

CITY OF MILWAUKEE SETTLEMENT AGREEMENT

Semiannual Analysis of Traffic Stops, Field Interviews,
No-action Encounters, and Frisks

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PREPARED BY



CRIME AND JUSTICE INSTITUTE

A Division of Community Resources for Justice

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INTRODUCTION

On July 23, 2018, the U.S. District Court for the Eastern District of Wisconsin entered an order adopting a Settlement Agreement (SA) among the parties to *Charles Collins, et al. v. City of Milwaukee, et al.*¹ The Plaintiffs in the case alleged that there had been racially disparate and unjustified stops, frisks, and other unconstitutional police actions. As required by the Settlement Agreement, the Milwaukee Police Department (MPD) revised their Standard Operating Procedures (SOPs) to reflect constitutional policing standards specific to the 4th Amendment's protection against unreasonable searches and seizures. SOP 085 ("Citizen Contacts, Field Interviews, Search and Seizure") defines reasonable suspicion as "objective, individualized, and articulable facts that, within the totality of the circumstances, lead a police member to reasonably believe that criminal activity has been, is being, or is about to be committed by a specific person or people." Additionally, for frisks to be warranted during a stop, "the police member must be able to articulate specific facts, circumstances and conclusions that support objective and individualized reasonable suspicion that the person is armed and dangerous."²

The Settlement Agreement stipulates that MPD must show sustained and continuing improvement in constitutional policing based in part on whether the legal basis for encounters is sufficiently articulated (SA V.1.d.iv-vii)³. Overall, MPD must be able to demonstrate that fewer than 15 percent of traffic stops, field interviews, and no-action encounters fail to show individualized, objective, and articulable reasonable suspicion (IOARS). Additionally, MPD must be able to demonstrate that fewer than 15 percent of documented frisks fail to show individualized, objective, and articulable reasonable suspicion that the subject of the stop was armed and dangerous.⁴

To measure MPD's compliance with the 4th Amendment in conducting traffic stops, field interviews, no-action encounters, and frisks, the Settlement Agreement calls for the Crime and Justice Institute (CJI), as the Consultant, to conduct a review of randomly-selected encounter data no less often than semiannually (SA V.A.3.a-e). This report is the second review in this series.⁵ The unit of analysis is a discretionary

¹ Order and Settlement Agreement (July 23, 2018). *Charles Collins, et al. v. City of Milwaukee, et al.*, (17-CV-00234-JPS) United States District Court Eastern District of Wisconsin Milwaukee Division.

² Milwaukee Police Department Standard Operating Procedure 085 "Citizen Contacts, Field Interviews, Search and Seizure." Effective January 25, 2019.

³ Citations to a specific paragraph of the Settlement Agreement will appear in this report as SA followed by the paragraph number.

⁴ According to the Settlement Agreement (SA V.1), "...Plaintiffs agree not to seek contempt sanctions should Defendants be unable to meet the numerical thresholds identified above within the first two (2) years of enforcement of this Agreement." Numerical thresholds are referenced in SA V.1.d.i-vii.

⁵ Crime and Justice Institute. (February 2020). *Semiannual Analysis of Traffic Stops, Field Interviews, No-action Encounters, and Frisks*
<https://city.milwaukee.gov/ImageLibrary/Public/ImageLibrary/Photos/CJISemiannualAnalysesFebruary2020.pdf>.

police encounter, in that the sample consists only of stops wherein the officer had discretion to initiate the stop (not stops conducted to fulfill arrest warrants or in which the officer was otherwise directed to conduct the stop). Through random selection, only one person in multi-person stops is included in the sample. Additionally, only forcible frisks are included in the sample, defined in this report as frisks not conducted as part of a search incident to arrest, or to convey or temporarily seat a person in a squad car.

This report details the analysis of a randomly selected sample of stops and a randomly selected sample of frisks representing police encounters that took place between July 1 and December 31 of 2019. As a part of the Settlement Agreement (SA IV.A.3), MPD is required to provide encounter data to CJI on a quarterly basis, which include the electronic digitized record for traffic stops, field interviews, no-action encounters, frisks, and searches. We base the findings in this report on the data provided by MPD as well as videos related to selected encounters.

The first section provides an overview of the population of encounters from which the sample is drawn, the sampling procedure, and an overview of the sample characteristics. Subsequent sections detail the IOARS analysis for stops and frisks, analysis of hit rates for contraband and by race and ethnicity, and a comparison to the analysis of data from the first half of 2019. The final section offers a summary of findings.

POPULATION AND SAMPLE CHARACTERISTICS

Encounter and Frisk Population Characteristics

Data for the second half of 2019 represent 28,036 police encounter events.⁶ Officers document traffic stops, field interviews, and no-action encounters in two databases, depending on the nature of the encounter and the type of work assigned to officers during specific tours of duty. The majority of encounters in the TraCS database involve traffic stops, but non-traffic pedestrian stops initiated by officers from their police vehicles are also included. The RMS database primarily involves pedestrian encounters categorized as field interviews or no-action encounters. Table 1 provides a breakdown of the encounters by type and police district.

Approximately half of the encounters occurred in Districts 5, 6, and 7 (15.4 percent, 16.1 percent, and 19.8 percent, respectively). The majority of these encounters come from the TraCS database. The district with the largest share of encounters documented in TraCS was District 7 (20.8 percent). Districts 2 and 5 reported the most field interviews during the period, representing 20.3 percent and 19.7 percent of field interviews, respectively. No-action encounters, a new reportable encounter per the Settlement Agreement, are the least common type of encounter with about 30 percent occurring in District 1.

Table 1. Police encounters by type and district. July to December 2019.

	TRAFFIC STOP-TRACS	FIELD INTERVIEW- RMS	NO-ACTION ENCOUNTER- RMS	TOTAL ENCOUNTERS
DISTRICT 1	1,529 (5.4%)	297 (11.5%)	28 (29.8%)	1,854 (6.0%)
DISTRICT 2	3,587 (12.7%)	524 (20.3%)	7 (7.5%)	4,118 (13.3%)
DISTRICT 3	3,274 (11.6%)	450 (17.4%)	9 (9.6%)	3,733 (12.0%)
DISTRICT 4	3,569 (12.6%)	240 (9.3%)	16 (17.0%)	3,825 (12.3%)
DISTRICT 5	4,250 (15.0%)	510 (19.7%)	16 (17.0%)	4,776 (15.4%)
DISTRICT 6	4,718 (16.7%)	271 (10.5%)	6 (6.4%)	4,995 (16.1%)
DISTRICT 7	5,901 (20.8%)	245 (9.5%)	10 (10.6%)	6,156 (19.8%)
NULL	1,135 (4.0%)	51 (2.0%)	2 (2.1%)	1,188 (3.8%)
MISSING	377 (1.3%)	0 (0.0%)	0 (0.0%)	377 (1.2%)
TOTAL	28,340 (100.0%)	2,588 (100.0%)	94 (100.0%)	31,022 (100.0%)

Notes: "NULL" refers to encounters that occurred out of jurisdiction. "Missing" refers to encounters that were missing location data in the data file.

