



Testimony of
New York County Defender Services

Before the
New York City Council
Committee on Public Safety

March 27, 2023

I. Background

New York County Defender Services (NYCDS) is a public defender office based in Manhattan that has represented more than half a million clients in criminal cases, the majority of whom are from marginalized communities. In an effort to provide holistic, specialized representation to our clients, the NYCDS organization is composed of a diverse staff of trial attorneys, social workers, investigators, paralegals, corrections specialists, and administrative staff. It is based on these decades of experiences practicing law in Manhattan’s criminal courts that we offer this testimony about the proposed legislation as it relates to the NYPD’s stop and frisk policies.

II. Introduction

Police/community relations in New York City have been broken for a very long time, especially in Black¹ and Brown² neighborhoods, but perhaps no single policy has been more damaging to the relationship between the NYPD and the communities in which it purports to serve than “Stop, Question & Frisk.” “Stop, Question & Frisk” (SQF) aka “Stop & Frisk” began decades ago but

¹ “Black” is “defined as sociocultural groups having ‘origins in any of the Black racial groups of Africa’ and recognizes the political impact of their origins in slavery and colonialism.” Sarah P. Chu, Frank S. Pezzella & Justice D. Evans, *Surveillance Load: A Burden of Search Borne by Black and Brown Bodies*, CRIT CRIM (2023), <https://link.springer.com/10.1007/s10612-022-09673-6> (last visited Mar 19, 2023); DOROTHY ROBERTS, FATAL INVENTION: HOW SCIENCE, POLITICS, AND BIG BUSINESS RE-CREATE RACE IN THE TWENTY-FIRST CENTURY (2d ed. 2012).

² “Brown” is “defined as the broader Latin American diaspora and recognizes the political consequences of anti-terrorism agendas on people of Middle Eastern, South Asian, Arabic ancestry, or Muslim faith.” Chu, Pezzella, and Evans, *supra* note 8; ROBERTS, *supra* note 1.

saw a significant and unprecedented surge in use under the previous administration of former-Mayor Michael Bloomberg. As explained below, the policy proved to be a massive failure in terms of its own stated purpose – to reduce crime. In addition, this policy is responsible for widespread, lasting trauma to all those exposed to it. As reported by the *New York Times*, “we now know that students heavily exposed to Stop-and-Frisk were [more likely to struggle in school](#), that young men were more likely to [experience symptoms of anxiety and depression](#), that this exposure fostered [cynicism in policing and government writ large](#), and that it made residents [more likely to retreat from civic life](#).”³ This is to say nothing of all individuals, mainly Black and Brown young men, who were wrongfully arrested during this era and forced to endure the oppressive force of our criminal legal system.

While the NYPD has ostensibly curbed its SQF practices in light of enormous public outrage, heightened media scrutiny, a landmark federal lawsuit, and new legally required oversight, much work remains to be done in terms of transparency and accountability. Therefore, we urge the City Council to pass each of the bills proposed in today’s hearing in order to fully capture the extent of our police’s street encounters and begin to hold the Department accountable for its activities.

III. Legal Authority to Stop and Search Civilians

New York State allows law enforcement to stop and search individuals on a limited basis according to clearly circumscribed parameters delineated by both statute and caselaw. In *Terry v. Ohio*⁴, the United States Supreme Court held that police officers must “be able to articulate reasonable suspicion of ongoing, past, or future criminal behavior to initiate a stop.”⁵ Applying New York state constitutional law, *People v. DeBour*⁶ outlined four levels of permissible street encounters. In order to approach an individual and request information from them, a police officer must have an “objective credible reason.” To initiate a stop to ask more pointed or accusatory questions, an officer must possess “a founded suspicion that criminal activity is afoot.” A level 3 encounter, AKA a “*Terry* stop,” is a stop that involves a frisk or pat down, and this requires reasonable that a crime has been committed and the person stopped has committed it. The final level of police intrusion, an arrest, requires an officer to possess probable cause.⁷ In 2020, the Second Circuit of the United States Appeals Court has held that when the reasonable suspicion at the street encounter is no longer present, then the individual must be released and “the police may not continue to detain an individual for the purpose of determining whether there are any outstanding warrants.”⁸

Our Criminal Procedure Law codifies these constitutional tenets. Section 140.50 of the CPL informs that a police officer may stop a person where “he reasonably suspects that such person is committing, has committed or is about to commit either (a) felony or (b) a misdemeanor... and

³ Emily Badger, *The Lasting Effects of Stop-and-Frisk in Bloomberg’s New York*, *New York Times*, March 2, 2020, <https://www.nytimes.com/2020/03/02/upshot/stop-and-frisk-bloomberg.html>.

