



Issue Brief and Position on Reforming Stop, Question and Frisk

I. INTRODUCTION

New York City in recent years has been deemed one of the safest big cities in America.¹ Twenty years ago this designation would have been inconceivable. New York City in 1990 recorded 2,251 murders, 100,280 robberies, and 68,891 aggravated assaults with a population of 7.3 million.² By 2012, a steep drop in crime occurred with 419 murders, 20,144 robberies, and 19,381 assaults occurring in the city even while the population grew to 8.3 million.³

During the past two decades, public support, mayoral leadership, and the New York Police Department (NYPD) and its policing strategies and tactics have substantially contributed to the city's record crime reduction. Other demographic and socioeconomic factors unrelated to police practices have also contributed to lower crime rates.

Notwithstanding the sharp reduction in the crime rate, the city's use of the legally permissible tactic of "stop, question, and frisk," better known as "stop and frisk" has been called into question, legally challenged and now declared unconstitutional. This criticism resulted in the City Council overwhelmingly passing two pieces of legislation and overriding a mayoral veto: prohibiting bias-based profiling by law enforcement officers and establishing an inspector general for the NYPD. A federal class-action lawsuit, *Floyd, et al. v. City of New York, et al.* also resulted in the determination that the city's overuse of the practice is unconstitutional, prompting the appointment of federal monitor.

Under study for a year, Citizens Union has come independently to the conclusion that stop, question and frisk should be used less frequently, employed more judiciously, and performed with the utmost professionalism given the intrusive nature of the tactic. As a matter of policy, we oppose the overuse of stop, question and frisk in its current and aggressive form, which has now also been ruled unconstitutional. We do so because, while it is uncertain how many stop and frisks need to occur in order to reduce crime, we believe there comes a point when its overuse brings diminished results and can be counterproductive. We also wish to see it used more appropriately by focusing on the quality

¹ Lysiak, Matt and Kemp, Joe. "Murder Rates in New York City hit a record low with 414 homicides in 2012," The New York Daily News, December 28, 2012. Available at: <http://www.nydailynews.com/new-york/murders-fall-record-city-article-1.1229273>

² Citizens Crime Commission of New York City. Total Crime in New York City, by category 1980-2010. Available at: <http://www.nycrimecommission.org/initiative4.php>

³ NYPD. Historical New York City Crime Data. Available at: http://www.nyc.gov/html/nypd/html/analysis_and_planning/historical_nyc_crime_data.shtml

of the stops and not quantity because it imposes a significant burden and personal infringement on the rights and lives of individuals who are mostly people of color.

The number of stop and frisks conducted by the NYPD has increased dramatically over the past decade – by 600 percent – from 97,296 in 2002⁴ to a peak of 685,724 in 2011 before dropping by 22 percent to 533,042 in 2012.⁵ Some of the increase could be attributed to better documenting of stop and frisks arising out of the Daniels, et al. v. the City of New York case. The legal settlement required the city to ensure that it does not engage in racial profiling and more specifically report “whether and to what extent the stop-and-frisks are based on reasonable suspicion and whether and to what extent the stop-and-frisks are being documented.”⁶ The murder rate has steadily declined with some minor variation during that period but, on average, there were 531 murders a year, an average that is far lower than preceding periods of similar length. While stop and frisks declined 22 percent in 2012 and the number of murders decreased 20 percent, from 515 in 2011 to 414 in 2012⁷, the number of robberies rose from 19,717 in 2011 to 20,144 in 2012 and assaults rose from 18,482 in 2011 to 19,381 in 2012.

New York has prospered as a city over the past three decades in part because it has become a much safer city. To remain a city that is attractive to business, provides a solid education to its young people, and keeps our neighborhoods as places where people want to live and raise their families, it must remain a safe city. It must also be one that is free of the fear of both crime and the police.

The question has become where to draw the line and with the federal court decision, it is even clearer now that the line needs to be redrawn since its current use has been ruled unconstitutional and resulted in the appointment of a federal monitor.

As is the current legal standard, stop, question and frisk should only be used when an officer has reasonable suspicion that a person has been, is, or is about to be involved in criminal activity.⁸ To ensure that the tactic is used most effectively to reduce crime, Citizens Union believes the emphasis should be based on the quality of the stops and not simply on the quantity alone. Enhancing training and instituting practices that incentivize greater professionalism in conducting stop, question and frisk can achieve the goal of fewer stops more directly contribute to reducing crime. With this issue brief and position statement, Citizens Union presents its analysis of the issue, its position on stop and frisk, and its policy recommendations.