During the second half of 2019, 1,073 police encounters included at least one frisk. Of these frisks, we determined 817 to be frisks that were not searches incident to arrest

⁶ This total represents the number of encounters that had corresponding TraCS (for traffic stops) or RMS (for field interviews and no-action encounters) forms. We omitted 7,459 citations and warnings and 1,800 CAD entries from this analysis because they lacked corresponding contact summary forms in TraCS or any RMS forms. They may represent additional encounters. We continue to work with MPD to improve and understand the data elements provided in the quarterly data extractions.

or for conveyance purposes.⁷ Table 2 provides a breakdown of the frisk population by type of encounter and district. Most frisks (64 percent or 520 out of 817 encounters) occurred during encounters documented as field interviews. About one-third of frisks (35.9 percent) occurred in District 5. Districts 4 and 5 recorded forcible frisks during four no-action encounters, an incorrect categorization since SOP 085 specifies that no-action encounters will not include any police action.

Table 2. Forcible frisks by encounter type and district. July to December 2019.

	TRAFFIC STOP-TRACS	FIELD INTERVIEW-RMS	NO-ACTION ENCOUNTER- RMS	TOTAL ENCOUNTERS
DISTRICT 1	2 (0.7%)	39 (7.5%)	0 (0.0%)	41 (5.0%)
DISTRICT 2	80 (27.3%)	91 (17.5%)	0 (0.0%)	171 (20.9%)
DISTRICT 3	40 (13.7%)	74 (14.2%)	0 (0.0%)	114 (14.0%)
DISTRICT 4	15 (5.1%)	53 (10.2%)	1 (25.0%)	69 (8.5%)
DISTRICT 5	122 (41.6%)	168 (32.3%)	3 (75.0%)	293 (35.9%)
DISTRICT 6	3 (1.0%)	26 (5.0%)	0 (0.0%)	29 (3.6%)
DISTRICT 7	27 (9.2%)	60 (11.5%)	0 (0.0%)	87 (10.7%)
NULL	1 (0.3%)	9 (1.7%)	0 (0.0%)	10 (1.2%)
MISSING	3 (1.0%)	0 (0.0%)	0 (0.0%)	3 (0.4%)
TOTAL	293 (100.0%)	520 (100.0%)	4 (100.0%)	817 (100.0%)

Notes: "NULL" refers to encounters that occurred out of jurisdiction. "Missing" refers to encounters that were missing location data in the data file.

Sampling Strategy

We drew two random samples from these data to complete the required IOARS analysis. The sample size is a statistically significant representation of encounters, with a confidence level of 95 percent and a margin of error of five percent.

Because officers record a majority of encounters in TraCS (91.4 percent), we stratified the stop sample to oversample field interviews and no-action encounters. This stratification allows us to gain a better understanding of field interviews and no-action encounters. The resulting sample includes 379 encounters⁸ – 289 from TraCS (76.3 percent), 71 field interviews documented in RMS (18.7 percent), and 19 no-action encounters also documented in RMS (5.0 percent).

We did not stratify the frisk sample by encounter type. Frisks occur more frequently during field interviews, but the proportion of frisks documented in TraCS was substantial enough to have confidence in a non-stratified random sample. The

⁷ Another five encounters included a frisk but the documentation was not sufficient to determine whether the frisk was a forcible frisk, incident to arrest, or for conveyance. We omitted these five encounters from the sampling population.

⁸ The original sample size was 380 encounters but during analysis, it became clear that one encounter was incorrectly categorized, as it was not a traffic stop, field interview, or no-action encounter.

resulting sample includes 260 frisk encounters⁹ – 106 from TraCS and 154 field interviews documented in RMS.

Decision Rules

The Settlement Agreement does not specify decision rules for determining IOARS. We consulted MPD training materials, SOPs, previous research, and subject matter experts to establish decision rules to determine whether officers sufficiently documented IOARS in the encounter and frisk samples.¹⁰

Decision Rule #1: “Speed Violation” stops demonstrate IOARS.

Stops occurring because of speeding violations meet IOARS and no further documentation is necessary to initiate the stop. This is because speeding represents visual and observable cues that the person has engaged in a traffic violation.

Decision Rule #2: “Vehicle Registration Violation” and “Vehicle Equipment Violation” stops demonstrate IOARS if officers document the observable registration or equipment violation that prompted the stop.

Officers must indicate in narrative fields the specific nature of the vehicle registration or equipment violation. Examples include expired registration, missing registration, improperly affixed registration, and brake light, headlight, plate, tinted window, or muffler violations. We coded encounters marked as vehicle registration or equipment violations that do not have supporting text regarding the registration or equipment violation observed prior to initiating the stop as a failure to document IOARS.

Decision Rule #3: Stops that are not speed, vehicle registration, or vehicle equipment violations are examined to judge whether IOARS was present prior to initiating the stop.

We determine IOARS to be sufficiently documented if narrative text indicates an observable and legally justified reason for the stop. Examples include stop sign violations, traffic light violations, blocking traffic, open intoxicants, and seatbelt violations. If an officer documents that loitering was the stop justification, the narrative needs to include details about the violated loitering ordinance, such as “loitering in area where ‘no loitering’ signs posted.”

⁹ The original frisk sample size was 261 but during analysis it became clear that one frisk occurred as incident to arrest and thus was removed from the sample because it was not a forcible frisk.

¹⁰ Specifically for traffic stops, when officers indicate several violations as the reasons for initiating the stop, the decision rules prioritize reasons for stops and the necessary IOARS documentation needed to justify the stop. For example, if an officer indicates “speeding” and “other rules of the road” as the reason for the stop, Decision Rule #1 determines that the officer provided adequate IOARS documentation to make the stop without further explanation of the “other rules of the road” violation.

Decision Rule #4: Field interviews documented in RMS must include narrative that specifies IOARS was present prior to initiating the stop.

Examples that meet the IOARS threshold include: truancy, traffic violations or rules of the road, illegal loitering as violation of ordinance, vehicle registration infractions, and matching description of a suspect.

Decision Rule #5: No-action encounters must include narrative that specifies IOARS was present prior to initiating the stop.

No-action encounters are interactions in which officers briefly question a person about that person, or that person's own actions or behavior and do not involve obtaining the subject's personal information or any other police action such as a frisk.

