
Frisky Business: Adapting New York City Policing Practices To Ameliorate Crime in Modern Day Chicago

“We have clearly shown that police can take back streets that were given up as lost for decades. The continuing challenge for American police leaders is to take them back in a lawful and respectful manner so that the behavior of the police reflects the civil behavior society expects of all of its citizens.”¹

I. INTRODUCTION

New York City currently maintains one of the lowest crime rates among all major American metropolitan areas.² Several decades ago, however, the urban hub of the Empire State found itself in peril as it experienced a devastating rise in violent crime.³ This upward trend persisted until the early-to-mid 1990s when statistics on crime began to indicate a change for the better.⁴ Crime rates in New York City continued to descend until the turn of the millennium when they stagnated, resulting in a plateau of reported crime, which continues to endure.⁵ The plummeting crime numbers coincided with an historic ascent in the number of stop and frisks performed by city police officers.⁶ The decline in

1. WILLIAM BRATTON WITH PETER KNOBLER, *TURNAROUND: HOW AMERICA’S TOP COP REVERSED THE CRIME EPIDEMIC* 311 (1998).

2. See Lawrence Rosenthal, *Pragmatism, Originalism, Race, and the Case Against Terry v. Ohio*, 43 *TEX. TECH L. REV.* 299, 321 (2010) (asserting New York City has lowest crime rates of any major metropolitan area in United States).

3. See *id.* at 320-21 (discussing rise in violent crime within New York City from 1960 to 1991).

4. See *id.* (highlighting trend of crime in New York City as rising and then dropping); see also ELIOT SPITZER, N.Y. STATE OFFICE OF THE ATTORNEY GEN., *THE NEW YORK CITY POLICE DEPARTMENT’S “STOP & FRISK” PRACTICES: A REPORT TO THE PEOPLE OF THE STATE OF NEW YORK FROM THE OFFICE OF THE ATTORNEY GENERAL* 46 (Dec. 1, 1999) (reporting New York City’s drop in crime rates during 1990s). From the early-to-mid-1990s, homicides declined by fifty-six percent, violent crimes declined by forty-three percent, auto crimes dropped from 147,000 to 60,000, and robberies fell from 100,000 to 59,000. See N.Y. STATE DIV. OF CRIMINAL JUSTICE SERVS., *1997 CRIME AND JUSTICE ANNUAL REPORT* 5-34 (1997).

5. See Rosenthal, *supra* note 2, at 321 (demonstrating period of stagnation following dramatic decline in crime).

6. See GREG RIDGEWAY, RAND CORP., *ANALYSIS OF RACIAL DISPARITIES IN THE NEW YORK POLICE DEPARTMENT’S STOP, QUESTION, AND FRISK PRACTICES* iii (2007), available at http://www.rand.org/content/dam/rand/pubs/technical_reports/2007/RAND_TR534.pdf (reporting objective analysis of data collected on NYPD’s stop-and-frisk patterns); SPITZER, *supra* note 4, at 88 (documenting 175,000 stop and frisks from January 1998 through March 1999). The New York Police Department released statistics in February 2007 “indicat[ing] that more than a half-million pedestrians had been stopped on suspicion of a crime in New York City in 2006.” RIDGEWAY, *supra*, at iii.

urban crime and simultaneous rise in stop and frisks suggests a correlation between the two phenomena.⁷

The discourse surrounding the stop-and-frisk practices in New York City is dominated by the poignant argument of critics claiming that such practices have been unjustly used as a vehicle for discrimination by the New York Police Department (NYPD).⁸ Moreover, particular crime statistics do in fact indicate that stop and frisks carried out by the NYPD have disproportionately targeted people of color.⁹ Drawing conclusions based solely on the interpretation of raw data, however, paints an incomplete picture of a complex issue.¹⁰ A more thorough examination of the larger context of urban crime and policing practices suggests that a variety of additional factors account for the racially disproportionate figures.¹¹

This Note will begin with a review of the landmark case of *Terry v. Ohio*,¹² in which the Supreme Court held it constitutional for police officers to stop people based on reasonable suspicion despite a lack of probable cause (commonly referred to as a *Terry* stop), and show how *Terry* ultimately paved the path to legalizing stop-and-frisk practices of police officers.¹³ Since the initial ruling, public opinion of *Terry* stops, which constitute the basis of, and are largely understood to be synonymous with, modern stop-and-frisk practices,

7. See Alfred Blumstein & Joel Wallman, *The Crime Drop and Beyond*, 2 ANN. REV. L. & SOC. SCI. 125, 125 (2006) (explaining varied factors, including police practices, may have contributed to sharp changes); Rosenthal, *supra* note 2, at 179 (stating “no non-police explanation for New York’s success is apparent”). See generally GEORGE L. KELLING & WILLIAM H. SOUSA, JR., CTR. FOR CIVIC INNOVATION, DO POLICE MATTER? AN ANALYSIS OF THE IMPACT OF NEW YORK CITY’S POLICE REFORMS (Dec. 2001), available at http://www.manhattan-institute.org/pdf/cr_22.pdf (concluding aggressive arrest policies account for significant drop in crime during 1990s).

8. See *Floyd v. City of New York*, 959 F. Supp. 2d 540, 556 (S.D.N.Y. 2013) (alleging NYPD implemented and sanctioned policy of unconstitutional stops and frisks); SPITZER, *supra* note 4, at 8-9 (describing animosity of minorities towards NYPD and its stop-and-frisk practices); Al Baker, *New York Minorities More Likely To Be Frisked*, N.Y. TIMES, May 12, 2010, <http://www.nytimes.com/2010/05/13/nyregi-on/13frisk.html> (stating critics believe police have unfairly targeted black and Hispanic young men).

9. See DELORES JONES-BROWN ET AL., CTR. ON RACE, CRIME & JUSTICE, STOP, QUESTION & FRISK POLICING PRACTICES IN NEW YORK CITY: A PRIMER 14 (Mar. 2010), available at http://www.jjay.cuny.edu/web_images/PRIMER_electronic_version.pdf (finding blacks and Hispanics make up substantial majority of those stopped); RIDGEWAY, *supra* note 6, at 8 (illustrating crimes most commonly suspected as reason for stop, categorized by race); SPITZER, *supra* note 4, at 94-111 (admitting minorities stopped at higher rates than whites for number of reasons).

10. See SPITZER, *supra* note 4, at 117 (arguing higher stop rates for minorities not necessarily demonstrative of any legal or practical flaw); Rosenthal, *supra* note 2, at 353 (arguing race-based tactics reflect racially skewed offenders in New York City).

11. See Rosenthal, *supra* note 2, at 353 (alleging racially skewed policing tactics remain in accordance with racially skewed criminal offenders in New York City).

12. 392 U.S. 1 (1968).

13. See *id.* at 20 (announcing Court’s movement from probable cause to reasonable suspicion). The Court also stated that police should not retreat from obtaining judicial approval through warrants whenever practicable. *Id.* This Fourth Amendment rule was monumental in its effects. See Anthony C. Thompson, *Stopping the Usual Suspects: Race and the Fourth Amendment*, 74 N.Y.U. L. REV. 956, 962-63 (1999) (explaining importance of *Terry* decision).

has not been universally favorable.¹⁴ In fact, there are many scholars who hold strong positions in opposition to the law.¹⁵ This Note, however, will point to data that suggest the racially disproportionate incidence of *Terry* stops is not so much a product of targeting urban minorities, as it is a failure to interpret statistical data that takes into account other important confounding factors.¹⁶ Additionally, it will show that the safety afforded to New York City's urban communities due to radically low crime rates is in large part a product of the efficacy of stop-and-frisk practices.¹⁷ Finally, this Note will argue that New York City can serve as a model for other U.S. cities; specifically, Chicago, Illinois, which is currently affected by a dramatically high rate of crime.¹⁸

II. HISTORY

A. Analyzing *Terry v. Ohio*: Moving from Probable Cause to Reasonableness

The landmark case of *Terry v. Ohio* is arguably the most criticized decision on the Fourth Amendment's prohibition of "unreasonable searches and

14. See, e.g., Baker, *supra* note 8 (explaining critics' belief police unfairly target black and Hispanic men); Joseph Goldstein & Wendy Ruderman, *Street Stops in New York Fall as Unease Over Tactic Grows*, N.Y. TIMES, Aug. 3, 2012, <http://nytimes.com/2012/08/04/nyregion/number-of-police-street-stops-falls-34-percent.html> (describing general feeling of unease over NYPD practices); Nicholas K. Peart, *Why Is the N.Y.P.D. After Me?*, N.Y. TIMES, Dec. 17, 2011, <http://nytimes.com/2011/12/18/opinion/sunday/young-black-and-frisked-by-the-nypd.html> (discussing one young black man's negative experience with NYPD stop-and-frisk practices).

15. See Thompson, *supra* note 13, at 983-91 (discussing arguments in opposition to practice of stop and frisk); Dasha Kabakova, Note, *The Lack of Accountability for the New York Police Department's Investigative Stops*, 10 CARDOZO PUB. L. POL'Y & ETHICS J. 539, 560-75 (2012) (arguing stop-and-frisk practices detrimental and discriminatory).

16. See SPITZER, *supra* note 4, at 117 (stating minorities stopped at higher rates does not necessarily demonstrate legal or practical flaw); R. Richard Banks, *Beyond Profiling: Race, Policing, and the Drug War*, 56 STAN. L. REV. 571, 583 (2003) ("Racial disparities in stop-search rates cannot be taken as prima facie evidence of racial profiling."); Rosenthal, *supra* note 2, at 353 (indicating minority stop-and-frisk hit rates elevated less than racial skew of crimes among minorities).

