

# 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 among the parties to *Charles Collins, et al. v. City of Milwaukee, et al.*<sup>1</sup> The Plaintiffs in the case alleged that there had been racially disparate and unjustified stops, frisks, and other unconstitutional police actions. The Defendants denied those allegations, and maintain that denial in the Settlement Agreement. By the terms of the Agreement, the City of Milwaukee, the Fire and Police Commission (FPC), and the Milwaukee Police Department (MPD) (collectively, the “Defendants”) are committed to implement significant changes to policies, training, supervision practices, and the use and sharing of data.

As required by the Settlement Agreement, MPD revised their Standard Operating Procedures (SOPs) to reflect constitutional policing standards specific to the 4<sup>th</sup> 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 after 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.”<sup>2</sup>

The Settlement Agreement (SA V.1.d.iv-vii) 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. 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 stop subject was armed and dangerous.<sup>3</sup>

To measure MPD’s compliance with the 4<sup>th</sup> Amendment in conducting traffic stops, field interviews, no-action encounters, and frisks, the Settlement Agreement calls for CJI (as the Consultant) to conduct a review of randomly-selected encounter data (SA V.A.3.a-e) no less often than semiannually. The unit of analysis is a discretionary 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

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<sup>1</sup> 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.

<sup>2</sup> Milwaukee Police Department Standard Operating Procedure 085 “Citizen Contacts, Field Interviews, Search and Seizure.” Effective January 25, 2019.

<sup>3</sup> 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.

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 searches incident to arrest or as a means by which to temporarily convey or seat a person in a squad car.

This review includes data on encounters that occurred between January 1 and June 30, 2019 that MPD provided to CJI. It is important to note that these data represent encounters occurring during a time of great change within the Department, as MPD was implementing many of the initial reforms outlined under the Settlement Agreement. For example, training specific to the requirements of the Settlement Agreement began on January 2 and concluded on June 18, 2019. Thus, training focused on the issues brought forward in the Settlement Agreement had not occurred for all officers involved in the encounters in this analysis. In essence, this first reasonable suspicion analysis provides information about MPD encounters with the caveat that the Department was not yet fully trained on how officers are expected to document IOARS. Future analyses, starting with encounters conducted during the second half of 2019, will better reflect MPD's practices based on a fully trained department.

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 January and June 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. The findings in this report are based on the data provided by MPD that include the first six months of 2019, 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 and offer a comparison to pre-litigation analysis of IOARS conducted by experts on behalf of the Plaintiffs. The final section offers a summary of findings.

## POPULATION AND SAMPLE CHARACTERISTICS

### Encounter and Frisk Population Characteristics

Data for the first half of 2019 represent 34,687 documented police encounters.<sup>4</sup> Officers document traffic stops, field interviews, and no-action encounters in two different 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 described as field interviews or no-action encounters. Table 1 provides a breakdown of the encounters by type and police district. Approximately 43 percent of the encounters occurred in Districts 5 and 7 (18.7 percent and 24.1 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 (24.8 percent). District representation is more even for field interviews documented in RMS, with the largest share in District 3 (19.5 percent). No-action encounters, a new reportable encounter per the Settlement Agreement, are not very frequent overall, with about one quarter documented in District 1 (26.9 percent).

Table 1. Police encounters by type and district. January-June 2019.

	TRAFFIC STOP-TRACS	FIELD INTERVIEW-RMS	NO-ACTION ENCOUNTER-RMS	TOTAL ENCOUNTERS
DISTRICT 1	2,794 (8.6%)	159 (8.2%)	29 (26.9%)	2,982 (8.6%)
DISTRICT 2	3,098 (9.5%)	360 (18.5%)	15 (13.9%)	3,473 (10.0%)
DISTRICT 3	3,709 (11.4%)	380 (19.5%)	23 (21.3%)	4,112 (11.9%)
DISTRICT 4	3,585 (11.0%)	258 (13.3%)	17 (15.7%)	3,860 (11.1%)
DISTRICT 5	6,145 (18.8%)	340 (17.5%)	10 (9.3%)	6,495 (18.7%)
DISTRICT 6	3,904 (12.0%)	199 (10.2%)	7 (6.5%)	4,110 (11.8%)
DISTRICT 7	8,093 (24.8%)	249 (12.8%)	7 (6.5%)	8,349 (24.1%)
NULL	822 (2.5%)	2 (0.1%)	0 (0.0%)	824 (2.4%)
MISSING	482 (1.5%)	0 (0.0%)	0 (0.0%)	482 (1.4%)
<b>TOTAL</b>	<b>32,632 (100.0%)</b>	<b>1,947 (100.0%)</b>	<b>108 (100.0%)</b>	<b>34,687 (100.0%)</b>

