



Stop-and-Frisk as a tool for combating gun violence: the Philadelphia experience

This is not the first time that Philadelphia has seen a surge in gun violence. And it is not the first time that the controversial police tool known as “stop-and-frisk” has been proposed as a solution. But history teaches us that stop-and-frisk simply does not deliver on the promise of reducing violence.

In 2008 with the election of a new Mayor in Philadelphia, the Philadelphia Police Department (“PPD”) embarked on a massive expansion of stop-and-frisk of pedestrians, with the goal of removing guns from the streets. That program made Philadelphia the city with the highest number of stops per resident of any city in the country, but resulted in the illegal stop and frisk of tens of thousands residents, with large racial disparities. Worse, the expansion of stop-and-frisk did not capture guns: most years, PPD officers recorded finding guns in less than 1% of stops. In other words, the new program was ineffective, racially biased in operation, and stigmatized large numbers of perfectly innocent persons.

Some proponents of increasing police use of stops sometimes argue that even a low probability of finding a gun justifies the police stopping as many people as the police legally can stop. Those arguments ignore the reality of stop-and-frisk.

The average police stop in Philadelphia lasts 13 minutes — long enough to make you late to wherever you were going. During the stop, police will take the individual’s identification and often question them about where they are going or what they are doing. The police run the individual’s name through criminal databases, looking for outstanding warrants. If the person resists or argues with the police —and sometimes even when they don’t— the situation can escalate into violence. Here and across the country these stops too often result in unjustified force, including deadly interventions by the police.

As explained below, civil rights lawyers in Philadelphia have been analyzing PPD stop data since 2011 and filing public reports, to which the PPD has a chance to respond. This is as a result of a class action, *Bailey v. City of Philadelphia*, filed in 2010 on behalf of Black and Latino men who had been repeatedly stopped for no legitimate reason by the PPD. The reports filed by the *Bailey* lawyers have shown large numbers of persons stopped without legal justification **and** with significant racial disparities that cannot be explained by differences in location, age, or crime rates.

In May 2020, the City agreed that the racial disparities in who gets stopped in Philadelphia were evidence of patterns of racial bias. As a result, the City agreed to measures to address the racial disparities. For starters, there is a pilot program focused on reducing the number of stops for low level offenses. Under that pilot, if a PPD officer sees someone engaged in one of these minor offenses—like holding an open can of beer—the officer will approach the person and ask them to stop the behavior or relocate. The officer does not take the individual’s ID or detain them or check to see if they have outstanding warrants. If they cease engaging in the offense, the person is immediately free to leave.

Since that pilot program began in October 2021, there have been more than 2500 such encounters and we know of no incident in which the civilian did not cease the prohibited

conduct. Further, the ACLU has sent “community ambassadors” to talk with residents about the changes in how the police respond to minor offenses. The community response to the pilot program has been overwhelmingly positive. The pilot is now active in 11 PPD districts.

Stop-and-frisk has never worked to find and confiscate illegal guns.

Amid the concern about rising gun violence, some public figures have urged a “return” to stop-and-frisk. But the PPD never ceased using stop-and-frisk—the PPD still records thousands of pedestrian and vehicle stops each year. The suggestion that we return to the policy of having PPD officers detain and question hundreds of thousands of Philadelphians in an effort to get guns off the street ignores the tragic consequences of this failed program.

The PPD’s own records show that pedestrian stops and frisks very rarely produce guns. The data also shows that the more stops that police conduct, the less success there is at finding guns.

Four years into the Nutter Administration’s aggressive stop-and-frisk program, PPD officers reported recovering guns in less than 1% of those stops—0.16% to be exact.

The *Bailey* lawyers found that 76% of those stops were of Black people and that PPD officers failed to give a legal reason for the stop in over 40% of the stops they analyzed.¹

2012 was not an outlier. The *Bailey* report covering the first half of 2013 showed that PPD officers reported recovering guns in only 0.27% of stops. The *Bailey* lawyers found that 76% of those stops were of Black people and that PPD officers still failed to give a legal reason for the stop in over 40% of the stops they analyzed.

In the first half of 2014, PPD officers reported finding guns in just over 5% of pedestrian stops. But the next year—and every year after that—the PPD reported recovering guns in less than 1% of stops reviewed by the *Bailey* lawyers: 0.25% of stops in the first half of 2015, 0.43% of stops in the second half of 2015, 0.65% of stops in the first half of 2017, 0.44% in the first half of 2018, and 0.74% of pedestrian stops in the second half of 2019.

By 2019, the PPD was reporting fewer than 100,000 pedestrian stops a year.² And the *Bailey* reports show that PPD were complying with the law in many more of those stops—that year, the *Bailey* lawyers found PPD officers failed to give a legal reason for the stop in only 16% of the stops they analyzed.

As the PPD has reduced the number of stops and focused on those incidents in which it was far more likely to find an illegal firearm, the PPD is seizing more firearms with a lower number of stops.

¹ https://www.aclupa.org/sites/default/files/field_documents/bailey_third_report_3-19-13_.pdf. All of the public reports in *Bailey v. City of Philadelphia* are available on the ACLU of Pennsylvania website, along with other information about the case. See <https://www.aclupa.org/en/cases/bailey-et-al-v-city-philadelphia-et-al>.

² PPD stop data starting in 2014 is available at <https://data.phila.gov/visualizations/vehicle-pedestrian-investigations>.

What exactly is “Stop-and-Frisk”?