Decision Rule #6: Frisks must meet the guidelines of SOP 085 and include narrative about the IOARS that the person is armed and immediately dangerous. SOP 085 indicates that "members may not use only one of the below factors on their own to justify a frisk as more than one of these or other factors must be present":

- The type of crime suspected – particularly in crimes of violence where the use or threat of deadly weapons is involved.
- Number of subjects vs. police members present.
- Police member vs. subject factors (age and gender considerations).
- Factors such as time of day, location, or neighborhood where the stop occurs.
- Prior knowledge of the subject's use of force and/or propensity to carry deadly weapons.
- The appearance and demeanor of the subject.

If the following condition alone is present, the frisk is justified: "Visual indications that suggest that the subject is carrying a firearm or other deadly weapon."

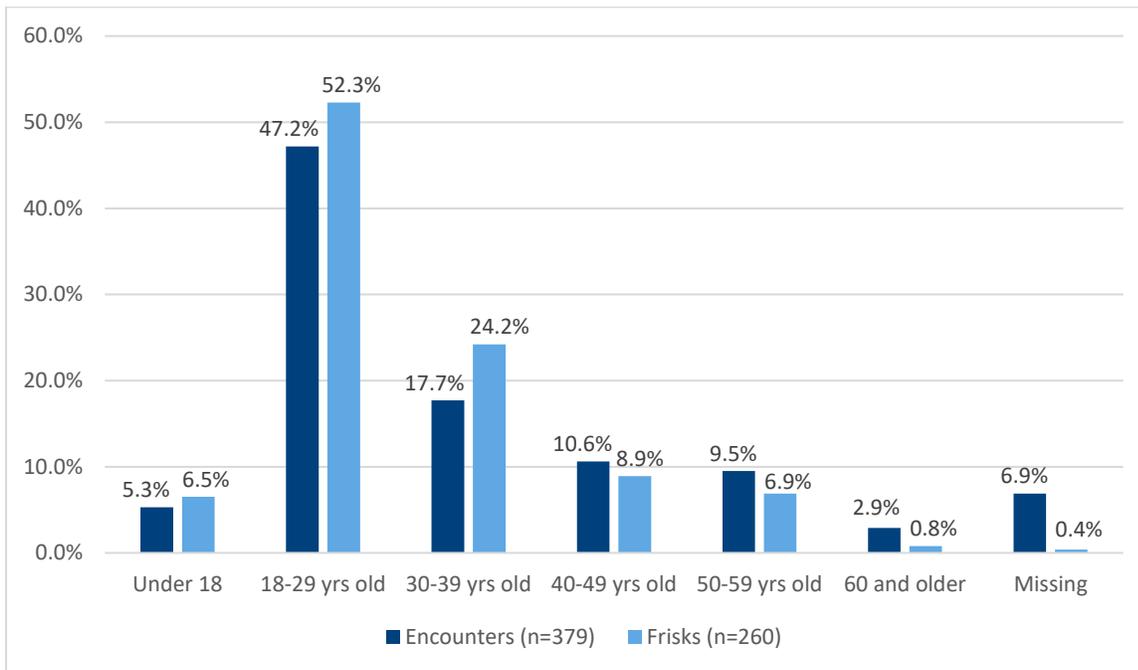
Encounter and Frisk Sample Characteristics

Figures 1, 2, and 3 provide an overview of the characteristics of the subjects that members of the MPD stopped from July through December of 2019. Table 3 lists the CAD call types documented as the originating reason for the encounter or frisk.

Figure 1 indicates that approximately half of encounters and frisks occur with young adults (18-29 year-olds). While males are more likely than females to be subjects of police encounters (Figure 2), they are even more likely than females to be frisked by the police during a stop (68.1 percent and 93.5 percent, respectively).

Figure 3 shows the proportion of police encounters and frisks by race and ethnicity. Over half of the subjects of police encounters are black, and black subjects are an even greater proportion of frisks (59.9 percent and 80.0 percent, respectively).

Figure 1. Proportion of Encounters and Frisks by Age Group. July to December 2019.



Notes: Age represents the person's age at the time of the encounter, given date-of-birth information.

Figure 2. Proportion of Encounters and Frisks by Sex. July to December 2019.

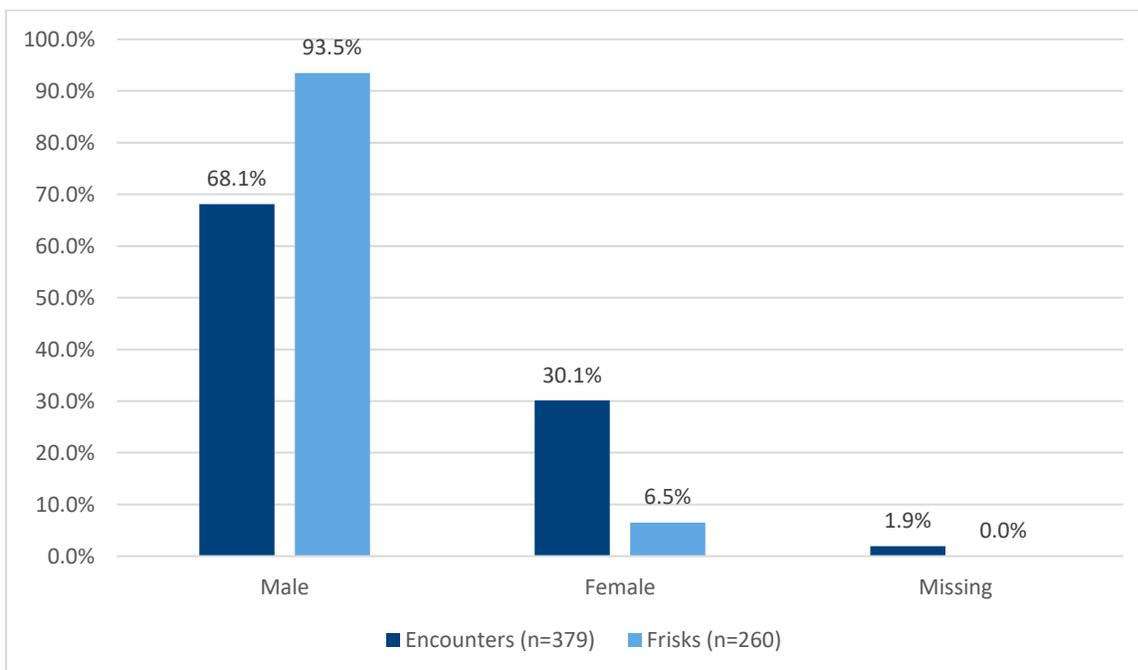
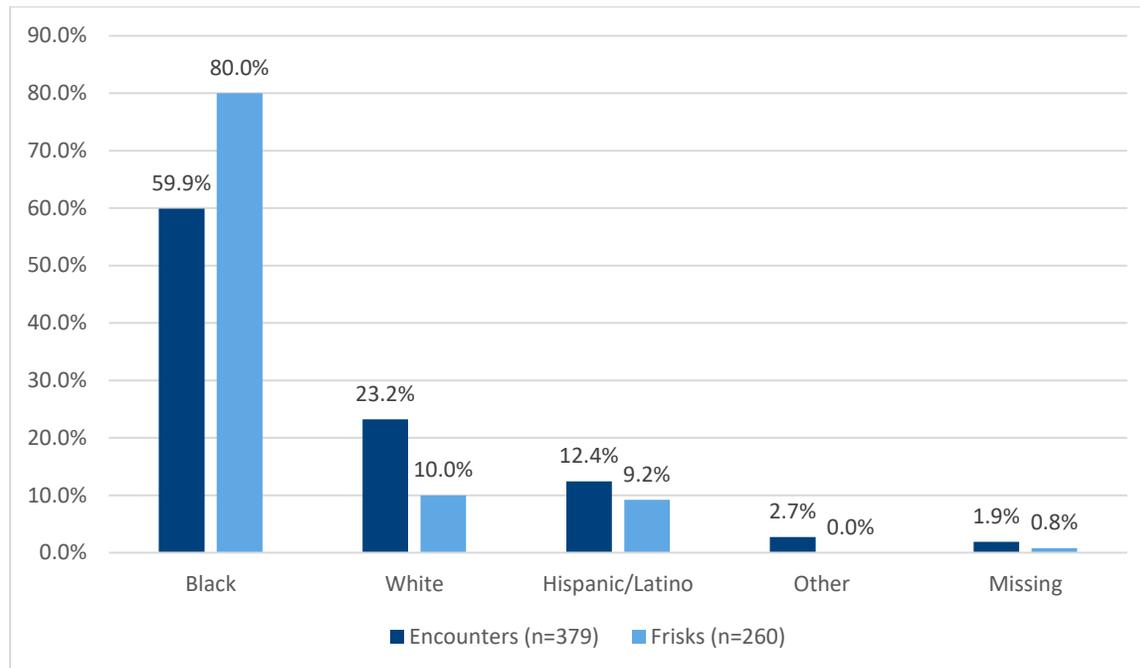