17. See Rosenthal, *supra* note 2, at 353 (recognizing suspicion of discrimination does not outweigh obvious benefits).

18. See 725 ILL. COMP. STAT. ANN. 5/107-14 (West 2013) (setting forth "stop" section of Illinois' stop-and-frisk statute); 725 ILL. COMP. STAT. ANN. 5/108-1.01 (West 2013) (setting forth "frisk" section of Illinois' stop-and-frisk statute); Monica Davey, *Rate of Killings Rises 38 Percent in Chicago in 2012*, N.Y. TIMES, June 25, 2012, <http://nytimes.com/2012/06/26/us/rate-of-killings-rises-38-percent-in-chicago-in-12.html> (reporting Chicago homicides up almost forty percent while they dropped in New York City); John Avlon, *Chicago Murder Rate Surges as New York's Drops to Record Low*, THE DAILY BEAST (July 2, 2012), <http://thedailybeast.com/articles/2012/07/02/chicago-murder-rate-surges-as-new-york-s-drops-to-record-low.html> (discussing Chicago's rise in crime compared to New York City's drop in crime); cf. CHRISTOPHER STONE ET AL., KENNEDY SCH. OF GOV'T, HARVARD UNIV., *POLICING LOS ANGELES UNDER A CONSENT DECREE: THE DYNAMICS OF CHANGE AT THE LAPD* i-ii (May 2009), available at http://www.hks.harvard.edu/var/ezp_site/storage/fckeditor/file/pdfs/centers-programs/programs/criminal-justice/Harvard_LAPD_Report.pdf (reporting crime in Los Angeles dropped significantly under Bratton, while stops by LAPD surged); William J. Bratton, L.A. POLICE DEP'T, http://lapdonline.org/assets/pdf/bratton_bio.pdf (last visited Apr. 15, 2014) [hereinafter *Bratton*] (showing former chief executive of NYPD effectively lowered crime in Los Angeles).

seizures.”¹⁹ The decision is recognized for announcing the rule that

police can conduct limited seizures of the person (now commonly known as “*Terry* stops”) and limited patdowns of a person (“*Terry* frisks”) based on a quantum of suspicion that is less substantial than the “probable cause” standard that the police must satisfy when conducting full-blown arrests and equivalent seizures of the person.²⁰

Prior to 1968, a police officer could only seize a person if the officer had probable cause.²¹ The Court’s subsequent leniency in *Terry* was meant to allow police officers the discretion needed to make arrests based on their observations in time-sensitive situations.²² Following *Terry*, police officers were held to a reasonableness standard as a measure of Fourth Amendment compliance for pat downs of suspicious individuals stopped on the street.²³ Simply stated, the Court was interested in effective crime prevention and detection.²⁴

The Court rejected the argument that “the authority of the police must be

19. See U.S. CONST. amend. IV (prohibiting unreasonable searches and seizures); see also Rosenthal, *supra* note 2, at 299 (stating *Terry* received much criticism regarding impact on Fourth Amendment). The Amendment provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV.

20. Thompson, *supra* note 13, at 962-63 (elaborating on significance of rule announced in *Terry*).

21. See *Brinegar v. United States*, 338 U.S. 160, 176 (1949) (concluding probable cause safeguards citizens from “unreasonable interferences with privacy” and “unfounded charges of crime”); Robert Berkley Harper, *Has the Replacement of ‘Probable Cause’ with ‘Reasonable Suspicion’ Resulted in the Creation of the Best of All Possible Worlds?*, 22 AKRON L. REV. 13, 23 (1988) (stating valid arrest could only be made based on probable cause prior to 1968). In *Brinegar*, the Court wrote that probable cause exists where “the facts and circumstances within their (the officers’) knowledge and of which they had reasonably trustworthy information (are) sufficient in themselves to warrant a man of reasonable caution in the belief that’ an offense has been or is being committed.” 338 U.S. at 175-76 (quoting *Carroll v. United States*, 267 U.S. 132, 162 (1925)).

22. See *Terry v. Ohio*, 392 U.S. 1, 20 (1968) (explaining circumstances under which police should engage in stop-and-frisk conduct). The Court was clear that this was a movement away from the historical warrant procedure, to be used when it was necessary that police take swift action to respond to on the spot observations of officers on the beat. *Id.*

23. See *id.* (detailing Court’s departure from probable cause and adoption of lesser reasonableness standard). The trial court held that an officer, for his own protection, had the right to give a pat down of the outer clothing of men who were reasonably believed to be armed. *Id.* at 8. The Court clarified the difference between a “frisk” of outer clothing for weapons and that of a complete search for criminal evidence. *Id.* Conducting a frisk, the Court reasoned, was an essential element to police officers properly performing their investigatory duties. *Id.*

24. See *id.* at 20 (allowing officers, in appropriate circumstances and manner, to investigate possible criminal behavior).

strictly circumscribed by the law of arrest and search as it has developed to date in the traditional jurisprudence of the Fourth Amendment.”²⁵ The Court specified that in determining whether a particular officer acted reasonably, the officer must cite specific inferences from the experience.²⁶ Therefore, it was established that absent probable cause to arrest, if an officer observes unusual conduct from a person that leads him or her to reasonably conclude that criminal conduct is taking place, the officer is entitled to conduct a limited search of the outer clothing of such person or persons the officer suspects of the criminal conduct.²⁷ Interestingly, references to race were virtually absent from the Court’s legal analysis.²⁸

The decision in *Terry v. Ohio* has been strongly criticized for granting police excessively broad discretion.²⁹ Critics argue that one of the primary concerns of the drafters of the Fourth Amendment was to prevent situations that have arisen because of *Terry v. Ohio*, namely, the federal government exercising powers that encroach on the rights of minorities.³⁰ Accordingly, critics contend that the Fourth Amendment should act as a safeguard against unregulated police power.³¹

Admittedly, not all of those opposed to the Court’s decision in *Terry v. Ohio* argue that the framers of the Fourth Amendment intended that racial minorities be protected by the Bill of Rights.³² Rather, they argue that the Fourteenth

25. See *id.* at 11 (stating supporters of rejected argument felt moving from probable cause would “exacerbate police-community tensions”). Instead, the Court held that because there is no test that states explicitly when an individual’s constitutionally protected rights have been breached, the police must balance “the need to search (or seize) against the invasion which the search (or seizure) entails”. See *id.* at 20-21 (quoting *Camara v. Mun. Court*, 387 U.S. 523, 536-37 (1967)).

26. See *Terry*, 392 U.S. at 27 (specifying officer’s individual suspicion or hunch will not suffice).

27. See *id.* at 30-31 (concluding Court’s transition from probable cause to reasonableness). Expanding on this notion, the Court focused on the safety of the officer as well as others in the area. *Id.* at 30. In trying to protect the general public, the Court wrote that, should the officer reasonably believe that an individual might be armed and dangerous, the officer is allowed to conduct a limited search. *Id.* Compare *People v. Maxey*, 949 N.E.2d 755, 769 (Ill. App. Ct. 2011) (holding information obtained from radio transmissions constituted reasonable and articulable suspicion justifying *Terry* stop), and *People v. Ross*, 739 N.E.2d 50, 54 (Ill. App. Ct. 2000) (stating officer had reasonable suspicion when defendant matched description and found within crime scene vicinity), with *People v. Anaya*, 665 N.E.2d 525, 531 (Ill. App. Ct. 1996) (determining defendant acted as typical traveler and officers fell below reasonable-and-articulable-suspicion standard).

28. See *Terry v. Ohio*, 392 U.S. 1, 24 (1968) (focusing on protection of officers and prospective victims from violence in situations lacking probable cause); Thompson, *supra* note 13, at 964 (finding almost no references to race throughout opinion in *Terry*). Rather, the Court in *Terry* focused on doctrinal aspects and practical considerations of the Fourth Amendment. See *Terry*, 392 U.S. at 24.

29. See Rosenthal, *supra* note 2, at 300 (arguing decision in *Terry* threatens liberty and facilitates discrimination of minorities).

30. See LEONARD W. LEVY, ORIGINAL INTENT AND THE FRAMERS’ CONSTITUTION 221 (1988) (stating England extended its general search warrants to American colonies when enforcing tax measures). The history surrounding the Fourth Amendment suggests that the drafters were primarily concerned with protecting individuals who were not a part of the established majority. See Thompson, *supra* note 13, at 991.

31. See Harper, *supra* note 21, at 19 (stating Fourth Amendment text requires warrants based on probable cause); Thompson, *supra* note 13, at 992 (arguing Fourth Amendment acts as structural protection).

32. Cf. DON E. FEHRENBACHER, SLAVERY, LAW, AND POLITICS: THE DRED SCOTT CASE IN HISTORICAL

Amendment granted all citizens of the United States the protections intended by the Bill of Rights.³³ Thus, if police officers are targeting people of color for searches and seizures, it is an abuse of power that the Fourth Amendment sought to prevent.³⁴

Conversely, there is an argument that rather than be subject to heavy disparagement, the decision in *Terry* deserves a substantial amount of credit for the recent nationwide decline in violent crime.³⁵ In response to the heavy criticism *Terry* has received, the argument can be made that the Fourth Amendment does not forbid the Court from reconsidering the interpretation of “reasonableness” in light of dramatic increases in crime.³⁶ Further, if the purpose of the Fourth Amendment is to balance individual liberty with governmental interest, the argument can be made that the Court in *Terry* did exactly that.³⁷ Moreover, while critics argue that an excessive number of innocent people are now being stopped as a direct result of *Terry*, an argument can be made that the Court accepted this potential risk by virtue of their ruling, and any future reversion of the standard from “reasonableness” to “probable cause” would not in itself prevent such risk.³⁸ The rule found in *Terry* exudes common sense; officers should not be required to wait until after a crime is completed to take action if they have reasonable grounds to believe that criminal activity is taking place.³⁹ There is nothing in the Fourth Amendment

PERSPECTIVE 34-40 (1981) (discussing colonial perspective of free black citizens not possessing all rights of white men).

33. See Thompson, *supra* note 13, at 997 (focusing on substance and effect of Fourteenth Amendment). The Fourteenth Amendment states:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST. amend. XIV, § 1.

34. See LEWIS R. KATZ, BALDWIN'S OHIO HANDBOOK SERIES: ARREST, SEARCH & SEIZURE § 15:1 (2013) (delineating fine line between crime prevention and violating Fourth Amendment); Thompson, *supra* note 13, at 998 (arguing intentional discriminatory application of search-and-seizure powers concerns Fourth Amendment).

