcement activity, to determine if any groups or classes of individuals are being subject to disparate impact.”⁵² SPD is now in the process of seeking bids for such a system. One highlight of the report, however, was that all SPD officers were on track to receive intensive training on stops, detentions and bias-free policing by the end of 2014, with more training to come in 2015.⁵³

BOSTON

The Boston Police Department provided independent researchers with over 204,000 reports of civilian encounters, including stop and frisks, that took place from 2007 to 2010.⁵⁴ These researchers looked into how race impacted stops and searches and how encounters were documented. Preliminary findings showed that 63.3% of these civilian encounter reports involved black residents, although Boston’s population is just 24.4% black.⁵⁵ The researchers also determined that, even controlling for factors like neighborhood crime rates or gang affiliation, officers were more likely to initiate encounters with black people, and they were also more likely to subject black Bostonians to repeated encounters and to frisks and searches.⁵⁶ Furthermore, anecdotal evidence suggests that police officers do not always fill out reports after stopping and/or frisking civilians.⁵⁷ And, as in Chicago, the data for arrests is kept separate from that for civilian encounters, making it impossible to determine how often a stop and frisk leads to arrest.

LOS ANGELES

In 2000, the City of Los Angeles entered into a consent decree after the Department of Justice accused the city’s police department of “engaging in a pattern or practice of excessive force, false arrests, and unreasonable searches and seizures

⁵² *Fourth Seattle Monitor Report supra* note 55, at 10.

⁵³ *Fourth Seattle Monitor Report supra* note 55, at 3, 87.

⁵⁴ *Black, Brown and Targeted: A report on Boston Police Department Street Encounters from 2007-2010*, at 10 (Oct. 2014) https://www.aclum.org/sites/all/files/images/education/stopandfrisk/black_brown_and_targeted_online.pdf [hereinafter Boston Report].

⁵⁵ *Boston Report supra* note 8, at 5.

⁵⁶ *Boston Report supra* note 8, at 1.

⁵⁷ *Boston Report supra* note 8, at 10.

in violation of the Fourth and Fourteenth Amendments...”⁵⁸

Among other things, the consent decree required that the police department expand their data collection practices, including of both stop and frisks and traffic stops, which enabled researchers to investigate whether there were trends of racially biased policing.⁵⁹ A study prepared for the ACLU of Southern California found that during a one-year period from 2003 to 2004, black and Hispanic residents were far more likely to be stopped, frisked, searched and arrested than white residents, and that black and Hispanic residents who were searched were less likely to have contraband than white residents.⁶⁰

⁵⁸ Consent Decree at 1, *United States v. City of Los Angeles*, LAPDONLINE.ORG http://assets.lapdonline.org/assets/pdf/final_consent_decree.pdf.

⁵⁹ See generally Consent Decree, *United States v. City of Los Angeles*, LAPDONLINE.ORG http://assets.lapdonline.org/assets/pdf/final_consent_decree.pdf.

⁶⁰ See Ian Ayers and Jonathan Borowsky, *A Study of Racially Disparate Outcomes in the Los Angeles Police Department*, (Oct. 2008) LAW.YALE.EDU, <http://islandia.law.yale.edu/ayers/Ayres%20LAPD%20Report.pdf>.