Figure 3. Proportion of Encounters and Frisks by Race and Ethnicity. July to December 2019.



Note: “Other” includes subjects that are Asian (1.3%), American Indian/Alaskan Native (1.1%), and documented as an unknown race or ethnicity (0.3%). “Missing” refers to instances in which the race and ethnicity information was blank.

Table 3 provides information about the CAD call designation that initiated the police encounter for the broader encounter sample and the more specific sample of encounters that involve frisks. (See Appendix A for a list of relevant CAD call types and how they are categorized.) Unsurprisingly, the designation for the majority of both samples are subject or traffic stops (82.1 percent for encounters and 56.5 percent for frisks). Notably, the frisk sample had more weapon/firearm-related call designations than the broader encounter sample (13.8 percent and 4.0 percent, respectively).

Table 3. CAD Call Types, by Sample. July to December 2019.

	ENCOUNTER SAMPLE	FRISK SAMPLE
SAMPLE TOTAL	N = 379 (100%)	N = 260 (100%)
WEAPON/FIREARM-RELATED	15 (4.0%)	36 (13.8%)
VIOLENCE-RELATED	4 (1.1%)	6 (2.3%)
SUBJECT/TRAFFIC STOP	311 (82.1%)	147 (56.5%)
INVESTIGATION	4 (1.1%)	23 (8.8%)
CRIME SUSPECT/SUBJECT	12 (3.2%)	12 (4.6%)
WELFARE CHECK	1 (0.3%)	0 (0%)
PROPERTY CRIME -RELATED	3 (0.8%)	6 (2.3%)
DRUG-RELATED	1 (0.3%)	4 (1.5%)
OTHER REASON	20 (5.3%)	21 (8.1%)
MISSING REASON	8 (2.1%)	5 (1.9%)

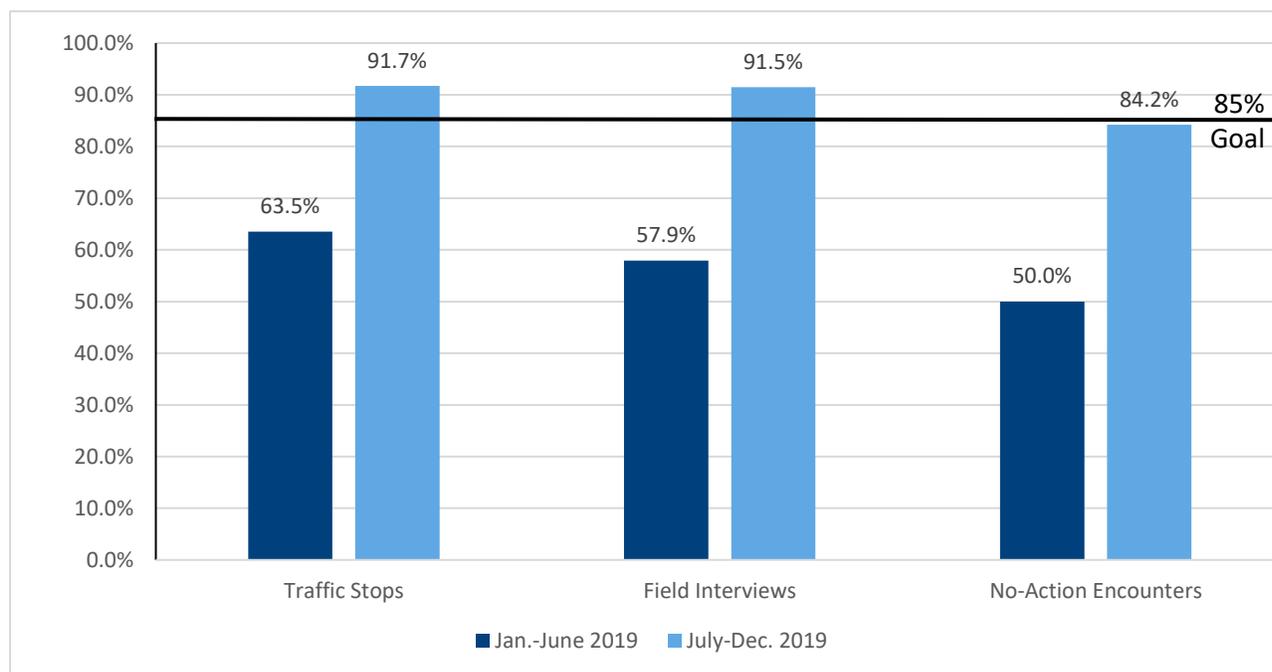
STOP SAMPLE ANALYSIS

The first semiannual analysis of IOARS noted that much of the failure to meet the IOARS documentation standard was due to missing data in the officer-written narratives for traffic stops.¹¹ The current analysis of encounters reveals marked improvement in not only the presence of documentation but also the specificity of the IOARS in that documentation.