“Stop-and-frisk” is a label that refers to police stops short of an actual arrest. In *Terry v. Ohio*,³ the Supreme Court held that police may briefly detain a person for investigation when they do not have enough evidence to arrest them, as long as the police have “reasonable suspicion” that the person has engaged or is about to commit a crime. That is the “Terry stop.” The “frisk” is not automatic. Police are allowed to frisk a person—pat down the outside of their clothing—only when police have “reasonable suspicion” that the person is armed and dangerous.

Police call stop-and-frisk “investigative detentions” or just “investigations”.

“Reasonable suspicion” exists when “specific and articulable facts,” “taken together with rational inferences from those facts, suggest that a specific individual has broken the law or is about to do so. In plain language, it means that the police officer can identify conduct by the person in question that strongly suggests that person has violated the law, even in a very minor way. For instance, if an officer observes a person holding a bottle while carefully covering up the label and that person smells of beer, the officer has reasonable suspicion that the person is carrying an open container of alcohol, which is a crime. The officer may stop and investigate that person.

What is the history of stop and frisk in Philadelphia?

During 2007, Philadelphia had an unusually high number of murders—391 murders, mostly by gunshot, were reported by the Philadelphia police for that year.⁴ The increase in gun violence was a major issue during the 2007 Philadelphia mayoral campaign, and Michael Nutter made a campaign pledge to increase the use of stop-and-frisk in Philadelphia in the hopes of getting people to stop carrying and using guns. Michael Nutter was elected Mayor in November of 2007 and took office in January 2008.

Prior to 2008, the Philadelphia police recorded a little over 100,000 stops of pedestrians each year—about 102,000 in 2005, almost 133,000 in 2006, and almost 137,000 in 2007.⁵ PPD officers recorded even more car stops in those years: near 225,000 in 2005, over 217,000 in 2006, and almost 224,000 in 2007.

Mayor Nutter appointed Charles Ramsey Police Commissioner, and the PPD’s use of pedestrian stops increased dramatically, to 217,000 in 2008 (80,000 more stops than the year before) and over 253,000 in 2009—over a quarter of a million pedestrian stops in a single year. The police recorded almost as many car stops the same year—over 249,000. Those numbers would have represented one stop for 1 out of 3 Philadelphia residents in 2009 (babies included). But those stops were not evenly distributed across the population: over 183,000 of the pedestrian stops, 72.2%, were of Black people, mostly Black men. Black people made up about 40% of Philadelphia’s population at the time.⁶ Throughout the Nutter administration, the PPD made around 200,000 pedestrian stops a year (and many more vehicle stops)—and Black people, and Black men in particular, were stopped far out of proportion to their share of the population.

³ 392 U.S. 1 (1968)

⁴ <https://www.phillypolice.com/crime-maps-stats/>

⁵ <https://data.phila.gov/visualizations/vehicle-pedestrian-investigations>.

⁶ Car stops were also racially skewed, although less so. Black drivers accounted for about 148,000, or 60% of the car stops in 2009.

These stops very rarely resulted in arrests, meaning that for the vast majority of those stopped on suspicion of illegal behavior, the detention and “investigation” did not turn up sufficient evidence for an arrest. The PPD was detaining tens of thousands of innocent Philadelphians a year, most of them Black men.

The federal lawsuit: *Bailey v. City of Philadelphia*

In late 2010, the ACLU and civil rights lawyers from Kairys, Rudovsky, Messing, Feinberg & Lin filed the *Bailey* lawsuit on behalf of eight African-American and Latino men who were stopped by Philadelphia police officers because of their race or ethnicity. The *Bailey* suit alleged that thousands of people each year were illegally stopped, frisked, searched, and detained by the Philadelphia Police Department as part of its aggressive stop-and-frisk policy, and that they were targeted because of their race. The City did not fight the suit. Instead, in June 2011, the City signed an agreement to reform its stop-and-frisk practices under the supervision of a federal judge until the PPD was no longer violating the law.⁷ Twelve years later, the Court is *still* supervising the PPD’s stop-and-frisk practices because the PPD continues to conduct stops and frisks that do not meet the legal standard and that disproportionately target people of color, especially Black men.

Partly because of the publicity brought to the issue by the *Bailey* litigation and a similar suit in New York City, *Floyd v. City of New York*, Black community members and leaders began pushing back against what some described as a “war” on Black and brown communities. Activists made their opposition to stop-and-frisk a major issue in the 2015 Philadelphia Mayoral campaign. Jim Kenney was elected mayor after promising to “end” stop-and-frisk. The PPD has never stopped using pedestrian or car stops, but there have been recent changes to how those tools are used in Philadelphia.

During the Kenney administration, the PPD reduced the percentage of stops in which PPD officers failed to provide a legal reason for the stop, but even the most recent *Bailey* reports have found that 15% or more of the stops conducted by the PPD fail to meet the constitutional standard of “reasonable suspicion.”

Many of the *Bailey* reports also analyze whether PPD stops of pedestrians comply with the Fourteenth Amendment’s prohibition of racial discrimination—whether, considering factors such as crime rates and age, Blacks are stopped disproportionately. In fact, Black people have consistently accounted for more than half of the stops recorded even in heavily white neighborhoods. In 2020, the City finally admitted that it could not justify the continuing racial disparities in who is stopped, and agreed to a series of reforms that are supposed to reduce racial disparities.

The next Mayor needs to make it a priority for the PPD to fulfill those agreements and make it a PPD priority to root out racial bias in the use of stop-and-frisk.

⁷ https://www.aclupa.org/sites/default/files/field_documents/bailey_consent_decree_6-21-11_.pdf