

Twenty-First Report of the Independent Monitor

Monitor's Compliance Report

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Floyd, et al. v. City of New York, et al.

Ligon, et al. v. City of New York, et al.

Davis, et al. v. City of New York, et al.



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I. Executive Summary

In 2013, after a nine-week trial, the United States District Court for the Southern District of New York found that the New York City Police Department's ("NYPD" or "Department") stop and frisk practices violated the Fourth Amendment, which requires *Terry* stops¹ to be based on reasonable suspicion, and the Fourteenth Amendment, which guarantees equal protection under the law.² In a separate opinion, the Court ordered changes to NYPD policies and practices and appointed an independent monitor to ensure that the NYPD's stop and frisk practices are carried out in accordance with the Constitution.³

Few would have expected that it would take more than a decade for the NYPD to make the changes required to comply with the Court's orders. The NYPD has accomplished many important critical tasks, including significant changes in policies, new training, use of body-worn cameras ("BWC"), and auditing procedures. But compliance entails more than just changes in policy and training; it requires accountability, and the Department must focus on proper supervision of officers so that stop and frisk practices are in accordance with the law. Despite training and proper policies, there are still too many *Terry* stops, frisks, and searches in violation of the law. When improper *Terry* stops, frisks, or searches are conducted, the Department, particularly Lieutenants and Sergeants at the command level, must identify them and take appropriate action to correct them and prevent them from reoccurring, and the Department must develop and implement a Fourteenth Amendment compliance plan.

¹ When a police officer detains a civilian such that the person is not free to leave it is called a *Terry* stop, based on the Supreme Court case *Terry v. Ohio*, in which the Court ruled that an officer must have reasonable suspicion of criminality before the officer can conduct that stop. In New York State, the Court of Appeals in *People v. DeBour* established four levels of encounters with police and labeled *Terry* detentions as Level 3 stops. Under the *DeBour* framework, Level 1 encounters are requests for information for which an officer must have an objective, credible reason to approach the person, and Level 2 encounters are common law inquiries for which an officer must have a founded suspicion of criminality. Level 4 encounters are ones in which an officer has probable cause to arrest.

² *Floyd v. City of New York*, 959 F. Supp. 2d 540, 562 (S.D.N.Y. 2013) (*Floyd* Liability Opinion).

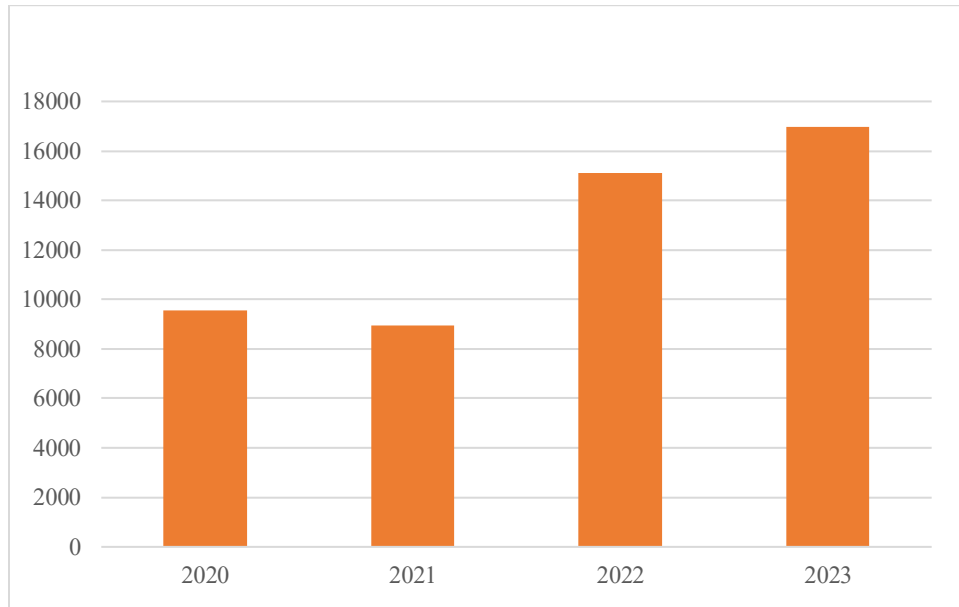
³ *Floyd v. City of New York*, 959 F. Supp. 2d 668 (S.D.N.Y. 2013) (*Floyd* Remedial Order).

The Department has made several changes over the last eighteen months, including a new Commissioner of the NYPD, new Chief of Patrol, new Chief of Professional Standards, new Chief of the Quality Assurance Division (“QAD”), and new Deputy Commissioner of Legal Matters, among many others. Recently, the Department has taken some major steps to monitor compliance with *Terry* stop, frisk, and search policies and procedures. While it is too early to evaluate the success of the new initiatives, the Monitor appreciates that the leadership team has designed and implemented ComplianceStat, a program to address accountability within commands, and is working on a Fourteenth Amendment compliance plan.

The purpose of the Twenty-First Report (“Report”) is to provide the Court and the public with an analysis of various NYPD *Terry* stop, frisk, and search practices at various times between 2020 and 2023. Some of the key findings are highlighted below.

***Terry* Stops, Frisks, and Searches are increasing.** In 2020, there were 9,544 reported *Terry* stops; in 2021 that number decreased to 8,947; in 2022, the number of reported *Terry* stops rose to 15,102 and in 2023, the increase continued to 16,971 reported stops, as noted in the figure below.

Total Reported *Terry* Stops 2020-2023



Unconstitutional *Terry* stops, frisks, and searches are increasing. Unconstitutional reported *Terry* stops increased slightly from 10.6% of stops in 2021 to 11.3% of stops in 2022. Unconstitutional frisks rose from 15.8% of all frisks in 2021 to 23.9% of all frisks in 2022, an over 50% increase. Unlawful searches also rose significantly, by almost 50%, from 20.4% of all searches in 2021 to 29.9% of all searches in 2022. In the first half of 2023, 12% of reported *Terry* stops were unconstitutional, 31% of frisks were unconstitutional, and 33% of searches were unconstitutional.

The Monitor identified in the Monitor’s Nineteenth Report⁴ that specialized units were making more improper *Terry* stops than patrol units. This trend has continued. For example, the Monitor team found that *Terry* stops related to 911 calls conducted by patrol officers in the first half of 2023 were lawful in 96% of reports reviewed. In the same period, the specialized units, such as the Neighborhood Safety Teams (“NST”) and Public Safety Teams (“PST”), made the

⁴ New York Police Department Monitor, *Nineteenth Report of the Independent Monitor*, NYPD MONITOR (June 5, 2023), available at <https://www.nypdmonitor.org/wp-content/uploads/2023/06/NST-Report.pdf>.

majority (54%) of the improper *Terry* stops, frisks, and searches, most of which were self-initiated stops.⁵

Underreporting of *Terry* stops is too high. After ten years of oversight, there are still too many officers who are making *Terry* stops but not documenting them in a stop report, as required. Underreporting of *Terry* stops by officers increased from 2020 to 2022. The Monitor team’s audit of BWC videos showed that 31.4% of *Terry* stops in 2022 were not documented.

Housing Bureau *Terry* stops are less compliant than those of the Department as a whole. The Monitor team reviewed a sample of *Terry* stops, frisks, and searches conducted by Housing Bureau officers at New York City Housing Authority (“NYCHA”) properties in 2022. Of the *Terry* stops reviewed, officers had reasonable suspicion for 77% of the stops, a rate lower than the Department-wide average of 86% lawfulness assessed by the Monitor in the same period. The rate of compliant frisks was 75% for Housing Bureau officers, the same percentage as deemed lawful in the Department-wide sample of frisks. For searches, the Monitor team determined 63% of the Housing Bureau officer searches were lawful, a compliance rate lower than the average of 70% deemed lawful in the Department-wide sample of searches assessed by the Monitor.

Housing Bureau trespass arrests are compliant. The Monitor team’s review of trespass arrests in 2022 by Housing Bureau officers determined that officers had probable cause for 98 of the 100 arrests reviewed (98%). Ninety-four of the 100 trespass arrests (94%) had a Trespass Crimes Fact Sheet.

⁵ The NYPD established the Neighborhood Safety Team (“NST”) program in 32 high-crime commands. Officers in NST units wear modified uniforms, patrol in unmarked cars and are tasked with taking illegal guns off the street. They are not expected to handle 911 calls-for-service from the public and are expected to engage in proactive enforcement to address violent crimes. Public Safety Teams (PST) are command units similar in their enforcement duties and responsibilities to NSTs and are deployed in almost every Precinct, PSA, and Transit District in the NYPD. PST officers in the Patrol Services and Housing Bureaus are in regular police uniforms but patrol in unmarked cars.

Supervision of *Terry* stops, frisks, and searches needs to improve. Many first-line supervisors are not reviewing the constitutionality of their officers' *Terry* stops in a thorough and comprehensive manner. The Monitor team's review of *Terry* stops in 2022 and 2023 showed that supervisors were not identifying improper stops, frisks, and searches by officers under their charge, but instead approving them. Supervisors routinely approved *Terry* stops, frisks, and searches that the Monitor team and the NYPD's own auditing division determined to be improper. In many cases, supervisors were present or participated in improper frisks and searches, including during *Terry* stops when jackets were unzipped, hoodies were lifted up, or pockets were searched without legal basis.

The Department's implementation of ComplianceStat is an important step in the right direction. Under new leadership, in January 2024, the NYPD began implementing a new procedure the Department is calling "ComplianceStat." For the Patrol Services Bureau, the meetings are chaired by the Chief of Patrol, John Chell, and the Chief of the Professional Standards Bureau, John Cosgrove. They are attended by Patrol Borough⁶ commanding officers ("CO") and precinct commanding officers, and the activities of two Patrol Borough commands are reviewed each meeting. Six ComplianceStat meetings have been held to date. At the Patrol Services Bureau meetings, Chief Chell emphasized the need for a process at the command level and at the Patrol Borough level to review *Terry* stops and BWC videos to "detect and correct" deficiencies. Several commands were called to task for the number of reported *Terry* stops, consent to search reports, and vehicle reports prepared for the prior 28-day period, especially compared to the large number of BWC activations in the command. Examples of undocumented *Terry* stops and improper frisks

⁶ Patrol Services Bureau is comprised of eight Borough Commands, each of which is headed by an assistant chief. Manhattan, Brooklyn, and Queens are divided into a "North" and "South" patrol borough due to their sizes. The borough commands exercise authority over the various seventy-seven precincts. Housing Bureau, Transit Bureau, and the Detective Bureau are separate, and do not fall under the Chief of Patrol.

and searches, as well as proper stops, were highlighted. At these meetings, the two chiefs, as well as the Deputy Commissioner of Legal Matters, emphasized the need for supervisory oversight and executive accountability, and that they expect compliance going forward.

The NYPD held its first ComplianceStat meeting with the Transit Bureau on May 21, 2024, and with the Housing Bureau on May 22, 2024, with the Chiefs of each Bureau chairing the respective meeting with Chief Cosgrove. ComplianceStat meetings will be critical in moving the Department towards compliance, but it is too early to assess their impact at this point.

The Early Intervention Program needs improvement. In 2020, the Court ordered the Department to develop an early intervention program (“EIP”),⁷ a program to identify potential issues and at-risk behavior by officers, and to take action before their misconduct escalates. The Monitor team has observed each Early Intervention Committee meeting and has provided its concerns and recommendations to the Department at several points in the process. COs must take more responsibility for their officers. Too often, COs did not identify potential problem officers prior to the EIP being in place, and often the CO recommended that no intervention was necessary. Second, it is unclear whether such interventions are improving behavior. The parties are discussing how EIP can be improved.

The Department must develop a plan to monitor Fourteenth Amendment compliance. The NYPD is required to develop sound procedures for monitoring officers’ compliance with the Fourteenth Amendment. The Monitorship has been in effect for ten years, and the NYPD has not yet developed a Fourteenth Amendment compliance plan. Although the NYPD is working on it, no plan currently exists, raising a major hurdle in terms of compliance.