IOARS for Stops

An analysis of the 379 encounters in the sample indicates that the large majority of documentation for traffic stops, field interviews, and no-action encounters shows sufficient IOARS documentation (91.3 percent). Failure to document IOARS was largely due to omission of narrative details necessary to meet the threshold. Figure 4 indicates the proportion of encounters with IOARS documentation by encounter type and offers a comparison to data from the first half of 2019.

Figure 4. Proportion of Encounters with IOARS, By Encounter Type and Time Period



Note: Horizontal line represents the 85% threshold that needs to be achieved (per SA V.1.d.iv-vii) so that fewer than 15% of encounters fail to document IOARS.

Among the 24 encounters (8.3 percent) documented in TraCS that failed to meet the IOARS threshold, most omitted justification for the stop when justification was needed (e.g., something other than speeding). For example, while officers may have

¹¹ Crime and Justice Institute. (February 2020). *Semiannual Analysis of Traffic Stops, Field Interviews, No-action Encounters, and Frisks* pp. 11.
<https://city.milwaukee.gov/ImageLibrary/Public/ImageLibrary/Photos/CJISemiannualAnalysIsFebruary2020.pdf>.

documented that the subject was driving recklessly or in an unsafe manner, they omitted specific information about what constitutes “reckless” or “unsafe.” Five encounters had blank narratives where a narrative was required.

Six field interviews documented in RMS failed to provide sufficient documentation for IOARS (8.5 percent). In these cases, officers included narratives that did not provide the observable facts the officer used to establish IOARS prior to initiating the stop. For example, the officer may indicate that the person matched the description of a suspect in a crime as their justification for the stop, but without further details regarding what about the description matched (e.g., clothing, demographic profile, associates), the officer failed to document IOARS.

No-action encounters were the least frequent type of encounter. Three of the 19 encounters in the sample failed to include IOARS for the stop (15.8 percent). Similar to field interviews, failing to document IOARS was due to officers not detailing in their narrative the legally justified observable facts that led them to initiate the encounter. In all three cases, officers included some narrative text about the stop but the text did not properly document IOARS for the stop.

Documentation of Frisks

The Settlement Agreement stipulates an analysis of the consistency and reliability of frisk documentation by requiring analysis of “cases in which an officer marks ‘no frisk’ and ‘no search’ in cases in which a frisk or search was highly likely to have occurred (e.g., stop for a robbery investigation)” (SA V.A.3.e). Based on established knowledge of police encounter protocols and in consultation with policing experts, we established a list of CAD call types to understand if the call type is likely to involve a frisk. Appendix B includes a list of the 22 CAD call types designated as cases in which an officer is likely to conduct a frisk. Call types flagged for this purpose generally involve firearms or other weapons, including: subject with a gun, shots fired, armed robbery, or domestic violence battery.

Updated January to June 2019 Review

CJI’s first IOARS report (February 2020) indicated that the analysis of frisk documentation for encounters occurring between January and June 2019 was incomplete because personally-identifiable information (PII) protocols specific to video footage were yet to be developed. Since the publication of that report, a process has been put in place to efficiently respond to CJI’s video footage requests.¹²

We have received all videos outstanding from our initial request. One of the encounters involved a search incident to arrest that was not documented in the TraCS information for the stop. In sum, out of the 10 encounters for which we requested and reviewed video footage, we found one undocumented frisk, one undocumented search, and one encounter without video footage associated with it.

¹² Order Stipulation to Disclose PII (April 10, 2020). Charles Collins, et al. v. City of Milwaukee, et al., (17-CV-00234-JPS) United States District Court Eastern District of Wisconsin Milwaukee Division.

July to December 2019

Twenty of the 379 encounters in the sample documented a forcible frisk, representing 5.3 percent of encounters with police. An analysis of CAD call types and encounters that did not document frisks reveals another 11 encounters that likely involved a frisk where officers did not document a frisk.¹³ The CAD call types included shooting, shots fired, ShotSpotter, fight, and subject with a gun.

Based on the guidelines of the Settlement Agreement (SA III.A.7.), we requested video footage from police-vehicle cameras and body-worn cameras from MPD for the 11 encounters we flagged as likely to involve a frisk but reported as not including a frisk. MPD documented eight of the encounters as no-action encounters and three as field interviews.

Video review of the encounters provided to CJI indicates that five of the 11 encounters included frisks that were visible in the video footage but were not documented in RMS. Officers documented four of these five encounters as no-action encounters, representing an incorrect categorization for these encounters since no-action encounters do not involve frisks or searches. The ongoing misclassification of encounters is significant and important for MPD to address as they continue to train officers on the definition of no-action encounters.

For one of these five encounters, MPD marked “yes” for search but “no” for frisk in RMS. The distinction between a frisk and a search is important to both the analysis of frisks and how MPD is conducting and documenting police actions. According to SOP 085 (“Citizen Contacts, Field Interviews, Search and Seizure”), a search involves looking into hidden places for contraband or other evidence with the intent of charging the person with a crime. Therefore, officers conduct searches once they are reasonably certain a crime has occurred and are in the process of collecting evidence. Frisks are limited to patting down a person’s outer clothing and officers conduct them for their own safety because they believe the person is armed and dangerous.¹⁴ While frisks and searches may both happen during an encounter, the RMS has specific fields to document the distinct rationales for and timing of frisks, separate from searches.

¹³ We omitted from this analysis eight of the 379 encounters in the sample because the CAD information was missing and we therefore could not investigate the type of call for the encounter.

¹⁴ Milwaukee Police Department Standard Operating Procedure 085 “Citizen Contacts, Field Interviews, Search and Seizure.” Effective January 25, 2019.

FRISK SAMPLE ANALYSIS

The first semiannual analysis, representing a period when the Department was conducting training for all officers on constitutional policing practices developed in response to the Settlement Agreement, provided a baseline assessment of the extent to which officers document IOARS to justify frisks during police encounters. The first analysis also provided information about contraband obtained during frisks and a preliminary analysis of frisks by race and ethnicity. The below sections assess MPD on these measures during the second half of 2019, a time period in which all officers had been trained on constitutional policing practices. MPD made significant improvements in documenting IOARS for justifying stops between the first reporting period and the second reporting period. MPD did not demonstrate progress in providing sufficient documentation to justify IOARS for frisks between the first and second reporting periods.

IOARS for Stops and Frisks

For encounters that involve frisks, two levels of IOARS documentation are needed: 1) IOARS that the person has/is/will engage in a crime for officers to justify the stop, and 2) IOARS that the person is armed and dangerous for officers to justify the frisk.