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

During the first half of 2019, 754 police encounter events included at least one subject frisk. Of these frisks, we determined 573 to be frisks that were not searches incident to arrest. Table 2 provides a breakdown of the frisk population by type of encounter and district. Most frisks (72 percent) occurred during encounters documented as field interviews. Almost 40 percent of frisks occurred in District 5,

<sup>4</sup> This total represents the number of encounters that had TraCS contact summaries, field interviews documented in RMS, and no-action encounters documented in RMS. There are an unknown number of citations omitted from this analysis that represents additional encounters without contact summaries or field interview documentation. CJI will continue to explore these encounters with future data extractions.

representing 62 percent of frisks documented in TraCS and 30 percent of frisks that occurred during field interviews. District 6 recorded one forcible frisk during a no-action encounter, clearly a documentation error since no-action encounters do not involve any police action.

Table 2. Forcible frisks by encounter type and district. January-June 2019.

	TRAFFIC STOP-TRACS	FIELD INTERVIEW-RMS	NO-ACTION ENCOUNTER- RMS	TOTAL ENCOUNTERS
DISTRICT 1	3 (1.9%)	18 (4.4%)	0	21 (3.7%)
DISTRICT 2	29 (17.9%)	61 (14.9%)	0	90 (15.7%)
DISTRICT 3	14 (8.6%)	60 (14.6%)	0	74 (12.9%)
DISTRICT 4	0 (0.0%)	43 (10.5%)	0	43 (7.5%)
DISTRICT 5	101 (62.3%)	124 (30.2%)	0	225 (39.3%)
DISTRICT 6	3 (1.9%)	26 (6.3%)	1	30 (5.2%)
DISTRICT 7	11 (6.8%)	78 (19.0%)	0	89 (15.5%)
MISSING	1 (0.6%)	0 (0.0%)	0	1 (0.2%)
TOTAL	162 (100.0%)	410 (100.0%)	1	573 (100.0%)

Notes: “Missing” refers to encounters that were missing location data in the data file.

## Sampling Strategy

We drew two random samples from these data in order 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 5 percent.

Because officers record the majority of encounters in TraCS (95 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 380 encounters – 285 from TraCS (75 percent), 76 field interviews documented in RMS (20 percent), and 19 no-action encounters also documented in RMS (5 percent). Table 3 displays a more detailed breakdown of the sample characteristics.

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 resulting sample includes 230 frisk encounters – 70 from TraCS and 160 field interviews documented in RMS. Table 4 displays a more detailed breakdown of the sample characteristics.

## Decision Rules

The Settlement Agreement does not articulate decision rules for determining IOARS. We consulted MPD training materials, SOPs, previous research, and subject matter

experts to establish decision rules in order to determine whether officers articulated IOARS in the encounter and frisk samples.<sup>5</sup>

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

Stops occurring because of speeding violations meet IOARS and no further articulation 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 articulate 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, brake lights, headlights, plates, tinted windows, 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 articulate 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.**

IOARS is met 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 articulated loitering for the stop, the narrative needs to include information about the violated loitering ordinance, such as “loitering in area where ‘no loitering’ signs posted.”

**Decision Rule #4: Field Interviews documented in RMS must include narrative that articulates IOARS was known prior to initiating the stop.**

Examples that meet 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 articulates IOARS was known prior to initiating the stop and an indication that the officer “quickly” disproved their initial suspicion after the stop began.**

No-Action Encounters should not involve obtaining the subject’s personal information or any other police actions such as frisks.

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<sup>5</sup> 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 has provided adequate IOARS documentation to make the stop without further explanation of the “other rules of the road” violation.