⁷ Early Intervention System Order, *Floyd v. City of New York*, No. 08-CV-01034-AT (S.D.N.Y. June 2, 2020), ECF No. 767.

The Community Liaison is engaging with communities. In December 2022, the Court appointed Germain Thompson to serve in the newly created role of independent Community Liaison. The Community Liaison's role is to provide community members more opportunities to be heard and to provide input into the reform process. The Community Liaison is organizing community meetings and listening sessions and using other methods to receive and communicate these perspectives to the Monitor. Mr. Thompson's work will ensure that the Monitor's assessment of the NYPD's compliance with the law is informed by the perspectives and experience of community members. The Community Liaison has hired five community organizers to assist in his efforts, as well as an administrative assistant and a social media specialist.

II. Introduction

In 2013, the United States District Court for the Southern District of New York found that the NYPD's stop and frisk practices violated the Fourth Amendment, which requires *Terry* stops to be based on reasonable suspicion, and the Fourteenth Amendment, which guarantees equal protection under the law. The Court found that the "City acted with deliberate indifference toward the NYPD's practice of making unconstitutional stops and conducting unconstitutional frisks. Even if the City had not been deliberately indifferent, the NYPD's unconstitutional practices were sufficiently widespread as to have the force of law."⁸ The Court found the NYPD liable for a pattern and practice of racial profiling during *Terry* stops.⁹ In a separate opinion, the Court ordered changes to NYPD policies and activities, and appointed an independent monitor to ensure that the NYPD's conduct of *Terry* stops and frisks is carried out in accordance with the Constitution.

⁸ *Floyd v. City of New York*, 959 F. Supp. 2d 540, 562 (S.D.N.Y. 2013).

⁹ *Floyd Liability Opinion*, at 560-562, 602-607.

This is the court-appointed Monitor’s Twenty-First Report regarding the work done pursuant to court orders in three federal lawsuits concerning NYPD stop and frisk practices.¹⁰ This Report covers data and information about NYPD policing from 2020 to 2023 and provides the Monitor’s current assessment of whether the NYPD is in compliance with the reforms required by the Federal Court in its Remedial Order and subsequent orders. Despite many improvements, the NYPD is not in compliance.

The Report first describes the Court’s requirements and then reviews efforts the Department has made to implement them. The Report covers the following topics: Monitor Reviews and NYPD Audits (Section II), Updates to Training (Section III), Accountability (Section IV), Discipline (Section V), and Community Engagement (Section VI).

A. Monitor Reviews and NYPD Audits of Terry Stops, Frisks, and Searches

1. Background

In 2016, the NYPD adopted court-approved procedures that clearly state the constitutional and legal requirements governing *Terry* stops, frisks, and searches. A *Terry* stop may be conducted only if a police officer has individualized, reasonable suspicion that the person stopped has committed, is committing, or is about to commit a felony or penal law misdemeanor.¹¹ Independent of whether the officer has reasonable suspicion to make the stop, the officer may only conduct a frisk if the officer has reasonable suspicion that the person stopped is armed and dangerous. A search after a frisk may be conducted without consent if the frisk reveals an object that the officer reasonably suspects is a weapon. The Court also required that after every stop,

¹⁰ These three cases challenged the NYPD’s practices and policies concerning “stop, question and frisk”: (*Floyd v. City of New York*); stops and arrests for criminal trespass in NYCHA buildings (*Davis v. City of New York*); and criminal trespass stops in and around certain private multiple dwelling buildings enrolled in the Trespass Affidavit Program (“TAP”) (*Ligon v. City of New York*).

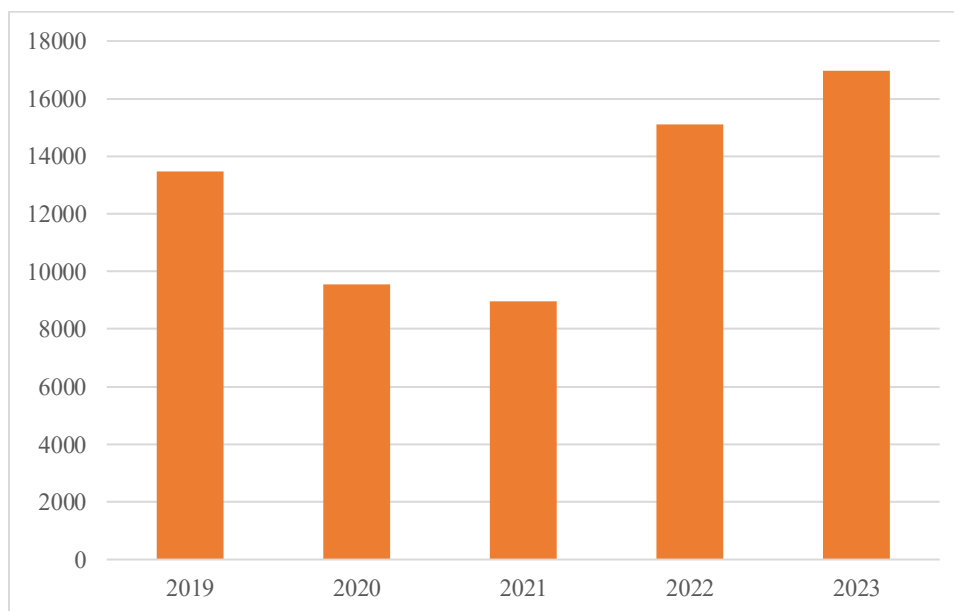
¹¹ For this report, a “stop” refers to a Level 3 *Terry* stop in which the person stopped is not free to leave. Under New York State’s *DeBour* framework, Level 1 requests for information and Level 2 common law inquiries are investigative encounters and are not “*Terry* stops.”

officers complete a stop report that includes a narrative describing the officer’s basis for stopping the person and, if a frisk or search was conducted, the basis for conducting the frisk or search.

2. Monitor’s Audit of Reported *Terry* Stops from 2020 through 1Q2023

In 2020, there were 9,544 reported *Terry* stops; that number decreased to 8,947 in 2021 and increased to 15,102 in 2022 and 16,971 in 2023.

Figure 1: Total Reported *Terry* Stops 2019-2023



There was also a significant shift in the type of *Terry* stops made over that time, with officers making an increasing percentage of “self-initiated” *Terry* stops (where officers make stops based on their observations) rather than stops based on radio runs (where officers are responding to a 911 or 311 call for service). In 2020, 19% of reported *Terry* stops were self-initiated. By 2023, that percentage increased to 46%, more than two-times as high a rate of self-initiated stops over the five-year period.

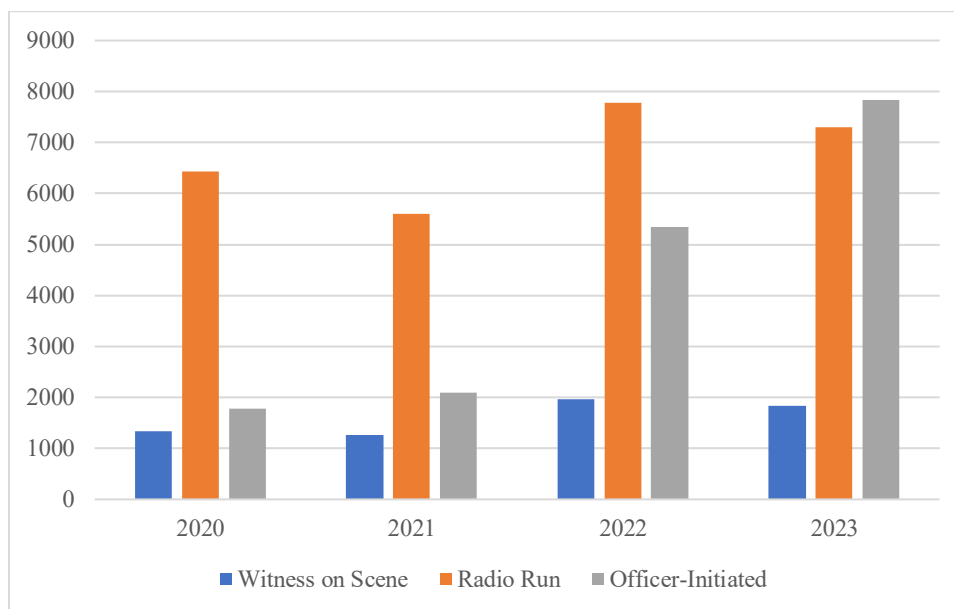
Figure 2: Terry Stops by How Initiated 2020–2023

Chart 1 below presents the Monitor team’s assessment by quarter of whether a stop was legal and whether any corresponding frisk and/or search, if conducted, was legal.¹²

¹² The Monitor team’s evaluation of reported *Terry* stops, frisks, and searches from 2020 to 2022 involved reviewing the available evidence, including the stop report, the ICAD (radio dispatch system) printout, and any associated BWC videos. Starting in the third quarter of 2021, if the Monitor team’s review determined that a stop was not based on reasonable suspicion, any subsequent frisk and/or search were also deemed deficient unless there was independent reasonable suspicion for the frisk and/or an independent legal basis for the search. This is a change from the Monitor’s prior approach to assessing frisks and searches conducted during *Terry* stops found to be improper, and accounts for a portion of the decline in compliance of frisks and searches. The NYPD has also adopted this audit methodology as of the third quarter of 2023.

Chart 1: Monitor Team Review of Reported *Terry* Stops 1Q2020 through 2Q2023

Quarter	<i>Terry</i> Stops Reviewed by Monitor Team	<i>Terry</i> Stops Based on Reasonable Suspicion	<i>Terry</i> Stops in Which Suspect Was Frisked	Frisks Based on Reasonable Suspicion	Stop in Which Suspect Was Searched	Legally Justified Searches
1Q2020	303	252 (85%)	161	153 (95%)	117	109 (93%)
2Q2020	302	237 (78%)	138	127 (92%)	119	113 (95%)
3Q2020	300	280 (93%)	152	142 (93%)	127	119 (94%)
4Q2020	298	264 (88%)	140	136 (97%)	107	100 (93%)
2020 Total	1203	1033 (85.9%)	591	558 (94.4%)	470	441 (93.8%)
1Q2021	302	271 (90%)	175	146 (83%)	165	140 (85%)
2Q2021	302	284 (94%)	163	147 (90%)	154	121 (79%)
3Q2021	302	272 (90%)	173	149 (86%)	146	117 (80%)
4Q2021	305	256 (84%)	184	143 (78%)	159	119 (75%)
2021 Total	1211	1083 (89.4%)	695	585 (84.2%)	624	497 (79.6%)
1Q2022	306	276 (90%)	183	146 (80%)	166	131 (79%)
2Q2022	300	264 (88%)	192	149 (78%)	168	111 (66%)
3Q2022	301	263 (87%)	218	160 (73%)	177	106 (60%)
4Q2022	310	277 (89%)	240	179 (75%)	159	122 (77%)
2022 Total	1217	1080 (88.7%)	833	634 (76.1%)	670	470 (70.1%)
1Q2023	313	272 (87%)	180	136 (76%)	138	92 (67%)
2Q2023	298	265 (89%)	191	120 (63%)	157	106 (68%)

The data in Chart 1 shows a slight increase in the rate of unconstitutional reported *Terry* stops from 2021 to 2022, from 10.6% to 11.3% of stops. The rate of unconstitutional frisks rose from 15.8% in 2021 to 23.9% in 2022. The rate of unlawful searches rose from 20.4% in 2021 to 29.9% in 2022. Elevated non-compliance in frisks and searches continued into 2023. In the first half of 2023, 12% of reported *Terry* stops were unconstitutional, 31% of frisks were unconstitutional, and 33% of searches were unconstitutional.