The Settlement Agreement (SA V.1.d.vii.) calls for “analysis of TraCS and RMS data on frisks [that] demonstrates that fewer than 15 percent of frisk records documented during the previous six (6) months fail to show that the frisks were supported by individualized, objective, and articulable reasonable suspicion that the stop subject was armed and dangerous.”

Figure 5 presents a breakdown of the sample, including whether officers documented IOARS for the stop or for the frisk, and whether officers found contraband.¹⁵ After assessing the documentation officers provided for each encounter in the sample, 18 of the 260 stops (6.9 percent) lacked sufficient justification, as they did not meet the IOARS documentation needed to justify the stop. This is an improvement from our previous analysis of frisks from January to June 2019, wherein 27.6 percent of stops in the frisk sample lacked sufficient justification. An examination of IOARS for frisks determined that officers did not document the IOARS necessary to justify the frisk 80.8 percent of the time, similar to our previous analysis, remaining far beyond the Settlement Agreement threshold of 15 percent.

Several patterns emerge in the documentation for frisks where documentation of IOARS justification is insufficient. First, most of the officer-written narratives do not include specific information about why they suspected the subject had a weapon and why they suspected the person was immediately dangerous. This includes officers

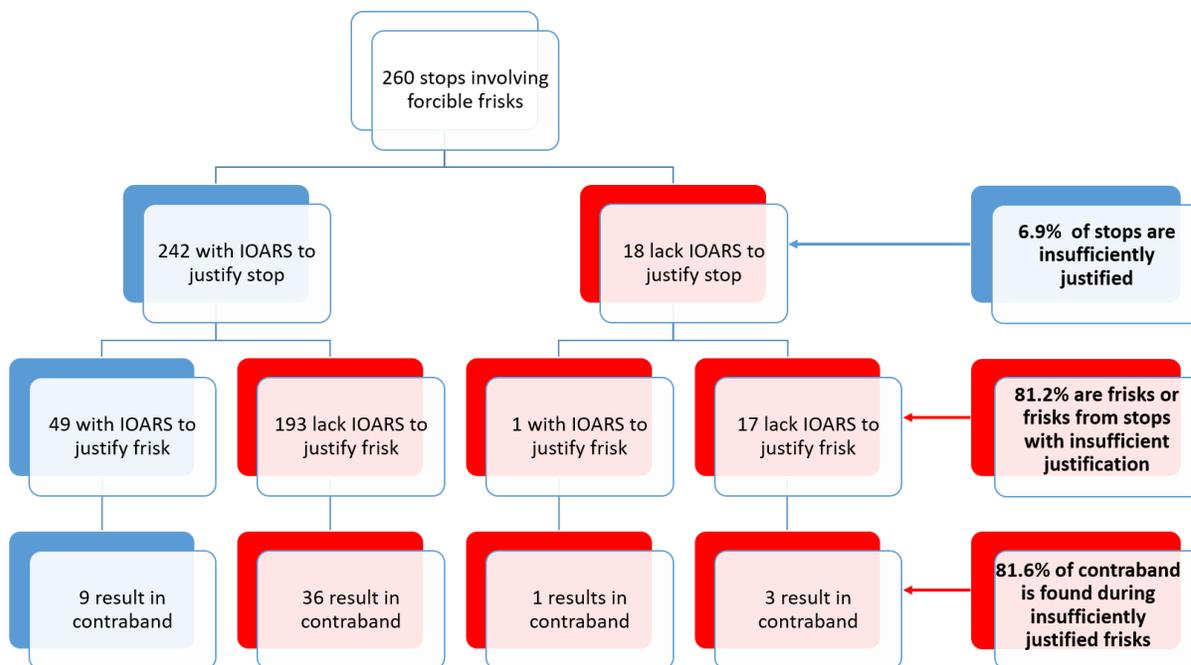
¹⁵ The original sample was 261 stops where a frisk occurred, omitting encounters where it was clear that the frisk was incident to arrest or for some other non-discretionary reason. Once we drew the sample it became clear that one of the frisks was in fact incident to arrest, so we excluded it from the sample, leaving 260 stops where a frisk occurred in the final frisk sample.

using boilerplate language (e.g., “furtive movement” or “bulge”) that is not detailed enough to establish IOARS that the person is armed and dangerous.

Second, officers inappropriately used the suspicion of drugs or drug paraphernalia as justification for frisks. SOP 085 only authorizes frisks of the outer garments when officers have IOARS that the person is armed and dangerous to the officer or other people. Suspicion of the presence of drugs or drug paraphernalia does not justify members of MPD conducting a frisk.

Finally, officers refer to frisks as “consensual” on several occasions. While there are specific criteria in SOP 085 for consensual searches, frisks do not fall within those consent criteria.

Figure 5. Stops Involving Forcible Frisks by IOARS Justification and Contraband Seizure. July to December 2019.



Note: Blue boxes represent sufficient justification and within acceptable thresholds. Red boxes represent insufficient justification and not within acceptable thresholds.

Outcomes of Insufficiently Justified Stops¹⁶

The presence or lack of IOARS documentation in a given encounter can influence criminal procedure in a court of law, especially if officers find contraband during that

¹⁶ Section V.A.3.c of the Settlement Agreement calls for an analysis of “fruit of the illegal stop” where a frisk, though proper given the officer’s observations, was made pursuant to a traffic stop or field interview conducted without IOARS. Based on this language, the “fruit” is the frisk. However, conventionally in this type of analysis “fruit of an illegal stop” considers contraband and/or weapons as the “fruit.” We provide a discussion of both interpretations for this report.

encounter. IOARS documentation also becomes important during investigations of complaints against officers. This section of the report examines outcomes of stops and frisks that lack proper documentation of IOARS and are therefore insufficiently justified stops and frisks.

We explored outcomes in a few ways. The first considers the frisk as an outcome of a stop without IOARS documentation, acknowledging that frisks are an intrusive police action affecting the constitutional rights of the public.¹⁷ The lack of IOARS documentation to justify the stop in the data we reviewed could create vulnerabilities in criminal procedure and/or complaints regarding officer misconduct.

The second outcome of insufficiently justified stops and frisks involves seizure of contraband. In the sample of 260 stops where a forcible frisk occurred, 49 resulted in finding contraband—a “hit rate” of 18.9 percent. In the instances where officers found contraband, 79.6 percent lacked proper IOARS documentation for the frisk (see Figure 5). When considering appropriate justification for the stop, the contraband hit rate decreases from 18.9 to 3.7 percent.

Table 4 details the type of contraband obtained during all frisks where officers found contraband, broken down by whether the stop and/or frisk was sufficiently justified by IOARS. The contraband obtained during the stops fall into only a few categories, mainly weapons and drugs, with an “other” category that includes items such as stolen property. Overall, drugs were the most common type of contraband found during frisks with weapons as a close second. Drugs also represent the primary contraband found during stops and frisks that did not sufficiently document IOARS.