35. See Rosenthal, *supra* note 2, at 302 (contending *Terry* deserves significant share of credit for drastically lowered crime rates).

36. See *id.* at 340 (declaring nothing in Constitution text forbids reassessment of reasonableness). The argument goes even further to suggest that officers engaging in stop-and-frisk procedures are taking prophylactic action to keep the peace and confront impending crime. See *id.*

37. See *id.* at 346 (stating Fourth Amendment process of balancing found in Court's *Terry* decision).

38. See *Illinois v. Wardlow*, 528 U.S. 119, 126 (2000) (showing Court's acceptance of risk of stopping more innocent people). The Court states that allowing a brief investigation of an innocent person by an officer during a *Terry* stop is a far less invasive and a more minimal intrusion than the experience of innocent people being arrested and detained on probable cause. *Id.*

39. See Stephen A. Saltzburg, *Terry v. Ohio: A Practically Perfect Doctrine*, 72 ST. JOHN'S L. REV. 911, 952 (1998) (contending officers should have ability to act quickly when reasonable suspicion established).

barring police officers from taking action until a crime has already been committed.⁴⁰ The decision in *Terry* offers the police a prophylactic approach to policing where law enforcement officers are not required to wait for a crime to be committed before taking steps to ensure community safety.⁴¹

B. Stop and Frisk: The Experience of New York City

1. The Birth of Stop-and-Frisk Legislation in New York City

Stop and frisk offers an exception to the warrant requirement, allowing police officers to interrogate any person for whom there is a reasonable belief that he or she is engaging in criminal behavior.⁴² New York City passed its first stop-and-frisk law in 1964, entitled “Temporary questioning of persons in public places; search for weapons.”⁴³ Prior to the law’s passage, the New York

40. *See id.* at 953 (showing Court agrees with many states that officers need not wait for harm to occur). Neither a judge nor a lay person would suggest that the Fourth Amendment prevents a police officer, with reasonable suspicion that a suspect is bringing a bomb into a building, from taking steps in determining whether this suspicion was correct, absent clear language or a robust legislative history to the contrary. *See id.*

41. *See id.* at 952 (arguing common sense grants officers power to prevent crimes before they occur).

42. *See People v. De Bour*, 352 N.E.2d 562, 566-70 (N.Y. 1976) (describing circumstance where NYPD officers reasonably believed suspect engaged in criminal behavior). In *De Bour*, two uniformed police officers walking their midnight beat noticed the defendant walking on the street. *Id.* at 565. When the defendant reached the police, one officer inquired as to the defendant’s activities in the neighborhood and asked for identification. *Id.* At this point, an officer noticed a waist-high bulge in the defendant’s jacket and asked him to unzip his coat. *Id.* After doing so, an officer observed a loaded revolver protruding from the defendant’s waistband. *Id.* The weapon was removed and the defendant was arrested. *Id.* The New York Court of Appeals determined that the police officers legitimately approached the defendant when they initially asked for his identification. *Id.* at 570. The court held that because the encounter occurred after midnight in an area known for its high incidence of drug activity and the defendant had conspicuously attempted to avoid the police officers, they were reasonable in their suspicion of the defendant and were thus authorized to make a brief and limited inquiry. *Id.*; *see Gabriel J. Chin & Scott C. Wells, The “Blue Wall of Silence” Evidence of Bias and Motive To Lie: A New Approach to Police Perjury*, 59 U. PITT. L. REV. 233, 248 n.46 (1998) (explaining stop-and-frisk exception to Fourth Amendment). *But see In re Darryl C.*, 947 N.Y.S.2d 483, 491 (N.Y. App. Div. 2012) (holding NYPD officer did not have reasonable suspicion to conduct stop and frisk). In this particular situation, a police officer testified that in February 2010 at approximately 11:30 a.m., after there had recently been multiple shootings in the area, he observed a fourteen-year-old male standing alone on the side of the street “examining an object with his right hand and in his left hand he had a cell phone.” *Id.* at 486. The boy was neither a suspect in the shootings, nor was associated with any gang activity. *Id.* The officer approached the boy and engaged him in conversation. *Id.* The officer inquired as to what the boy was holding in his hand when the police officer first observed him standing on the street, to which the boy replied it was his wallet. *Id.* The officer proceeded to tap the boy’s right jacket pocket, where the officer had previously observed the boy putting the unidentified object in and felt a hard object. *Id.* at 486-87. While there was no indication that the object was any kind of weapon, the officer proceeded to get behind the boy and tap the object again, ultimately reaching his hand into the boy’s pocket and finding a firearm. *Id.* at 487. The court held that police officers are not permitted to “search an individual by the mere assertion that the person may be armed absent any articulated facts to support the officer’s claim of suspicion of criminality or of a reasonable threat of physical injury.” *Id.* at 489. The court determined there was no reasonable suspicion of criminal activity, the situation did not present the officer with a “good cause for such fear,” and absent either of the requisite elements, a stop and frisk could not be properly conducted. *Id.* at 491.

43. *See* N.Y. CRIM. PROC. LAW § 140.50 (McKinney 2013). The language of the statute reads:

courts were forced to suppress any evidence obtained from stops in which there was less than probable cause for the search and seizure.⁴⁴ The call for such legislation originated from a 1962 New York Court of Appeals decision, which stated that such evidence would continue to be lawfully suppressed in the absence of formal legislation indicating a lower standard.⁴⁵

Following its passage, New York's 1964 stop-and-frisk law was upheld by the United States Supreme Court in its 1968 *Sibron v. New York* decision.⁴⁶ The Court ruled that such stops did not violate the Fourth Amendment rights of those searched, and from a superficial perspective, the law did not appear unconstitutional.⁴⁷ The Court included a notable caveat, which allowed the law to be deemed unconstitutional under the circumstances of individual cases.⁴⁸ Less than a decade later, the New York Court of Appeals outlined a "degree of suspicion" framework comprised of four levels, which served to elucidate the potential ambiguity of the new standard and continues to serve today's NYPD officers.⁴⁹

The first of the four levels that constitute the framework, entitled "request for information," is founded upon the court's belief that police officers' ability to competently perform public service functions is contingent upon the existence of a "wide latitude to approach individuals and request information."⁵⁰ Level two of the framework is known as the "common-law

1. In addition to the authority provided by this article for making an arrest without a warrant, a police officer may stop a person in a public place located within the geographical area of such officer's employment when he reasonably suspects that such person is committing, has committed or is about to commit either (a) a felony or (b) a misdemeanor defined in the penal law, and may demand of him his name, address and an explanation of his conduct.

....

3. When upon stopping a person under circumstances prescribed in subdivisions one and two a police officer or court officer, as the case may be, reasonably suspects that he is in danger of physical injury, he may search such person for a deadly weapon or any instrument, article or substance readily capable of causing serious physical injury and of a sort not ordinarily carried in public places by law-abiding persons. If he finds such a weapon or instrument, or any other property possession of which he reasonably believes may constitute the commission of a crime, he may take it and keep it until the completion of the questioning, at which time he shall either return it, if lawfully possessed, or arrest such person.

Id.

44. See *Kabakova*, *supra* note 15, at 542 (finding multiple courts suppressing such evidence).

45. See *id.* (describing need for legislative action). See generally *People v. Caliente*, 187 N.E.2d 550 (N.Y. 1962) (refusing to deviate from statutory test for warrantless misdemeanor arrests).

46. See 392 U.S. 40, 60-62 (1968) (declaring New York's stop-and-frisk statute constitutional).

47. See *id.* at 59 (declining to strike down statute as unconstitutional on its face).

48. See *id.* (stating constitutionality of warrantless searches is question determined on concrete factual context of individual case).

49. See generally RIDGEWAY, *supra* note 6 (outlining four-level framework and demonstrating proper use of third level).

50. See *People v. De Bour*, 352 N.E.2d 562, 568 (N.Y. 1976) (setting grounds for level one of four-level framework); RIDGEWAY, *supra* note 6, at 2 (detailing level one of four-level framework). At this level of

right of inquiry” and although considered less stringent than the reasonable suspicion standard, it requires that an officer have “a founded suspicion that criminal activity is present.”⁵¹ The third tier is the stop-and-frisk level, which mirrors and is derived from the New York stop-and-frisk statute.⁵² The fourth and final echelon of the framework is the probable cause standard, which serves as a prerequisite to an officer legally placing an individual under arrest.⁵³

2. *The Report of the Attorney General*

In 1999, then-Attorney General Eliot Spitzer undertook an investigation to examine the NYPD’s stop-and-frisk practices with an eye toward better understanding New York City’s stop-and-frisk experience.⁵⁴ The investigative report relied on data analysis of an estimated 175,000 documented stop and frisks conducted between January 1998 and March 1999.⁵⁵ The report’s conclusive findings suggest a strong statistical correlation between one’s race and one’s likelihood of being stopped by an officer.⁵⁶ Specifically, the relationship was so substantial that minorities in New York City were significantly more likely to be subjected to stop-and-frisk practices than white

suspicion, an NYPD officer may approach an individual for any distinct reason. RIDGEWAY, *supra* note 6, at 2. A police officer may not, however, obligate an individual to answer inquiries, be searched, or prevent him or her from walking away. *Id.*

51. *De Bour*, 352 N.E.2d at 566; see RIDGEWAY, *supra* note 6, at 2 (explaining level two of four-level framework). At this level, when a NYPD officer has a “founded suspicion,” he or she may ask an individual more probing questions. RIDGEWAY, *supra* note 6, at 2. The officer may also ask to search the individual or the individual’s belongings. *Id.* At this point, however, an officer cannot compel an individual to answer any question or assent to any search, and the individual is free to walk away at any point. *Id.*

52. See N.Y. CRIM. PROC. LAW § 140.50 (McKinney 2013) (outlining New York’s stop-and-frisk statute); RIDGEWAY, *supra* note 6, at 2 (discussing third level of four-level framework). An NYPD officer reaches this level when he or she reasonably suspects an individual’s involvement in criminal activity. RIDGEWAY, *supra* note 6, at 2. The officer may frisk an individual in an attempt to search for weapons and to ensure the safety of the public as well as the officer conducting the search. *Id.* New York courts permit questions about the individual’s identification and explanations for suspicious behavior. *Id.* An officer may also detain an individual until the officer concludes if the individual is involved in criminal activity or not. *Id.* Unlike the two previous levels of suspicion, the officer must document a stop and frisk. *Id.*

53. See RIDGEWAY, *supra* note 6, at 2 (articulating fourth and final level of four-level framework). Situations that constitute probable cause include officers “witnessing the crime, suspects being caught red-handed, or incidents in which victims identify the perpetrator.” *Id.*

54. See SPITZER, *supra* note 4, at 11-12 (setting forth data found during stop-and-frisk investigation). Specifically, the report indicated that its “overarching purpose [was] to understand the ‘stop & frisk’ experience in New York City, to analyze the practices of NYPD officers on a system-wide basis, to determine whether any changes in Department policy in respect of these practices are warranted, and, ultimately, to help restore public confidence in law enforcement generally.” *Id.* The report sought to obtain input from as diverse a group of respondents as possible and quickly report results of the investigation to the public. *Id.* at 14; see also Kabakova, *supra* note 15, at 561 (introducing principal purpose of report as responding to public pressure surrounding stop-and-frisk searches).

