

# Black, Brown and Targeted



A Report on Boston Police Department  
Street Encounters from 2007–2010

October 2014



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Staff from the ACLU Foundation of Massachusetts and the national ACLU Racial Justice Program compiled this report.

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Cover photo: Boston resident Ivan Richiez

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## EXECUTIVE SUMMARY

Boston Police Department (BPD) officers have engaged in widespread racially biased “stop-and-frisk” practices, according to a preliminary statistical analysis of four years of BPD police-civilian encounter reports. The findings confirm what many people from communities of color have long suspected: Boston police officers targeted people of color at far greater rates than white people.

In 2010, the BPD secured a researcher to analyze more than 204,000 BPD reports of police-civilian encounters from 2007 to 2010. These reports, known as “Field Interrogation, Observation, Frisk and/or Search”—or “FIOFS Reports,” are made when an officer records having interrogated, observed, stopped, frisked, or searched someone. The researcher’s preliminary analysis of these FIOFS Reports found evidence that Black Bostonians are more likely to be selected for these encounters than otherwise identical white Bostonians.

Most alarmingly, the analysis found that Blacks were subjected to 63% of these encounters, even though they made up just 24% of Boston’s population. The analysis also showed that crime—whether measured by neighborhood crime rates or the arrest records or alleged gang involvement of the civilians subjected to these encounters—does not explain away this racial disparity.

Instead, even after controlling for crime, alleged gang affiliation, and other non-race factors, the number of police-civilian encounters was driven by a neighborhood’s concentration of Black residents: as the Black population increased as a percentage of the total population, so did the number of police encounters. The analysis also found, *after controlling for alleged gang involvement and prior arrest records*, that Blacks were more likely to experience repeat police encounters and to be frisked or searched during an encounter.

This preliminary analysis—which has been shared with the BPD, the American Civil Liberties Union of Massachusetts, and the national ACLU—suggests

that thousands of Black Bostonians were observed, stopped, interrogated, frisked, or searched because of their race. Key preliminary findings, all of which control for non-race factors, include the following:

- Young Black men were more likely than young white men to be targeted for police-civilian encounters such as stops, frisks, searches, observations, and interrogations.
- When police-civilian encounters occurred, young Black men were more likely than young white men to be frisked or searched.
- Young Black men were more likely to be targeted for repeat police-civilian encounters.

The preliminary findings make clear that the BPD has practiced racially discriminatory policing. This practice contradicts the principle of equal protection under the law, which is guaranteed by the Fourteenth Amendment to the U.S. Constitution and Articles 1, 10, and 106 of the Massachusetts Constitution.

The data also show that, for Bostonians of all races, the BPD has failed to ensure that police-civilian encounters comply with constitutional protections against unreasonable searches and seizures. Under the Fourth Amendment to the U.S. Constitution and Article 14 of the Massachusetts Declaration of Rights, police stops are unlawful unless supported by [individualized](#) reasonable suspicion of wrongdoing, and frisks require individualized reasonable suspicion that a person is armed and dangerous. The data, however, show that BPD officers have largely failed to justify their police-civilian encounters with *individualized* suspicion.

Instead, in three-quarters of all FIOFS Reports from 2007-2010, the officer’s stated reason for initiating the encounter was simply “investigate person.” But “investigate person” cannot provide a constitutionally permissible reason for stopping or frisking someone. It only describes what the officer *decided* to do.

Finally, the BPD seems unable to prove that its stop-and-frisk tactics were effective in fighting crime. According to BPD officials, officers did not file FIOFS Reports when encounters resulted in arrest. And, for the 204,000-plus FIOFS Reports that were completed,



only 2.5% indicate that an officer seized weapons, drugs, or other contraband. Despite ACLU requests, the BPD has not disclosed any information showing that it has eradicated racially biased policing, or that it now ensures that its stops and frisks are justified.

The ACLU applauds the BPD for making FIOFS data available to independent researchers, and for permitting the researchers to share their preliminary analysis with our organization, and thereby policy-makers and the public. These disclosures mark an enormous step forward; they present the police, elected officials, and the people of Boston with clear evidence that it is time for the BPD to adopt a new, more effective, and more equitable approach.

We welcome the opportunity to use this new information to work with Boston city leaders, the BPD, and people from affected communities. Together, we can enhance public safety by reducing racial bias in policing and by building trust between Boston communities and the officers who swear an oath to protect and serve them. These are our key recommendations to the Mayor and the BPD:

- Require all officers who engage in police-civilian encounters—including interrogations, stops, frisks, and searches—to use body-worn cameras during every interaction with the public. Also require written or video-recorded consent whenever an officer claims that such an encounter was consensual.
- Provide documentation—i.e., a receipt—to any civilian involved in an interrogation, stop, frisk, or search, whether or not it was consensual.
- Publish electronic data on a quarterly basis about all stops, frisks, non-consensual searches, observations, and consensual interrogations and searches, including a breakdown by race, gender, age, outcome, and the officer's basis for the encounter and action.
- Adopt a bias-free policing policy that addresses obstacles to race-neutral policing—including implicit bias—and revise, provide training on, and regularly publish BPD policies and depart-

ment directives on stops, frisks, searches, and consent.

## I. INTRODUCTION: IVAN'S STORY

Ivan Richiez, a young Black Dominican-American, was robbed at gunpoint in the summer of 2011. Two young men took his wallet and cell phone. One of them pistol-whipped Ivan, smashing his mouth.

Ivan then slowly walked home, down Washington Street and right by the District E-13 Police Station in Boston's Jamaica Plain neighborhood. As Ivan approached the station, bloodied and battered, he thought of the role that police officers had played in his life.



Ivan grew up in the South Street housing projects of Jamaica Plain. His friends and neighbors came from Boston's communities of color: Puerto Ricans, Dominicans, African-Americans, Haitians and others—some citizens and some immigrants. For them, the police were a daily presence.

Ivan experienced his first stop and frisk on a warm fall evening in 2007, when he was 14 years old. He was sitting with some friends on the benches across from his apartment building. A Boston police car, a "blue and white," rolled into the South Street parking lot. Two uniformed officers, both white, jumped out and confronted Ivan and his friends:

"Who are you guys?"

"What are you doing here?"

"Where do you live?"

"What gang are you in?"

The officers then frisked Ivan. They grabbed at his legs, his arms, his torso. One officer reached into Ivan's pockets. But they found nothing on Ivan or his friends.

Ivan describes this treatment as rough, abusive, and lacking any respect. He says that this is common, for himself and his friends. When asked how many times he has been subjected to stops and frisks, Ivan says,

“Many times . . . thirty to forty times. Maybe fifty.”

The night Ivan was robbed, he walked past the police station. In his mind, he says, he paused. He thought, “Should I go inside? Should I tell the cops . . . that I was just robbed at gunpoint?”

He never told the police. He never reported the crime. As a result, the people who robbed him were never caught. Ivan says “What would [the police] have done for me? I don’t trust them after the way they have treated me and my people for so many years.”

## II. POLICING IN BOSTON: FROM “SEARCH ON SIGHT” TO “GETTING POSTED”

The City of Boston has a checkered racial past, and the BPD is no stranger to it. In the late 1980s, the BPD applied a policy of “Search on Sight” to anyone allegedly “associated with a gang” in Boston’s predominantly-Black Roxbury neighborhood. This practice subjected people to humiliating searches based on where they lived and the color of their skin. As a [Superior Court judge](#) recognized, illegal searches in Roxbury were not just tolerated by the BPD; they were “applauded.”

Thankfully, the BPD abandoned Search on Sight by the early 1990s. But stories like Ivan’s are common. These stories suggest, and a preliminary statistical analysis now shows, that the BPD still disproportionately targets Black men for stops, frisks, and searches—even when controlling for the alleged gang affiliation and past criminal histories of people subject to these encounters.