**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 a frisk is justified if more than one of the below factors is 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**

Tables 3, 4, and 5 provide an overview of the characteristics of the people represented in police encounters and the CAD call types documented as the originating reason for the encounter. It is important to note that the encounter sample suffers from the same, and substantial, missing demographic data issues discussed in CJI’s First Annual Report and impacts the conclusions that can be drawn from the reasonable suspicion analysis.<sup>6</sup> Missing data can obscure patterns in encounters if there are similar reasons for why the data are incomplete. However, the frisk sample data are far more complete with respect to demographic information, perhaps indicating either that officers are focused on documentation in situations that involve more substantive police actions (e.g., frisks or searches) or that there is a technical issue in recording all pertinent information on encounter samples.

The characteristics of the encounter sample represented in Table 3 provide information about the demographics of the people involved in police encounters and missing data in the sample. Approximately 16 to 21 percent of the demographic indicators in the sample are missing.

Fifty-eight percent of the encounters involve males. Over half of the individuals involved in police encounters are black (56 percent), followed by white (16 percent), and Hispanic/Latino (9 percent). Thirty-three percent of the sample is between 18 and 29 years old.

Table 4 provides the age, race, ethnicity, and sex demographics for the encounters in the frisk sample. The frisk sample has much more complete data, perhaps indicating a focus on documentation for police encounters that involve more police action. The

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<sup>6</sup> CJI’s First Annual Report is available on the Fire and Police Commission website at: <https://city.milwaukee.gov/fpc#.XfeOu5NKjX4>

majority of individuals frisked are black (80 percent) and male (91 percent). Approximately half of the frisk sample is between the ages of 18 and 29 years old.

Table 3. Encounter Sample Characteristics, by number and percent

	NON-MISSING	MISSING
SEX		61 (16%)
MALE	220 (58%)	
FEMALE	98 (26%)	
UNKNOWN	1 (0.3%)	
RACE/ETHNICITY		60 (16%)
BLACK	214 (56%)	
WHITE	62 (16%)	
HISPANIC/LATINO	33 (9%)	
ASIAN	8 (2%)	
INDIGENOUS	1 (0.3%)	
UNK/NULL	2 (0.5%)	
AGE		80 (21%)
UNDER 18	28 (7%)	
18-29 YRS OLD	127 (33%)	
30-39 YRS OLD	55 (15%)	
40-49 YRS OLD	48 (13%)	
50-59 YRS OLD	23 (6%)	
60 AND OLDER	19 (5%)	

Notes: Age is calculated as the person's age at the time of the encounter, given date-of-birth information. Percentages are calculated using the total for each characteristic, including non-missing and missing (N = 380).

Table 4. Frisk Sample Characteristics, by number and percent

	NON-MISSING	MISSING
SEX		0 (0%)
MALE	209 (91%)	
FEMALE	21 (9%)	
UNKNOWN	0 (0%)	
RACE/ETHNICITY		0 (0%)
BLACK	183 (80%)	
WHITE	15 (6%)	
HISPANIC/LATINO	30 (14%)	
ASIAN	0 (0%)	
INDIGENOUS	2 (1%)	
UNK/NULL	0 (0%)	
AGE		8 (3.5%)
UNDER 18	24 (10%)	
18-29 YRS OLD	118 (51%)	
30-39 YRS OLD	48 (21%)	
40-49 YRS OLD	18 (8%)	
50-59 YRS OLD	13 (6%)	
60 AND OLDER	1 (0.4%)	

Notes: Age represents the person's age at the time of the encounter, given date-of-birth information. . Percentages are calculated using the total for each characteristic, including non-missing and missing (N = 380).

Table 5 provides information about the CAD call designation that originated the police encounter for the broader encounter sample and the more specific sample of encounters that involve frisks. Unsurprisingly, the majority of both samples are subject or traffic stops. We base other call type categories on the type of call to describe generally the initiating reason for the encounter. Notably, the frisk sample had more weapon/firearm-related call designations than the broader encounter sample (15 percent and 3 percent, respectively). Appendix A presents a list of CAD call types and how they are categorized.