55. See SPITZER, *supra* note 4, at 88 (explaining statistical analysis of data derived from documented NYPD stop-and-frisk encounters).

56. See *id.* at 89 (suggesting minorities subjected to stop-and-frisk practices more often than others).

individuals.⁵⁷ An additional finding revealed that despite the disproportionately large number of minorities subjected to a stop and frisk, the stop and frisks of white individuals were statistically more likely to result in an arrest.⁵⁸

According to the Spitzer report, higher rates of minority stop and frisks alone do not demonstrate discriminatory practices of the NYPD.⁵⁹ An indication of discriminatory practice is, however, evidenced by the understanding that despite controlling for variables that explain racial differences in stop-and-frisk rates, the disproportionately high rates of minority stops persist.⁶⁰ In particular, the results of the report suggest statistically significant differences in stop rates for minorities compared to whites, even when accounting for demographic information and racially associated crime rates.⁶¹

Finally, the report concluded that approximately one out of every seven documented stop and frisks failed to meet the requisite criteria for the reasonable-suspicion standard.⁶² To assess the extent to which the reasonable suspicion requirement was satisfied as outlined by the Fourth Amendment, the report examined the rationale used by each officer to justify the stop.⁶³ A qualitative analysis yielded approximately sixty-seven different reasons commonly used by officers to justify their stop and frisk, about one quarter of which were found to be insufficient to meet the reasonable-suspicion requirement.⁶⁴ Interestingly, officers seemed to employ these insufficient rationales for stops at equal rates with respect to race, thereby indicating no bias in practice.⁶⁵

57. *See id.* at 94 (exposing multiple ways to demonstrate minorities stopped more often than whites). The report found that while black individuals comprised 25.6% of New York City's population, 50.6% of all persons stopped were black. *Id.* The report also found that while Hispanic individuals comprised 23.7% of New York City's population, 33% of all persons stopped were Hispanic. *Id.* In comparison, white individuals comprised 43.4% of New York City's population, yet only 12.9% of those stopped were white. *Id.* at 94-95.

58. *See id.* at 111 (demonstrating minority stops less likely to result in arrest).

59. *See* SPITZER, *supra* note 4, at 117 (suggesting lack of inherent racism within data collected).

60. *See id.* at 89 (stating minorities stopped at rates higher than those predicted by demographics and crime rates).

61. *See id.* at 122 (explaining statistical data after controlling for crime and population variables). Blacks and Hispanics were significantly more likely than whites to be stopped. *See id.* at 123.

62. *See id.* at 89 (insinuating stops done by NYPD officers not done in accordance with constitutional standards).

63. *See* SPITZER, *supra* note 4, at 135 (analyzing more than 15,000 stop-and-frisk documents representing fifteen months of stops).

64. *See id.* at 148-49 (basing conclusion on clear instances where stop not legally sustained). The report resolved that approximately sixteen out of sixty-seven rationales for officers performing a stop and frisk on an individual would not sustain a stop under New York's current law. *See id.*

65. *See id.* at 174 (demonstrating lack of significance between minorities and whites in these kinds of stops).

3. *The RAND Report: An Analysis of Racial Disparities of New York's Stop-and-Frisk Practices*

In 2007, the NYPD appointed the RAND Corporation to conduct further research investigating stop-and-frisk practices in an effort to elucidate the truth regarding the increasingly controversial allegations of racially biased policing.⁶⁶ The RAND report determined that apparent differences existed from a statistical standpoint, yet the inferences drawn from such findings are often inflated, thereby distorting the true scope of the issue.⁶⁷ The raw figures expose that minorities were clearly stopped more frequently than whites.⁶⁸ At second glance, however, important factors such as time, place, and reason for the stop help to explain the aforementioned finding, thereby attributing differences in stops to differences in these confounding factors rather than race.⁶⁹

While the RAND report concluded that “[t]he raw statistics . . . distort the magnitude and, at times, the existence of racially biased policings,” it provided recommendations for the NYPD to assist in improving interactions between officers and those subject to their stops.⁷⁰ The first of such recommendations suggested that officers explicitly identify the reason for why they are stopping a pedestrian.⁷¹ The RAND report also advocated that the NYPD broaden its awareness of the issue through a review of the city’s boroughs with the largest

66. See RIDGEWAY, *supra* note 6, at iii (indicating department contacted RAND Corporation to conduct objective analysis of data in street encounters); Kabakova, *supra* note 15, at 564 (revealing NYPD hired RAND Corporation in 2007 to investigate stop-and-frisk practices). The RAND report used information from 506,491 documented stops by NYPD officers in 2006. RIDGEWAY, *supra* note 6, at 7.

67. See *id.* at xiv (suggesting racial disparities much smaller than raw statistics suggest); Vani K. Borooah, *Racial Bias in Police Stops and Searches: An Economic Analysis*, 17 EUR. J. POL. ECON. 17, 18 (2001) (suggesting minority rates may reflect response to differential offending rates); Andrew Gelman et al., *An Analysis of the New York City Police Department's "Stop-and-Frisk" Policy in the Context of Claims of Racial Bias*, 102 J. AM. STAT. ASS'N 813, 818-20 (2007) (finding differences in search rates reflect response to differential rates of offending by race). The report notes that this finding does not absolve the NYPD of the need to monitor their officers and the issues surrounding stop-and-frisk practices, but implies large-scale restructuring of NYPD policies and procedures is both unnecessary and unwarranted. See RIDGEWAY, *supra* note 6, at xiv.

68. See RIDGEWAY, *supra* note 6, at 8 (showing minorities stopped at higher rates than whites). The RAND report concluded that while Hispanic individuals were stopped by NYPD officers at a rate that is proportional to their representation in the New York City population, black individuals were stopped at a rate fifty percent greater than their representation. See *id.*; Kabakova, *supra* note 15, at 564.

69. See RIDGEWAY, *supra* note 6, at 42 (creating alternative explanations for apparent different treatment between racial groups). The study reported, however, that in some boroughs, Staten Island in particular, minorities experience more intrusive stops than similarly situated white suspects. *Id.*

70. See RIDGEWAY, *supra* note 6, at xiv, 44-46 (showing findings and suggested recommendations); Kabakova, *supra* note 15, at 565 (summarizing RAND report's general conclusion and suggested improvements for NYPD officers).

71. See RIDGEWAY, *supra* note 6, at 44 (recommending NYPD officers explain reason for stop). The RAND report suggests that discussing the individual's manner that generated the officer's suspicion and offering contact information of an appropriate complaint authority would allow the stopped individual to convey his or her comments about the interaction. *Id.*

reported racial disparities in stop-and-frisk practices.⁷² Further, the RAND report suggested that the NYPD improve training methods enabling new officers to be well-versed and competent in stop-and-frisk practice and policy.⁷³ Lastly, the RAND report called for more efficient auditing processes and supervision by the upper strata of the NYPD.⁷⁴

4. Recent Trends in New York City Crime Rates

The United States, as a whole, has experienced marked volatility in violent crime patterns over the past three decades, which can be stratified into three distinct eras: the rise, the drop, and the plateau.⁷⁵ The first era, the rise, is characterized by a dramatic increase in violent crime beginning in 1985, which followed a five-year period of consistent decline.⁷⁶ The rise persisted for about eight years, until diminishing crime rates ushered in a period of pronounced and highly publicized declines.⁷⁷ At the turn of the millennium, the drop plateaued and violent crime rates have remained relatively stagnant to date.⁷⁸

Following in line with the United States at large, New York City experienced an abrupt and dramatic increase in crime, particularly homicide, beginning in 1985.⁷⁹ New York City, however, began seeing gradual increases in homicide and other violent crimes as early as the mid-1960s.⁸⁰ Between the years of 1960 to 1991, homicide rates in New York City rose from a rate of 4.7 per 100,000 people to a peak of 31.0 per 100,000, in “waves that roughly corresponded to drug epidemics, with the increases concentrated in firearms-

72. See *id.* at 44-45 (suggesting NYPD officers review particular boroughs). According to the RAND report, particular boroughs demonstrated evidence of large racial differences in stop-and-frisk rates. *Id.* at 44. The RAND report recommends a closer review of these boroughs, which may lead to changes in training, policies, or practices to reduce the disparities. *Id.* at 45.