Similar experiences in other cities, from New York City to Newark to Los Angeles, reflect this trend:

police departments have pledged to “get tough” on crime by targeting “high-crime” areas. But instead, police officers have gotten tough on people of color by conducting high numbers of humiliating and stigmatizing stops, frisks, and searches in their neighborhoods.

This is the problem that has become known as Stop and Frisk.

The United States Supreme Court first authorized the law enforcement technique of “stop and frisk” in [Terry v. Ohio](#), a 1968 case involving a group of men who were casing a jewelry store for a robbery. The Court permitted police officers to conduct investigatory stops and protective frisks to protect officer safety and to investigate possible crimes. But a stop or frisk cannot be based on a mere hunch, and it cannot rely *at all* on real or perceived race, ethnicity or national origin:

- To “stop” someone, a police officer must have individualized and objective reasonable suspicion that the person has committed, is committing, or is about to commit a crime.
- To “frisk” someone, which is a pat-down of a person’s outer clothing, an officer must have reasonable suspicion that a lawfully stopped person is armed and dangerous. A frisk is not a full-blown search for evidence; it may be used only to seek weapons.

BPD officers are supposed to complete “2487 Forms” following encounters with civilians. From 2007 to 2010, the forms were called “Field Interrogation, Observation, Frisk, and/or Search” or “FIOFS” Reports (though, as of 2011, they were renamed “Field Interaction/Observation/Encounter” or “FIOE” Reports). At the time, BPD Rule 323 required officers to complete these reports after “observ[ing], detain[ing], or interrogat[ing] a person suspected of unlawful design,” after “frisk[ing] or search[ing] an individual during a stop,” and after searching vehicles.

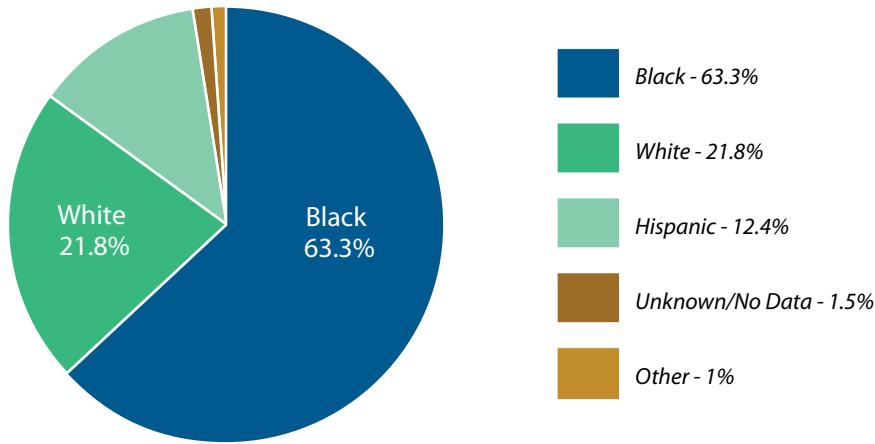
BPD officers refer to these encounters as “FIOs.” But

**The bottom line: the BPD unfairly targets Black people because of their race.**

### Who's Stopped and Who's Not

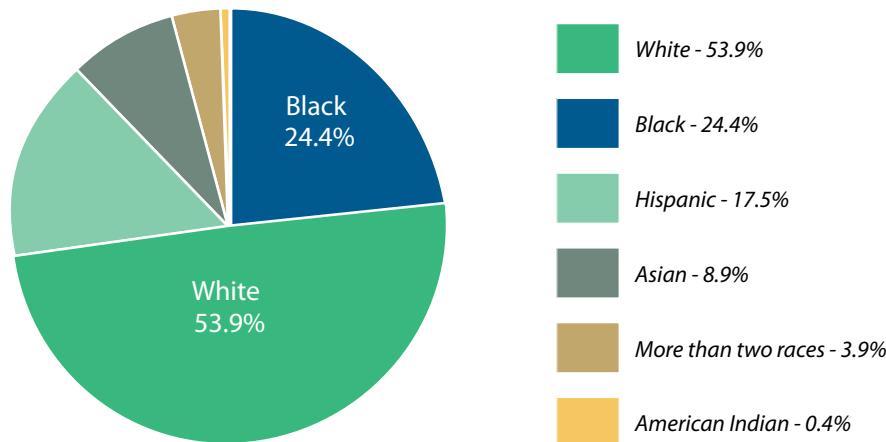
#### Boston Police-Civilian Encounters

Blacks accounted for more than 3 out of 5 FIOFS (Field Interrogation, Observation, Frisk and/or Search) in 2007-2010 but represent less than 1 of 4 people in Boston.



#### Boston Population

2010 U.S. Census data



aclum.org/stopandfrisk

2007 and 2010.

The analysis is clear: from 2007 to 2010, Boston had a serious stop-and-frisk problem. This problem included a pattern of racially targeted, police-civilian encounters and a practice of failing to ensure that stops and frisks were justified.

### HISTORY OF THE BOSTON STREET-ENCOUNTER STUDY

This report is part of the ACLU of Massachusetts's "Justice for All" initiative. In recent years, the ACLU of Massachusetts has received reports that Boston Police Department officers are unfairly targeting people of color for stops and frisks. Together with the national ACLU's Racial Justice Program, and with legal counsel from the law firm WilmerHale, we have sought to examine the BPD's stop-and-frisk policies and practices.

In June 2009, the ACLU of Massachusetts wrote the BPD to propose a study of police-civilian encounters. We requested access to FIOFS data and urged the BPD to "assess the significance of race as a factor in stop[s] and searches." We also asked the BPD whether FIOFS Reports were being used primarily to gather intelligence on civilians, rather than to oversee officers.

on the streets of Boston, it's called "getting posted."

While anecdotal evidence of racial profiling is easy to find, and a 2004 Northeastern University [study](#) found evidence of racial bias in BPD *traffic stops*, the public has never been shown empirical data about *street encounters* between Boston police officers and pedestrians. In March 2014, however, researchers presented to the BPD and the ACLU a preliminary analysis of data from over 204,000 FIOFS Reports of police-civilian encounters that occurred between

We were then told that we would be charged \$112,000 simply to obtain redacted FIOFS Reports from 2007-2009. Unable to pay that amount, we considered other means—including litigation—of making these vital public records available to policy-makers and the public.

But instead of going to court, in 2010 the ACLU of Massachusetts reached an agreement with the BPD. The agreement provided that then-BPD Policy Advisor Anthony Braga, a professor in the School of Criminal

Justice at Rutgers University, would work with the BPD to “code” the FIOFS Reports into an analyzable form. Dr. Braga agreed that he would then consult with independent scholars, including one suggested by the ACLU of Massachusetts, to analyze the data.

The stated research goal was to study: (1) the extent to which police officers documented stops, frisks, and searches in FIOFS Reports; (2) the nature and scope of any supervisory review of these reports; (3) the impact, if any, of race on decisions to stop or search; and (4) the incidence of stops and searches at different times and locations in Boston. Dr. Braga predicted that the study would be completed by the summer of 2012.

However, the study is still ongoing as of the date of this report, and the BPD has not disclosed any of the underlying data. Instead, on two occasions, some of the data has been *described*.

First, in June 2012, Dr. Braga told the BPD and the ACLU of Massachusetts that the proportion of FIOFS Reports involving Black subjects (63.3%) far exceeded the proportion of Black residents in Boston (24.4%). Later, in March 2014, Dr. Braga presented a preliminary analysis of the FIOFS Reports to the BPD, the ACLU of Massachusetts, the ACLU, and WilmerHale. He revealed racial disparities that persisted even after controlling for crime and other non-race factors, and he said that a full written analysis would be completed by June 2014.

The analysis is not yet complete. However, we have no reason to believe that the final analysis will contradict the key preliminary findings presented in June 2012 and March 2014.



This report addresses those key findings, while understanding that new information may still come to light. The preliminary findings, combined with discussions we have held with community members, leaders, and activists—some of whom are pictured above—make clear that now is the time for a meaningful public conversation about reforming stop-and-frisk practices in Boston.