⁴ NYCLU 2011 Stop and Frisk Report. Available at: http://www.nyclu.org/files/publications/NYCLU_2011_Stop-and-Frisk_Report.pdf

⁵ Schram, Jamie and Saul, Josh. “Major decline in NYPD stop-frisks,” The New York Post, February 9, 2012. Available at: http://www.nypost.com/p/news/local/major_decline_in_nypd_stop_frisks_UH6jmAZBUhv8Hk1wZ2TycM

⁶ Daniels, et al. v. the City of New York case. Available at: http://ccrjustice.org/files/Daniels_StipulationOfSettlement_12_03_0.pdf

⁷ Chung, Jen. “NYC Hits Record Low Murder Rate In 2012, Bloomberg And Kelly Start Bragging,” The Gothamist, December 28, 2012. Available at: http://gothamist.com/2012/12/28/nyc_hits_record_low_murder_rate_in.php

⁸ *Terry v Ohio*, 392 U.S. 1 (1968).

II. CITIZENS UNION'S PAST ENGAGEMENT ON POLICE ISSUES

Citizens Union serves as a watchdog for the public interest and an advocate for the common good in the City of New York by seeking to make democracy work for all New Yorkers. We advocate for fair and open elections, honest and efficient government, and a civically engaged public. We are New Yorkers from diverse backgrounds and political beliefs, connected to our communities and united in our commitment to put the city's long-term interest ahead of all special interests.

Principled and pragmatic, Citizens Union is an independent force for constructive reform, driving policy and educating the public to achieve effective government in the City and State of New York. We work to make government accountable to all the people it serves by advocating for effective and practical solutions.

In our 2008 Issue Brief and Position statement entitled, *Public Oversight of Police Misconduct*, Citizens Union made nine specific policy recommendations that would strengthen the system of police discipline and improve public confidence in and support for the New York Police Department. Chief among them was creating a more effective and independent Civilian Complaint Review Board (CCRB) by enabling the CCRB to prosecute the cases it substantiates and requiring explanations of the Commissioner's deviations from CCRB recommended discipline. Citizens Union also reviewed the issue of police conduct in the mid-1980s and again when the CCRB was being established in the early 1990s.

Over the past several years, Citizens Union advocated for this change before the City Council and the Mayor's Office, including releasing a report entitled *Diminished Accountability: How Discipline for Police Misconduct is Downgraded by the NYPD* detailing that in more than 9 of 10 instances, the NYPD downgraded recommendations of the CCRB for administering the most severe penalty to police officers for whom misconduct had been substantiated.⁹ Our advocacy resulted in a Memorandum of Understanding in April 2012 that granted prosecutorial power to the CCRB and required the NYPD to explain its reason when it differs from CCRB recommended discipline.

It is with this historical experience and perspective that Citizens Union examines the controversial police tactic of Stop, Question and Frisk. Our intent in doing so is to inform New Yorkers on an important public policy issue that has attracted a strong range of views and challenge the next mayor and police commissioner to present specific steps on how the tactic might be used to greater effect with the least amount of offense to law-abiding New Yorkers.

⁹ Citizens Union. "[Diminished Accountability: How Discipline for Police Misconduct is Downgraded by the NYPD](http://www.citizensunion.org/www/cu/site/hosting/Reports/CUReport_AccountabilityPoliceMisconduct.pdf)." March 2012. Available at:
http://www.citizensunion.org/www/cu/site/hosting/Reports/CUReport_AccountabilityPoliceMisconduct.pdf

III. CITIZENS UNION'S VIEW ON POLICING

Citizens Union's involvement with the issue of stop and frisk is a natural extension of our earlier work on police conduct. Indeed, many complaints filed with the CCRB are allegations of inappropriate or unauthorized stop and frisks (under the category of "abuse of authority")¹⁰, and the independence and transparency as a result of recent reforms will undoubtedly help to address the reported misuse of the stop and frisk tactic.¹¹ Citizens Union also believes that our nonpartisan and pragmatic approach to addressing issues can positively contribute to the discussion around stop and frisk, a politically-charged weighty issue that invokes passion and emotion from many stakeholders.

There are several overarching beliefs informing Citizens Union's evaluation of police issues that act as a lens through which we examine the effectiveness of stop and frisk and make policy recommendations:

- Our democratic society is built on a foundation of personal liberty as enshrined in the Bill of Rights. Within the Bill of Rights, the Fourth Amendment protects our privacy and our persons from unreasonable governmental searches and seizures, and except in limited circumstances probable cause remains the constitutional standard for determining reasonableness.
- The relationship between the NYPD and the city's communities of color, and in particular the Black and Latino communities, has historically been strained. Recent efforts to mitigate that checkered history include a police force in which a majority of its officers are now people of color.
- A healthy democratic society must have a citizenry that has confidence in and actively supports its police department if it is to be fully effective in providing public safety.
- CU recognizes the police are in a unique position in our society. Not only are they accorded with the most significant power of any public servants, they are expected to be model representatives of the law and enforce it courteously, professionally and responsibly regardless of circumstances. They are empowered to use reasonable physical force against all who live in or visit New York and use intrusive tactics including stops, frisks, searches, arrests, and even deadly force when justified.
- Police officers perform a vital and dangerous function protecting our city. Most New York City residents, especially residents of high crime areas, are law-abiding residents who want and support the presence of good policing in their communities. Yet today, the NYPD does not receive the full public support it deserves or the full cooperation it needs to maximize effectiveness and optimize public safety due in part to hostility arising from some quarters over both the frequency and manner in which stop and frisk is utilized.