The Monitor team's review of *Terry* stops, frisks, and searches in the first half of 2023 showed that the stops, frisks, and searches of officers on patrol have generally been compliant, especially encounters resulting from 911 calls (96.1%). In the same six months, the specialized

units, such as the NST and PST, made the majority of the improper *Terry* stops, frisks, and searches, most of which were self-initiated stops involving officers stopping a person to investigate whether they had a weapon.¹³ For example, young Black and Hispanic men have been stopped without reasonable suspicion, often when they were wearing fanny packs. For many *Terry* stops reviewed by the Monitor team, the officer was in a police car some distance away from the person stopped and it was late in the evening when there was little light, and it was unlikely, if not impossible, for the officer to observe what might be a weapon through the fabric in a fanny pack. Additionally, there were also instances in which stop reports were inconsistent with BWC video or did not contain sufficient detail to legally justify the stop.

The Department should look further into commands where there is a large percentage of self-initiated stops for criminal possession of a weapon (“CPW”) but a low recovery rate of weapons to determine whether *Terry* stops are compliant. For example, in 2023, officers in one precinct made 1,415 self-initiated *Terry* stops (more than four times that of any other precinct) and 1,389 (98%) of them were for CPW. Of the 1,389 self-initiated CPW *Terry* stops in 2023, only 43 resulted in a CPW arrest, a “hit rate” of just 3%. Other commands had much higher recovery rates during the same period; of the NST commands other than this precinct, the average recovery rate for weapons from self-initiated *Terry* stops for CPW was 14% in 2023. The Monitor brought to the Department’s attention the data from this command. In 2024, a new commanding officer was assigned to the precinct and preliminary data indicates that the volume of *Terry* stops in the command is now more aligned with that of other precincts in that borough.

¹³ Of the 68 unlawful *Terry* stops reviewed by the Monitor team from the first half of 2023, 40 were NST or PST officers; of the 112 illegal frisks, 77 were NST or PST officers; of the 98 illegal searches, 50 were NST or PST officers.

3. Comparing Monitor Team Review with QAD Audits

The NYPD has established auditing procedures that identify noncompliant *Terry* stops, frisks, searches, and trespass arrests and a mechanism for correcting them. Each quarter, the Monitor team reviews the audits of the Department's Quality Assurance Division ("QAD") to evaluate the QAD auditors' work.¹⁴ When the Monitor team disagrees with QAD's assessments, QAD and the Monitor team meet to discuss these cases.

Chart 2 below compares the number and percentage of stop reports each quarter that QAD initially determined articulated reasonable suspicion with the number and percentage of stop reports that the Monitor team determined were justified *Terry* stops. Although QAD's audits and the Monitor team's assessments had been converging for several years, these assessments diverged in 2021 and 2022, with QAD finding more *Terry* stops, frisks, and searches proper than the Monitor team found deficient. The differences in 2022 ranged from eight percentage points to 21 percentage points with respect to frisks and searches.

¹⁴ QAD's audits and command self-inspections assess compliance with the Fourth Amendment and the Department's stop-and-frisk policies. The NYPD is also required to develop sound procedures for monitoring Fourteenth Amendment compliance but has not done so to date.

Chart 2: Monitor and QAD Assessments of *Terry* Stops

	QAD (No., % Articulating Reasonable Suspicion)	Monitor (No., % Containing Justified <i>Terry</i> Stops)	% Point Difference
1Q2020	252 (85%)	252 (85%)	0
2Q2020	241 (80%)	237 (78%)	2
3Q2020	281 (94%)	280 (93%)	1
4Q2020	274 (91%)	264 (88%)	3
1Q2021	274 (91%)	271 (90%)	1
2Q2021	286 (95%)	284 (94%)	1
3Q2021	289 (95%)	272 (90%)	5
4Q2021	285 (93%)	256 (84%)	9
1Q2022	284 (93%)	276 (90%)	3
2Q2022	270 (90%)	264 (88%)	2
3Q2022	209 (90%)	263 (87%)	3
4Q2022	286 (92%)	277 (89%)	3
1Q2023	301 (96%)	272 (87%)	9
2Q2023	277 (93%)	265 (89%)	4

Chart 3 below compares QAD's assessments of frisks with those of the Monitor team. Starting in the third quarter of 2021, the Monitor team changed its standards for evaluating frisks during improper *Terry* stops. Frisks conducted during improper *Terry* stops are now determined to be improper as well, which accounts for some of the decrease in compliance for the Monitor team's assessment starting in that quarter. However, the level of compliant frisks decreased even more in 2022. QAD changed its methodology to mirror the Monitor's in the third quarter of 2023, which may account for some of the difference between QAD's assessments and the Monitor's, but QAD's assessment of frisks also showed a decrease in proper frisks in 2022. For *Terry* stops in 2022, the Monitor team determined that only 76.1% of frisks were compliant, while QAD's assessment was that 89.8% of frisks were proper.

Chart 3: Monitor and QAD Assessment of Frisks, 1Q2020 through 4Q2022

Quarter	# Terry Stops Reviewed by Monitor Team	# Frisks QAD Assessed	QAD- Assessed Frisks That Had Reasonable Suspicion for the Frisk	# Frisks Observed by Monitor	Monitor- Assessed Frisks That Had Reasonable Suspicion for the Frisk	% Point Difference
1Q2020	303	157	151 (96%)	177	164 (93%)	3
2Q2020	302	135	128 (93%)	138	128 (93%)	0
3Q2020	300	152	142 (93%)	153	143 (93%)	0
4Q2020	298	141	135 (96%)	141	134 (95%)	1
1Q2021	302	170	146 (86%)	175	146 (83%)	3
2Q2021	302	163	154 (94%)	163	147 (89%)	5
3Q2021	302	170	162 (95%)	173	149 (86%)	9
4Q2021	305	183	164 (90%)	184	143 (78%)	12
1Q2022	306	179	170 (95%)	183	146 (80%)	15
2Q2022	300	190	164 (86%)	192	149 (78%)	8
3Q2022	301	170	144 (85%)	218	160 (73%)	12
4Q2022	310	239	221 (92%)	240	179 (75%)	17
1Q2023	313	180	163 (91%)	180	136 (76%)	15
2Q2023	298	192	161 (84%)	191	120 (63%)	21

Chart 4 below compares QAD's assessment of searches with those of the Monitor team. This chart shows an even larger decrease in compliance in 2022 and a larger difference between the Monitor's assessments and the assessments of the QAD auditors. For Terry stops with searches in 2022, the Monitor team determined that only 70.1% of searches were compliant, while QAD's assessment was that 88.4% of searches were proper, an 18.3 percentage-point difference.

Chart 4: Monitor and QAD Assessment of Searches 1Q2020 through 4Q2022

Quarter	# Terry Stops Reviewed by Monitor Team	# Searches Assessed by QAD	QAD Assessed Searches Justified	# Searches Observed by Monitor	Monitor-Assessed Searches Justified	%Point Difference
1Q2020	303	115	106 (92%)	126	114 (90%)	2
2Q2020	302	119	111 (93%)	113	113 (95%)	2
3Q2020	300	127	119 (94%)	127	119 (94%)	0
4Q2020	298	113	106 (94%)	113	102 (90%)	4
1Q2021	302	160	144 (90%)	165	141 (85%)	5
2Q2021	302	145	141 (97%)	153	121 (79%)	18
3Q2021	302	145	136 (94%)	147	121 (82%)	12
4Q2021	305	155	136 (88%)	166	119 (72%)	16
1Q2022	306	163	151 (93%)	166	131 (79%)	14
2Q2022	300	160	139 (87%)	168	111 (66%)	21
3Q2022	301	140	112 (80%)	177	106 (60%)	20
4Q2022	310	157	146 (93%)	159	122 (77%)	16
1Q2023	313	138	116 (84%)	138	92 (67%)	17
2Q2023	298	154	113 (73%)	157	106 (68%)	5

The Monitor team's review of QAD's 2022 audits demonstrates that the Department's audits need to be more thorough and exacting. For example, BWC video footage showed officers improperly lifting clothing to search for weapons, but these searches were not included in the stop reports and were not noted by QAD. Frisks of fanny packs were deemed compliant by QAD even though BWC videos of these frisks were inconsistent with the frisk narratives in the stop reports. In addition to the large number of disagreements with QAD's 2022 assessment on *Terry* stops, frisks, and searches, after reviewing the disagreements, the NYPD changed its assessment and agreed with the Monitor team in over 60% of the stops, frisks, and searches. This indicates not that the NYPD and the Monitor team have different views of the standards for compliance, but that QAD's initial reviews in 2022 were not sufficiently thorough.

In the second half of 2023, a new CO was put in charge of QAD, and several new auditors were added to the unit. The QAD auditors also went through additional training on identifying

unlawful *Terry* stops, frisks, and searches. The Monitor team met with QAD in January 2024 and shared examples of problematic types of encounters to improve the Department's auditing standards. The leadership changes in QAD along with additional training and discussions with the Monitor team will hopefully lead to more rigorous audits and improved compliance.

4. NYPD Monitoring of Fourteenth Amendment Compliance

It is important to note that QAD's audits and command self-inspections assess compliance with the Fourth Amendment and the Department's stop-and-frisk policies, but not compliance with the Fourteenth Amendment. The NYPD is also required to develop procedures for monitoring its officers' compliance with the Fourteenth Amendment. The Department has not yet developed procedures for monitoring Fourteenth Amendment compliance. The NYPD is working on a plan for monitoring Fourteenth Amendment compliance and will be providing it to Monitor for review.

B. Underreporting of Stop Encounters

The Court's Remedial Order requires the NYPD to develop and implement a stop report form to be used by officers every time a person is stopped. The report includes a narrative section to explain the basis for the stop and a narrative section to explain the basis for a frisk or search, if applicable. The Court approved the NYPD's stop report form in 2016 and approved the electronic version of the stop report in 2018.

After ten years of oversight, there are officers who are making *Terry* stops but not documenting them in a stop report, as they are required to do. In fact, underreporting of *Terry* stops by officers increased from 2020 to 2022 by 20 percentage points, a trend that is quite troubling. The implementation of BWCs and the requirement that officers activate their cameras for all police interactions, including *DeBour* Level 1 encounters (a request for information for which an officer needs only an objective credible reason to approach, and does not need any

suspicion of criminality), appears to have helped with identifying unreported *Terry* stops recorded on officers' BWCs.

1. Monitor BWC Audits

Beginning in the second quarter of 2020, the Monitor team has conducted an audit of BWC videos categorized as "Investigative Encounters."¹⁵ The Monitor team selects a random sample of BWC videos to review to determine whether the encounter might involve a stop, frisk, or search. If the video appears to illustrate a stop, frisk, or search, the video is sent to the NYPD to investigate if a stop, frisk, or search did occur and if so, whether a stop report was completed. Because NYPD officers now include the *DeBour* level in the BWC data, the Monitor team selects a separate random sample of videos from each *Debour* level, as well as videos in which an officer fails to identify the level. The chart below illustrates the results of the audits:

¹⁵ Officers are to label their BWC videos using a variety of categories. Videos labeled "Investigative Encounters" include *DeBour* Level 1, Level 2, and Level 3 encounters.