73. See *id.* (finding recent academy graduates were not fully aware of stop-and-frisk practices and procedures). While this issue is likely to impact only a small amount of stops, the RAND report suggests that correction in training of new officers during his or her initial days would be beneficial. *Id.*

74. See *id.* at 45-46 (indicating benefits of modification of audits and identifying frequently offensive officers). The RAND report finds that while the NYPD has several layers of auditing to ensure stop-and-frisk documentation is completed correctly, the audits do not address whether stops are occurring that are not documented. *Id.* at 45. Without documentation of particularly problematic stops, it is impossible to accurately interpret patterns of stop-and-frisk practices. *Id.* Furthermore, the RAND report’s analysis indicated “that the racial distribution of stops for several officers is skewed substantially from those of their colleagues.” *Id.* at 46. Ultimately, the RAND report advocates that the NYPD identify, flag, and investigate officers practicing racially biased policing. *Id.*

75. See Blumstein & Wallman, *supra* note 7, at 125 (explaining American trends in violent crime from 1980 to 2000).

76. See *id.* (describing rise period, which preceded five-year national decline).

77. See *id.* (detailing national homicide rate declined by forty-two percent and robbery by forty-four percent).

78. See *id.* (describing period of flattening as third, and final, period of violent crime).

79. See Jeffrey Fagan et al., *Social Contagion of Violence*, in THE CAMBRIDGE HANDBOOK OF VIOLENT BEHAVIOR AND AGGRESSION 688, 688 (Daniel J. Flannery et al. eds., 2007) (explaining experience of crime in New York City as compared to nation).

80. See *id.* at 694 (detailing increase in crime rates).

related homicide.”⁸¹ Evidence as to what caused the severe rise in crime rates, while not providing undisputable confirmation, suggests it was a combination of a rise in the illegal drug market as well as in the distribution of handguns.⁸²

Remarkably, unlike many other large American cities that experienced a gradual decrease in crime over the following decade, the crime increase in New York City was trailed by a radical decline.⁸³ In fact, the crime drop in New York City was of a magnitude greater than that of any large American city since the 1950s.⁸⁴ During the 1990s, New York City saw a decline in every category of “index” crimes reported to the Federal Bureau of Investigation (FBI) at a rate that was approximately double that of the rest of the country.⁸⁵ From 1990 to 2000, of the fifteen largest U.S. cities at the time, New York City’s crime rates declined the fastest.⁸⁶ In particular, from 1994 to 1995, the drop in homicide rates in New York City alone accounted for twenty-two percent of the overall national reduction.⁸⁷ By the turn of the century, New York City had the lowest rate in five of the seven FBI-index crimes when compared to America’s ten largest cities.⁸⁸

81. Rosenthal, *supra* note 2, at 320 (showing New York City crime rates fairly typical of major cities during crime spike); see GEORGE L. KELLING & CATHERINE M. COLES, *FIXING BROKEN WINDOWS: RESTORING ORDER AND REDUCING CRIME IN OUR COMMUNITIES 1* (1996) (arguing not only crime, but fear of crime, at all-time high).

82. See Alfred Blumstein & Richard Rosenfeld, *Explaining Recent Trends in U.S. Homicide Rates*, 88 J. CRIM. L. & CRIMINOLOGY 1175, 1207-08 (1998) (tracking changes in homicide rate in 1980s and 1990s). Blumstein and Rosenfeld explain that the sequence that was occurring in major cities in the United States that generated the sharp growth in crime, particularly homicide, was the “introduction of crack in the mid-1980s; recruitment of young minority males to sell the drugs; arming of the drug sellers with handguns; diffusion of guns to peers; irresponsible and excessively casual use of guns by young people.” *Id.* at 1208.

83. See Fagan et al., *supra* note 79, at 688 (discussing dramatic declines in crime rates within New York City). Nearly a decade after New York City’s sudden and dramatic increase in crime, the homicide rate dropped twenty-five percent lower than the rate which the city had seen in 1985; and by 1998, homicide rates were at the lowest the city had seen in three decades. See *id.*

84. See *id.* (showing importance and individuality of crime experience in New York City).

85. See FRANKLIN E. ZIMRING, *THE GREAT AMERICAN CRIME DECLINE* 136-37 (2007) (demonstrating crime decline in each index at rate other large U.S. cities not experiencing). While the 1990s ushered in a decline in overall crime for New York City, the most dramatic decrease was that of violent crime, and homicide in particular. See *id.*; see also George L. Kelling & William J. Bratton, *Declining Crime Rates: Insiders’ Views of the New York City Story*, 88 J. CRIM. L. & CRIMINOLOGY 1217, 1217 (1998) (labeling reduction in violent crimes, particularly homicide, in New York City in 1990s as “extraordinary”).

86. See ZIMRING, *supra* note 85, at 12-15 (detailing New York City’s drop in crime as drastically bigger than other large American cities). Interestingly, the rapidly declining rates of crime and violence during this time period were experienced in nearly every neighborhood in the city; the decline was not limited to the areas where conditions were at their worst. See Richard Curtis, *The Improbable Transformation of Inner-City Neighborhoods: Crime, Violence, Drugs, and Youth in the 1990s*, 88 J. CRIM. L. & CRIMINOLOGY 1233, 1275-76 (1998) (showing crime dropped in nearly every New York City neighborhood).

87. See Blumstein & Rosenfeld, *supra* note 82, at 1202-03 (identifying New York City as major contributor to declining national homicide rate). These statistics show that changes in New York City can have a powerful effect on the entire nation. *Id.* This holds true for many of America’s largest cities; in fact, in 1996, ten major U.S. cities (New York, Chicago, Los Angeles, Detroit, Philadelphia, Washington, New Orleans, Baltimore, Houston, and Dallas) were responsible for one fourth of the homicides in the country. *Id.* at 1202.

88. See ZIMRING, *supra* note 85, at 139-41 (discussing substantial decrease in crime rates in New York

Additionally, New York City has been successful in keeping its level of crime low; in 2009, New York's homicide rate was only 5.6 per 100,000 people.⁸⁹ In 2010, New York City continued its annual decline in major crimes, as there was a reported 1.4% drop in comparison to 2009.⁹⁰ When analyzing whether there were any major changes in New York City's society or government that might be helpful in explaining its significant crime decline as compared to the rest of the nation, trends in policing stand alone as the probable explanation.⁹¹ Taking into consideration other hypotheses, such as economic prosperity, increased incarceration, and demographic shifts, Franklin E. Zimring explains that those trends were not as great as national averages and, thus, would not be expected to cause differential crime-decline rates in New York City when compared to the remainder of the nation.⁹² In regards to the city's poverty rate, New York City lingered at nearly twice the national average during the 1990s.⁹³ As far as drugs are concerned, there is no evidence of any radical decline in illegal drugs that may explain the crime decline during this period.⁹⁴

While the size of New York City's police force increased substantially during the period of crime decline, the mere size of the police force remains an incomplete justification.⁹⁵ A more convincing explanation is that important changes in policing, such as a greater emphasis on aggressive stop-and-frisk

City by 2000); Rosenthal, *supra* note 2, at 321 (stating New York City homicide rates dramatically below other nine cities).

89. See Rosenthal, *supra* note 2, at 321 (showing New York City crime rates remain low, uncharacteristic of other large American cities).

90. See Tamer El-Ghobashy, *Crime Numbers Drop in 2010; Violence Spikes*, WALL ST. J., Dec. 31, 2010, <http://online.wsj.com/news/articles/SB10001424052748703909904576052090840028466> (discussing New York City's crime drop in 2010 despite pressure on NYPD to justify its crime figures). In particular, homicide rates in 2010 were expected to be on the decline for the twenty-second consecutive year. *Id.*

91. See ZIMRING, *supra* note 85, at 235 (using process of elimination to find New York City police trends as most plausible explanation).

92. See *id.* (considering various other factors and eventually dismissing all but police practices). Other factors that may explain the success in New York City, such as incarceration and unemployment rates, were either similar to or less than the national average. *Id.* at 71, 235.

93. See ANDREW KARMEN, *NEW YORK MURDER MYSTERY: THE TRUE STORY BEHIND THE CRIME CRASH OF THE 1990S* 197 (2000) (stating approximately one out of every four residents lived below poverty line in 1990s). Even towards the second half of the 1990s, poverty remained as bad as it was immediately following the recession at the start of the 1990s and was worse than the poverty rate had been during the entire decade of the 1980s. *Id.* Therefore, there is no statistical relationship between the percentage of New Yorkers who were poor and crime rates. *Id.*

94. See *id.* at 177-82 (eliminating drop in illegal drug use as potential explanation); Rosenthal, *supra* note 2, at 321 (explaining no decline in illegal drugs during 1990s in New York City). Rosenthal explains that the legalization of abortion also could not explain the crime decline, as one would expect the disparity between New York City and other cities' crime rates to disappear as abortion became legal in other cities over time. *Id.* at 321-22.

95. See Rosenthal, *supra* note 2, at 322 (rejecting mere size of NYPD as solely responsible for crime decline). Further, crime in New York City continued to decline into the 2000s, when the size of the NYPD decreased significantly, rendering this justification inadequate. *Id.*

tactics, led to New York City's groundbreaking regression in crime rates.⁹⁶

C. The Experience of Chicago: Defying the Tendency of New York City

1. Recent Trends in Chicago Crime Rates

While New York City has been experiencing record-low crime rates, rates in Chicago, a city with one-third of the population of New York City, continue to surge.⁹⁷ During the first half of 2012, homicides in Chicago occurred at the fastest pace seen since 2003, when the city suffered 283 homicides by July and recorded a total of 601 for the year.⁹⁸ In fact, in 2003 Chicago led the entire nation in homicides.⁹⁹ In 2010, the homicide rate in Chicago was more than twice as high as in New York City.¹⁰⁰ Recently, the homicide rate in Chicago has continued to swell: in 2012, the city suffered the highest rates of homicide it has seen since 2008.¹⁰¹

Even with the current high crime rate, violence in Chicago remains nowhere near its historical peak, which occurred in the early 1990s when the city recorded roughly 900 homicides per year.¹⁰² In 1991, the number of assaults and robberies hit new highs and in August, homicide rates reached the highest

96. See Benjamin Bowling, *The Rise and Fall of New York Murder: Zero Tolerance or Crack's Decline?*, 39 BRIT. J. CRIMINOLOGY 531, 546 (1999) (arguing aggressive policing in early 1990s contributed to decline in crime, particularly homicide); Jeffrey Fagan et al., *Declining Homicide in New York City: A Tale of Two Trends*, 88 J. CRIM. L. & CRIMINOLOGY 1277, 1313 (1998) (finding correlation between increase of NYPD patrol and sharp declines in crime); Rosenthal, *supra* note 2, at 322 (finding NYPD stop-and-frisk practices most pertinent explanation for low crime rates); see also SPITZER, *supra* note 4, at 47-52 (discussing transformation from community policing to aggressive stop-and-frisk practices).