¹⁰ According to Citizens Union's report. "[Diminished Accountability: How Discipline for Police Misconduct is Downgraded by the NYPD](http://www.citizensunion.org/www/cu/site/hosting/Reports/CUReport_AccountabilityPoliceMisconduct.pdf)," between January and August 2011, the CCRB substantiated allegations of wrongdoing with recommendations for the most severe penalty (known as "charges and specifications") for 143 officers. Ninety-three of those officers were found by the CCRB to have abused their authority in relation to conducting stops, searches and frisks. Available at: http://www.citizensunion.org/www/cu/site/hosting/Reports/CUReport_AccountabilityPoliceMisconduct.pdf

¹¹ Ibid.

IV. BACKGROUND ON STOP, QUESTION and FRISK

Stop, Question and Frisk Explained

While often discussed as a single act, the activity of stop, question and frisk is actually composed of separate actions by police officers which are permissible in accordance with different legal standards as outlined by the New York State Court of Appeals in the *People vs. De Bour*.

1. A police officer may *question* a person even while not stopping him or her, asking questions as to his or her identity or reason for being in a particular place provided that the “request is supported by an objective, credible reason, not necessarily indicative of criminality.”¹²
2. A *stop* is a higher level of personal intrusion in which a police officer temporarily detains a person because the officer has “reasonable suspicion” the person being stopped is committing a crime or is about to commit a crime.¹³
3. A *frisk* is considered most intrusive as the officer conducts a pat down of the stopped person. This can only legally be done when the officer “reasonably suspects that he or she is in danger of physical injury by virtue of the detainee being armed.”¹⁴

Stop and frisk as a police tactic was validated with the United States Supreme Court’s establishment of a legal basis for officers to stop, question, and frisk citizens through its 1968 decision in the case of *Terry v. Ohio*. It ruled that guns found on a suspect’s person after a pat down were admissible evidence in court, even though the police officer had neither a warrant nor probable cause for arrest. The decision laid out some guidelines describing when and how a police officer may search a suspect without a warrant or probable cause, relying instead on a standard of reasonable suspicion. Stop and frisk procedures were first codified in New York in September 1971, through the New York State Criminal Procedure Law (CPL) § 140.5015.

If a police officer detains someone under the conditions of the Terry decision and its progeny, also known as a Terry or “reasonable suspicion stop, they must fill out an NYPD UF-250 form known as a “Stop, Question and Frisk Report Worksheet.” The officer must specify on this worksheet what compelled the officer to detain the suspect. The worksheet lists the following choices as reasons for the stop:

¹² NYS Attorney General’s Report: The New York City Police Department’s Stop and Frisk Practices: A Report to the People of the State of New York from the Office of the Attorney General, New York: Civil Rights Bureau, December 1, 1999, p. 26. Available at: http://www.oag.state.ny.us/sites/default/files/pdfs/bureaus/civil_rights/stp_frsk.pdf

¹³ Ibid, p. 28.

¹⁴ Ibid.

¹⁵ “Stop, Question & Frisk Policing Practices in New York City: A Primer.” Center on Race, Crime and Justice, John Jay School of Criminal Justice. March 2010. Available at: http://www.jjay.cuny.edu/web_images/PRIMER_electronic_version.pdf

- Carrying Suspicious Object in Plain View
- Fits Description
- Action Indicative of “Casing” Victim or Location
- Actions Indicative of Acting as a Lookout
- Suspicious Bulge or Object
- Actions Indicative of Engaging in Drug Transaction
- Furtive Movements
- Actions Indicative of Engaging in Violent Crimes
- Wearing Clothes or Disguise Commonly Used in Commission of Crime
- Other Basis for Reasonable Suspicion (in which case the officer needs to detail the reason)

Data on Stop, Question and Frisk

The data from all Stop, Question and Frisk Report worksheets from January 2010 to June 2012 was analyzed by the Center for Constitutional Rights¹⁶, and yielded the following information:

- The most common reason cited for Terry Stops was “Furtive Movements” and the least common was “Carrying Suspicious Object in Plain View.”¹⁷ Suspects can be stopped for more than one reason and most of the UF250 forms list more than one reason.
- Roughly half of all stops result in frisks or pat downs.
- 8% of all stops resulted in searches which are more invasive than a frisk.
- 6.74% of stops resulted in the police officer using physical force (including putting the suspect on the ground or against a wall or car, pointing a firearm at the suspect, handcuffing the suspect, drawing a firearm, use of baton, or use of pepper spray but excluding putting hands on the suspect).¹⁸
- 6.25% of stops resulted in the suspect being issued a summons.¹⁹
- 6.26% of stops resulted in the suspect being arrested.²⁰
- 1.18% of stops resulted in the confiscation of any kind of weapon.²¹
- 0.12% of stops resulted in the confiscation of a firearm (while the proportion of stops resulting in the confiscation of a firearm is miniscule, the numerical value is not insignificant. For example, 780 guns were recovered in 2012).²²

¹⁶ Second supplemental report of Jeffrey Fagan, Ph.D. David Floyd et al vs. City of New York. United States District Court Southern District of New York. Available at: <http://www.ccrjustice.org/files/FaganSecondSupplementalReport.pdf>

¹⁷ Ibid, p. 22.

¹⁸ Ibid, p. 35.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

²² Ibid. See http://www.nypost.com/p/news/local/major_decline_in_nYPD_stop_frisks_UH6imAZBUhv8Hk1wZ2TycM

Though the police must have a reasonable suspicion of a crime in order to make a stop, 87.51 percent of all stops did not result in an arrest or the issuance of a summons. The police use the tactic not just as a way to uncover a crime, but to address and prevent crime from occurring. Regardless, this is a disturbingly high figure given the number of stops made by the NYPD on far too many law-abiding New Yorkers.

As noted earlier, the number of stops conducted by the NYPD has increased dramatically over the past decade – from 97,296 in 2002²³ to a peak of 685,724 in 2011 before dropping by 22 percent in 2012.²⁴ Some of this increase may be the result of better reporting since this rise occurred at the same time the NYPD was required to report more accurately its number of stop and frisks, but there is little question that the police are using this tactic much more often than before and as a federal judge now has ruled - in an unconstitutional manner. It is also clear that a substantial majority of the stops – 87 percent in 2011 – involve African-Americans and Latinos, especially young men.²⁵

Stop and Frisk and People of Color

The dramatic increase in the use of stop and frisk and the heavy burden it places on persons of color has created resentment and alienation in communities of color since such stops for questioning and potential frisks are often conducted in public and in a manner that is perceived to be disrespectful. While proponents of stop and frisk have cast the practice as merely a personal annoyance worthy of the greater benefit of reducing crime, law-abiding New Yorkers who are stopped can feel offended and even humiliated. Indeed, The Supreme Court of the United States itself acknowledged in the *Terry v. Ohio* decision the personal intrusion of a stop even while establishing the policy as legal. In the opinion of the Court delivered by Chief Justice Earl Warren the Court acknowledged, “it is simply fantastic to urge that such a procedure performed in public by a policeman while the citizen stands helpless, perhaps facing a wall with his hands raised, is a ‘petty indignity.’ It is a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be undertaken lightly.”

There is similar resentment about two other police practices that are also common. The first is “vertical patrols” of public housing projects, and so-called “clean halls” buildings where landlords have consented to such patrols that may result in arrests for criminal trespass if the persons stopped cannot prove to the satisfaction of the police that they are tenants or guests of tenants in the buildings or upon being asked to leave give evasive answers that cause suspicion. The second is frequent arrests of persons who, when stopped and asked to empty their pockets, produce amounts of marijuana which

²³ NYCLU 2011 Stop and Frisk Report. Available at: http://www.nyclu.org/files/publications/NYCLU_2011_Stop-and-Frisk_Report.pdf

²⁴ Schram, Jamie and Saul, Josh. “Major decline in NYPD stop-frisks,” The New York Post, February 9, 2012. Available at: http://www.nypost.com/p/news/local/major_decline_in_nypd_stop_frisks_UH6jmAZBUhv8Hk1wZ2TycM

²⁵ Eligon, John. “Fighting stop and frisk tactic but hitting racial divide,” New York Post, March 22, 2012. Available at: <http://www.nytimes.com/2012/03/23/nyregion/fighting-stop-and-frisk-tactic-but-hitting-racial-divide.html>

would otherwise result in a summons and a fine if kept out of public view, but when brought into public view constitute a misdemeanor and could lead to an arrest. A record number 50,000 people were arrested for marijuana possession in New York City in 2011 which fell to 39,000 in 2012.²⁶ In a move widely applauded, Mayor Bloomberg in his 2012 State of the City Address announced further reforms that those arrested for marijuana possession in small amounts would not be held overnight in jails if they had proper identification and did not have any open warrants for their arrest.²⁷

Current Litigation

Recent litigation on this matter in federal court resulted in Judge Judge Shira Scheindlin ruling in *Floyd, et al. v. City of New York, et al* that New York's use of stop was unconstitutional. The plaintiffs alleged that the police were engaged in racial profiling.²⁸ This was based on the claim that police stops disproportionately affect African-Americans and Latinos in comparison to their percentage of the population. The police responded that the tactic is used most often in high crime neighborhoods, which have a high percentage of people of color, and that the percentages of African-Americans and Latinos stopped is lower than the percentages of crime committed by them and is therefore not disproportionate.²⁹ With her ruling, the judge essentially disagreed.