### III. RACIAL BIAS IN THE BPD’S STOP-AND-FRISK PRACTICES

When police officers use race as a factor in stopping or frisking people, they engage in [racial profiling](#)



## STOP AND FRISK IN BOSTON'S LATINO COMMUNITIES

Why does this report focus on the impact of the BPD's stop-and-frisk tactics on Black Bostonians, rather than both Blacks and Latinos?

The answer relates to the BPD's core data problems. The BPD's data likely reflects an under-identification of Latinos. When reporting a police-civilian encounter, officers must identify the subject as American Indian, Asian, Black, Hispanic, or white. These limited categories fail to capture the complexity of the Latino community, where often racial and ethnic categories are not mutually exclusive. Officers may incorrectly report a Latino to be "white." And like Ivan, some people in Boston's Latino communities identify by both their race and ethnicity.

The likely under-reporting of police encounters with Latinos makes it difficult to assess the impact of the BPD's stop-and-frisk practices on Latinos.

But the preliminary analysis did find that a neighborhood's concentration of "Hispanic" residents, like the concentration of Black residents, drives increased BPD encounters. The BPD's stop-and-frisk practices should be reformed to address this problem.

Thus, in formulating recommendations below, we propose reforms that would benefit all communities of color. We also call upon the BPD to revise FIOFS Report forms to accommodate more complex racial and ethnic designations, and to implement precinct-level cultural competency training in the histories and cultures of local immigrant and ethnic communities.

prohibited by the Fourteenth Amendment to the U.S. Constitution and Articles 1, 10, and 106 of the Massachusetts Constitution. Preliminary analysis of 204,739 FIOFS Reports confirms what many in Boston's communities of color have long suspected: the BPD has not only stopped, frisked, observed, and searched them at far greater rates than whites; it has targeted

thousands of Black people for these encounters at least in part *because of their race*.<sup>1</sup>

## A. THE BPD'S FIOFS REPORTS REFLECT WIDESPREAD TARGETING OF BLACKS

Nearly two-thirds of BPD police-civilian encounters target Black Bostonians. While the 2010 census reveals that Blacks made up 24.4% of Boston's population, they comprised 63.3% of police-civilian encounters from 2007 to 2010—well over double the rate suggested by population figures. Over a four-year period, Black Bostonians were subjected to roughly 129,600 of the 204,739 recorded police-civilian encounters.

The BPD's practices between 2007 and 2010 were arguably even more racially skewed than the New York City Police Department's (NYPD) tactics ruled unconstitutional in 2013 by a federal court. Boston and New York City have comparable Black populations; the 2010 census found that 24.4% of Bostonians and 23% of New Yorkers were Black. However, Blacks accounted for 52% of NYPD stops between 2004 and 2012—a shocking figure, but still far lower than the 63.3% of BPD encounters that targeted Blacks.<sup>2</sup>

## B. RACIAL BIAS PERSISTS EVEN AFTER ACCOUNTING FOR CRIME

The research team has studied whether factors other than race explain why, from 2007 to 2010, the BPD targeted Blacks for nearly two-thirds of all police-civilian encounters. Was it simply because Blacks are more likely than whites to commit crimes or live in rough neighborhoods?

The answer, it turns out, is no.

1 FIOFS Reports are not limited to stops and frisks; they also document interrogations, searches, and mere observations. In March 2014, BPD officials acknowledged that officers might have failed to comply uniformly with the rule that they report all stops and frisks in FIOFS Reports from 2007 to 2010, and they continue to fail to do so. Nevertheless, FIOFS Reports provide the best data about stops and frisks in Boston.

2 *Floyd v. City of New York*, 959 F. Supp. 2d 540, 558-59 (S.D.N.Y. 2013), appeal dismissed (Sept. 25, 2013).

The research team conducted several analyses to measure the effect of race on these encounters. Their preliminary findings confirm that Blacks were more likely to experience both stops and searches—even after controlling for non-race factors such as neighborhood crime rates or the past arrest records and alleged gang affiliation of the civilians subjected to police encounters.

These preliminary findings include the following evidence of race-based policing:

- Black race is a significant factor driving BPD police-civilian encounters.

The research team determined that a neighborhood’s concentration of Black residents drives the rate of police-civilian encounters.

What does this mean? It means that given two otherwise identical Boston neighborhoods—with identical crime rates and total populations—BPD initiated more street encounters in the neighborhood with more Black residents. Between 2007 and 2010,

the mere presence of Black residents increased the numbers of police-civilian encounters. And higher concentrations of Black residents yielded even more police-civilian encounters (see chart on page 8). This finding provides important—and disturbing—evidence that race drove, at least in part, BPD encounters.

- A person’s Black race substantially increases the likelihood that the BPD will target him for more than one encounter.

The research team also reported that, among people who experienced police encounters, Blacks were more likely to be targeted for multiple encounters.

What does this mean? It means that, once targeted for an encounter, a Black person was at a higher risk than an otherwise identical white person of being targeted again. The researchers found that