97. See Avlon, *supra* note 18 (stating New York City recorded 193 homicides in first six months of 2012 while Chicago recorded 250). While Chicago crime rates used to be in line with the rest of the nation, homicide rates are escalating at a pace that has not been seen since 2003. See *id.* See generally Patrick J. McCloskey, Letter to the Editor, *Chicago Could Use New York's Stop-and-Frisk Policy*, WALL ST. J., Aug. 17, 2012, <http://online.wsj.com/news/articles/SB10000872396390443324404577591611260640128> (arguing city of Chicago could benefit from stop-and-frisk practices).

98. See Avlon, *supra* note 18 (comparing 2003's high homicide rate in Chicago to 2012 homicide rate).

99. See Mick Dumke, *Community Policing Is Caught in a Cross-Fire*, N.Y. TIMES, Jan. 8, 2011, <http://www.nytimes.com/2011/01/09/us/09cncommunity.html?pagewanted=all> (explaining Chicago's high homicide rates directed police officers to attack gangs and drug dealers).

100. See Heather MacDonald, *To See Its Value, See How Crime Rose Elsewhere*, N.Y. TIMES, July 17, 2012, www.nytimes.com/roomfordebate/2012/07/17/does-stop-and-frisk-reduce-crime/to-see-its-value-see-how-crime-rose-elsewhere (comparing New York City's record decrease in crime to cities not practicing proactive policing).

101. See Mark Guarino, *Chicago Registers Its 500th Homicide of 2012—The Highest Number Since 2008*, CHRISTIAN SCI. MONITOR, Dec. 29, 2012, www.csmonitor.com/USA/Society/2012/1229/Chicago-registers-its-500th-homicide-of-2012-the-highest-number-since-2008 (citing public housing and school policies, gang activity, guns, and budget cuts for homicide rate). The city reached 500 homicides by December 29, 2012, rendering it the deadliest year since 2008, when the number rose to 513. *Id.*

102. See Don Babwin, *Fractured Gangs Blamed for Chicago Homicide Surge*, ASSOCIATED PRESS, June 12, 2012, <http://bigstory.ap.org/article/fractured-gangs-blamed-chicago-homicide-surge> (discussing homicide rate in early 1990s and current spike in homicide rate); see also WESLEY G. SKOGAN, POLICE AND COMMUNITY IN CHICAGO: A TALE OF THREE CITIES 32-33 (2006) (explaining crime in Chicago hit new peak in 1991).

the city had ever seen.¹⁰³ Compared to 1980, 1991 brought a 250% rise in police-reported robberies and a 550% rise in aggravated assaults.¹⁰⁴ The following year, the homicide rate for black males aged fifteen to forty-nine jumped to more than twice the national average.¹⁰⁵ Even more alarming is the observation that only about half of all crimes are reported, suggesting these crime figures grossly understate the dire conditions Chicago experienced during the 1990s.¹⁰⁶

2. Community Policing: Chicago's Policing Strategy in Response to Surging Crime Rates

During 1993 and 1994, police in Chicago responded to the drastic increase in crime by developing a working program, referred to as the Chicago Alternative Policing Strategy (CAPS), in five of its police districts.¹⁰⁷ The five original "prototype districts" were "diverse in terms of their demographics, economics, crime problems, and levels of community organization."¹⁰⁸ Initially, the Chicago police department formed teams of officers with long-term assignments to small zones of Chicago, organized into police "beats."¹⁰⁹ The goal of these police officers was to engage the community by holding regular meetings with residents of each beat, which included a total of fifty-four small areas within the experimental districts.¹¹⁰ In 1995, the community-policing program in Chicago was firmly in place.¹¹¹ By 2011, Chicago was

103. See SKOGAN, *supra* note 102, at 33 (attributing homicide rates in part to full-scale drug war between gangs in Chicago's South Side). That same year, both automatic and semiautomatic weapons began to replace revolvers, fueling the increase in homicide rates. *Id.* Both gang- and drug-related homicides contributed to the period's foreboding trends. *Id.*

104. See *id.* (comparing Chicago crime rates in 1980 to those in 1991).

105. See *id.* (setting forth homicide rate for black males in 1992). During this year, the overall city homicide rate for black males was as high as 128 homicides for every 100,000 individuals. *Id.*

106. See *id.* (arguing crimes are underreported to police and do not reflect true rate). Skogan suggests that Chicago's police do not always properly record crimes in an attempt to accommodate the request of politicians who have an interest in lowering crime rates within the city, particularly during periods prior to an election. See *id.* at 33-34.

107. See Jane Penley, Comment, *Urban Terrorists: Addressing Chicago's Losing Battle with Gang Violence*, 61 DEPAUL L. REV. 1185, 1194 (2012) (exposing Chicago's policing strategy in response to increasing gang-related crime); see also SKOGAN, *supra* note 102, at 12 (discussing community-policing tactics). In all other districts, policing tactics remained the same. See SKOGAN, *supra* note 102, at 12; see also Jeremy Goner, *Police Stops Raise Suspicion*, CHI. TRIB., Nov. 5, 2013, http://articles.chicagotribune.com/2013-11-05/news/ct-met-contact-cards-20131105_1_chicago-police-cards-officers (observing Chicago utilizes stop-and-frisk practice, but at lower rate than New York City).

108. See *What Is CAPS?*, CHI. POLICE DEP'T, <https://portal.chicagopolice.org/portal/page/portal/ChicagoPolice/Community/Community%20Policing/What%20is%20CAPS> (last visited Apr. 15, 2014) (defining community policing as Chicago's approach to fighting crime).

109. See SKOGAN, *supra* note 102, at 12 (describing process of Chicago police officers' working program in five police districts).

110. See *id.* (explaining involvement of Chicago community in experimental policing strategy). The police officers chosen to partake in this community-policing test run were trained in their new duties and given rudimentary instruction in effective and efficient problem solving. See *id.*

111. See *id.* (describing adoption of Chicago's policing program).

recognized as having one of the most ambitious community-policing programs in the United States, due to the initiation of CAPS in every neighborhood.¹¹²

Fundamentally, community policing is a model that replaces traditional policing strategies with a problem-solving and prevention-oriented approach to fighting crime.¹¹³ It involves redefining the goals of policing by creating new cultures within police departments and relying upon a two-way communication between the police and the public.¹¹⁴ One of the most significant features of Chicago's CAPS program is the extensive involvement of the community.¹¹⁵ Further, police officers must be committed to developing working relationships with the residents of their respective beat for the program to succeed.¹¹⁶

Whereas Chicago's community-policing plan attracted national attention and acclaim, reviews from residents of the Chicago community varied.¹¹⁷ While the idea of community policing sounds effective in theory, a number of residents felt Chicago police officers did not successfully integrate the strategy into society.¹¹⁸ Similarly, while Chicago has maintained an extensive community-policing program, crime rates continue to reach new heights.¹¹⁹ Currently, Chicago's community policing "faces an uncertain future as financing declines and officials debate whether it is an effective strategy that needs to be revitalized or an expensive public relations gimmick that should be phased out."¹²⁰

112. See Penley, *supra* note 107, at 1194-95 (ranking Chicago as current community-policing leader in United States).

113. See WESLEY G. SKOGAN, COMMUNITY POLICING, CHICAGO STYLE 4 (1997) (elaborating on idea and philosophy of Chicago's community-policing strategy). Community policing places a strong emphasis on the role of the public in fighting and preventing crime. See *id.* Varying by city, community policing can refer to special teams of volunteer officers, foot patrols, or even officers that travel on bicycles. See *id.*

114. See *id.* at 5 (categorizing community policing as "process," rather than "product").

115. See WESLEY G. SKOGAN ET AL., U.S. DEP'T OF JUSTICE, *Public Involvement: Community Policing in Chicago* 1-2 (2000), available at www.ncjrs.gov/pdffiles1/nij/179557.pdf (explaining importance of public role in success of community policing). Community policing in Chicago relies heavily on help from individual residents in each neighborhood to "identify problems, formulate solutions to them, and play an active part in solving them." *Id.* Along with the public, police officers must be committed to hearing the concerns of residents and working to alleviate them of their concerns. See *id.* at 2.