For a police officer to detain a person requires that he or she have reasonable suspicion that criminal activity has occurred, is occurring, or is about to occur. For the police officer to conduct a frisk requires reasonable suspicion of imminent danger. The police are trained on these matters and have to fill out a form for each stop with boxes to check as to the reason. The boxes all refer to reasons that at least in some circumstances have been held by the courts to constitute sufficient justification. There is no way to know to what extent the forms are being filled out accurately or honestly. Moreover, the constitutionality of a stop will depend on all of the circumstances in each individual case about which there is really no complete information. In the federal litigation, dueling expert witnesses who have analyzed tens of thousands of forms and reached opposite conclusions. Judge Scheindlin determined the heavy use of stop and frisk presented a pattern of violations of the constitutional limits within which stop and frisk is permissible.

Somewhat different and additional legal issues arise in the context of stops and arrests for criminal trespass in Housing Authority and private buildings. As noted above, these are the subject of separate lawsuits. The District Attorney for Bronx County, Robert Johnson, has announced a policy of refusing

²⁶ Toor, Mark. "Cuomo Wants Pot Weeded Out of Stop-and-Frisks," *The Chief*, June 15, 2012.

²⁷ Grynbaum, Michael M. and Barbaro, Michael. "From Bloomberg, a Warning of Life after Bloomberg," *The New York Times*, February 14, 2013. Available at: <http://www.nytimes.com/2013/02/15/nyregion/bloomberg-in-last-annual-address-cites-gains-and-goals.html?pagewanted=all& r=0>

²⁸ The primary case, which challenges the NYPD's stop and frisk practices for pedestrians, is *Floyd v. City of New York*, 08 Civ. 1034 (SDNY)(SAS). In addition, there are challenges to the stop and frisk practices in public housing projects and to trespass stops and arrests in an around private owned building enrolled in the "Trespass Affidavit Program". See *Davis v. City of New York*, 10 Civ. 0699 (SDNY)(SAS) and *Ligon v. City of New York*, 12 Civ. 2274 (SDNY)(SAS).

²⁹ MacDonald, Heather. "Fighting Crime Where the Criminals Are," *The New York Times*, June 25, 2010. Available at: <http://www.nytimes.com/2010/06/26/opinion/26macdonald.html>

to prosecute *Clean Halls* program cases unless the arresting officer is interviewed in order to determine that there was probable cause to believe that the person arrested had committed criminal trespass and was not a resident or invitee.

Distinct issues also arise in the context of arrests for marijuana possession made when the police stop persons on the street and ask them to empty their pockets. The Police Department announced *Operations Order 49: Charging Standards for Possession of Marijuana in a Public Place Open to Public View*³⁰ in September 2011 that marijuana possession in plain view as a result of a stop and frisk should be treated as a violation rather than a misdemeanor, resulting in part in a 14 percent decline in subsequent months.³¹ Governor Cuomo has proposed changing the penal law to this effect.

NYPD's Own Effort to Bring About Change

Beyond changes to treatment of marijuana possession, the NYPD has put in motion additional reforms. In a May 2012 response to a February letter from Council Speaker Christine Quinn, Police Commissioner Ray Kelly detailed a number of reforms taken by the NYPD. Commissioner Kelly indicated the NYPD includes in its unit level training sessions an existing Department order specifically prohibiting racial profiling. The new training additionally provides clarity via video instruction as to when a stop and frisk should be conducted, and encourages the distribution of cards to those stopped citing the legal authority for stops in general and common reasons why stops occur. A new procedure provides for greater scrutiny of report worksheets at the local command level, with captains now responsible for auditing stop, question and frisk worksheets within their command to ensure compliance with guidelines established by the NYPD Quality Assurance Division. Precinct commanders will also be questioned by their superior officers before weekly Compstat meetings. The NYPD is also in the process of establishing a mechanism to compare the stop and frisks by police officers with similar assignments.

V. CITIZENS UNION POSITION ON STOP AND FRISK

Beginning in the early 1990s, New York City steadily increased its funding for the NYPD and embarked on a wide range of law enforcement and criminal justice system reforms which have resulted in a dramatic drop in crime. These reforms have been expanded upon by each mayoral administration since then, with results that are unmatched elsewhere in the United States. These practice reforms are wide ranging, with strategies that include: the expansion of the patrol force under the "Safe Streets, Safe City" program in 1991; the development and refinement of data-driven crime fighting strategies (ranging from COMPSTAT, to the intensive use of DNA technology, to the development of robust data sharing and the Real Time Crime Center); strict consequences for violations of gun laws; an extensive investment in problem solving courts; and focusing police presence in neighborhoods where crime rates are highest. These innovations, in many cases leading criminal justice practice nationally and internationally, have driven the dramatic drop in crime in New York City over the past twenty years.