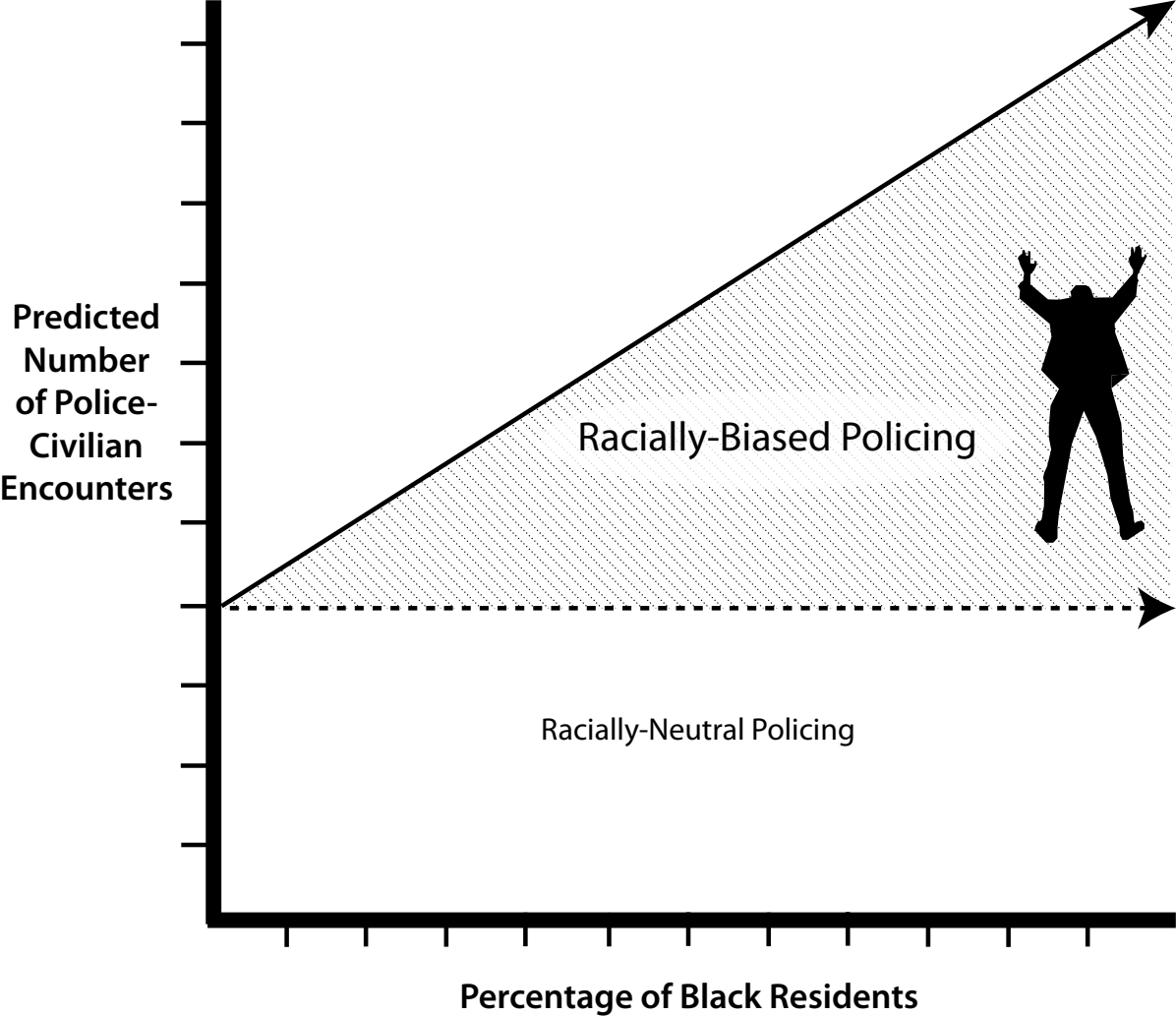
| BOSTON POLICE DEPARTMENT                                      |      |                                 |       |                             |                          |                             |              |                             |  |  |  |
|---|------|---------------------------------|-------|-----------------------------|--------------------------|-----------------------------|--------------|-----------------------------|--|--|--|
| FIELD INTERROGATION; OBSERVATION; FRISK AND/OR SEARCH         |      |                                 |       |                             |                          |                             |              |                             |  |  |  |
| Check whether: Interrogated    Observed    Frisked    Search: |      |                                 |       |                             |                          |                             |              |                             |  |  |  |
| Terrorism: YES    NO  |      |                                 |       |                             |                          |                             |              |                             |  |  |  |
| District  |      |                                 | Date  |                             |                          | Time                        |              |                             |  |  |  |
| Name (print) Last   |      | First                           |       |                             | Initial                  |                             |              |                             |  |  |  |
| Address   |      |                                 |       |                             |                          |                             |              |                             |  |  |  |
| Alias/Nickname  |      |                                 |       |                             |                          | Location                    |              |                             |  |  |  |
| Social Security #   |      |                                 |       | Operator's License #        |                          |                             |              | State                       |  |  |  |
| Sex   | Race | Ethnicity                       | Age   | D.O.B.                      |                          |                             | Prior Record |                             |  |  |  |
| YES   |      | NO                              |       |                             |                          |                             |              |                             |  |  |  |
| Hgt.  | Wgt. | Comp.                           | Eyes  | Hair                        | Glasses                  |                             |              |                             |  |  |  |
| Scars - Deformities - Peculiarities - Facial Hair             |      |                                 |       |                             |                          |                             |              |                             |  |  |  |
| Describe Clothing   |      |                                 |       |                             |                          |                             |              |                             |  |  |  |
| Veh. Reg.   |      | State                           | Make  | Year                        | Body                     | Color                       |              |                             |  |  |  |
| Pass. or Driver   |      | Occupation                      |       |                             | Where employed or school |                             |              |                             |  |  |  |
| Search  |      |                                 | Basis |                             |                          |                             |              |                             |  |  |  |
| <input type="checkbox"/> Vehicle                              |      | <input type="checkbox"/> Person |       | <input type="checkbox"/> PC |                          | <input type="checkbox"/> RS |              | <input type="checkbox"/> CS |  |  |  |
| Reasons for Original Stop:                                    |      |                                 |       |                             |                          |                             |              |                             |  |  |  |
| Reasons for Interrogation, Observation, Frisk or Search       |      |                                 |       |                             |                          |                             |              |                             |  |  |  |
| In company with (name & address - surname first)              |      |                                 |       |                             |                          |                             |              |                             |  |  |  |
| 1.  |      |                                 |       |                             |                          |                             |              |                             |  |  |  |
| 2.  |      |                                 |       |                             |                          |                             |              |                             |  |  |  |
| Outcome: Seizure  |      |                                 | FIO:  |                             |                          | Other:                      |              |                             |  |  |  |
| Officer Reporting   |      |                                 |       | Dist./Unit                  |                          |                             |              | ID #                        |  |  |  |
| Det. Supervisor/Supervisor                                    |      |                                 |       | ID #                        |                          |                             |              | Date                        |  |  |  |
| ROUTING: Supervisor → Detective Commander → Intelligence      |      |                                 |       |                             |                          |                             |              |                             |  |  |  |
| BPD Form 2487 7-03  |      |                                 |       |                             |                          |                             |              |                             |  |  |  |

63% "Black"

75% Investigate Person

Only 2.5% of the police-civilian encounters studied were reported to involve the seizure of items. BPD has not shown that any of the 200K+ encounters resulted in arrest.

# Approximate Relationship between the Percentage of Black Residents and the Predicted Number of Police-Civilian Encounters in Boston Neighborhoods (Controlling for Other Variables)



[aclum.org/stopandfrisk](http://aclum.org/stopandfrisk)

although prior arrest history and gang membership also increased a person’s chance of being targeted for a repeat police-civilian encounter, those factors did not explain away the role of Black race. Thus, Blacks targeted for police-civilian encounters are more likely to experience not just one, but repeat police-civilian encounters *because of their race*.

- A person’s Black race substantially increases the likelihood that the BPD will target him for a frisk or search.

The research team also reported that among Blacks

and whites who experienced police encounters, Blacks were more likely than whites to be frisked or searched.

What does this mean? It means that, if a Black person and an otherwise identical white person were each targeted for an encounter, the Black person was at a higher risk of having the police elevate the encounter to a physical frisk or search. Once again, the researchers controlled for a person’s prior arrest history, alleged gang membership, and other factors.

Thus, after the start of a police-civilian encounter, Blacks were more likely to be frisked or searched *because of their race*.

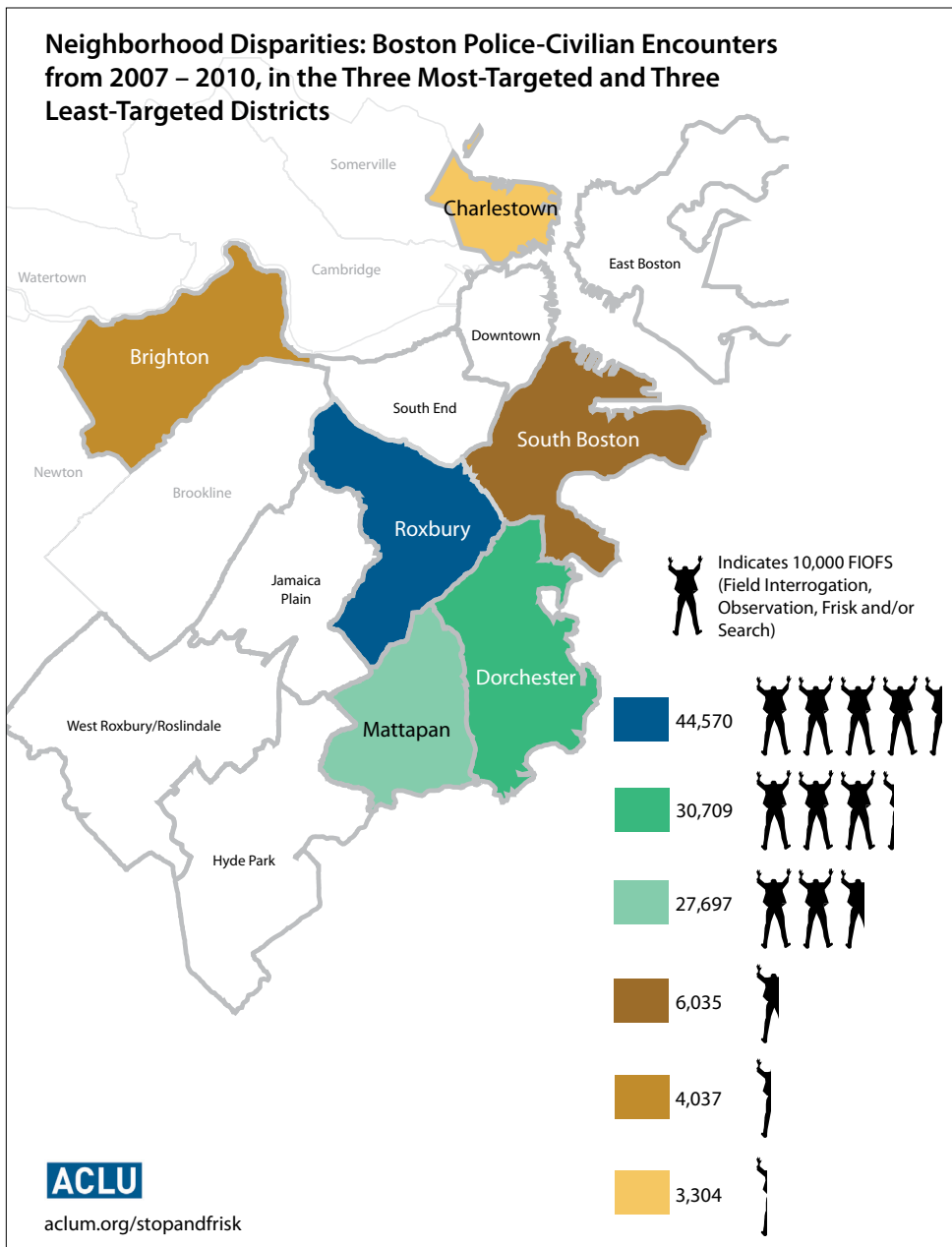
The bottom line: the BPD unfairly targets Black people because of their race, separate and apart from efforts to target neighborhoods or people associated with crime.