⁴ *Terry v. Ohio*, 392 U.S. 1 (1968).

⁵ *Id.*

⁶ *People v. DeBour*, 40 N.Y.2d 210 (1976).

⁷ *Id.*

⁸ *United States v. Walker*, 965 F.3d 180 (2020); Barry Kamins, *Major Reform in Street Encounters Enacted by Police Department*, ALM, Feb. 6, 2023, <https://www.law.com/newyorklawjournal/2023/02/06/major-reform-in-street-encounters-enacted-by-police-department/?slreturn=20230219114505> (last visited May 19, 2023).

may demand of him his name, address and an explanation of his conduct.”⁹ Further, a police officer may frisk an individual when he “reasonably suspects that he is in danger of physical injury” and “may search such person for a deadly weapon or any instrument, article or substance readily capable of causing serious physical injury.”¹⁰

a. Background on the Spike in Stop, Question & Frisk Usage in NYC

In the City of New York, the practice of Stop, Question and Frisk (SQF) has been disproportionately used against Black and Brown people. The increasing usage of SQF by the New York Police Department (NYPD) started in the 1990s and continues well into the 21st century.¹¹ The practice of SQF grew to millions of stops “as a result of increased pressure on officers to meet their CompStat mandated quotas and the growing overall acceptance of stop and frisk as a common police practice.”¹² Certainly no other city in the world used SQF as comprehensively as the NYPD with five million stops recorded between the years 2004 and 2013.¹³

b. Inefficiency and Ineffectiveness of SQF

With millions of stops across more than a decade, one would expect research examining the efficiency and efficacy of the policy would show that SQF worked – the belief being that the dual aims of crime control and deterrence were met. But the opposite has shown to be true: high incidence rates of SQF had a low rate of return.¹⁴ Low arrest rates showed that *Terry* stops resulted in nine out of ten innocent people being detained and frisked. The policy also failed to reduce crime.¹⁵ While New York City did see a decline in crime during the implementation and continued use of SQF, importantly, studies do not support the connection between these two phenomena.¹⁶

c. Social Costs: Racial Discriminatory Use of SQF

Laws and policies are not applied equally. Studies have consistently shown that SQF has been applied inequitably and disproportionately based on a person’s race, ethnicity, and to a lesser extent, gender. The brunt of this disproportionate application has been borne by Black and brown New Yorkers.¹⁷ For example, in a study looking at race and non-weapon force against detained persons who were deemed non-compliant to police commands, people who are Black were 81% more likely to have non-weapon force used against them than people identified as White. Further, people who are Hispanic are 105% more likely to have non-weapon force used against them than

⁹ New York Criminal Procedure Law (C.P.L.) § 140.50 (2010).

¹⁰ *Id.*

¹¹ Henry F Fradella, Weston J Morrow & Michael D White, *An Empirical Analysis of the Racial/Ethnic and Sex Differences in NYPD Stop-and-Frisk Practices*, 21 *NEV. L.J.* 1151 (2021).

¹² David Clark, “*Stop and Frisk*” Under *Floyd v. City of New York: The Difficulty of Proving a Fourteenth Amendment Violation*, 25 *GEO. MASON U. CIV. RTS. L.J.* 341 (2015).

¹³ Fradella, Morrow, and White, *supra* note 10.

¹⁴ *Id.*, at 1167

¹⁵ Richard Rosenfeld & Robert Fornango, *The Relationship Between Crime and Stop, Question, and Frisk Rates in New York City Neighborhoods*, 34 *JUSTICE QUARTERLY* 931, 933 (2017).

¹⁶ Fradella, Morrow, and White, at 1170, *supra* note 10.