³⁰ Available at: <http://www.wnyc.org/articles/wnyc-news/2011/sep/23/police-commissioner-calls-nypd-stop-improper-marijuana-arrests/>

³¹ Toor, Mark. "Cuomo Wants Pot Weeded Out of Stop-and-Frisks," *The Chief*, June 15, 2012.

The practice of stop, question and frisk – when used legally and appropriately in specific and limited ways – is pro-active policing and arguably can be an effective police tactic to reduce crime. It is part of the NYPD's aggressive effort to reduce violence and crime by removing illegal guns from the streets, a laudable and desired goal. However, there is no clear evidence establishing the degree to which the reduction of crime is directly attributable to the tactic of stop, question and frisk. As shown on the chart below, in most individual years and overall there has been a correlation between an increased number of stop and frisks and lower crime rates. However, the data demonstrate an imbalance between the very large increase in the use of stop, question and frisk versus a more modest reduction in the crime rate. Moreover, one cannot conclude from this or any other evidence as to the extent to which aggressive use of stop and frisk has played a role apart from other police tactics in reducing crime rates.

Year	Major Felony Offenses ³²	Increase/Decrease from Previous Year	Number of Stop, Question and Frisks ³³	Increase/Decrease from Previous Year
2001	162,908		Unknown	
2002	154,809	-5%	97,296 ³⁴	N/A
2003	147,069	-5%	160,851	65%
2004	142,093	-3%	313,523	95%
2005	135,475	-5%	398,191	27%
2006	128,682	-5%	506,491	27%
2007	121,009	-6%	472,096	-7%
2008	117,956	-3%	540,320	14%
2009	106,730	-10%	575,996	7%
2010	105,115	-2%	600,601 ³⁵	4%
2011	106,669	1%	685,724 ³⁶	14%
2012	108,432 ³⁷	2%	533,042 ³⁸	-22%

³² The seven major felony offenses include: 1) murder and non-negligent manslaughter; 2) rape; 3) robbery; 4) felony assault; 5) burglary; 6) grand larceny; and 7) grand larceny of a motor vehicle. See NYPD Historical Crime Data. Available at: http://www.nyc.gov/html/nypd/downloads/pdf/analysis_and_planning/seven_major_felony_offenses_2000_2011.pdf

³³ Stop and frisks data for 2003-2009 is from the following source: Trone, Jennifer, "The New York Police Department's Stop and Frisk Policies. Are they Effective? Fair? Appropriate? Summary of a New York City Bar Association Forum, Center on Race, Crime and Justice. John Jay College of Criminal Justice. March 9, 2010. Available at: http://www.jjay.cuny.edu/forum/SQF_forum_summaryFINALJUNE28.pdf

³⁴ Weiss, Murray, "Stop-and-Frisks Have Done Little to Reduce Shootings, NYPD Data Show," DNAInfo, June 5, 2012. Available at: <http://www.dnainfo.com/new-york/20120605/new-york-city/stop-and-frisks-have-done-little-reduce-shootings-nypd-data-shows>

³⁵ Grynbaum, Michael M. "Crime is Up and Bloomberg Blames iPhone Thieves," December 28, 2012. Available at: <http://cityroom.blogs.nytimes.com/2012/12/28/crime-is-up-and-bloomberg-blames-iphone-thieves/>

³⁶ Iabone, Rande, "NYPD Report: Most of those 'stopped and frisked' are minorities," CNN, February 13, 2013. Available at: <http://www.cnn.com/2013/02/05/us/new-york-stop-and-frisk>

³⁷ "NYC mayor blames increase in crime on demand for Apple products," Apple Insider, December 28, 2012 Available at <http://forums.appleinsider.com/t/155233/nyc-mayor-blames-increase-in-crime-on-demand-for-apple-products>.

In 2007, for example, the number of stop and frisks declined by 7 percent from 2006 yet major felony offenses still decreased by 6 percent. The 6 percent decrease in 2007 was slightly more than the 5 percent decrease in 2006 and 2005, even though stop and frisks surged by 27 percent in each of those years. Similarly, stop and frisks increased by 14 percent in 2008 while major felonies dropped 3 percent. Yet in 2011, stop and frisks also increased by 14 percent and major crimes increased by 1 percent. Overall, major crimes have dropped 30 percent since 2002 while stop and frisks have increased by 448 percent.