Chart 5: Investigative Encounter BWC Video Analysis

Quarter	Population of Investigative Encounter BWC Videos	Sample BWC Videos	Possible <i>Terry</i> Stops	NYPD Confirmed <i>Terry</i> Stops	Monitor Identified as <i>Terry</i> Stops	Stop Reports	Compliance Rate
2Q2020	10,915	75	24	19	19		
3Q2020	9,478	75	21	19	20		
4Q2020	8,352	75	24	18	18		
1Q2021	10,039	150	67	47	55		
2Q2020–1Q2021 Total	38,784	375	136	103	112	100	89.3%
1Q2022	833,065 ¹⁶	225	34	25	31	23	74.2%
2Q2022	1,039,525	225	37	28	31	19	61.3%
3Q2022	1,124,692	225	38	24	28	22	78.6%
4Q2022	1,138,119	225	48	26	31	19	61.3%
2022 Total	4,135,401	900	157	103	121	83	68.6%

Chart 5 shows a troubling increase in unreported *Terry* stops from the last three quarters of 2020 and the first quarter of 2021 to the full year of 2022.¹⁷ For the 2022 data, the sample of videos indicated there were six confirmed *Terry* stops with four stop reports in which no level had been categorized; three confirmed *Terry* stops labeled Level 1, each without a stop report; 39 confirmed *Terry* stops labeled Level 2, with only eight stop reports; and 73 confirmed *Terry* stops labeled Level 3, with 71 stop reports. Encounters labeled as Level 2 encounters (common law inquiries in which officers must have founded suspicion but for which a stop report is not required) should be one of the areas closely examined to determine whether they were actually Level 3 *Terry* stops. In 2022, there were 31,089 BWC videos categorized by officers as Level 2, so even if a small percentage of those Level 2 encounters were actually Level 3 *Terry* stops, the total number

¹⁶ There are several reasons for the large increase in Investigative Encounter BWC videos in 2022. In September 2021, the NYPD required that Level 1 encounters be recorded on BWCs. Also, in November 2021, the Department changed its retention policy from 18 months to 39 months, except those videos tagged as arrest or homicide, which are kept indefinitely.

¹⁷ The Monitor team did not conduct its BWC audit in the last three quarters of 2021. It restarted the audits in the first quarter of 2022.

of unreported stops would still be extremely concerning. The 2022 non-compliance rate of 31.4% undocumented *Terry* stops is too high.

2. NYPD BWC Audits

The Department shares the Monitor's concerns about unreported *Terry* stops and, beginning in January 2024, a unit in the Patrol Services Bureau began conducting their own BWC audit of selected commands to identify undocumented *Terry* stops. According to the Department, specific BWC categories are sampled to identify if any team or precinct are improperly categorizing BWC, either inadvertently or to avoid review as a Level 3 *Terry* stop. Some of the BWC categories sampled include Stop-pedestrian, Calls for help, Non-crime corrected, Crime in progress, Warn & admonish, QOL violation, Level 1 encounter, and Level 2 encounter.¹⁸ The results of the audit are then sent to the audited commands for follow-up and corrective action. In January 2024, the unit reviewed 150 BWC videos and identified 47 potential *Terry* stops without stop reports. In February, the unit reviewed 185 BWC videos and identified 32 *Terry* stops that were categorized as Level 2 encounters, and thus, did not have a stop report. The Housing Bureau and Transit Bureau will also be conducting similar BWC reviews now that they have been added to ComplianceStat. It is important that the Patrol Services Bureau has taken the initiative to identify underreporting.

3. RAND Audits

The NYPD continues to review samples of radio dispatches to determine whether a stop was made and whether the stop was documented with a stop report.¹⁹ For 2021, the RAND audit identified 54 *Terry* stops and 51 stop reports (94% compliance). In 2022, the RAND audits

¹⁸ These categories or "tags" are in addition to the main categories of homicide, arrest, summons, and investigative encounter.

¹⁹ The methodology was developed by the RAND Corporation, giving these audits the name "RAND audits."

identified 61 *Terry* stops and 57 stop reports (93% compliance). For the first quarter of 2023, the NYPD's RAND audits identified 22 *Terry* stops and 20 stop reports (91% compliance).

Although these compliance rates are high, the low number of potential *Terry* stops identified through the RAND audits indicate that this audit methodology is insufficient to assess underreporting. Since 2016, the RAND audit methodology has been decreasing in its effectiveness in identifying events that may have been *Terry* stops. Officers are now using their NYPD phones instead of their radios for a variety of tasks, so those tasks will not appear in ICAD (radio) transmissions, and thus will not be identified in the RAND audits. Nor will self-initiated *Terry* stops be covered in RAND audits, as those stops are generally not reported over the radio. This methodology is not reliable.

4. Police Initiated Enforcement Audits (“PIE”)

A third audit conducted by the NYPD to identify undocumented *Terry* stops is the Police-Initiated Enforcement, or PIE, audit. These audits examine arrests in which the People of the State of New York are the complainants on the Complaint Report (as opposed to a named individual), such as criminal possession of a controlled substance and criminal possession of a weapon. The arrest reports are reviewed to determine whether it appears that a stop report should have been completed for the encounter. *See* Chart 6 below. For 2021, 187 arrests in the PIE audit started as *Terry* stops, and 165 had stop reports (88%). In 2022, 331 arrests in the PIE audits started as *Terry* stops, and 295 had stop reports (89%). The PIE audits examine only a small portion of potential *Terry* stops—ones that result in an arrest—and therefore cannot be used to estimate the total number of unreported *Terry* stops. But such audits do provide useful information about stop reporting. Although the compliance percentage has improved since 2017, an 11% rate of underreporting for *Terry* stops leading to arrests is still concerning.

Chart 6: PIE Audits with Command Responses

	Arrests Audited Possibly Requiring Stop Reports	Stop Report Not Required	Command Response Missing	Stop Report Required	Stop Report on File (at time of audit)	Percentage Compliance (SR on file/SR Required)
2017	734	492	55	187	64	34%
2018	627	372	65	190	90	47%
2019	571	356	73	142	70	49%
2020	448	272	0	176	131	74%
2021	274	87	0	187	165	88%
2022	460	129	0	331	295	89%

5. Compliance Assessment of Stop Reporting

NYPD will only be in compliance with the Court’s stop report requirements if officers use the stop report form to document their *Terry* stops in practice. The underreporting of *Terry* stops has been acknowledged by the Department and explicitly identified in NYPD and Monitor audits. Any assessment of compliance with the Court’s remedial orders will be impossible unless the Department finds ways to ensure that unreported *Terry* stops are no longer an issue. As noted above, the Department is far from satisfying that metric. The Department has the tools to address this problem, including BWC audits and ComplianceStat, and we hope to see improved compliance going forward.

C. Business Cards

The *Floyd* Remedial Order specified that any “form or card given to stopped persons should provide the stated reasons for the stop, the badge numbers of the stopping officers, and information on how to file a complaint.”²⁰ Chart 7 below illustrates the frequency that Business Cards are offered by members of the NYPD as observed on BWC footage during the Monitor team’s assessment of stop reports and videos associated with those *Terry* stops. In the first three

²⁰ *Floyd*, 959 F. Supp. at 682.

quarters of 2022, the NYPD complied with offering a Business Card in 79% of the instances in which such was required (364 out of 461). Although there has been significant improvement in the compliance rate for offering business cards over the past three years, the NYPD is not yet in compliance with this requirement.

Chart 7: Compliance with the Business Card Requirement—Sample of *Terry* Stops

Quarter	Total Events	Business Card Required	Business Card Offered	Compliance
1Q2020	288	179	91	50.84%
2Q2020	275	161	71	44.10%
3Q2020	275	155	68	43.87%
4Q2020	280	170	79	46.47%
1Q2021	284	117	66	56.41%
2Q2021	296	136	96	70.59%
3Q2021	300	111	76	68.47%
4Q2021	302	152	107	70.39%
1Q2022	306	145	109	75.17%
2Q2022	300	165	137	83.03%
3Q2022	301	151	118	78.15%
4Q2022	307	180	151	83.89%
1Q2023	313	192	160	83.33%

D. NYCHA Interior Patrols

The *Davis* settlement required revisions to the Patrol Guide provisions governing interior patrols of NYCHA buildings.²¹ The settlement also required changes to related NYPD training materials and the use of a revised Trespass Crimes Fact Sheet (“TCFS”), an NYPD form used by officers to describe the circumstances leading to or supporting an arrest for trespass. The court-approved policy states that officers must have an objective, credible reason (“OCR”) to approach a person in or around NYCHA buildings, and that simply entering, being in, or exiting a NYCHA building is not an OCR for an approach.

²¹ The Court approved the settlement of the *Davis v. New York City* case in April 2015.

1. Terry Stops at NYCHA Properties

The Monitor assessed 214 stop reports that recorded *Terry* stops made in NYCHA properties in 2022 and the first half of 2023. These stop reports were selected as part of the quarterly random sample of stop reports in the broader Monitor assessment of *Terry* stops. In total, there were five Police Service Areas (“PSA”) and 214 *Terry* stops identified in the six quarters for assessment. The results of the assessment are displayed in the chart below. Of the 214 *Terry* stops reviewed, officers had reasonable suspicion for 163 stops (76%). This is a lower rate than the overall Department-wide average of 88% compliance assessed by the Monitor in the same period. During the same period, there were 167 *Terry* stops in NYCHA properties where the suspect was frisked. In 123 of these frisks (74%), the frisk was assessed as lawful by the Monitor. This is about the same percentage as deemed lawful in the city-wide sample of frisks assessed by the Monitor in the same period. Finally, there were 112 *Terry* stops in NYCHA during which the suspect was searched. In 69 of these searches (62%), the search was assessed as lawful by the Monitor. Again, this is lower than the average of 69% deemed lawful in the city-wide sample of searches assessed by the Monitor.

Chart 8: 2022–2023 NYCHA Terry Stops, Frisks, and Searches

		# STOP REPORTS	STOP OK	# FRISKS	FRISK OK	# SEARCHES	SEARCH OK
1Q2022	PSA3	26	14 (54%)	21	11 (52%)	10	4 (40%)
1Q2022	PSA4	19	14 (74%)	5	4 (80%)	7	6 (86%)
1Q2022	PSA7	12	11 (92%)	12	9 (75%)	10	7 (70%)
2Q2022	PSA6	12	11 (92%)	10	9 (90%)	7	5 (71%)
2Q2022	PSA7	29	27 (93%)	22	20 (91%)	20	13 (65%)
3Q2022	PSA3	55	42 (76%)	48	34 (71%)	39	23 (59%)
4Q2022	PSA6	9	6 (67%)	6	6 (100%)	4	3 (75%)
1Q2023	PSA3	28	22 (79%)	22	16 (73%)	11	5 (45%)
2Q2023	PSA5	24	16 (67%)	21	14 (67%)	4	3 (75%)
Total		214	163 (76%)	167	123 (74%)	112	69 (62%)

2. 2023 NYCHA BWC Review

As part of its monitoring efforts, the Monitor team assesses BWC video recordings to explore the lawfulness of encounters between police officers and members of the public inside and in the vicinity of NYCHA buildings, as required by the *Davis* settlement. In reviewing the videos, the Monitor team assesses whether officers had an objective, credible reason to approach a person in or around a NYCHA building, whether officers had reasonable suspicion when making stops, including trespass stops, and whether officers had probable cause when making arrests. Between January 1, 2023, and June 30, 2023, there were 8,097 videos assigned the tag “Interior Patrol – NYCHA.” Often, these interior patrols are conducted late in the night and officers do not encounter any residents or visitors. For this reason, the sample was divided into two groups. The first group was videos that had the category of “uncategorized” with the additional tag of “Interior Patrol – NYCHA.” The second group consisted of videos that had a specific category, such as homicide, arrest, summons, or investigative encounter, and that also had the tag of “Interior Patrol – NYCHA.” This group was more likely to have recorded encounters between the police and the public.

The Monitor team selected a random sample of 100 videos from each group for assessment. This assessment focused on the lawfulness of significant public contacts between the police and the public in NYCHA buildings and on NYCHA property. For purposes of this Report, significant public contact is defined as any encounter between the officer and a member of the public where the officer is engaged in an investigative encounter. This would include contacts where the officers asked Level 1 or Level 2 questions.²² Routine interactions with staff members of the building, other officers, or persons in their official capacity (FDNY, EMS, Postal, etc.) were not considered a significant public contact for this definition. There was significant public contact in 10% (10 of 100) of the videos in the “uncategorized” and 40% (40 of 100) of the other categories.