¹⁷ *Id.*

non-compliant/aggressive White suspects.¹⁸ Additionally, studies have shown that Black and Latino men are more likely to experience force than White men of any size category; and heavy and tall men are more likely to experience force by police than non-tall or heavy men.¹⁹

Use of force by law enforcement agents can have long-lasting effects. Looking at areas where SQF was assertively implemented, studies have found that those subjected to SQF have higher negative mental health outcomes, including psychological distress, feelings of nervousness, and feelings of worthlessness.²⁰ Additionally, trauma and anxiety present with higher frequency of SQF stops.²¹ The deleterious effects of having force used against an individual, being more likely to be stopped based solely on race/ethnicity, initiates a cascade of psychological symptoms, and, as a result, the unjust/unfair policy application has contributed to the current state of fragmented police/community relations.

IV. *Floyd v. City of New York*

The watershed case of *Floyd v City of New York*²² arose out of the discriminatory applications of SQF on people of color. Namely, of the over four million stops conducted between 2004 and 2012, over half of the stops were of Black people, and almost a third were of Hispanic people; only 10% were of White people.²³

In *Floyd*, the Southern District of New York held that:

The right to physical liberty has long been at the core of our nation’s commitment to respecting the autonomy and dignity of each person: No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of the law.²⁴

Further, the *Floyd* court reiterated the standards regarding *Terry* stops that must be followed. Specifically:

[I]n order to conduct a stop, an officer must have *individualized*, reasonable suspicion that the person stopped has committed, is committing, or is about to commit a crime. The officer must be able to articulate facts establishing a minimal

¹⁸ Chelsea Farrell, *Use of Force During Stop and Frisks: Examining the Role of Suspect Demeanor and Race*, 82 J. OF CRIM. JUSTICE 1 (2022).

¹⁹ Adrienne N. Milner, Brandon J. George & David B. Allison, *Black and Hispanic Men Perceived to Be Large Are at Increased Risk for Police Frisk, Search, and Force*, 11 PLOS ONE 1 (2016).

²⁰ Fradella, Morrow, and White, *supra* note 10., at 1172; Abigail A. Sewell & Kevin A. Jefferson, *Collateral Damage: The Health Effects of Invasive Police Encounters in New York City*, 93 J URBAN HEALTH 42 (2016).

²¹ Sewell and Jefferson, at 43, *supra* note 19.

²² *Id.*

²³ Clark, *supra* note 11.

²⁴ *Id.*, at 672 (internal citations omitted).

level of *objective* justification for making the stop, which means more than an inchoate and unparticularized suspicion or hunch.²⁵

Further, the *Floyd* court ruled on the place of race in the determination of street encounters:

[R]acially defined groups may not be targeted for stops in general simply because they appear more frequently in local crime suspect data. Race may only be considered where the stop is based on a specific and reliable suspect description. When an officer carries out a stop based on reasonable suspicion that a person fits such a description, the officer may consider the race of the suspect, just as the officer may consider the suspect’s height or hair color. When a stop is not based on a specific suspect description, however, race may not be either a motivation or a justification for the stop. In particular, officers must cease the targeting of young black and Hispanic males for stops based on the appearance of these groups in crime complaints. It may also be appropriate to conduct training for officers on the effect of unconscious racial bias.²⁶

In addition to recognizing the racial discriminatory practices, *Floyd* mandated the use of body-worn cameras on police officers, the creation of the New York Police Department Officer of the Inspector General and instituted a federal monitor. Since the implementation of these policies and offices, the number of *reported* SQF stops has dropped approximately 98%.²⁷ However, as explained below, because the NYPD’s SQF reporting standards significantly changed in the aftermath of *Floyd*, it is impossible to know the current breadth of all police encounters.

Notably, the reduction in SQF stops did not lead to higher crime rates.²⁸

V. Police Oversight

A number of agencies are involved in New York City’s police oversight. They include: the New York Police Department’s (NYPD) Internal Affairs Bureau (IAB), the Civilian Complaint Review Board (CCRB), the NYPD Office of the Inspector General (OIG), and the federal monitor put in place pursuant to *Floyd v City of New York*.²⁹

²⁵ *Floyd*, *supra* note 21 (italics in original).