**C. IF ANYTHING, THESE FINDINGS UNDERESTIMATE BOSTON’S PROBLEM OF RACIALLY BIASED POLICING**

The preliminary research might actually underestimate the role of racial bias in the BPD’s policing practices. Why? In assessing the role of crime in driving police-civilian encounters, the research team relied on the BPD’s own data and reporting practices. For three reasons, those practices might undercount the number of Blacks who were targeted because of their race.

- BPD records appear to omit some encounters with people who lack arrest records or gang affiliations.

BPD rules require an officer to complete a FIOFS Report even if





the officer stopped someone who had no arrest record, gang affiliation, drugs, or weapons. But Bostonians report that this does not always happen.

Ivan is one of those Bostonians. He has been stopped and frisked many times, but the officers often did not even take down his name, much less fill out a FIOFS Report. As a result, FIOFS Reports may well underestimate the number of police-civilian encounters that involved people of color or unaffiliated with gangs or lacking prior arrest records.

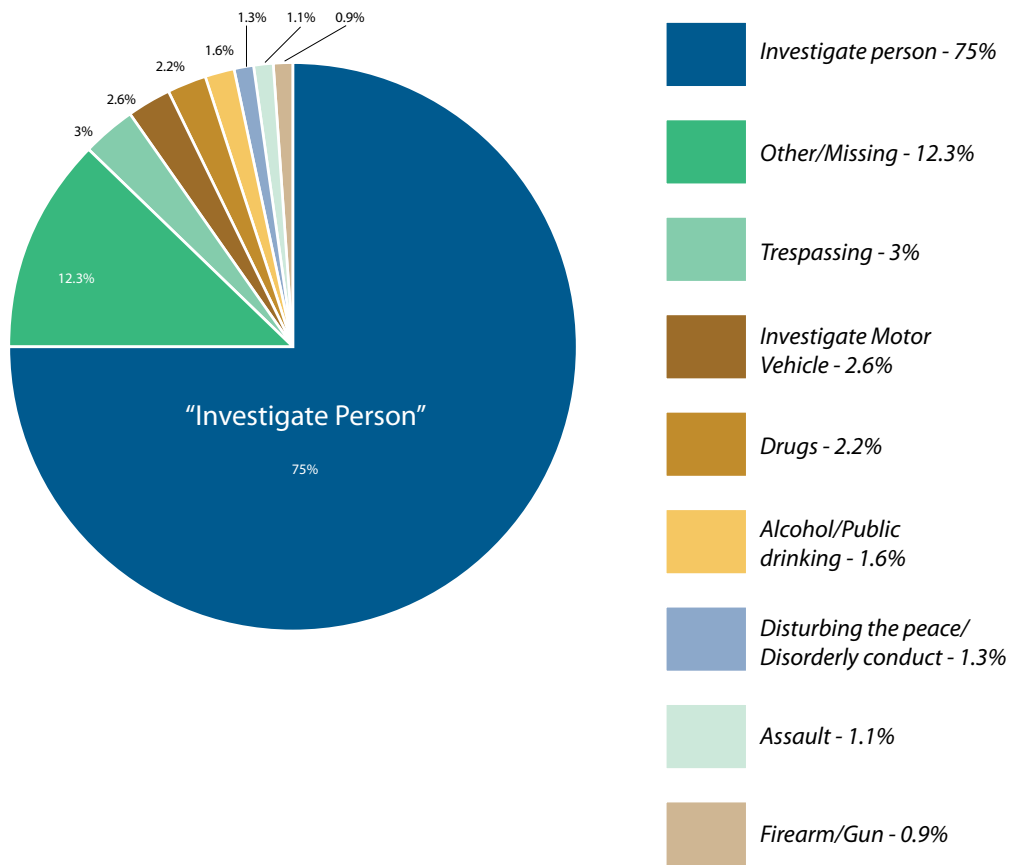
- BPD records may overstate the involvement of Black people in gangs.

The BPD collects and retains the names of alleged gang members in a BPD gang database, but has declined to reveal how it decides whether to include or remove a name from the list. As Ivan’s experience demonstrates, young Black men can be labeled gang members even when they are not. And there is no way for them to correct that error.

- A person’s prior arrest record, by itself, cannot justify a stop or frisk.

A person’s arrest record reflects *past* conduct; it does not justify stopping and frisking that person whenever the police want. In fact, BPD officials have conceded that *none* of the encounters described in the FIOFS Reports involved an arrest. Whatever the subjects of these Reports did in the past, they were evidently *not* committing crimes when the police initi-

**Reasons for Interrogation Observation, Frisk, or Search from 2007 – 2010**  
 “Investigate Person” was the most common reason given, yet it doesn’t reference a crime.



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[aclum.org/stopandfrisk](http://aclum.org/stopandfrisk)

ated these encounters.

And prior arrests might have been due to racially biased policing. For example, the FBI Uniform Crime Reporting Program shows that, in 2010, Black people in Suffolk County were 4.8 times more likely than whites to be arrested for marijuana possession, even though studies confirm that Blacks and whites use marijuana at roughly the same rates.<sup>3</sup>

3 ACLU, *The War on Marijuana in Black and White*, 156; see Results from the 2011 National Survey on Drug Use and Health: Detailed Tables, Table 1.24B (Marijuana Use in Lifetime, Past Year, and Past Month among Persons Aged 12 or Older, by Demographic Characteristics: Percentages, 2010 and 2011) (2012), available [here](#).