In 50 videos, officers encountered a total of 123 people²³ where the officer was observed to have had significant public contact. Below are some general observations:

- Demographics of the 123 persons encountered are as follows:
 - 81 Black, 40 Hispanic, and 2 Unknown
 - 82 male, 41 female
 - The average estimated age of the persons encountered was 31, with ages ranging between 15 and 60.
- Most encounters (103) start at Level 1 (83.7%).
- Only one encounter escalated beyond the initial approach and the escalation appeared lawful.
- There was one encounter that appeared to be a Level 3 *Terry* stop and the officers appeared to have reasonable suspicion for the stop.
- There were 19 encounters that started at Level 4 (15.49%). In none of these 19 encounters was a person arrested, even though the officer had probable cause to make an arrest. However, in five encounters a person was issued a summons for trespass.

²² In a Level 1 encounter, a police officer may only ask non-accusatory questions. In a Level 2 encounter, officers are permitted to ask pointed, accusatory questions (e.g., “Do you have any weapons on you?”).

²³ In several videos there were more than one person encountered during the Interior Patrol. This was a combination of multiple persons at the same encounter or encountering different people at different times during the same interior patrol.

- During the 123 encounters, the officers acted lawfully in all of them (100%), a very positive result.

3. 2022 NYCHA Trespass Arrest Assessment

In 2022, there were 486 trespass arrests in NYCHA properties. A random sample of 100 of these arrests were selected for assessment.²⁴ The Monitor team obtained Arrest Reports and Trespass Crimes Fact Sheets (“TCFS”) for these arrests, reviewed these documents, and watched the BWC videos associated with the arrests. The NYPD provided a total of 100 arrest documents. Several of the sampled arrest incidents included multiple trespass arrests from the same encounter. The NYPD also provided the Monitor team with the TCFS that officers are required to complete for all trespass arrests in and around NYCHA buildings.

Based upon the Monitor team’s assessment, the officers had an objective credible reason to approach the individuals in 99 of the 100 arrests. They appeared to have probable cause to effect arrests in 98 of the 100 arrests. The Monitor’s sample of 100 arrests in 2022 initially included only 78 TCFS. After further inquiry from the Monitor, the NYPD produced an additional 16 TCFS (of which three had been sealed), resulting in 94% compliance.

QAD auditors also review whether a TCFS was prepared when required, whether the officer articulated a proper basis for the approach on the TCFS, and whether the arrest documentation articulates probable cause for the arrest. QAD audits found that 91% of trespass arrests in NYCHA are properly documented by a TCFS, 87% articulated a proper basis for the approach, and 95% articulated probable cause for the arrest. *See Chart 9 below.*

²⁴ This sample size produces a confidence interval of approximately +/- 8.7% at a 95% confidence level.

Chart 9: QAD Audits of Trespass Arrests and TCFS

	NYCHA Trespass Arrest Had TCFS	NYCHA TCFS Articulated Proper Basis for Approach	NYCHA Trespass Arrests Articulated Probable Cause
2018	85% (516/604)	97% (501/516)	94% (567/604)
2019	94% (520/555)	98% (508/520)	93% (515/555)
2020	94% (240/255)	94% (225/240)	94% (240/255)
2021	98% (251/255)	97% (243/251)	98% (251/255)
2022	89% (278/312)	96% (267/277)	96% (301/312)
1Q23	91% (171/188)	87% (148/171)	95% (179/188)

Audits by both the NYPD and the Monitor indicate that NYPD officers comply with the TCFS requirement.

III. Updates To Training

As noted in prior Reports, the NYPD, working with the Monitor and the Plaintiffs, developed new training on constitutional *Terry* stops, frisks, and searches for both new and current officers, which the Court approved. By the end of October 2020, the Department completed delivering the training to more than 34,300 members of the service, including police officers, detectives, sergeants, and lieutenants.

A. Recruit Training

In July 2023, Monitor team members observed entry-level Policing Legally training at the NYPD's Police Academy. The instructors covered the materials in the court-approved lesson plan and did a good job engaging the recruits and highlighting important aspects of the lessons. In October 2023, the Monitor team observed recruit training on Interior Patrols in NYCHA developments. The training appropriately covered the court-approved materials.

B. In-Service Training

The NYPD completed its initial training of incumbent officers and supervisors in stop and frisk, trespass enforcement, and bias-free policing in October 2020. The Department also

developed and provided a full-day, in-service training for Housing Bureau officers in 2019 and 2020 on conducting interior patrols in NYCHA buildings.

1. Neighborhood Safety Team Training

In addition to the initial stop and frisk and Housing training, the Monitor team observed the NYPD's training of newly assigned NST members as well as refresher training for incumbent NST members. The NYPD launched the NST program in March 2022. Although the NST members do not patrol in plainclothes, the NYPD adopted the Basic Plainclothes Course for the NST members. The training included court-approved training on investigative encounters and characteristics of armed suspects. The Monitor team observed the training in March 2022 and observed training for newly assigned NST members in May, July, August, and October 2023.

The 2022 training covered the court-approved training materials, although the "characteristics of armed suspects" material was from a recruit training class and was not particularly tailored to the work of the NST units. The 2022 training also included a presentation and dialogue with a community-based organization regarding perceptions of police/community interactions. The 2023 training sessions did not include a presentation from a community organization, but the instructors did cover the court-approved material effectively.

After the July session and before the August training session, the Monitor team made recommendations to improve the training by tailoring it more effectively to the problems encountered by NST members. In particular, the Monitor team recommended focusing the training on self-initiated *Terry* stops and using some of the BWC videos used in the NST refresher training (described below) that illustrate deficient stops, frisks, and searches. The NYPD made these changes in the August 2023 training for newly assigned officers.

After the Monitor issued the Nineteenth Report on NST practices, the NYPD conducted refresher training for incumbent NST personnel by Borough Patrol. The first refresher training

took place in May 2023. The session included a discussion of the law of investigative encounters and its complexities, common deficiencies, a review of BWC videos, and a presentation from the Health and Wellness Section. The instructor identified five categories of NST deficiencies observed citywide:

- **Misapplication of Character of Armed Suspect Training:** e.g., generic bulges in pockets and waistbands, using Level 3 language or tools at Level 2 encounters, etc.
- **Improper Stop-Report Writing and Supervisory Review:** e.g., failure to note on the stop report frisks and/or searches that occurred; supervisors approving their own stop reports; supervisors approving impermissible frisks and/or searches on the stop reports.
- **Unlawful Searches:** e.g., searches of bags, and lifting clothing, etc., without a legal basis.
- **Underreporting of *Terry* stops:** persons being frisked and/or searched, and the encounter not being reported on a stop report.
- **BWC Compliance:** e.g., late activation, failing to note the apparent race, gender, and age in appropriate BWC fields for Level 2 encounters, etc.

A second refresher training session was held for Brooklyn North and Brooklyn Housing NST personnel in July 2023, and a training session was held for Queens South and Queens North NST members in August 2023. Refresher training was subsequently conducted by the Police Academy for all NST units. Although the training was well-targeted to address unlawful *Terry* stops, frisks, and searches, the Monitor's recent audits have shown that unlawful *Terry* stops continued in 2023.

2. Stop, Question, Frisk (“SQF”) Refresher Training Videos

In 2022, the NYPD began producing refresher training videos using scripts created with input from the Monitor and Plaintiffs and approved by the Court. To date, the NYPD has produced and disseminated an introductory video on investigative encounters and training videos on *DeBour* Level 1, 2, and 3 encounters, on interior patrols in NYCHA buildings, and on racial profiling. All members of the service engaging in patrol activities will be required to view the refresher training videos and complete quizzes on investigative encounters. Remaining modules to be completed by

the Creative Services Division include videos on the Right to Know Act, documentation of *Terry* stops, and supervision.

3. Executive Training

In the first quarter of 2024, the NYPD conducted training for all senior executives and supervisors responsible for overseeing officers' compliance with the Fourth Amendment and the documentation of *Terry* stops and consent searches, including Patrol, Housing, and Transit COs, Executive Officers, Special Operations Lieutenants, and Integrity Control Officers, as well as Borough COs, Executive Officers, and Adjutants.

The training was based on the SQF training for NST units and was developed to address some of the deficiencies in supervision noted by the Monitor and by the NYPD. The instructors stated that supervisors should review the BWC videos of *Terry* stops and identify inconsistencies between the stop report narratives and BWC videos. They should look for boilerplate language used in multiple stop reports for stops that differ; frisks that go beyond the scope of the officer's observation of a potential weapon; and searches conducted but that are not recorded on the stop report, including officers lifting shirts and sweatshirts, unzipping jackets, and putting their hands in pockets. The instructors also covered BWC deficiencies, such as late activation and early deactivation, and consent searches, among other areas. There were four training sessions, starting in March 2024 and concluding in May 2024. The Monitor team observed each training session.

4. Remedial Training

The Professional Standards Bureau ("PrSB") Training Unit has conducted several different types of remedial stop and frisk training. In 2023, the NYPD conducted individual training sessions for 64 officers and supervisors as the result of multiple stops, frisks, and searches that QAD deemed to be deficient. Remedial training was conducted for 35 officers in 2023 for whom the Early Intervention Committee determined that SQF training was the appropriate intervention

for these officers. Thirty-two officers were required to undergo remedial training in 2023 based on a substantiated CCRB complaint or Department investigation and referral from the Department Advocate's Office. In addition, remedial training on investigative encounters was also provided as a segment of the broader Tactical Communications ("TAC COM") course, which was conducted seven times in 2023. Remedial training responsibilities are now with the Legal Bureau, rather than PrSB.

IV. Accountability

A. Supervision

The Monitor team's review of *Terry* stops showed that supervisors were not identifying improper stops, frisks, and searches by officers under their charge, but instead approving them. Supervisors routinely approved *Terry* stops, frisks, and searches that the Monitor team and the NYPD's own auditing division determined to be improper. In other words, supervisors have failed to identify and correct unlawful *Terry* stops, frisks, and searches by officers they supervise. This is concerning because it demonstrates a lack of accountability in the field, which could lead to renewed stop-and-frisk-related problems in the future.

Stop reports include a section in which the reviewing supervisor records whether they believe there was a sufficient basis for the stop, whether there was a sufficient basis for the frisk, and whether there was a sufficient basis for the search. The stop report also documents any follow-up action directed by the supervisor, such as instructions, training, or discipline. Charts 10 and 11 below show whether the supervisors identified any improper *Terry* stops, frisks, or searches, and if so, whether any follow-up action was directed.

Chart 10: Supervisory Actions on Stop Reports

	# Stop Reports	# Reviewing Supervisor Determined Insufficient Basis for Stop	# Stop Reports with Frisks	# Reviewing Supervisor Determined Insufficient Basis for Frisk	# Stop Reports with Searches	# Reviewing Supervisor Determined Insufficient Basis for Search
2019	12,958	66 (0.5%)	7,290	60 (0.8%)	4,721	64 (1.4%)
2020	9,618	68 (0.7%)	5,235	72 (1.3%)	4,001	85 (2.1%)
2021	9,291	90 (0.9%)	5,429	98 (1.8%)	4,114	120 (2.9%)
2022	15,541	103 (0.7%)	9,396	144 (1.5%)	6,577	174 (2.6%)
1Q2023	4,466	28 (0.6%)	3,036	45 (1.4%)	1,771	53 (3.0%)

As noted in Chart 1 above, the Monitor team determined that 11% of *Terry* stops, 25% of frisks, and 26% of searches in 2022 were unlawful.²⁵ However, in 2022 NYPD supervisors found that less than 1% of *Terry* stops, less than 2% of frisks, and less than 3% of searches in that year were improper, which is a massive discrepancy. Even when supervisors do identify unlawful *Terry* stops, frisks, or searches, discipline is seldom imposed, with instruction and training being the primary corrective action, as shown below in Chart 11.²⁶

²⁵ See *supra* Chart 1.