Table 5. CAD Call Types, by Sample

	ENCOUNTER SAMPLE	FRISK SAMPLE
SAMPLE TOTAL	N = 380	N = 230
WEAPON/FIREARM-RELATED	11 (3%)	35 (15%)
VIOLENCE-RELATED	10 (3%)	5 (2%)
SUBJECT/TRAFFIC STOP	311 (82%)	131 (57%)
INVESTIGATION	10 (3%)	9 (4%)
CRIME SUSPECT/SUBJECT	6 (2%)	11 (5%)
INJURY/WELFARE CHECK	2 (0.5%)	1 (0.4%)
PROPERTY CRIME -RELATED	4 (1%)	5 (2%)
DRUG-RELATED	0 (0%)	3 (1%)
OTHER REASON	17 (4%)	24 (10%)
MISSING REASON	9 (2%)	6 (3%)

## STOP SAMPLE ANALYSIS

Pre-litigation analyses conducted by experts on behalf of the Plaintiffs in *Collins v. City of Milwaukee*, Dr. Margot Frasier and Dr. David Abrams, investigated the extent to which officers provided IOARS documentation for traffic and pedestrian encounters recorded in the TraCS and RMS databases<sup>7</sup>. Dr. Frasier found that 49 percent of encounters documented in the TraCS (2010-2017) database and 41 percent of the encounters documented in the RMS (2016-2017) database failed to provide IOARS to justify the stop. In a larger report on Milwaukee police encounters, Dr. Abrams noted that 51 percent of the encounters recorded in the RMS database from 2010-2017 had no narratives documenting the reason for the encounter. The current analysis offers information about progress MPD has made on documenting IOARS.

### IOARS for Stops

An analysis of the 379<sup>8</sup> encounters in the sample indicates that 38.3 percent of the encounters fail to articulate IOARS for the stop initiation (Table 6). In large part, this is due to an omission of details necessary to meet the standard.

Thirty-six percent of encounters documented in TraCS fail to meet the IOARS articulation standard. These encounters largely omitted justification for the stop when justification was needed (e.g., something other than speeding). While officers may have chosen “Vehicle Equipment” or “Vehicle Registration” as the reason for the stop, often the narrative field for articulation of IOARS was “NULL.”

Field interviews documented in RMS failed to articulate IOARS in 42 percent of the encounters. Those failing to meet the IOARS articulation standard 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 write “loitering” as their justification for the stop, but without further detail regarding the ordinance violation or posted signage that prohibits loitering, the officer fails to articulate IOARS.

No-action encounters were the least frequent type of encounter. Half of the 18 encounters fail to include IOARS for the stop. As was the case for field interviews, failing to document IOARS was due to officers not detailing in their narrative the legally justified observable facts that lead them to initiate the encounter. In all cases, officers included some narrative text about the stop but the text did not properly document IOARS for the stop.

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<sup>7</sup>Abrams, D. (February 20th, 2018). “Report of David Abrams, Ph.D.” Frasier, M. (February 20th, 2018). “Report of Margo Frasier.” Charles Collins, et al. v. City of Milwaukee, et al., (17-CV-00234-JPS) United States District Court Eastern Division of Wisconsin Milwaukee Division. Retrieved from American Civil Liberties Union Website: <https://www.aclu.org/cases/collins-et-al-v-city-milwaukee-et-al>

<sup>8</sup> The original sample was 380 encounters but one no-action encounter was removed as the narrative indicated it was a form pulled by mistake.

Table 6 provides a breakdown of categories of encounters based on originating CAD call types and the proportion of which failed to achieve the IOARS articulation standard. The vast majority of the encounters are traffic or subject stops and both types of encounters exceed the 15 percent failure threshold stipulated in the Settlement Agreement. The findings shown here are consistent with the findings in pre-litigation analysis. One notable improvement since the Settlement Agreement is that all encounters from the RMS database include some narrative about the stop, an improvement from the finding that 51 percent of encounters in RMS analyzed for pre-litigation reports were missing officer-written narratives.

Table 6. Reasonable Suspicion, by CAD Call Type

	NUMBER OF ENCOUNTERS	FAILURE TO ARTICULATE REASONABLE SUSPICION
SAMPLE TOTAL	379	38%
TRAFFIC STOP	280	35%
SUBJECT STOP	31	48%
WEAPON/FIREARM-RELATED	11	45%
VIOLENCE-RELATED	10	60%
INVESTIGATION	10	40%
CRIME SUSPECT/SUBJECT	6	50%
PROPERTY CRIME -RELATED	4	75%
INJURY/WELFARE CHECK	2	0%
OTHER REASON	17	47%
MISSING CAD	8	50%

## Documentation of Frisks

The Settlement Agreement stipulates an analysis of the consistency and reliability of frisk documentation by designating “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). We flagged and explored CAD call types to understand if the call type would likely 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.