Stop and frisk has occasionally resulted in the discovery of concealed weapons. It may also have discouraged persons from carrying them, as suggested by a U.S. Centers for Disease Control study that showed a 36 percent reduction in NYC teens carrying guns, from 3.6 to 2.3 percent since 2001.³⁹ However, in only 1.8 percent of stops was a weapon discovered.⁴⁰ However, in an overwhelming majority of stop and frisks – 87.51 percent – no arrests are made or summons are issued and in only 1.18 percent of stops was a weapon discovered.⁴¹

In sum, the evidence does not definitively establish the extent to which stop, question and frisk is a significant factor in reducing crime or that a more judicious application of the tactic would cause a reversal of the current crime reduction trend.

In addition, it is clear that the burden of stop, question and frisk falls most heavily on young men of color and that its increased and aggressive use has had the corrosive consequence of weakening public support and cooperation with the police in communities of color. Communities most in need of a strong police presence to prevent crime are also the same communities where resentment is greatest about stop and frisk because of its disproportionate application.⁴²

³⁸ Ruderman, Wendy. "Number of Frisks Fell in '12," The New York Times, February 8, 2013. Available at: <http://www.nytimes.com/2013/02/09/nyregion/number-of-frisks-fell-in-12-police-data-show.html>

³⁹ Seifman, David, "Worth the frisk as gun teens plummet: mayor," The New York Post, April 5, 2013. Available at: http://www.nypost.com/p/news/local/worth_the_frisk_as_gun_teens_plummet_d9qTbUWQfaGnR5rSsLfJaL

⁴⁰ Second supplemental report of Jeffrey Fagan, Ph.D. David Floyd et al vs. City of New York. United States District Court Southern District of New York. Available at: http://www.ccrjustice.org/files/FaganSecondSupplementalReport.pdf#bid_p_35.

While the proportion of all stops that result in the confiscation of a weapon is miniscule, the numerical value is not insignificant. For example, 7,137 weapons were recovered in 2012. See http://www.nypost.com/p/news/local/major_decline_in_nypd_stop_frisks_UH6jmAZBUhv8Hk1wZ2TycM.

⁴¹ Ibid, p. 35. While the proportion of all stops that result in the confiscation of a weapon is miniscule, the numerical value is not insignificant. For example, 7,137 weapons were recovered in 2012. See http://www.nypost.com/p/news/local/major_decline_in_nypd_stop_frisks_UH6jmAZBUhv8Hk1wZ2TycM. Seifman, David, "Worth the frisk as gun teens plummet: mayor," The New York Post, April 5, 2013. Available at: http://www.nypost.com/p/news/local/worth_the_frisk_as_gun_teens_plummet_d9qTbUWQfaGnR5rSsLfJaL

⁴² A Quinnipiac University poll conducted February 20-25th of New York City voters found that only 39 percent of those polled supported the police practice of stop and frisk, and 76 percent of black respondents and 60 percent of Hispanic respondents opposed it. This was down from an August 2012 Quinnipiac poll, when 45 percent overall support the practice and a slim majority of Hispanics supported it.

Citizens Union opposes the overuse of stop, question and frisk. We believe that stop, question, and frisk should be employed less frequently, employed more judiciously and exercised with the utmost professionalism. It should be used only when an officer has reasonable suspicion that a person has been, is, or is about to be involved in criminal activity, which is the constitutional standard. In short, the emphasis should be on the quality of the stops rather than quantity alone.

If the police are to be given needed discretion in ensuring public safety, clearer guidelines must be developed and made publicly available in order for the public to trust that the police are using stop, question and frisk as judiciously as possible. A mechanism for reporting annually to the public on its adherence to these guidelines must then be established.

Citizens Union recognizes that judicious use of stop, question and frisk and other police tactics are only part of the fuller response that is needed to address the problem of criminal activity. Additional factors play an effective and significant role in creating safe and secure communities, such as making investments in youth development and education programs, violence prevention and conflict resolution programs as well as alternatives to incarceration focused on rehabilitation rather than punishment. Development of new strategic police-community partnerships especially concerning the city's young people of color may also result in a further reduction of crime as well as stabilization of police-community relations.

VI. CITIZENS UNION'S POLICY RECOMMENDATIONS

In addition to our view that stop, question and frisk should be used less frequently and more judiciously, Citizens Union puts forward the following specific recommendations, which were developed prior to the federal judge's ruling and council legislation but which still hold applicability.