²⁶ *Id.*, at 680.

²⁷ Fradella, Morrow, and White, *supra* note 10; John MacDonald & Anthony A. Braga, *Did Post-Floyd et al. Reforms Reduce Racial Disparities in NYPD Stop, Question, and Frisk Practices? An Exploratory Analysis Using External and Internal Benchmarks*, 36 JUSTICE QUARTERLY 954 (2019). Also worth noting: the data collected prior to 2015 in the UF-250 (the SQF form used by the NYPD) is different than the data collected after 2015. Specifically, police officers are explicitly instructed not to collect data on Level 1 or Level 2 stops; this prohibition does not seem to have been in place prior to 2015.

²⁸ *Id.*, at 1174.

²⁹ Greg B. Smith, *New NYPD Inspector General Faces Department Resistant to Recommended Reforms*, THE CITY, Aug. 4, 2022, <https://www.thecity.nyc/2022/8/4/23292414/nypd-inspector-general-charles-guria> (last visited May 19, 2023).

a. New York Police Department’s Internal Affairs Bureau

According to the NYPD IAB website, IAB “is dedicated to reserving integrity, which is critical to the function of the Police Department and fighting corruption within the NYPD...IAB helps to ensure that trust by detecting, investigating, and bringing to justice the small number of New York City police officers and civilians who engage in misconduct and corruption.”³⁰

b. Civilian Complaint Review Board

The CCRB is an agency that is independent of the NYPD, “empowered to receive, investigate, mediate, hear, make findings, and recommend action on complaints against New York City police officers alleging the use of excessive or unnecessary force, abuse of authority, discourtesy, or the use of offensive language.”³¹ The CCRB is staffed by non-law enforcement personnel and forwards its findings to the police commissioner.³² Further, the CCRB Board is comprised of 15 members: five of whom are appointed by the Mayor, five are appointed by the City Council, three are appointed by the NYPD Police Commissioner, one is appointed by the Public Advocate, and the last, the Chair, is appointed by the Mayor with the City Council.³³

c. New York Police Department Office of the Inspector General

The New York Police Department Office of the Inspector General came into creation following the *Floyd v City of New York* case. This watchdog body was designed to create recommendations for the NYPD to implement and address racial discriminatory practices. The first Inspector General (IG) was Philip Eure; he was appointed in March 2014.³⁴ The recently appointed IG is Charles Guria, a former Kings County prosecutor.³⁵

The NYPD-OIG is another agency that is independent of the NYPD. It’s mandate includes “investigating, reviewing, studying, auditing, and making recommendations relating to the operations, policies, programs and practices of the NYPD.”³⁶ NYPD-OIG is part of the New York City Department of Investigations. In addition to its mandate, NYPD-OIG’s mission includes “enhance[ing] the effectiveness of the police department; increase[ing] public safety; protect[ing] civil liberties and civil rights; and increase[ing] the public’s confidence in the police force, thus building stronger police-community relations.”³⁷

Since its inception in 2014, the OIG has found that certain types of enforcement, specifically quality-of-life enforcement, was disproportionately being applied in precincts with a higher population of Black and Hispanic people.³⁸ Disappointingly, the NYPD regularly rejects

³⁰ New York Police Department. Internal Affairs Bureau.

<https://www.nyc.gov/site/nypd/bureaus/investigative/internal-affairs.page>.

³¹ Civilian Complaint Review Board. <https://www.nyc.gov/site/ccrb/about/about.page>.

³² Civilian Complaint Review Board. <https://www.nyc.gov/site/ccrb/about/about.page>.

³³ <https://nyc.gov/site/ccrb/about/the-board.page>

³⁴ Smith, *supra* note 30.

³⁵ *Id.*

³⁶ New York Police Department Office of the Inspector General. <https://www.nyc.gov/site/doi/offices/oignypd.page>.

³⁷ New York Police Department Office of the Inspector General. <https://www.nyc.gov/site/doi/offices/oignypd.page>.