Sixteen of the 379 encounters in the sample documented a forcible frisk, representing 4 percent of encounters with police. An analysis of CAD call types and encounters that did not document frisks reveals another 10 encounters that likely involved a frisk but where officers did not document a frisk.<sup>9</sup> The CAD call types

<sup>9</sup> We omitted from this analysis nine 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.

included shots fired, ShotSpotter, foot pursuit, fight, subject with a gun, and domestic violence battery.

Based on the guidelines of the Settlement Agreement (SA III.A.7.) we requested from MPD video footage from police-vehicle cameras and body-worn cameras for the 10 encounters flagged as likely to involve a frisk but not reported as including a frisk.<sup>10</sup> At the time of this report, MPD provided video footage from six of these encounters. MPD responded that one of the requested encounters does not have video footage associated with it and has not released video footage from the three remaining encounters for our review due to the inclusion of sensitive and personally identifiable information. The City Attorney's Office is working with CJI and MPD to make relevant portions of the video footage available for review.

Video review of the encounters provided to CJI indicates that one of the six encounters involved an undocumented frisk. During the one encounter, officers searched the vehicle as well as frisked the individual involved. Officers documented the vehicle search, but failed to document the frisk.

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<sup>10</sup> The original request included an additional five CAD numbers with call types that, upon review, were removed from the list of encounters likely to involve a frisk.

## **FRISK SAMPLE ANALYSIS**

### **Frisk Sample**

In order to analyze a statistically significant representation of stops where a frisk occurred, we drew a random sample of 230 stops where a frisk occurred, omitting encounters where officers noted “search incident to arrest” as the reason for the frisk. Once we drew the sample however, it was clear that some of the frisks in the sample were actually searches so that officers could place the subject in a squad car temporarily or for conveyance. Out of the 230 stops in the sample, 27 fall into this category. Another two were searches incident to arrest, indicated differently than the omitted searches incident to arrest before the sample was drawn. One encounter had a narrative that revealed no frisk actually occurred. An analysis of whether the stops were discretionary caused the omission of one additional encounter because it was clear it was a non-discretionary stop. Excluding these instances leaves 199 stops where a frisk occurred for the final forcible frisk sample.

### **IOARS for Stops and Frisks**

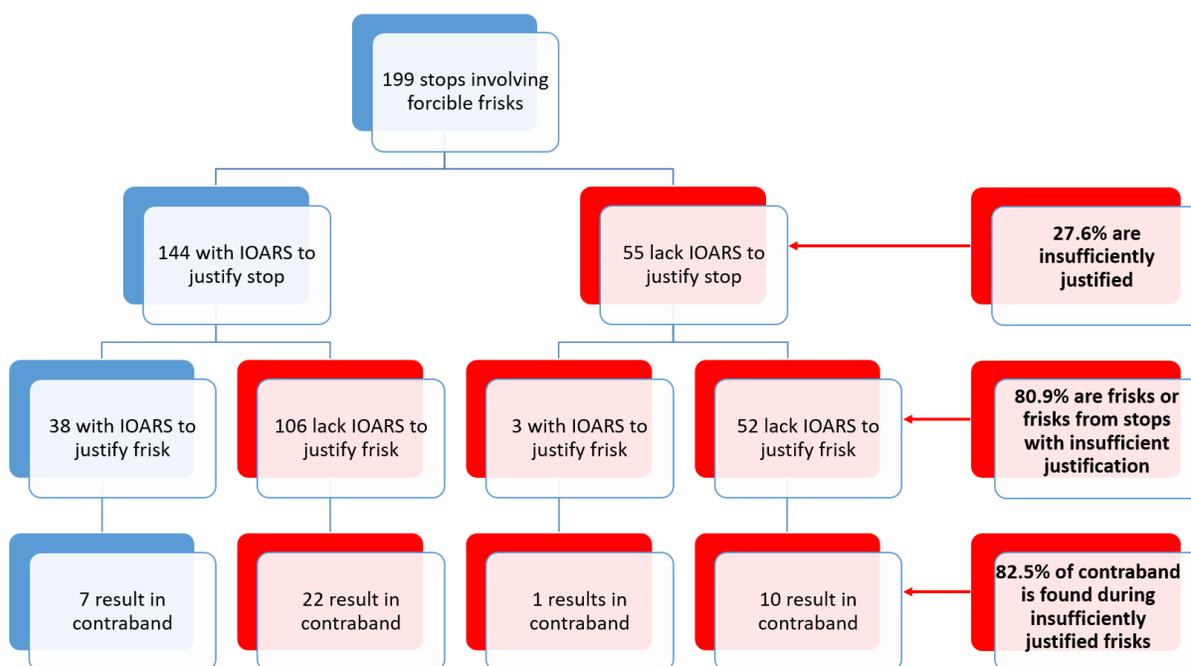
For encounters that involve frisks, two levels of IOARS documentation is needed, 1) IOARS that the person has/is/will engage in a crime in order for officers to justify the stop, and 2) IOARS that the person is armed and dangerous in order for officers to justify the frisk.