116. See *id.* at 2 (emphasizing importance of relationship between public and police officers in each beat). Officers that are assigned to beats are members of special teams, developed to ensure the officers have enough time to engage in problem solving with individuals of the community. *Id.*

117. See Dumke, *supra* note 99 (characterizing local reviews of strategy as mixed).

118. See *id.* (detailing specific concerns some residents had with community-policing program). Members of the Chicago community felt that "the meetings were more about talk than action [and] few officers were completely freed from responding to 911 calls, and some complained that they were essentially being asked to do social work." *Id.*

119. See *id.* (describing persistently high crime rates). In 2003, in response to Chicago's homicide total of 601, the highest homicide rate in the nation for that year, the mayor named a new police superintendent. *Id.* While crime rates did drop, it was due to the department de-emphasizing the role of community-policing tactics and focusing on direct attacks of gangs and drug dealing. *Id.*

120. *Id.* (discussing debate surrounding Chicago's community-policing program). While many police officers and advocates for the community-policing strategy continue to express their support and encouragement for the program, the widespread community view continues to regard the strategy as

III. ANALYSIS

A. *Misinterpreting the Data: A Second Look at Minority Stop Rates in New York City*

In accordance with the RAND report, inferences that show dramatic differences between the rates of stops of minorities compared to whites are often inflated, thus distorting the scope of the issue.¹²¹ Police officers defend racially disparate patterns of stops on the premise that “minorities commit disproportionately more crimes than whites (especially the types of crimes that capture the attention of police), and that the spatial concentration and disparate impacts of crimes committed by and against minorities justifies more aggressive enforcement in minority communities.”¹²² Thus, police officers maintain that higher stop rates of minorities represent efficient and rational police practices.¹²³ A 2001 economic analysis of racial bias in police stops and searches conducted in England and Wales argued that if there is truth to that justification, elevated stop rates for minorities are not concerning.¹²⁴

In accordance with the justification for police officers accused of targeting minorities with stop-and-frisk practices, claimants cannot use racial disparities as *prima facie* evidence of discrimination.¹²⁵ In fact, in particular circumstances, police can use race as a tool without racially profiling individuals.¹²⁶ Racial disparities may even result from NYPD officers targeting crime in minority neighborhoods.¹²⁷ For example, there is reason to believe that minorities, especially those within big cities, offend at higher rates and are disproportionately represented in criminal street gangs.¹²⁸ Given the fact that New York City stop-and-frisk practices are “driven by statistical data identifying hot spots of violent crime that require focused policing and which may well involve unusually high levels of minority offenders, it is far from

ineffective. *See id.*

121. *See* RIDGEWAY, *supra* note 6, at xiv (suggesting racial disparities are much smaller than raw statistics depict).

122. Gelman et al., *supra* note 67, at 814 (describing common rationale of many police officers).

123. *See id.* (justifying imbalance in stop rates between whites and minorities).

124. *See* BOROAH, *supra* note 67, at 23 (finding minority rates may reflect response to differential offending rates).

125. *See* Banks, *supra* note 16, at 583 (maintaining racial profiling is only one of many causes of rate disparities).

126. *See id.* at 583-84 (listing ways in which using race does not constitute racial profiling). Banks argues that police officers are warranted in performing an investigation on specific racial grounds if they have reasonable cause to suspect that particular race, based on either an eyewitness account or trustworthy intelligence information. *Id.*

127. *See id.* at 583 (giving alternative explanations to disproportionate stop rates of minorities). Banks gives several justifications for targeting minority neighborhoods, suggesting it may be easier to apprehend drug dealers there or possibly to thwart drug dealing in neighborhoods acutely harmed by this type of crime. *See id.*

128. *See* Rosenthal, *supra* note 2, at 348 (reporting minorities offend at higher rates and represented disproportionately in criminal street gangs).

clear that the differential stop rates that these tactics produce reflect anything that can be fairly characterized as official discrimination.”¹²⁹

Ultimately, data on NYPD officers’ stop-and-frisk practices offer only refutable grounds to suspect that actual discrimination is taking place on a large-scale level.¹³⁰ Subsequently, these tactics that garner such harsh criticism are the very same tactics that have shaped an astonishing plunge in New York City’s crime rates.¹³¹ It creates a peculiarity in the proposal that NYPD officers abandon the policies and practices that have produced “the best record in the nation for driving down rates of minority victimization—saving thousands of minority lives in the process.”¹³²

*B. The Crime Drop in New York City Correlating to the Rise
in Police Officers’ Stop-and-Frisk Practices*

There is no sidestepping the fact that during the crime-decline period in New York City, NYPD officers began to increase the use of stop-and-frisk practices in their approach to policing.¹³³ Initially, beginning in 1991 and continuing until 1995, patrol strength in New York City increased from 6647 officers to more than 8305.¹³⁴ As Richard Curtis concluded in a 1992 study of several Brooklyn neighborhoods, with a police crackdown being ushered in throughout the city, a severe decline in violent crime resulted.¹³⁵ Along with the increase of manpower, the early to mid-1990s marked shifts in NYPD policing strategies, which were concurrent with the city’s decline in violent crime.¹³⁶ Following the appointment of a new police chief, the early 1990s marked the

129. *Id.* at 350 (rejecting notion of stop and frisk practices targeting minorities).

130. *See id.* at 353 (indicating only modest reason to suspect discrimination in NYPD’s stop-and-frisk practices).

131. *See infra* notes 133-45 and accompanying text (noting NYPD’s stop-and-frisk practices as largely responsible for crime drop).

132. Rosenthal, *supra* note 2, at 353 (determining NYPD should not abandon practices producing such beneficial results).

133. *See* KARMEN, *supra* note 93, at 270 (discussing crime decline in New York City correlating to NYPD officers’ stop-and-frisk practices).

134. *See* Fagan et al., *supra* note 96, at 1313 (stating patrol strength increased dramatically between 1991 and 1995).

135. *See* Curtis, *supra* note 86, at 1267-74 (examining police practices on violent crime in 1992). Curtis found that this forced gang drug dealing to be carried out indoors and off of neighborhood streets. *Id.* at 1274. As a result,

the reconfiguration of drug markets in the mid-1990s appreciably reduced the level of neighborhood violence. As distribution retired indoors, turf battles were eliminated. . . . Distributors were robbed by users less frequently because they were more protected selling indoors to known customers. Like other neighborhood residents, drug distributors and users had also adapted and contributed to dramatic changes in neighborhood conditions.

Id.

136. *See* Fagan et al., *supra* note 96, at 1313 (reporting marked shifts in NYPD policing strategy, beginning in 1994, concurrent with crime decline).

beginning of the NYPD placing a greater emphasis on aggressive stop-and-frisk practices.¹³⁷

While the major change that took place in the NYPD's police strategy in the 1990s is frequently referred to as "order maintenance" or "zero tolerance," it appears that the crucial strategic weapon was the increasingly persistent use of stop-and-frisk practices.¹³⁸ Consequently, many NYPD police officers felt that the reduction of murders that occurred in the mid-1990s was a direct result of individuals thinking twice before carrying guns on their person.¹³⁹ Nonetheless, some scholars maintain that the persistent stop-and-frisk practices of the NYPD are not responsible for the radical decline in crime that New York City experienced.¹⁴⁰ The most powerful rebuttal to this argument is the lack of any plausible alternative.¹⁴¹

Lawrence Rosenthal, a professor at the Chapman University School of Law, argues that the only conceivable alternative explanation for the crime decline in New York City would be a simple regression-to-the-mean theory, falling in line with criminologists' observations that crime waves are often followed by a regression.¹⁴² Nonetheless, Rosenthal rejects this notion, maintaining that New York City did not exhibit the characteristics of a regression to the mean.¹⁴³ Further, no evidence exists that the substantial drop in crime was the result of economic change, changes in drug use patterns, or demographic changes.¹⁴⁴ One can, therefore, draw the conclusion that insistent stop-and-frisk practices

137. See Rosenthal, *supra* note 2, at 322-23 (arguing 1994 marked NYPD's emphasis on aggressive stop-and-frisk tactics for misdemeanor arrests). The year of 1994 also brought the adoption of "a system of statistical analysis that directed enforcement efforts at statistical 'hot spots' of criminal activity, and imposed greater managerial accountability." *Id.* at 323.

138. See KELLING & COLES, *supra* note 81, at 7 (describing order maintenance). The call for order has been met with new police strategies that emphasize order maintenance as well as citizen involvement in crime control efforts. See *id.* Kelling and Coles contend that police are "uniquely positioned to assist in order restoration and maintenance through their historical role as problem solvers in the community." See *id.* Order maintenance emphasizes the role of citizen involvement in crime-control efforts in concert with the police as a fundamental part of crime prevention. See *id.*; see also ZIMRING, *supra* note 85, at 150 (contending 1990s had New York City emphasizing "proactive policing across a wide spectrum of target[ed] behaviors").

139. See Bowling, *supra* note 96, at 546 (justifying stop and frisk as critical part of deterring crime). Bowling explains that throughout the early 1990s, seventy to eighty percent of New York City's homicides were the result of handgun shootings. *Id.* With the increase in aggressive stop-and-frisk practices and subsequent arrests, Bowling expresses that fewer people were willing to carry guns on their person, thus reducing the number of homicides in the mid-1990s. *Id.*

140. See *supra* notes 92-95 and accompanying text (rejecting other arguments).

141. See Rosenthal, *supra* note 2, at 327-28 (illustrating studies finding correlation between stops and crime decline, and arguing no other plausible theory).

142. See *id.* at 329 (addressing concept of New York City data reflecting regression to mean).

143. See *id.* (arguing regression-to-mean theory does not apply to New York City experience). The decline in crime in New York City in 2000 was equal to one-third of the average from the 1980s, which made it the most dramatic decrease the city had seen since World War II. *Id.* Further, crime rates continued to drop and were concentrated in the types of crime likely to be responsive to aggressive stop-and-frisk tactics. *Id.*

144. See Kelling & Bratton, *supra* note 85, at 1217 (rejecting other theories as credible explanations for crime drop in New York City).

by the NYPD played a central role in the crime decline in New York City.¹⁴⁵

C. Stop and Frisk as an Essential Measure: From New York City to Chicago

Being subjected to a stop-and-frisk search as an innocent citizen is almost certainly an infuriating, humiliating experience.¹⁴⁶ As a result, the practice has come under fire from groups like the Center for Constitutional Rights (CCR), a nonprofit legal advocacy organization, which filed two suits challenging the constitutionality of the NYPD's policy.¹⁴⁷ The first of these suits settled and now serves as the basis for the second suit, which was heard in federal court in August 2011.¹⁴⁸ In the second suit, the plaintiffs brought action against New York City Police Commissioner Raymond Kelly, then-Mayor Michael Bloomberg, and named and unnamed New York City police officers, alleging that the practice brought forth a pattern and practice of suspicionless and race-based stop and frisks.¹⁴⁹ On August 12, 2013, the United States District Court for the Southern District of New York found New York City liable for violating the plaintiffs' Fourth and Fourteenth Amendment rights, which resulted in the disproportionate and discriminatory stopping of blacks and Hispanics.¹⁵⁰ While there is no question that the innumerable people opposed to the policing tactic are entitled to their negative perceptions of stop-and-frisk methods, it is imperative to note that New York City residents currently benefit from record-breaking low crime rates as a result of the NYPD's assertive style of policing.¹⁵¹

The decision to increase stop-and-frisk practices in New York City derives

145. See *id.* (affirming police played most important role in New York City crime decline); see also Curtis, *supra* note 86, at 1274-75 (declaring innovations in policing as most popular explanation of crime decline).