³⁸ Smith, *supra* note 30.

recommendations made by the NYPD-OIG and has consistently done so over the last seven years.³⁹ Of relevance to this testimony, NYPD-OIG has recognized that certain applications of low-level crime law enforcement can have a damaging effect on police/community relations. To that end, the NYPD-OIG has recommended that the NYPD “assess the relative effectiveness” of how they issue summonses in quality-of-life crimes and “demonstrate statistically whether significant relationships exist.” The NYPD has rejected this recommendation.⁴⁰

d. Use of Body-Worn Camera

The use of body-worn cameras (BWC) was mandated pursuant to the decision in *Floyd v City of New York*. The theory behind the implementation of BWC is deterrence; it is believed that officers who are being filmed on the BWC will be deterred from violating the law and departmental policy because they are being recorded.⁴¹ However, research is mixed on its effectiveness. In a pilot study covering over 40 NYPD precincts and almost 4,000 NYPD officers, it was found that the officers who wore BWC had 21% fewer complaints lodged against them than officers who were not outfitted with BWC. However, those officers who had BWC filed almost 40% more SQF reports which involved people of color and did not lead to arrests or summonses. Finally, these stops were “more likely to be rated as not meeting constitutional justifications for stops, frisks, and searches.”⁴²

VI. **More Transparency Is Needed for Better Police Accountability and Bridge-Building in Impacted Communities**

The publication of the SQF data, the implementation of the NYPD-OIG, and the implementation of BWCs have made some progress in making our policing less discriminatory, less abusive, and less traumatizing for communities of color, especially teenagers and young people. But more work must be done. More transparency is necessary. Which is why NYCDS supports each of the proposals being considered today, all of which will be integral for transparency, accountability, and for improved police/community relations. We ask that you pass the following proposals:

- a. The New York City Council Should Pass Int 0386-2022, which would amend the Administrative Code of the City of New York, in relation to requiring the Police Department to submit reports on complaint of police misconduct.

We support this proposal without further comment.

- b. The New York City Council Should Pass Int 0443-2022, which would require the Police Department to provide records of complaints and investigations of bias-based profiling to the City Commission on Human Rights.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Anthony A. Braga, John M. MacDonald & James McCabe, *Body-worn cameras, lawful police stops, and NYPD officer compliance: A cluster randomized controlled trial*, 60 CRIMINOLOGY 124 (2022).

⁴² *Id.*

We support this proposal without further comment.

- c. The New York City Council Should Pass Int 0538-2022, which would require the Police Department to report on instances in which an individual denied an officer consent to search.

We support this proposal without further comment.

- d. The New York City Council Should Pass Int 0585-2022, which would grant access to the Police Department's body-worn camera footage to the Office of the Inspector General and Department of Records and Information Services.

We support this proposal with reservations. While we support increased oversight over NYPD practices, especially street encounters, we are concerned about the privacy of those who are targeted in these encounters and who are therefore featured prominently in these videos. Providing body-worn camera footage to the Department of Records and Information Services has the risk of bypassing and usurping the sealing statutes and further victimize those populations who have historically been disproportionately affected by policing policies. While the other Departments and agencies that are granted access to this footage are subject to public disclosure through FOIL requests, we are concerned that the Department of Records and Information Services may post this footage directly on a public database, thereby subjecting the civilians subject to these police encounters to invasive public exposure. We therefore object to granting access to the Department of Records and Information Services.

- e. The New York City Council Should Pass Int 0586-2022, which would require the Police Department to report on police-civilian investigative encounters, specifically detailing all Level One and Level Two stops.

We support this proposal without further comment.

- f. The New York City Council Should Pass Int 0938-2022, which would require the Police Department to provide the Civilian Complaint Review Board (CCRB) with direct access to the officer body-worn camera footage and to establish related procedures.

We support this proposal without further comment.

- g. The New York City Council Should Pass Int 0944-2023, which would evaluate civil actions alleging improper conduct by the Police Department.

We support this proposal without further comment.

- h. The New York City Council Should Pass Int 0948-2023, which would require the Police Department to report information and data regarding Police Department operations.

We support this proposal without further comment.

VII. Conclusion

More work remains to be done to pursue that aims of transparency and accountability. These proposals are a step in that direction.

Thank you for considering this testimony. Please feel free to contact our office at policy@nycds.org if there are any questions.