²⁶ When supervisors identify deficient *Terry* stops, frisks, or searches, they also note on the stop report any follow-up action taken, with check-boxes for Instruction, Training, and Discipline. The NYPD generally considers instruction and training to be discipline, although the formal definition of discipline only includes lost days or hours, fines, or a formal reprimand. For Chart 11, discipline would include Command Discipline, whether or not any penalty days or hours were imposed.

Chart 11: Supervisory Actions Regarding Improper *Terry* Stops

2021			
Follow-Up Action	Stop	Frisk	Search
Instruction Only	18	28	39
Training Only	1	1	1
Discipline Only	0	0	0
Instruction and Training	41	47	41
Instruction and Discipline	2	1	4
Instruction, Training, and Discipline	16	10	12
No Action Taken	12	11	23
Total	90	98	120
2022			
Follow-Up Action	Stop	Frisk	Search
Instruction Only	22	50	62
Training Only	0	0	0
Discipline Only	1	0	0
Instruction and Training	52	65	67
Instruction and Discipline	1	2	2
Instruction, Training, and Discipline	15	11	11
No Action Taken	12	16	26
Total	103	144	168
1Q23			
Follow-Up Action	Stop	Frisk	Search
Instruction Only	9	6	20
Training Only	0	1	0
Discipline Only	0	0	0
Instruction and Training	17	31	22
Instruction and Discipline	0	3	3
Instruction, Training, and Discipline	0	0	0
No Action Taken	2	4	8
Total	28	45	53

First-line supervisors are not holding their officers accountable for unconstitutional *Terry* stops.

B. ComplianceStat

Starting in December 2018, the NYPD met with each Patrol, Housing, and Transit Bureau command twice per year to discuss the commands' efforts to address the underreporting of *Terry* stops, constitutionality of *Terry* stops, and compliance with policies regarding the use of BWCs. The meetings were labeled Remediation of Identified Situations Key to Success ("RISKS") Reviews. Without any notice to the Monitor, the NYPD discontinued RISKS Reviews in September 2022.

Over a year later, under new leadership, in January 2024, the NYPD began implementing a new procedure the Department is calling "ComplianceStat." These are meetings chaired by Chief John Chell of the PSB and Chief John Cosgrove of the PrSB. They are attended by four Patrol Borough commanding officers and the precinct commanding officers from those Patrol Bureaus, and the activities of commands from two Patrol Boroughs are reviewed each meeting. Prior to the meeting, the Patrol Services Bureau reviews BWC videos of those commands as well as data on stop reports, consent to search forms, and vehicle reports from the prior 28-day period to identify potential undocumented *Terry* stops, improper *Terry* stops, frisks, and searches, and stop reports still awaiting review and approval by supervisors.

ComplianceStat meetings were held on January 31, February 28, April 12, April 14, May 21, May 22, June 11, and July 31, 2024, focusing on underreporting, stop, frisk, and search compliance, and BWC compliance in the prior 28-day period. At each meeting, Chief of Patrol John Chell and other executives emphasized the need for a process at the command level and at the Patrol Borough level to review *Terry* stops and BWC videos to "detect and correct" deficiencies. Several commands were called to task for the number of reported *Terry* stops, consent to search reports, and vehicle reports prepared for the 28-day period, especially compared to the number of BWC activations in the command. Examples of undocumented *Terry* stops and

improper frisks and searches, as well as proper *Terry* stops, were identified. At these meetings, NYPD chiefs and executives emphasized the need for supervisory oversight and executive accountability. At the meetings, the Professional Standards Bureau also provided a brief refresher on the most frequently noted deficiencies using BWC videos.

As of May 1, 2024, ComplianceStat had only covered Patrol Services Bureau commands. The NYPD held their first ComplianceStat meeting with the Transit Bureau on May 21, 2024, and with the Housing Bureau on May 22, 2024. ComplianceStat meetings will be critical in moving the Department towards compliance. The Monitor looks forward to working with the Department to ensure their effectiveness.

C. NST Compliance Plan

After issuing the Monitor's report on NYPD's Neighborhood Safety Teams, the Monitor directed the Department to prepare a compliance plan addressing the concerns identified in the Report. The NYPD provided the Monitor with a draft plan in July 2023. However, there were critical gaps in the draft plan. In particular, the draft plan did not have any timeline for implementation or benchmarks to measure success. The Monitor gave the NYPD clear feedback about how to revise the plan and met with the Department to discuss that feedback. The NYPD has revised the plan, which it began implementing in January 2024. The Monitor is reviewing the Department's implementation of the compliance plan. In addition, the Monitor team is undertaking a more comprehensive audit of NST and PST *Terry* stops, frisks, and searches, which will be completed later in the year.

D. Early Intervention Program

In June 2020, the Court ordered the Department to develop an early intervention system.²⁷

The Department was directed to implement a program that systematically receives, assesses, and acts on information regarding adverse findings on the conduct of police officers involving illegal *Terry* stops or illegal trespass enforcement. In addition to the Court’s order, a new section of New York City’s Administrative Code, NYC Administrative Code § 14-190, added additional factors to be used as triggers for the Department’s early intervention program (“EIP”).²⁸

The goal of the program is for the NYPD to identify potential issues and at-risk behavior by officers, and to take action before their misconduct escalates. When an officer crosses a threshold in the early intervention system, NYPD staff prepare an overview of the officer’s history with the Department and makes a recommendation for a potential intervention; the officer’s information is then reviewed by an Early Intervention Committee (“EIC”) to determine what intervention, if any, is appropriate. The designated thresholds include:

- Three or more declinations to prosecute in a 12-month period in certain specified categories;
- A suppression decision in a case involving unlawful *Terry* stops, frisks, or searches, trespass enforcement, racial profiling, or racial slurs;
- A court finding of non-credible testimony;
- A declination by the Law Department to represent or indemnify the officer in a lawsuit alleging an unconstitutional stop, trespass enforcement, racial profiling, or racial slur;
- A judgment or settlement in a lawsuit that names the officer and alleges an unconstitutional stop, an unconstitutional trespass enforcement, racial profiling, or racial slurs, where evidence exists that the police officer violated an NYPD rule or regulation;

²⁷ Early Intervention System Order, *Floyd v. City of New York*, No. 08-CV-01034-AT (S.D.N.Y. June 2, 2020), ECF No. 767.

²⁸ Local Law No. 68 (2020) of City of New York. The additional thresholds relate to vehicle pursuits and collisions; CCRB complaints; uses of force; and arrests for disorderly conduct, obstruction of government administration and resisting arrest (sections 240.20, 195.05 and 205.30 of the penal law).

- Any Civilian Complaint Review Board (“CCRB”) complaint against the officer involving racial profiling or a racial slur.

In addition to the thresholds specified in the Court’s order, the EIC will also review any officer who meets certain criteria regarding other indicators specified in legislation enacted by the City Council.²⁹ An officer’s CO or other NYPD units can also, in their discretion, refer an officer for EIC review.

The EIC is chaired by the Chief of the PrSB and includes personnel representing the Legal Bureau, the Deputy Commissioner of Equity and Inclusion, the Chief of the Department, the Chief of Detectives, the Chief of Patrol, and the Chief of Personnel. A representative of the Health and Wellness Section also attends the EIC meetings.

The EIC has several potential interventions from which to choose, including training, mentoring, further review of the officer’s BWC videos, enhanced supervision, change of assignment, and conferral with Bureau leadership. The EIC can also refer an officer for performance monitoring, for an assessment with the Health and Wellness Section, to the Internal Affairs Bureau for potential disciplinary action, or to a district attorney’s office for potential criminal investigation. The EIC may also decide that no intervention is necessary.

The EIC first met in August 2020 and has convened almost quarterly since then. In 2023, the Plaintiffs raised concerns that certain officers subject to adverse credibility findings by judges were not being reviewed by the EIC. After meeting with the NYPD, the Monitor team set up meetings with each district attorney’s office, the two U.S. Attorney’s offices, the Law Department’s Family Court Division, and the Office of Court Administration (“OCA”), to find out how those offices collected information on adverse credibility determinations and suppression

²⁹ These indicators include CCRB and Internal Affairs Bureau (“IAB”) investigations, criminal arrests and investigations of an officer, vehicle pursuits and collisions, violations of the Patrol Guide, and arrests and summonses for resisting arrest, obstructing governmental administration, and disorderly conduct. Local Law 68-2020.

decisions, what information was collected, and how information was communicated to the NYPD. These meetings revealed that there were gaps in the information that the NYPD was receiving to review adverse credibility and suppression determinations. Because of transitions in both the NYPD and in the offices of the district attorneys and U.S. Attorneys, several of the persons designated in those offices as the liaison to collect and send adverse credibility findings to the NYPD were no longer in those positions. In addition, the OCA was not collecting and forwarding information about suppression decisions to the Department.³⁰ At the same time, these meetings also identified some best practices, which should be replicated in other offices. For example, the Family Court Division of the Law Department worked with the Family Court to develop a template unsealing order that can be used to share information with the NYPD regarding adverse credibility findings. The NYPD has now contacted each office and provided them with a single email address for the offices to send both adverse credibility determinations and suppression decisions. The Monitor team will continue to follow up to ensure that the NYPD is receiving the required information.

Chart 12 below illustrates the number of EIC reviews and interventions for each threshold in 2022 and 2023.³¹ In 2023, the PrSB reviewed 768 candidates. Of the 768 candidates, 169 (22%) were recommended for intervention and 599 (78%) had no intervention recommended.

³⁰ The OCA declined to participate in the program and does not report any data to the NYPD for the EIP.

³¹ The numbers of thresholds and interventions are larger than the number of candidates reviewed and candidates recommended for intervention, as some officers crossed more than one threshold and the EIC recommended multiple interventions for some officers.

Chart 12: EIC Reviews and Interventions by Threshold

Threshold	2022 Reviews	2022 Interventions	2023 Reviews	2023 Interventions
Adverse Credibility	36	35	11	10
CCRBs	2	0	34	24
Declined Prosecution	173	12	446	18
Law Dept. Referral	0	0	3	1
CO or Another Referral	1	1	22	18
Profiling/Slur Allegations	132	35	192	65
Suppression	14	14	11	10
Vehicle Pursuit Force	10	5	59	37
OGA/Resisting Arrest/Dis. Con.	0	0	43	21
Total	368	91	792	183

The Monitor team has observed each of the EIC meetings and has provided its concerns and recommendations to the Department at several points in the process. To begin, COs must take more responsibility for their officers. Too often, COs did not identify potential problem officers prior to the EIP being in place. And often, the CO recommended that no intervention was necessary, gave glowing performance evaluations, and justified the officer's actions to the Committee because the officer was "an active cop" even though the officer was an EIC candidate. Because the early intervention program isn't disciplinary, the interventions have been mild, such as requiring more training or additional review of the officer's BWC videos. It is unclear whether such interventions are improving behavior. The Department should track and review the impact of the interventions over time. In addition, the Department should address issues of supervisory responsibility. Supervisors, Integrity Control Officers, Field Training Officers, and other command executives are not being held accountable for failing to identify individuals needing intervention. For example, some officers reviewed by the Committee have exhibited deeply

troubling conduct. The interventions recommended (training, guidance, mentoring) were woefully inadequate. The EIP is designed to address individual officer issues, but when systematic problems of a unit or command are before the Committee, the Department must do more than training and mentoring the individual officers. The Department cannot turn a blind eye to continued misconduct and must step back and take a broader look at the performance of the unit and determine whether intervention is needed not just for the officers, but for the command as well.