## IV. THE BPD'S INABILITY TO SHOW THAT IT COMPLIES WITH CONSTITUTIONAL GUARANTEES AGAINST UNREASONABLE SEARCHES AND SEIZURES

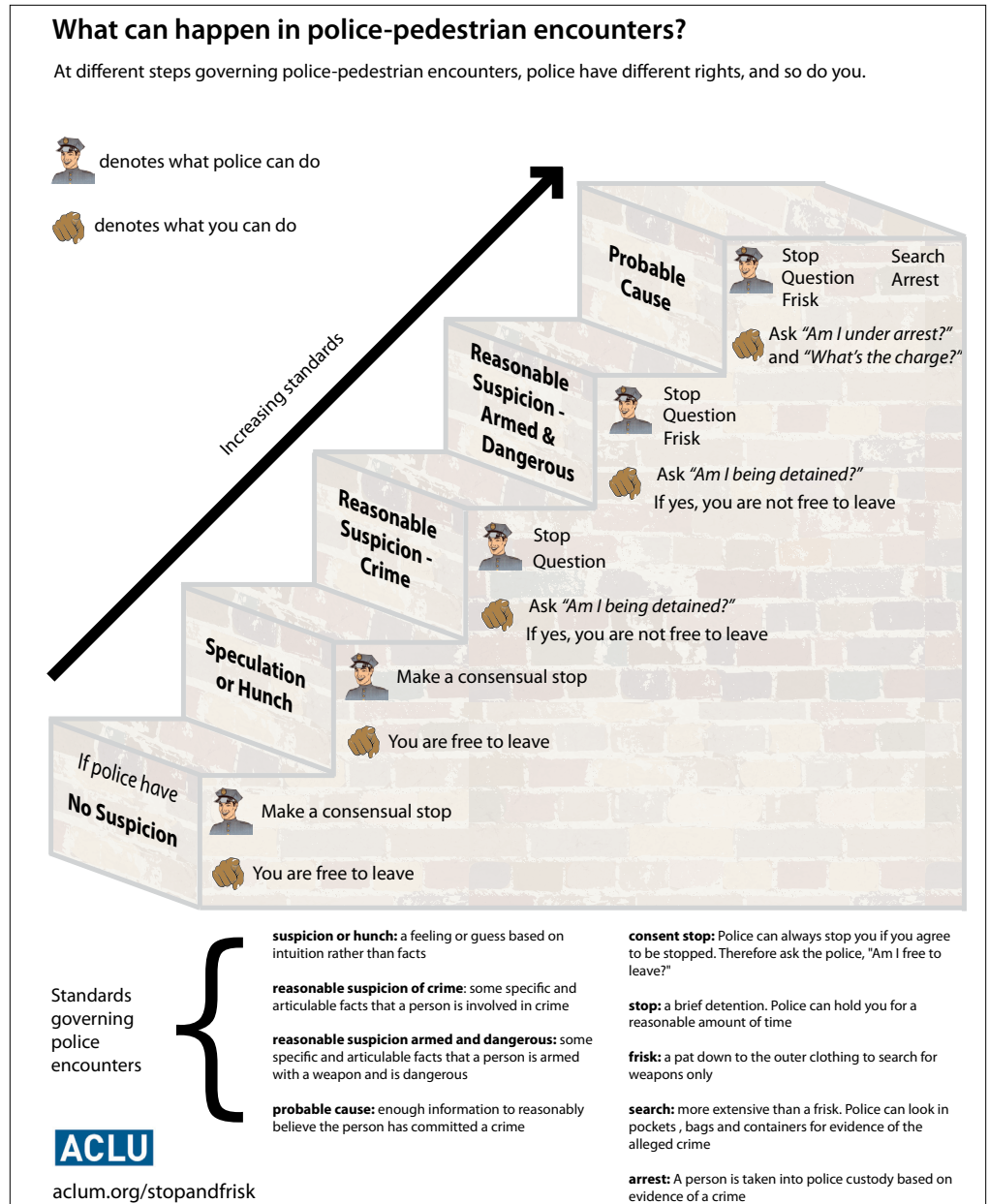
The Fourth Amendment to the U.S. Constitution and Article 14 of the Massachusetts Declaration of Rights prohibit unreasonable intrusions on our bodies and possessions by the government. The preliminary analysis of 204,739 FIOFS Reports demonstrates that the BPD has not ensured compliance with this prohibition.

### A. BPD OFFICERS HAVE NOT PROVIDED LEGITIMATE REASONS FOR STOPS, FRISKS, AND SEARCHES

In 75% of all FIOFS Reports, BPD officers cited “investigate person” as the reason for the interrogation, observation, frisk, or search. But that phrase merely indicates *that* the patrol officer initiated a stop, frisk, or search. It cannot explain, either to the public or to a BPD supervisor, *why* the officer did so.

The U.S. and Massachusetts Constitutions require more than that. Officers must have legitimate reasons for initiating stops and frisks. To initiate a stop, an officer must have reasonable, articulable suspicion of criminal activity. To conduct a frisk, the officer must have reasonable articulable suspicion that the individual is armed and dangerous.

Under these standards, an “investigate person”



rationale cannot justify a single stop or frisk. It is no different from writing, “Because I said so.”

In fact, “investigate person” is worse than the “furtive movement” rationale that was used by NYPD officers in 51.3% of their stops and frisks. A federal court ruled that “furtive movement” is so vague that it fails to justify a stop or frisk, without more specific information.<sup>4</sup>

Yet the “furtive movement” rationale at least attempts to explain what someone did to attract suspicion; the “investigate person” rationale does not.

<sup>4</sup> *Floyd*, 959 F. Supp. 2d at 559.

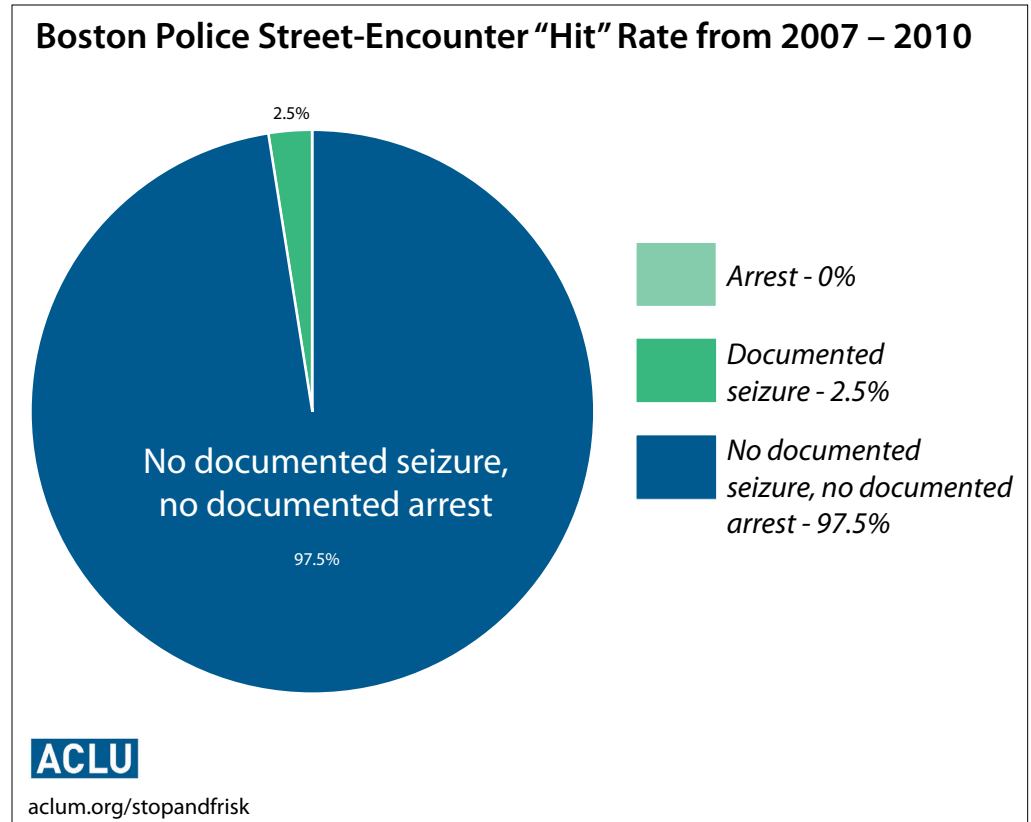
Because the “investigate person” rationale is both so pervasive and so deficient, the BPD cannot determine whether its officers regularly stopped and frisked people for good reasons or bad. Thus, this rationale undermines supervision, enabling BPD officers to avoid both individual and collective accountability to the Department, the people, and the communities that they are supposed to protect and serve.