Table 4. Type of Contraband Found. July to December 2019.

	WEAPON(S)	DRUGS	OTHER	TOTAL
ALL FRISKS IN SAMPLE	16	18	15	49
STOP AND FRISK WITH IOARS	4	0	5	9
STOPS WITHOUT IOARS & FRISKS WITH IOARS	1	0	0	1
STOPS WITH IOARS & FRISKS WITHOUT IOARS	9	17	10	36
STOPS AND FRISKS WITHOUT IOARS	2	1	0	3

Hit Rates

Section V.A.3.d of the Settlement Agreement calls for hit rate analysis disaggregated by race and ethnicity. As we discussed in our first report, research indicates that the threshold of suspicion used by officers to initiate a stop or frisk varies by race, and

¹⁷ The stop sample included 20 forcible frisks out of 379 stops (5.3 percent). Out of those 20 frisks, two occurred during insufficiently justified stops. Fourteen of the 20 were insufficiently justified by proper IOARS documentation.

hit rates are often lower for non-white individuals.¹⁸ This may be an important indicator, but not proof of racially biased policing in and of itself.

Hit rates in Milwaukee have historically varied by race. This analysis presents a second view of hit rates during the implementation of the Settlement Agreement and offers information about changes in policing practices that may have developed because of new policy changes and training initiatives the Department underwent. The encounters in this sample occurred after MPD completed the first cycle of training focused on constitutional policing standards and practices as required by the Settlement Agreement.

As stated previously, in the random sample of 260 stops where a forcible frisk occurred, officers obtained contraband from 49 frisks—a hit rate of 18.9 percent. Table 5 provides an overview of hit rates by type of stop indicated as the originating CAD call type.

Table 5. Contraband Hit Rates, by CAD Call Type. July to December 2019.

	NUMBER OF FRISKS	CONTRABAND HIT RATE
SAMPLE TOTAL	260	18.9%
TRAFFIC STOP	88	17.0%
SUBJECT STOP	59	23.7%
WEAPON/FIREARM-RELATED	36	27.8%
VIOLENCE-RELATED	6	16.7%
INVESTIGATION	23	17.4%
CRIME SUSPECT/SUBJECT	12	16.7%
PROPERTY CRIME-RELATED	6	16.7%
DRUG-RELATED	4	25.0%
OTHER REASON	21	4.8%
MISSING REASON	5	0.0%

In this sample, 106 of the frisks represent encounters documented in the TraCS database. When recording race and ethnicity, officers must choose from a dropdown menu giving the options “Asian,” “Black,” “Hispanic,” “Indian,” “White,” and “Native Hawaiian/Pacific Islander.” The rest of the frisks are documented in RMS as Field Interviews (n=154). The RMS database includes a field for race (“American Indian or Alaskan Native,” “Asian,” “Black/African American,” “Unknown,” or “White”) and a field for ethnicity (“Hispanic/Latino,” “Not Hispanic/Latino,” and “Unknown”). To analyze the hit rate by race for all frisks, we recoded race and ethnicity for stops documented in RMS into White (Not Hispanic/Latino), Black (Not Hispanic/Latino), Hispanic/Latino, and Other. In the frisk sample used for this analysis, there are two instances (0.8 percent) where the race/ethnicity is missing completely. Rather than

¹⁸ Crime and Justice Institute. (February 2020). *Semiannual Analysis of Traffic Stops, Field Interviews, No-action Encounters, and Frisks* pp. 16-17
<https://city.milwaukee.gov/ImageLibrary/Public/ImageLibrary/Photos/CJISemiannualAnalysesFebruary2020.pdf>.

coding as unknown or other, which have different meanings (e.g., ambiguous race or a racial category unavailable as an option in the databases), we left them as “Missing” in the tables below.

Table 6 details the hit rates for all frisks, disaggregated by race and ethnicity, to the best of our ability given how the data are structured. In looking at all frisks in the sample, we see the highest hit rate among whites at 23.1 percent, followed by blacks at 18.8 percent, and Hispanic/Latinos with the lowest hit rate of 16.7 percent. Taking into consideration that the vast majority of frisks in the sample involved subjects who are black, this analysis suggests there is a difference in the rate at which officers find contraband during a frisk with respect to the race and ethnicity of the individual in the encounter.

Table 6. Hit Rate, by Race and Ethnicity. July to December 2019.

	FRISKS	CONTRABAND HIT RATE
ALL FRISKS	260	18.9
BLACK	208	18.8%
HISPANIC/LATINO	24	16.7%
WHITE	26	23.1%
MISSING	2	0.0%

Table 7 demonstrates the type of contraband found during frisks, broken down by race and ethnicity. Due to the low number of instances where officers find contraband, it is difficult to draw any conclusions about racial disparities in the type of contraband seized.

Table 7. Contraband Type, by Race and Ethnicity. July to December 2019.

	WHITE	BLACK	HISPANIC/LATIN O	MISSING
NONE	20	169	20	2
DRUGS	1	16	1	0
WEAPONS	2	13	1	0
OTHER	3	10	2	0

PROGRESS BENCHMARKS

The purpose of the semiannual analyses of IOARS is to determine, in part, whether MPD is meeting the thresholds for justification of traffic stops, field interviews, no-action encounters, and frisks as stipulated in the Settlement Agreement.

Table 8 lists the proportions of each sample of stops and frisks that fail to meet the IOARS documentation requirement that fewer than 15 percent of records fail to show that the encounters meet the IOARS standard. MPD has made progress in documenting IOARS for traffic stops and field interviews, falling well within the required threshold for the sample from the second half of 2019. Documentation for no-action encounters has also improved from 50 percent in the first analysis to 15.8 percent in the current analysis, though still failing to meet the required threshold.

MPD has not made progress in meeting the 15 percent threshold for sufficient documentation of justification for frisks since the first reporting period. The frisk samples for both the first reporting period and second reporting period indicate that the majority of frisk encounters are not sufficiently justified with officer-written narratives describing IOARS that the subject was armed and dangerous.

Table 8. Comparison of IOARS Documentation to Settlement Agreement Thresholds by Time Period.