The Monitor team attended the most recent EIC meetings in March and June 2024 and observed some promising practices. In the March meeting, four of the 13 members of the service being reviewed were referred to the EIP by their commanding officer, including a lieutenant who had been the platoon commander in the precinct. Two of those members, including the lieutenant, had already been reassigned by the commanding officer as part of their intervention. In the June meeting, the commanding officers or the Borough Adjutant of the subject officer's Patrol Borough were present at the meeting and provided information about the officers and their recommended interventions to the EIC. For officers in three commands, the CO recommended that retraining be conducted not just for the subject officer, but for all the officers in the Public Safety Team on which the subject officer was a member. Except for two reassignments, the interventions consisted almost entirely of retraining, enhanced review of the officers' BWC videos, and command-level mentoring. In April 2024, the Monitor met with the PrSB and the Legal Bureau to address ways that the EIP can be improved.

E. Performance Evaluations

In November 2017, the Court approved the NYPD's performance evaluation system for patrol officers. In doing so, the Court ordered that the Monitor review and assess certain aspects of the system. The review was intended to ensure that, in practice, the system does not "restitute

pressures that result in a focus on the quantity of stops without regard to their lawfulness” or undermine the goals of the remedial process, including compliance with the Fourth and Fourteenth Amendments.³²

To evaluate whether the performance evaluation system meets these criteria, the Monitor team requested information from the NYPD related to evaluations and their relationship to investigative encounters. The team reviewed Cop’s Rapid Assessment Feedback Tool (“CRAFT”) entries from 2022 related to *Terry* stops, which allows supervisors to issue a Supervisory Comment Form in the system for an officer’s positive actions or negative actions (e.g., Needs Improvement). The CRAFT “Needs Improvement” report is now used by the NYPD instead of the Minor Violations Log, which was a logbook kept at the command level but not tracked department-wide.

The Monitor team reviewed the 2022 performance evaluations in which a negative grade was given for performance dimensions related to *Terry* stops (e.g., Application of Law and Procedures, Quality and Timeliness of Written Reports, and Proactive Policing). The team also reviewed the performance evaluations of officers from the 10 precincts that were part of the Monitor’s assessment of the NSTs from the second quarter of 2022, as well as the performance evaluations of all officers for whom an intervention was required by the Early Intervention Committee in 2022.

1. 2022 Negative CRAFT Entries Related to *Terry* Stops.

In 2022, there were 939 Negative CRAFT Reports that had a “needs improvement” rating related to *Terry* stops. These ratings and the comments associated with them were reviewed and collapsed into general categories to make them easier to understand and interpret. The table below

³² *Floyd*, ECF No. 564 (Nov. 6, 2017).

illustrates the general areas that supervisors cited for the needs-improvement ratings on the evaluations.

As noted below, according to the data provided by the NYPD, the most common negative CRAFT entry was related to the use of BWCs (proper activation and recording). Thirty-three percent of all negative CRAFTs related to *Terry* stops were related to improper use of BWCs.

Chart 13: Negative CRAFT Entries

Reason/Comment for Needs Improvement Rating	#
Issues Related to BWC	312
Issues with Improper Entries or Failing to Document <i>Terry</i> Stops in Activity Log	140
Issues with Right to Know Card	109
Other	78
Clerical Errors	65
Failure to Prepare Stop Report	63
Poor Tactics	62
Supervisor Failing to Identify Deficient Stop Report	30
Unlawful Stop	22
Unlawful Search	19
Unlawful Frisk	18
Off Post	12
Failure to Conduct a Name Check During a Stop	9
Total	939

As shown in the chart, there were 22 negative CRAFT entries (2.3%) for officers making an unlawful stop, 19 for an unlawful search (2.0%), and 18 for an unlawful frisk (1.9%). To put these numbers in context, in 2022, the QAD audits of stop reports determined that 531 stop reports did not articulate reasonable suspicion for the stop, 591 stop reports did not articulate reasonable suspicion for the frisk, and 397 stop reports did not articulate a legal basis for the search. Section III above illustrates the lack of meaningful supervisory review of stop reports at the immediate supervisor or command level. It is therefore unsurprising that unlawful *Terry* stops, frisks, and searches are not resulting in negative CRAFTs. Even so, commands are made aware of the QAD audit findings, and some form of action *could* have been taken with regard to the unlawful conduct

identified. But less than five percent of the unlawful *Terry* stops, frisks, and searches found by QAD are being dealt with by any form of negative supervisory actions through the CRAFT system.³³ This reflects the lack of supervisory review regarding unlawful *Terry* stops, frisks, and searches.

Additionally, in 2022, 63 officers were issued a negative CRAFT for failing to prepare a stop report. This accounted for 6.7% of the negative CRAFTS issued that year relating to *Terry* stops. Inspection of the comments made by the supervisors in these situations indicate a wide variety of mechanisms used to identify underreporting. The data indicates that supervisors reviewed BWC videos to identify *Terry* stops, conducted command-level RAND audits, directed stop reports to be prepared at the scene of encounters and then looked for them later in the database, and received notice from the CCRB that a stop occurred and was not reported. One officer received two negative CRAFTs in successive months by the same supervisor for failure to prepare a stop report.

The CRAFT system was also used in a limited way to identify supervisory errors or omissions with regards to stop report preparation. In 2022, 30 supervisors received a negative CRAFT for failing to identify deficiencies on a stop report that were identified in a command self-inspection, QAD audit, or review of BWC videos.

Finally, there were no negative CRAFTs issued to officers in 2022 for not preparing enough stop reports, indicating that the performance evaluations system was not reinstating pressure on officers to make *Terry* stops without regard to their lawfulness.

³³ Note that there are other mechanisms Department supervisors have available to deal with poor performance, including training, command discipline, and charges and specifications.

2. Performance Evaluations with Needs Improvement Ratings

In the third quarter of 2022, the Department completed 12,469 Performance Evaluations for officers and detectives. In 73 of those evaluations (0.58%) the evaluator assigned a “Needs Improvement” rating in the dimensions “Application of Law and Procedure” (16), “Proactive Policing” (50), or “Quality and Timeliness of Written Reports” (7). None of these ratings related to improper stop reports. There appears to be little, if any, connection between a negative CRAFT entry related to stop activities and a Needs-Improvement rating on quarterly evaluations.

3. Performance Evaluations for NST Members

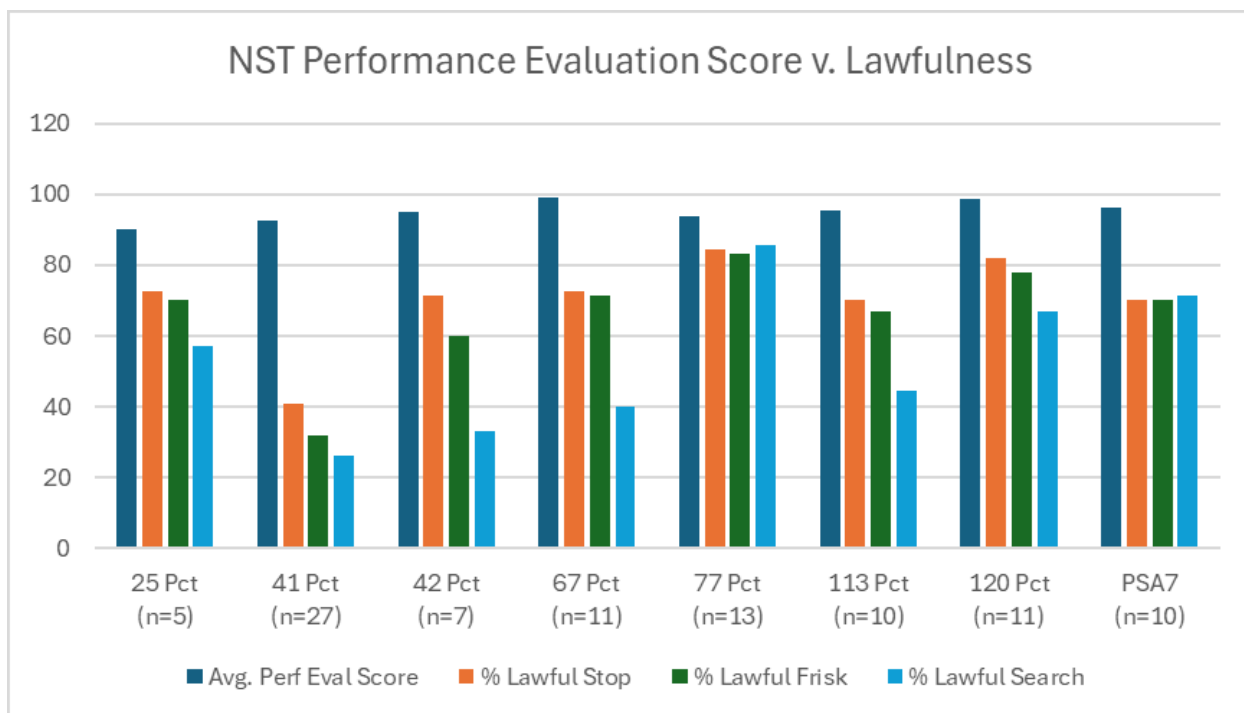
The Monitor’s Nineteenth Report evaluated the performance of the NYPD’s NSTs. As part of that report, the Monitor team reviewed *Terry* stops included in QAD’s audits of eight commands during the second quarter of 2022 (Precincts 25, 41, 42, 67, 77, 113, 120, and PSA7). The third quarter 2022 performance evaluations of all NST officers assigned to these eight commands were reviewed. The Monitor team reviewed 45 performance evaluations of officers assigned to the NSTs in these commands.

The range of scores assigned to the 45 evaluations was from 88 to 100, with an average rating of 95.1. Overall, this would translate to an “Exceptional” rating for the group of officers. Closer inspection of the three relevant performance dimensions indicates that all 45 officers were rated as either exceptional or exceeds standards on the Application of Law and Procedure, Quality and Timeliness of Written Reports, and Proactive Policing dimensions. There was not one Needs-Improvement rating given for any of the 45 officers for these, or any other, dimensions.

The very high ratings, however, do not line-up with the poor performance identified by the Monitor’s assessment of the *Terry* stops conducted by these officers. In the second quarter of 2022, these 45 officers prepared 81 stop reports. Overall, the Monitor team determined that only 63% of the *Terry* stops were lawful, only 59% of the frisks were lawful, and only 46% of the

searches were lawful. Clearly, there is a disconnect between unlawful *Terry* stops, frisks, and searches, and the performance ratings for officers involved in these encounters. The graph below puts these data side by side to illustrate the disconnect.

Figure 3: NST Performance Evaluation Score vs. % Lawfulness of *Terry* Stops, Frisks and Searches



The graph above shows that in all commands, the average performance evaluation score for NST officers in the third quarter of 2022 did not reflect the low compliance rates for the *Terry* stops, frisks, and searches of these officers in the second quarter of 2022. It appears that lawful encounters are not a factor in evaluating the performance of officers assigned to NSTs.

4. PERF Compliance

On a positive note, the Monitor team did not find cases in which officers were given negative evaluations because of a lack of stop activity. In contrast, evaluations are not used to hold officers accountable for illegal *Terry* stops, frisks, or searches by officers. The failure to identify unlawful *Terry* stops, frisks, and searches at that supervisory level in the command means

that the Department is not correcting illegal behavior. This is further compounded by officer evaluations that do not accurately reflect an officer's stop and frisk performance. And there is a paucity of negative data in the form of identifying unlawful *Terry* stops, frisks, and searches, and when these instances are identified, the evaluation does not reflect negatively on performance. This reflects a two-pronged problem: poor performance is not identified, and in the limited instances when poor performance is identified, the performance evaluation system is not leveraged to correct it.

V. Discipline

A. Statute of Limitation Problems

In 2022, the former Police Commissioner dismissed a large number of misconduct cases against officers on the grounds of a "short statute of limitations" ("short SOL"). Section 75 of the NY Civil Service Law provides that a disciplinary proceeding must commence within 18 months of the subject incident, with exceptions for misconduct that also could be considered criminal. At least 425 cases were dismissed even though they had received a full investigation and substantiation by the CCRB. Of particular concern to the Monitor, 48 of the cases were findings of improper stop, question, frisk, or search of person ("SQFS") by the officer, and another 65 dismissals were for cases where the CCRB referred a Failure to File a Stop Report, but the Department dismissed the allegations and findings without investigation or review.