146. See MacDonald, *supra* note 100 (stating innocent citizens who experience these practices feel both enraged and degraded).

147. See *infra* notes 148-50 and accompanying text (discussing suits filed in response to NYPD's stop-and-frisk practices).

148. See *Floyd v. City of New York*, 959 F. Supp. 2d 540, 556 (S.D.N.Y. 2013) (alleging NYPD implemented and sanctioned policy of unconstitutional stops and frisks); Kabakova, *supra* note 15, at 567 (describing CCR's two lawsuits stemming from New York City stop-and-frisk policy). The settlement from the first lawsuit "mandated the creation of a racial profiling policy and training of officers on this policy." Kabakova, *supra* note 15, at 567.

149. See *Floyd*, 959 F. Supp. 2d at 556 (describing class action, alleging stop and frisks violated plaintiffs' Fourth and Fourteenth Amendments).

150. See *id.* at 667 (discussing New York City's liability to plaintiffs for improper stop-and-frisk practices). The court held that the city violated the plaintiffs' Fourth Amendment rights under two theories: it was adequately shown that senior officials at the NYPD were deliberately indifferent to officials conducting unconstitutional stops and frisks; and, the unconstitutional stops and frisks were sufficiently widespread. See *id.* at 658-67. Furthermore, the court held that the city violated the plaintiffs' Fourteenth Amendment rights through the NYPD, finding that the NYPD had a policy of indirect racial profiling based on local criminal suspect data and that senior officials in both the city and the NYPD were deliberately indifferent to intentionally discriminatory stop-and-frisk practices. See *id.*

151. See MacDonald, *supra* note 100 (stating New York City's "residents enjoy a freedom from assault unknown in any other big city").

from an attempt to reassert control over disorderly behavior and crime, a goal that was quickly accomplished.¹⁵² This shift in the NYPD's policing practices was the catalyst for the historic decline in crime rates, and it serves to offer a potential blueprint for a similar turnaround in Chicago.¹⁵³ Frustrated with the rising violence in their neighborhoods, some Chicago residents are asking for a more hands-on police approach than community policing currently affords to solve the city's crime issue.¹⁵⁴

Employing policies and practices modeled off of the NYPD has already rendered itself effective in cities throughout the United States.¹⁵⁵ William J. Bratton, who was appointed Chief of the Los Angeles Police Department (LAPD) in October of 2002, is the former New York City Police Commissioner responsible for achieving the largest crime declines in New York City's history.¹⁵⁶ After only six years in office, crime in Los Angeles was reduced to historic lows, with serious crime down thirty-three percent and homicides down forty-one percent.¹⁵⁷ A study conducted by Harvard's Kennedy School of Government in 2003 showed that under Bratton, the significant crime drop coincided with a surge in the number of police stops executed by the LAPD.¹⁵⁸

Furthermore, the NYPD has already revealed the shortcomings of community policing, as the department tried to implement a community-policing approach in the early 1990s and was not successful in achieving the results the city desperately sought.¹⁵⁹ After only a few years of New York City's community-policing program, it became abundantly clear that the priorities of the police department and those of community leaders did not align with the actual needs of the community.¹⁶⁰ While the program was implemented under NYPD Commissioner Brown, by 1994, when Bratton became Commissioner of the NYPD, order maintenance replaced community policing as the NYPD's primary strategy.¹⁶¹ As previously discussed, the role that stop-and-frisk practices played was vital in furthering the NYPD's goal of

152. See Kelling & Bratton, *supra* note 85, at 1227 (describing New York City reaction when confronted with disorder, crime, and mayhem).

153. See *id.* at 1231 (finding NYPD's successful policy changes potential blueprint for other cities experiencing high crime).

154. See Dumke, *supra* note 99 (stipulating some locals regard community policing as ineffective and in need of phasing out).

155. See Bratton, *supra* note 18 (stating former chief executive of NYPD effectively lowered crime in Los Angeles).

156. See *id.* (stating New York City's crime dropped significantly under Bratton's lead).

157. See *id.* (showing statistical significance of drops in crime under Bratton).

158. See STONE ET AL., *supra* note 18, at i-ii (recognizing crime dropped when stops by LAPD rose).

159. See SPITZER, *supra* note 4, at 46-48 (discussing initial community-policing plan of NYPD in 1990s).

160. See *id.* at 48 (showing how distant priorities were). While the NYPD and community leaders in New York City were focused on preventing crimes such as homicide and armed robbery, residents of the community felt that there should be a greater emphasis on the prevention of petty crimes and disorder problems. See *id.*

161. See *id.* at 52-53 (examining NYPD's shift from community policing to order maintenance); see also *supra* note 138 and accompanying text (explaining order maintenance).

order maintenance.¹⁶² Thus, if Chicago were to implement a model placing a strong emphasis on appropriate stop-and-frisk practices, it may be just the solution the city needs to strategically and effectively fight crime.¹⁶³

Currently, Illinois has two statutes that set forth the state's stop-and-frisk policy.¹⁶⁴ In accordance with the statutes, an Illinois officer is permitted to stop an individual for a reasonable period of time when the officer "reasonably infers from the circumstances that the person is committing, is about to commit or has committed an offense."¹⁶⁵ Once an officer has stopped an individual for temporary questioning and reasonably suspects that he or she is in danger of an attack, that officer may search the apprehended individual for weapons.¹⁶⁶ The Illinois statutes, when compared to New York's statute, appear remarkably close in language and applicability.¹⁶⁷ The central question thus becomes, why has Chicago not executed similar policing practices to New York City, if the current law allows the city the liberty to do so?¹⁶⁸

This Note has illustrated that there is sufficient evidence that a majority of New York City's stop-and-frisk practices target urban violence, rather than minorities, and have been exceedingly effective in lowering crime rates.¹⁶⁹ Subsequently, while it can be assumed that nearly every police department in the country uses some form of stop and frisk, it has been shown that the focus

162. See SPITZER, *supra* note 4, at 56-59 (discussing importance of stop and frisk in order-maintenance policy). Under order maintenance, the NYPD focused on "apprehending violent criminals and preventing more serious crimes by aggressively enforcing laws aimed at low-level criminality". *Id.* at 56.

163. See Borooh, *supra* note 67, at 35-36 (finding accurate use of police resources achieves maximum desired effect).

164. See 725 ILL. COMP. STAT. ANN. 5/107-14 (West 2013) (setting forth "stop" section of Illinois' stop-and-frisk statute); 725 ILL. COMP. STAT. ANN. 5/108-1.01 (West 2013) (setting forth "frisk" section of Illinois' stop-and-frisk statute).

165. 725 ILL. COMP. STAT. ANN. 5/107-14 (West 2013).

166. See 725 ILL. COMP. STAT. ANN. 5/108-1.01 (West 2013). The statute provides:

When a peace officer has stopped a person for temporary questioning pursuant to Section 107-14 of this Code and reasonably suspects that he or another is in danger of attack, he may search the person for weapons. If the officer discovers a weapon, he may take it until the completion of the questioning, at which time he shall either return the weapon, if lawfully possessed, or arrest the person so questioned.

Id.

167. Compare N.Y. CRIM. PRO. LAW § 140.50 (McKinney 2013), with 725 ILL. COMP. STAT. ANN. 5/107-14 (West 2013), and 725 ILL. COMP. STAT. ANN. 5/108-1.01 (West 2013).

168. See Gorner, *supra* note 107 (explaining while occurrence of stop and frisks in Chicago rising, they remain less prevalent than in New York City). Stop and frisks that are conducted by Chicago police officers are reported on "contact cards," which require officers to record the age, address, race, time, location, and reason for stopping an individual on the street without making an arrest. See *id.* Under Superintendent Garry McCarthy, officers of the Chicago Police Department are encouraged to make more street stops, and in the first ten months of 2013, officers had filled out more than 600,000 contact cards, while only 516,500 cards were filled out in 2012. See *id.*

169. See *supra* Part III.A (rejecting idea stop-and-frisk practice is facially discriminatory and supporting its effectiveness).

on community policing—the chief strategy of the Chicago Police Department—has been ineffective in its attempt to produce dramatic results, evidenced by the continually surging crime rate in Chicago.¹⁷⁰ Choosing to implement a stop-and-frisk policy within the Chicago Police Department that reflects that of the NYPD would afford Chicago the advantage of a clean slate with which to work as they put these practices into place, and allow Chicago the opportunity to operate an improved and more efficient variation of New York’s policy.¹⁷¹

IV. CONCLUSION

The reduction of crime in New York City and the practices of the NYPD can serve as an exceptional outline for the diminution of crime in Chicago. There is a fine line, however, that separates police conduct intended to prevent crime and that which must be sanctioned under the Fourth and Fourteenth Amendments. It is imperative that police officers in Chicago, and everywhere else for that matter, are meticulous in conducting stop and frisks of citizens, omitting and punishing any conduct that constitutes mere harassment or intrusions that violate an individual’s rights. Officers of the Chicago Police Department must be painstakingly careful in their administration of stop-and-frisk practices, as it is irrelevant how effective stop-and-frisk practices are in deterring crime should they violate a person’s constitutional rights. Only then will the Chicago Police Department be successful in implementing and achieving the maximum effect of stop-and-frisk practices, free from bigotry and discrimination and alive with the achievement and accomplishment of reducing, and potentially eliminating, crime on the streets of the city of Chicago.

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170. See *supra* notes 97-106 and accompanying text (discovering Chicago crime rates continue to swell, in contrast to New York City’s); *supra* notes 107-20 and accompanying text (describing Chicago’s approach to community policing).

171. See RIDGEWAY, *supra* note 6, at 44-46 (giving recommendations to NYPD for interactions with stopped pedestrians).