1. Enhance the Quality of the Stops and Reduce their Quantity

a. Improve Training and Accountability Systems

The NYPD should provide to the public what steps it has taken to enhance its training and accountability systems as discussed in letters exchanged between Commissioner Kelly and Council Speaker Christine Quinn. As previously announced by Commissioner Kelly, enhanced training and accountability systems should include:

- i.** continued rigorous data collection from stops;
- ii.** reaffirming officers need to specifically designate the reason for the stop to ensure high-quality stops;
- iii.** better local supervision as well as precinct commander accountability;
- iv.** the creation of a streamlined system for lodging complaints of inappropriate stops by officers; and
- v.** the appropriate and consistent disciplining of police officers against whom complaints of improper stops are substantiated.

b. Conduct More Professional and Productive Stops

- i. The NYPD should place a premium on conducting stop and frisks with the professionalism that acknowledges even a well-executed stop is an indignity upon the person temporarily detained, particularly if they have not engaged in wrongdoing.
- ii. The NYPD should take even stronger steps to make clear to its officers that stop and frisks should be conducted in adherence with the legal standards for conducting a stop and question, and for conducting a frisk. We support the Department's efforts to make absolutely clear that racial or ethnic profiling is not acceptable as a rationale for conducting stop and frisks and urge that it takes all steps necessary to ensure that its efforts succeed.
- iii. The requirement that police officers offer a business card and inform the person who is the subject of a stop and frisk of the reasons for the activity, as outlined in City Council Intro No. 801, should be seriously considered for implementation to ensure that professionalism is given great emphasis.
- iv. The Police Commissioner should make it absolutely clear to its officers, as well as the general public, that there are no quotas in effect. While the NYPD contends there are no quotas to conduct stop, question and frisks public perception is such that it can only benefit the NYPD to unequivocally reiterate a "no quotas" policy, now also required by the federal court ruling. The Police Commissioner should also make it unequivocal that there should be no reason for officers to believe there are unofficial policies or expectations to conduct stops and frisks except when there is reasonable suspicion that a person has been, is, or is about to be involved in criminal activity. Nor should officers' performance be evaluated on the basis of the quantity rather than the quality of their stops.
- v. The NYPD should create a systematic method for obtaining, memorializing and utilizing for analytical, training, disciplinary and other related matters the results of civil court judgments and settlements involving allegations of police misconduct or civil rights violations.

c. Furtive movements as a reason for conducting a stop should be clarified and scrutinized carefully.

The current standard for conducting a stop is "reasonable suspicion" as per the rulings of the U.S. Supreme Court and subsequent federal and state case precedents. The category of furtive movements is the most commonly cited reason on the UF-250 form for conducting a stop and frisk. Yet there is little clarity as to what furtive movements are, with no standards indicating what qualifies as a furtive movement. It is therefore very subjective and susceptible to misuse as a rationale for conducting a stop. The NYPD issued a directive on March 5th requiring log

entries for UF250 forms standardized information about stops including an explanation of the suspicion and whether a frisk had occurred. The memo reads, “the circumstances or factors of suspicion must be elaborated on...i.e.; if the “Furtive Movements” caption is checked off, then a description of that movement must be specified.” **Accordingly, Citizens Union recommends that the NYPD, in its training for and supervision of, the implementation of this directive, take steps to ensure that the category of “furtive movements” is not used to circumvent the requirement of reasonable suspicion.**

2. **Change the Law Related to Marijuana Possession.** Marijuana possession that is revealed as a result of a person taking marijuana out of his/her pocket at the request or direction of a police officer should be considered the same level of offense for possession had the person not been required to place the marijuana in plain view. This is currently NYPD practice as a result of *Operations Order 49: Charging Standards for Possession of Marijuana in a Public Place Open to Public View* but should be codified in the state penal law.
3. **Provide Additional Public Oversight of Stop, Question and Frisk.**
 - a. **Citizens Union reiterates its existing positions related to the Civilian Complaint Review Board (CCRB) that pertain to stop, question and frisk.**
 - i. **The CCRB should make available data that clearly indicates for every complaint related to a stop, question and/or frisk, how the complaint was adjudicated so that it can be determined whether police officers improperly using the tactic are being instructed on the appropriate use or disciplined when necessary.** (Presumably this will now be addressed by the federal monitor.)
 - ii. **The CCRB should be able to use its recently granted prosecutorial authority to prosecute officers found guilty of lying during CCRB investigations.** CCRB investigations, which often involve complaints related to stop, question and frisk are conducted under oath and should result in ramifications for officers who are not truthful while making official statements.
 - b. **Citizens Union took no positions on City Council Int. No. 881 establishing an Inspector General in the New York City Department of Investigation and Int. No. 1080 that reaffirms the ban on racial profiling and allows citizens to file a private right of action in state supreme court alleging racial profiling,** because there was no consensus within the organization.
4. Candidates for mayor should make clear what specific steps they will take to reduce the use of stop, question and frisk so that it is used in adherence to the constitution while reducing crime and not imposing a burden on the very communities it is intended to protect.

These reforms are designed to ensure that stops are conducted judiciously, effectively and lawfully in a manner that keeps New Yorkers safe yet diminishes needless tension when it is overused on law-abiding New Yorkers. It also will promote good police-community relations and ensure the police department receives the recognition and support it deserves as it continues to keep New York City safe.