The COVID pandemic contributed to delay in resolution of the dismissed cases. In addition, the CCRB focused its investigative work on the large number of complaints stemming from protests in 2020 and 2021. The CCRB took longer than usual to conclude many investigations for a variety of reasons, including staffing issues at CCRB and non-appearance of officers for CCRB interviews during the pandemic or lack of an agreed upon process for production of BWC footage. Even so, as described below, many of these cases could have been

resolved by the Department, and, going forward, the NYPD should not use the SOL as a reason to dismiss cases where alternatives are available.

More than half of the dismissed SQFS cases were submitted to the Department as finalized by the CCRB more than two weeks before the SOL date. These cases could have been prioritized and sorted by seriousness of charge or record of the officer without dismissal. Further, for more serious cases, the SOL does not apply: the statute explicitly excludes cases where the misconduct potentially constitutes a crime, regardless of whether the officer is formally accused.³⁴

Additionally, the Department should have prioritized cases where the officer had a prior history of substantiated complaints. Of the 48 substantiated SQFS cases, at least 27 of the officers had four or more previous CCRB complaints, frequently for earlier SQFS allegations. Many of the SQFS cases were ones where the CCRB had recommended training in lieu of discipline. Training and instructions can be imposed even after the 18-month SOL in Section 75, as they are not considered discipline under Section 75. Thus, each of those cases could have proceeded without being dismissed by the NYPD for SOL reasons. At a minimum, even where the CCRB recommended command discipline, each substantiated SQFS allegation that was dismissed on SOL grounds could have been examined to see if training or other guidance would have been an appropriate disposition.

There is also little reason to dismiss cases on SOL grounds where the officer failed to file a stop report. Such cases are not investigated by the CCRB—they are examined by the precinct or command. An investigation whether a stop was conducted and, if so, whether a stop report was completed can be conducted quickly. These cases could have been determined quickly without

³⁴ See *Mieles v. Safir*, 272 A.D.2d 199 (1st Dep't 2000) (Official Misconduct under Penal Law § 195.00 serves as a sufficient basis to avoid SOL dismissal). By definition, Official Misconduct is broad enough to cover many serious cases.

being dismissed on SOL grounds. Beyond that, reporting failures almost always result in CRAFT entries, instructions, or training. Even after the delay in resolving the stop report failures, the Department should still be pursuing corrective action.

B. Discipline Matrix

The NYPD has proposed amendments to the Disciplinary System Penalty Guidelines (“Discipline Matrix”) that would reduce the mitigated penalties for “failing to file a required report” from three penalty days to training. This change would apply to the failure of an officer to complete an activity log for a *Terry* stop, but the proposed revisions do not change the penalties for failure to file a stop report, which still has a mitigated penalty of at least three penalty days. The Monitor expressed concerns to the NYPD that training could become the routine outcome for failure to file a stop report, which is a serious issue. Although the NYPD has reiterated that the Matrix still calls for a penalty day for failure to file a stop report, to date, the Monitor’s research has not identified any case where failure to file a stop report or activity log received any penalty days, separate and apart from discipline which might have been imposed concurrently for other misconduct arising from the same encounter. Experience shows that documentation failures standing alone, even without proof of inadvertence or good faith error, do not receive the presumptive five-day penalty, let alone the three-day mitigated penalty prescribed in the Matrix. In practice, the rule is no discipline of penalty days regardless of the nature of the failure to file a stop report.

The failure to file a stop report is a significant compliance issue and leads to community distrust in the NYPD; these acts should be taken seriously by the Department. The Department must ensure that the proposed Matrix revision does not diminish the discipline for failures to file stop reports. For this reason, the Department must track and report on discipline for stop report failures.

C. Racial Profiling and Bias-Based Policing Investigations

In 2021, the City Council passed Local Law 47 (2021),³⁵ which amended the City Charter to clarify that investigating allegations of “racial profiling and bias-based policing” falls under the CCRB’s “abuse of authority” jurisdiction. Prior to this amendment, all profiling and biased policing complaints were investigated by the NYPD. In 2022, the CCRB established the Racial Profiling and Bias-Based Policing Unit (“RPBP”). The CCRB began receiving complaints in October 2022.

By May 2023, the CCRB had begun investigating over 100 profiling complaints. However, it was unable to complete those investigations because the NYPD would not provide certain evidence CCRB sought for a thorough and complete investigation. The Monitor brought this concern to the City and to the Court, and discussions among the CCRB, the NYPD, and the New York City Law Department resulted in a Memorandum of Understanding (“MOU”) between the NYPD and CCRB on June 8, 2023, to ensure that relevant data was provided to the CCRB. Further discussions among the agencies resulted in an agreed-upon addendum to the MOU on the specific data fields to be shared by the NYPD.

At the end of 2023, the RPBP Unit had 424 open investigations of complaints that included at least one allegation of bias-based policing.³⁶ It had closed 142 profiling complaints for the following reasons: the complaint was unfounded (19), unable to determine (9),³⁷ closed pending litigation (21), the complaint was withdrawn (19), the member retired or resigned (2), the CCRB was unable to investigate (62), or officer unidentified (2). In 2023, the CCRB substantiated four

³⁵ Local Law 2021/047, available at <https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCAAdmin/0-0-0-132892> (last visited Mar. 18, 2024).

³⁶ CCRB 2023 Annual Report (2023), available at https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2023_CCRB_Annual_Report.pdf (last visited Aug. 30, 2024).

³⁷ The CCRB now uses the term “unable to determine” for allegations that previously were labeled “unsubstantiated.”

allegations of bias-based policing.³⁸ The Monitor team will be reviewing how the NYPD handles profiling and bias-based policing complaints that are substantiated by the CCRB.

D. Discipline for Failure to Complete a Stop Report

The Monitor requested information from the NYPD regarding any discipline imposed on NYPD members at the command level or at the Department Advocate Office (“DAO”) level in 2022 and the first quarter of 2023 for a failure to document a stop. Also requested was information about what penalty, if any, was associated with any Command Discipline (“CD”) if issued (e.g., whether any penalty days or hours were imposed).

For the discipline data at the command level, the NYPD reported that in 2022, 12 members were given CDs, of which seven were “warned and admonished,” one was penalized two hours of vacation, two were penalized six hours of vacation, and one was penalized one vacation day. For the first quarter of 2023, the NYPD reported that 17 officers were issued CDs, with 15 “warned and admonished,” one case pending, and one case without any penalty listed. The NYPD data also indicate that 64 members were given instructions in 2022 and 17 were re-instructed in the first quarter of 2023.³⁹ Note, however, that discipline imposed for a failure to complete a stop report might also have represented discipline for additional violations, as shown below in the DAO discipline data.

For cases stemming from CCRB complaints and reviewed by the DAO in 2022 and the first quarter of 2023, the NYPD reported that four members were issued CDs, with one getting a 10-day penalty, two officers getting three-day penalties, and the fourth officer getting no penalty days or time imposed. However, further examination of these cases by the Monitor team showed

³⁸ CCRB 2023 Annual Report (2023), *supra* note 36. The substantiations involved two distinct incidents, for which two officers were involved in each incident.

³⁹ Instructions are guidance for officers in lieu of discipline. They may be given by the Legal Bureau or within the command by a supervisor or training sergeant. Instructions are meant to be tailored to the particular behavior leading to the need for remediation.

that the discipline imposed in these cases was not just for failure to complete the report, but instead for other violations. For example, the 10-day penalty was for a substantiated discourtesy and failure to complete the member's activity log, in addition to the failure to complete the stop report. One of the three-day penalties was for a substantiated refusal to provide a name and failure to offer a business card, in addition to the failure to complete a stop report. The second three-day penalty was for a substantiated stop and frisk violation, threaten to arrest, and failure to provide a business card, in addition to the failure to complete a stop report. The Monitor team is unaware of any cases in which a member received penalty days or time *solely* for the failure to complete a stop report. Given the increase in underreporting, this is problematic: officers who fail to report should be disciplined for their failure to report, not only for a bundle of infractions. In addition to the four CDs at the DAO level, the NYPD reported that 25 members were instructed and 12 required additional training.

VI. Community Liaison

On December 16, 2022, the Court appointed Germain Thompson to serve in the newly created role of independent Community Liaison. As Community Liaison, Mr. Thompson is engaging with the communities most impacted by the NYPD's stop-and-frisk practices and communicating their experiences, perspectives, and recommendations to the Monitor and the Court. To accomplish this, the Community Liaison organizes community meetings and listening sessions, and uses other methods to receive and communicate perspectives to the Monitor.

From start to finish, the development of the Community Liaison position and the selection of Mr. Thompson to serve in the role was the product of collaboration. The Monitor team worked closely with the NYPD, the City Law Department, and counsel for the *Davis*, *Floyd*, and *Ligon* plaintiffs to design the Community Liaison role, which was outlined in a public filing by the Monitor on August 25, 2022. Then, a selection committee consisting of representatives of each of

the Parties and the Monitor team identified candidates to interview, conducted the interviews, and, by consensus, recommended finalists to the Monitor and the Court. Next, a community advisory group was assembled from the recommendations of the Parties to interview the finalists and provide their input directly to the Monitor. Finally, after considering input from the selection committee, the community advisory group and the Monitor, and interviewing the finalists, the Court appointed Mr. Thompson to serve as the Community Liaison.

As an appointee of the Court, Mr. Thompson is independent from the Monitor. Ultimately, Mr. Thompson's work will ensure that the Monitor's assessment of the NYPD's compliance with the law is informed by the perspectives and experience of community members. The Community Liaison has hired five community organizers to assist in his efforts, as well an administrative assistant, and a social media specialist.

From the start of 2023, the Community Liaison and his team have conducted outreach meetings with community-based organizations involved in social justice and criminal justice issues. From these meetings and other activities, the Community Liaison has organized information sessions ("info sessions") for community members and organizations to inform them about the monitorship and the Office of Community Liaison ("OCL") and obtain information about their experiences with the NYPD. The Liaison and his team have conducted over 100 info sessions and gathered feedback relevant to the monitorship. The Office designed brochures and flyers for distribution at meetings and events and created a "train-the-trainer" curriculum for organizations to build capacity to inform participants about the monitorship, the OCL, and stop-and-frisk policies and practices. In addition, the Community Liaison team attends rallies and public meetings relating to police policies and practices.

The Community Liaison and the Monitor have conducted two joint community forums, one on October 24, 2023, at the Restoration Plaza in Bedford Stuyvesant, Brooklyn, and a second on February 26, 2024, at Elmcors in Queens. Both sessions were moderated by K. Bain of the Community Capacity Development organization. There were productive conversations with community members regarding the Monitor's role and how the Monitor can address stop-and-frisk-related issues that the community currently faces. Another joint forum will be held in 2024. Feedback from the Community Liaison team about the community's perspectives on *Terry* stops, frisks, and searches will inform the Monitor's assessment of the NYPD's progress in complying with the Court's required reforms.

VII. Conclusion

NYPD policies have been changed and officers have been trained, but the Monitor's assessment of *Terry* stops, frisks, and searches shows that unlawful stops, frisks, and searches increased in 2022 and into 2023, rather than decreased. In addition, undocumented *Terry* stops continue to plague the NYPD and hinder the Department's efforts towards achieving substantial compliance. Better oversight is needed at the supervisor, command, and Department level, and the Department's ComplianceStat meetings are an important step in the right direction. After ten years of this monitorship, the Department must take real steps to address Fourteenth Amendment compliance. The Department is working on a plan and the Monitor looks forward to reviewing it. The NYPD at all levels must properly identify unlawful stop and frisk practices and hold officers and supervisors accountable. The time for this to happen is now.