SA Paragraph	SA Language	Percentage of Encounters Without IOARS	
		Jan.-June 2019	July-Dec. 2019
V.1.d.iv	Fewer than 15% of traffic stop records fail to show that the stops were supported by IOARS (TraCS)	36.5%	8.3%
V.1.d.v	Fewer than 15% of field interview records fail to show that the field interviews were supported by IOARS (RMS)	42.1%	8.5%
V.1.d.vi	Fewer than 15% of no-action encounters fail to show that they were supported by IOARS (RMS)	50.0%	15.8%
V.1.d.vii	Fewer than 15% of frisk records fail to show that the frisks were supported by IOARS (TraCS and RMS)	79.4%	80.8%

SUMMARY OF FINDINGS

This report offers an assessment of the Milwaukee Police Department's progress in implementing changes to police procedures in accordance with the requirements of the Settlement Agreement of *Charles Collins, et al. v. City of Milwaukee, et al.* The encounters detailed in this report occurred in the second half of 2019, after the first complete cycle of officer training specific to constitutional policing practices developed in response to the Settlement Agreement. The following summarizes the major findings based on these data.

The Department has shown substantial progress in meeting the requirement that fewer than 15 percent of traffic stops, field interviews, and no-action encounters fail to show individualized, objective, and articulable reasonable suspicion to support the stop. Analysis of encounters for this report finds that 8.7 percent of encounters for the second half of 2019 fail to provide proper IOARS documentation. No-action encounters just missed the threshold at 15.8 percent, but traffic stops and field interviews were well within the threshold margin.

The Department continues to fall short of the Settlement Agreement requirement that fewer than 15 percent of frisks fail to show individualized, objective, and articulable reasonable suspicion that the subject is armed and dangerous. Our analysis of officer-written narratives indicates that 80.8 percent of frisks are insufficiently justified. The narratives lack the specific details necessary to establish IOARS that the subject was armed and immediately dangerous to the safety of the officers and other people present at the scene of the encounter.

Officers are not documenting every frisk. Our review of video footage from encounters flagged as likely to involve frisks, but had no frisk documented, indicates that officers are not documenting every frisk and that MPD continues to misclassify no-action encounters.

Most of the contraband seized during frisk encounters is obtained during frisks that were insufficiently justified. Our analysis of frisk encounters indicates that 79.6 percent of the contraband found during encounters is obtained during insufficiently justified frisks. This reduces the contraband hit rate from 18.9 percent to 3.7 percent when considering the documented justification for the encounter.

The contraband hit rate varies by race and is lowest for non-white subjects. Overall, most frisks in the sample occur with subjects who are black (80 percent) who have a contraband hit rate of 18.8 percent. Hispanic/Latinos, while representing the racial/ethnic group with the fewest number of frisks in the sample, also had the lowest hit rate of 16.7 percent. While these differences are notable, the low rate of contraband seizure overall makes it difficult to draw conclusions based on hit rates by race. We will continue to track racial and ethnic differences in encounter, frisk, and contraband hit rates in future analyses.

CONTRIBUTORS

Katie Zafft leads CJI's data analysis efforts for the Milwaukee Settlement Agreement work. She has over 10 years of experience working in criminal justice policy evaluation and implementation. Dr. Zafft's professional research experience includes both quantitative and qualitative data analysis at the local, state, and national level to evaluate a wide range of criminal justice topics, including the intersection of law enforcement and drug policy, community supervision strategies, drug court implementation, sentencing guidelines, and felony theft statutes. Her work for The Pew Charitable Trusts' public safety performance project involved evaluating state criminal justice policy reforms to inform the national conversation about sentencing and corrections. She holds a Ph.D. in Criminology and Criminal Justice from the University of Maryland, a Master's Degree in Criminology from the University of Minnesota-Duluth, and a BA in Psychology from St. Catherine's University in St. Paul, Minnesota.

Joanna Abaroa-Ellison provides data analysis support with her policy and data experience in various parts of the criminal justice system, including jails, courts, policing, and corrections. Prior to her work with CJI, Ms. Abaroa-Ellison served as the Data Integration Specialist and Research Analyst at the Middlesex Sheriff's Office (MA). There, she was able to extract, analyze, and visualize data as well as build capacity for implementing data-driven practices and policies. She holds a Master's of Social Work in Macro Practice from Boston College and a BA in Criminology from the University of Pennsylvania.

Theron Bowman is a policing professional contracted by CJI for his subject matter expertise in policing and compliance with court-ordered reforms. He is a police and city management professional and consultant with more than 30 years of experience leading and managing some of the most complex and sophisticated police and public safety operations in the world. In addition to 30 years with the Arlington TX Police Department, Dr. Bowman's consulting experience includes serving as a Federal court-appointed monitor; police practices expert and investigator on use of force, internal affairs, misconduct complaints, community policing, bias-free policing, stops, searches and arrests; and recruitment for the U.S. Department of Justice in several jurisdictions. He earned a Ph.D. in urban and public administration from the University of Texas at Arlington and has more than 25 years' experience teaching college and university courses. His experience also includes international policing, community affairs, workforce diversification, public finance, construction oversight, policing strategies, technology, and inspections and accreditations. He has written extensively on policing topics for industry publications and is a graduate of the FBI National Executive Institute and the FBI National Academy.

APPENDIX A

Call Category	CAD Call Type
Crime Suspect/Subject	Foot Pursuit
	Subj Wanted
	Trb w/ Juv
	Trb w/ Subj
	Vehicle Pursuit
Drug-Related	Drug Dealing
Welfare Check	Welfare Citizen
Investigation	Investigation
Other Reason	911 Abuse
	Assignment
	Business Check
	Citizen Contact
	Documented Call
	Fire
	Follow Up
	Gambling
	Indecent Exposure
	MO
	Noise Nuisance
	Out
	Parking Trouble
	Patrol
	Reckless Vehicle
	Special Assignment
	Susp Pers/Auto
	Traffic Hazard
Truant	
Vacant House Check	
Property Crime-Related	Entry
	Entry to Auto
	Shoplifter
	Stolen Vehicle
	Theft
	Theft from Person
Subject/Traffic Stop	Subj Stop
	Traffic Stop
Violence-Related	Battery

	Fight
	Robbery
	Threat
Weapon/Firearm-Related	Reckless Use of a Weapon
	Robbery Arm
	Shooting
	Shots Fired
	ShotSpotter
	Subj With Gun
	Subj With Weapon

APPENDIX B

CAD Call Types Likely to Involve Frisk

Call Type Code	Call Type Description
AS	ACTIVE SHOOTER/ATTACK
1344	BATTERY CUTTING
1344D	BATTERY CUTTING - DV
1345	BATTERY DV
1523	BB GUN COMPLAINT
1810	DRUG DEALING
1952	EXPLOSIVES
1613	FIGHT
FP	FOOT PURSUIT
1820	HOSTAGE SITUATION
1349	OFFICER SHOT
1733	PRISONER TRANS
1351	RECK USE OF WEAP
1352	ROBBERY ARM
SW	SEARCH WARRANT
1356	SHOOTING
1357	SHOTS FIRED
1358	SHOTSPOTTER
1632	SUBJ WITH GUN
1634	SUBJ WITH WEAPON
1847	SUICIDE ATTEMPT
WS	WARRANT SERVICE