**B. THE BPD HAS NOT SHOWN THAT ITS STOPS AND FRISKS PRODUCED RESULTS**

Beyond being unable to prove that it has complied with constitutional guarantees against unreasonable searches and seizures, the BPD cannot show that its stop-and-frisk practices helped to fight crime. BPD officials have acknowledged to the ACLU that, despite a rule requiring officers to complete FIOFS Reports for every encounter, officers did not complete Reports for anyone who was arrested. Because it did not track the entire universe of stops and frisks—i.e., those that led to arrest and those that did not—the BPD cannot say what proportion of stops and frisks resulted in arrest.

But the FIOFS Reports do reveal certain facts. They show that, in a four-year span, the BPD targeted Blacks for roughly 129,600 encounters—63.3% of 204,739—that did *not* result in arrest.

Moreover, only 2.5% of the FIOFS Reports involved the seizure of contraband or a weapon. So tens of thousands of Black Bostonians were subjected to these encounters despite not being engaged in conduct that a BPD officer deemed worthy of an arrest.



**V. THE EFFECT OF BIASED POLICING ON PEOPLE OF COLOR AND PUBLIC SAFETY**

Policing based on bias and negative stereotypes not only undermines civil liberties, it imperils public safety. The harms caused by biased policing have become apparent in interviews and community meetings that the ACLU of Massachusetts has had with Bostonians of color over the last several months and years. These discussions, some of which are described below, demonstrate that people feel hurt by, and fearful of, the police.

That is hardly surprising. Protests swept the nation in August 2014 following the killing of unarmed teenager Michael Brown by a police officer in Ferguson, Missouri. In Ferguson, [traffic stop data show](#) that police disproportionately target Blacks for stops and searches. Communities of color nationwide have pointed to Ferguson as an example of the counterproductive, stigmatizing, and sometimes dangerous effect of unfairly targeting Blacks for police action. As a federal judge recognized when addressing the NYPD’s

stop-and-frisk program, “*While it is true that any one stop is a limited intrusion in duration and deprivation of liberty, each stop is also a demeaning and humiliating experience. No one should live in fear of being stopped whenever he leaves his home to go about activities of daily life.*”<sup>5</sup>

These words are just as true for Boston as they are for New York. When police officers engage in racially biased actions, they undermine the vital trust between police and the public that is necessary to ensure public safety. As *New York Times* columnist Charles M. Blow has said, fighting crime by treating young Black people with “universal suspicion” is “like burning down a house to rid it of mice.”<sup>6</sup>

#### **A. IMPROPER STOP-AND-FRISK TACTICS HARM BLACK BOSTONIANS**

In interviews and community meetings, young Black Bostonians report feeling scared while walking home or to school because of how the Boston police target and harass them. One young man stated that he does not know why the police regularly stop him when he is not doing anything, and that the police’s behavior toward him and his friends “make people build a type of hatred toward them.” In his view, “We get stopped all the time, but people in the South End get treated differently.”

Another young man noted, “Police think badges give them the power to do whatever they want.” Similarly, Armani W. explained that no matter what he does, how he dresses, or where he goes, he always feels that the police are targeting him. Armani stated, “I’m walking down the street trying to mind my own business and I get stopped. I look like college, but I’m

**I can’t ride my bike down the street to the corner store without worrying that I’ll end up in the back of a cop car.”**  
—Armani W.

still getting stopped. I’m in the newspaper as a neighborhood scholar, and I’m still getting stopped. I can’t ride my bike down the street to the corner store without worrying that I’ll end up in the back of a cop car.”

The BPD’s targeting of Black men and youth for police encounters has caused many

in Boston’s Black communities to feel as though they are living under siege. The BPD’s stop-and-frisk tactics pervade every aspect of daily life, leaving people to feel as though they are criminals and constantly suspect. As one young man explained, “Being stopped affects your sense of home and the image being projected about you. [Stop-and-frisk] marks you and the people who look like you as criminals.”

#### **B. IMPROPER STOP-AND-FRISK TACTICS ERODE TRUST WITH COMMUNITIES OF COLOR**

When people are stopped without any reason, or when they hear that the “reason” is reported as “investigate person,” they begin to believe that the system is not treating them fairly. And, of course, they’re right. These experiences inevitably reduce trust and faith in the police.

One young woman, Yohana B., put the problem this way: “Unless you’re white, this is not a system to protect you. It is not about the rights written down, it’s about what happens.”

Many of Boston’s young men of color believe that when officers look at them, they see only one thing: criminals. Alex P-C., a resident of Boston’s predominantly-Black Roxbury neighborhood, stated, “Stop and frisk really changes how you act; like it really gets to you. It makes you feel like you’re a criminal when you’re not even doing anything wrong.”

When the BPD targets Mattapan, Roxbury, and Dorchester for stops just because of their high concentration of Black residents, communities of color can feel that they are under occupation.

5 *Floyd*, 959 F. Supp. 2d at 557.

6. Charles M. Blow, *The Whole System Failed Trayvon Martin*, *N.Y. Times* (July 15, 2013), <http://www.nytimes.com/2013/07/16/opinion/the-whole-system-failed.html>



Young Bostonians sometimes alter entirely legal behavior just to avoid the police. They do not go to parks and playgrounds, basketball courts and baseball diamonds. They avoid train stations and bus stops, city squares and community festivals.

And, perhaps most worryingly, they avoid the police. Ivan Richiez’s story suggests that victims of crime are less likely to report it if they have personally experienced racially biased policing. That makes all of us much less safe in our communities, in our homes, and on our streets.

Lastly, by selecting Black people for the majority of more than 204,000 police encounters over four years, the BPD has effectively told Black children that we are preparing them to enter a pipeline. That pipeline starts in school, moves to stops and frisks on the streets, and ends with jails and prisons. Stop and Frisk creates a culture that tells our youth, “The place for you is behind bars.”

Martsyl Joseph, a criminal defense attorney in Boston, explains, “[Stop and Frisk] happens so much that kids internalize the view that police have of them—that they are criminals. Among many of the youth with whom I work, being targeted by the police because of the color of their skin has become ‘normal.’ Kids know that even if they’re not doing anything wrong, the police are going to stop them. To Black and Latino kids, that’s just how it goes.”

Joseph further notes that “with racially discriminatory policing being the norm, you have large groups of youth who do not trust the police and who do not want to cooperate with the police. You cannot have productive community policing so long as you keep treating all young Black and Latino people like criminals.”

“Being stopped affects your sense of home and the image being projected about you. [Stop-and-frisk] marks you and the people who look like you as criminals.”

## VI. TIME TO ACT: BRINGING ACCOUNTABILITY, CONSTITUTIONALITY AND TRANSPARENCY TO BOSTON STOP-AND-FRISK PRACTICES

The preliminary analysis of FIOFS Reports from 2007 to 2010 identifies a serious stop-and-frisk problem, with two major dimensions: (1) racially biased policing, including the targeting of Black neighborhoods for police-civilian encounters and of Black people for repeat police-civilian encounters as well as frisks and searches; and (2) a failure to ensure that the BPD’s practices complied with constitutional prohibitions against unreasonable searches and seizures.

How did this happen? And how do we end these practices?

### A. BPD POLICIES ARE INADEQUATE<sup>7</sup>

The BPD’s deficient practices from 2007 to 2010 appear to reflect deficient policies. The BPD has disclosed five policies and training materials from this period, which address stops, frisks, and searches, as well as procedures for completing FIOFS Reports and entering information about civilians into law enforcement databases. None of those materials prohibit racially biased policing or instruct BPD officers on how to ensure that stops, frisks, and searches are not based to *any extent* on race, ethnicity, or national origin, as the law requires.

Nor does it appear that the BPD has imposed significant reforms since hearing, in June 2012 and March 2014, about racial disparities in its police-civilian encounters. The ACLU has asked the BPD to make available all recent policies and training materials on racial

<sup>7</sup> The policies and training materials discussed in this section are available at [https://www.aclum.org/stopandfrisk/policies\\_and\\_training.pdf](https://www.aclum.org/stopandfrisk/policies_and_training.pdf)

profiling and Stop and Frisk, as well as recent data on stop-and-frisk practices. In response, the BPD has indicated that it intends to move away from permitting officers to use “investigate person” as a justification for an encounter. But the BPD has not provided *any* post-2010 policies, training materials, or data geared toward addressing problems with racially biased policing or unjustified stops, frisks, and searches.

Instead, the BPD has produced several other documents. These include a 2014 policy on consensual police-civilian encounters, a training document on constitutional law, and a 2011 revision of Rule 323, which governs the conduct and reporting of encounters with civilians. These documents do not solve the BPD’s stop-and-frisk problems.

For example, the 2011 revision to Rule 323 fails to instruct officers how to ensure that police encounters are not driven by race. It does not prohibit the use of race, ethnicity, or national origin to any degree in justifying a stop, frisk, or search. Nor does it clearly require officers to document all stops, frisks, and searches. Rule 323 also fails to explain that a stop is impermissible unless officers identify specific, articulable evidence supporting individualized suspicion of wrongdoing. And finally, the rule does not identify the proper standard for conducting protective frisks—reasonable suspicion that a person is armed and dangerous—and does not adequately guard against the use of coercion to obtain “consent.”

Similarly, the training document incorrectly states that stops are permitted based on factors such as “time of day” and “furtive gestures.” But those factors, standing alone, do not provide reasonable suspicion for a stop.

With respect to the ACLU’s request for updated *data*, the BPD has reported a 42% drop in the number of police-civilian encounters per year between 2010 and 2013. Although this reduction is commendable, it does not mean that the BPD has ceased disproportionately targeting Boston’s communities of color, or that it has ceased using flimsy justifications to initiate

encounters with civilians.

To the contrary, because the BPD’s post-2010 *policies* evidently do not address the problems identified in June 2012 and March 2014, it is doubtful that those problems have been solved by the BPD’s post-2010 *practices*.

Accordingly, there remains cause for concern that BPD encounters with civilians, even if less frequent, are still deeply flawed. These concerns are reinforced by interviews that the ACLU of Massachusetts has recently conducted in targeted communities. Time and again, people of color in Boston reported that police still target Black youth, not because they are committing crimes, but because of the color of their skin.

We should strive to make Boston a model to which other cities aspire.

## B. THE TIME FOR CHANGE IS NOW

Boston has a new mayor and a new police commissioner. These circumstances present a unique opportunity for Boston to adopt new and better approaches to Stop and Frisk. To transform an environment of discrimination and suspicion into one of trust and cooperation, we urge reforms that promote police Accountability, safeguard Constitutional rights, and create Transparency.

In short, the BPD needs to A.C.T.

### Accountability

The BPD can manage only what it measures. The BPD should implement oversight that can quickly spot, address, and correct unconstitutional policing. After all, the best policies will not lead to improvements in the streets unless the BPD ensures that officers follow them.

- All officers engaged in police-civilian encounters should wear and utilize *body-worn cameras* (BWCs) during every interaction with the public. Likewise, all BPD vehicles used in encounters with civilians should be equipped with *dash-board-mounted cameras* (DMCs).

» Officers should immediately notify people that

they are being recorded by a BWC.

»The BPD should delete BWC or DMC video after two years unless a recording is “flagged” at the subject’s request or because it documents the use of force, or involves an encounter that is the subject of a complaint, or led to a detention or arrest.

»The BPD should permit individuals recorded by BWCs or DMCs to have access to and make copies of those recordings. This same permission should be available to a third party if the subject consents, or to criminal defense lawyers seeking relevant evidence.

- BPD officers should issue *receipts* to anyone who is interrogated, stopped, frisked, or searched.

»The receipt should be issued no matter whether the encounter was consensual, and no matter whether the encounter resulted in an arrest or other legal action.

»The receipt should identify the officer(s) involved, the time and place of the encounter, the legal basis for the encounter, and the means of filing a complaint with the BPD.

»The BPD should *follow up appropriately on all complaints* relating to civilian encounters.

- The BPD should *ensure that all officers complete a FIOFS Report* for every stop, frisk, or search, regardless of whether the subject consented and regardless of the encounter’s outcome.

»Supervisors should be required to promptly review FIOFS Reports and to take corrective action if an officer fails to complete them.

»The BPD should take corrective or disciplinary action if a supervisor fails to conduct complete, thorough, timely, and accurate reviews of the FIOFS Reports.

### Constitutionality

Of course, oversight will not work unless the officers conducting street encounters are actually trained to follow the Constitution. Thus, the BPD should im-

plement policies and training to ensure that officers conduct proper stops, frisks, and searches, without any influence by race, ethnicity, or national origin.

- The BPD should *revise its stop, frisk, and search policies* so that they require officers:
  - »to have individualized, objective reasonable suspicion of specific criminal activity to conduct an investigatory stop;
  - »to have individualized, objective reasonable suspicion that someone stopped is “armed and dangerous” before conducting a protective frisk for weapons;
  - »to never rely in any way on real or perceived race, ethnicity, national origin, religion, gender, gender identity, disability status, or sexual orientation;
  - »to refrain from conducting a consensual encounter, interrogation, frisk, or search until the officer affirmatively informs the individual of his or her right of refusal, and obtains prior written documentation of the subject’s consent; and
  - »to require substantial cadet and in-service training to all sworn officers on all revised FIOFS policies.
- The BPD should *revise its training policies and FIOFS Report form* to ensure that each Report:
  - »identifies the individualized reasonable suspicion that led to the police-civilian encounter and each action taken during the encounter, including any frisks, searches, and uses of force;
  - »cautions officers against using boilerplate language to articulate reasonable suspicion;
  - »documents whether each encounter was consensual and, if so, provides proof that the civilian’s consent was obtained in writing or through video-recording; and
  - »indicates whether the encounter resulted in a summons, arrest, and/or seizure of weapons or contraband.
- The BPD should *implement a bias-free policing policy* that:

- »prohibits using race, ethnicity, national origin, gender, age, religion, sexual orientation, gender identity, or disability status to any extent in initiating an encounter, stop, frisk, or search;
- »requires substantial cadet and in-service training to all sworn officers on bias-free policing; and
- »disciplines officers for violating the policy.

### Transparency

Beyond improving oversight and training, the BPD should work to rebuild trust with communities who have been stigmatized, victimized, and marginalized by the BPD's stop-and-frisk practices. That rebuilding is impossible so long as the BPD's practices and data are secret.

- The BPD should develop and implement *a program to inform Bostonians about their right to a citizen-receipt* following any police-civilian encounter and teaches them how to make police misconduct complaints.
- The BPD should, on a quarterly basis, *analyze and publish data on all consensual or non-consensual stops, frisks, searches, observations, and interviews*. The published data should be broken down by race, gender, age, and the officer's basis for the encounter or action.
- The BPD should annually *publish its FIOFS-related directives and training materials*. And, on a quarterly basis, the BPD should *publish information about civilian complaints*, including how many were received and how they were resolved.

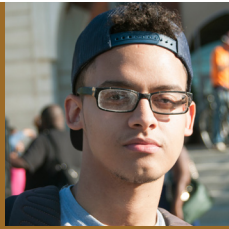
## VII. CONCLUSION

The information in this report places Boston at a crossroads. One road continues with business as usual, which has alienated communities and failed to ensure that police encounters are either just or effective. The other road leads to transparency, police accountability, and respect for the dignity and constitutional rights of all Bostonians.

All of us—the police, Bostonians, community groups, and others—should choose the second road. We should rededicate ourselves to making Boston a place of healthy and safe communities with justice for all. We should restore accountability, constitutionality, and transparency to police practices. And we should strive to make Boston a model to which other cities aspire.

If we do that, Boston's streets will be safer, its police department will be stronger, and the trust between its police officers and civilians will be more durable. Nearly 250 years after Boston was dubbed "the Cradle of Liberty," it is time again to put that ideal into practice. ■





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