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 frisks 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 1 presents a breakdown of the sample by whether officers documented IOARS for the stop or for the frisk, and whether officers found contraband. After assessing the documentation officers provided for each of the encounters in the sample, we deemed 55 of the 199 stops (27.6 percent) insufficiently justified, as they did not meet the IOARS documentation needed to justify the stop. An examination of IOARS for frisks determined that officers did not document the IOARS necessary to justify the frisk 79.4 percent of the time.

Analysis of the 55 stops that lacked IOARS justification for the stop indicates that only three frisks that occurred during those stops had documented IOARS justifying the frisk, leaving 52 unsupported by written IOARS documentation at the stop and the frisk level. Thus, we see that if the stop is lacking IOARS documentation, it is highly likely that the frisk will also be lacking proper IOARS documentation.

Figure 1. Stops involving forcible frisks by IOARS justification and contraband seizure.



## Outcomes of Insufficiently Justified Stops<sup>11</sup>

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

We have explored outcomes 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.<sup>12</sup> The frisk sample included 55 stops without proper IOARS documentation, only three of which involved frisks with proper IOARS documentation. The other 52 stops involved frisks that also lacked proper IOARS documentation to justify the frisk. That is, the lack of

<sup>11</sup> 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.

<sup>12</sup> The stop sample included 16 frisks out of 380 stops (4.2 percent). Out of 16 frisks, five occurred during insufficiently justified stops that lacked proper IOARS documentation. None of the five frisks had proper IOARS documentation to justify the frisk.

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 199 stops where a forcible frisk occurred, 40 resulted in finding contraband—a “hit rate” of 20 percent. In the instances where officers found contraband, 82.5 percent lacked proper IOARS documentation (see Figure 1). This reduces the contraband hit rate from 20 percent to 3.5 percent when considering the documented justification for the stop.

Table 7 details the type of contraband obtained during all frisks where contraband was found, broken down by documented justification for the stop and/or frisk. The contraband obtained during the stops falls into only a few categories, mainly weapons or drugs, with an “other” category including contraband such as stolen property. Overall, drugs were the most likely type of contraband found during frisks. Weapons were the primary contraband obtained during stops and frisks that had documented IOARS. Drugs represented the primary contraband found during stops and frisks that did not effectively document IOARS.

Table 7. Type of Contraband Found

	WEAPON(S)	DRUGS	OTHER	TOTAL
ALL FORCIBLE FRISKS	11	22	7	40
STOP AND FRISK WITH IOARS	4	2	1	7
STOPS WITHOUT IOARS & FRISKS WITH IOARS	1	0	0	1
STOPS WITH IOARS & FRISKS WITHOUT IOARS	5	12	5	22
STOPS AND FRISKS WITHOUT IOARS	1	8	1	10

## Hit Rates

Section V.A.3.d of the Settlement Agreement calls for hit rate analysis disaggregated by race and ethnicity. The best available research on hit rates indicates that the threshold of suspicion used by officers to initiate a stop or frisk varies by race, often resulting in lower rates for black or Hispanic/Latino individuals than for whites.<sup>13</sup> That is, officers are more likely to initiate a stop or frisk for nonwhite individuals with the expectation that they will find contraband or that a crime has occurred, thus increasing the ratio of the number of stops to the amount of contraband seized (i.e., a lower hit rate). Many jurisdictions around the country have seen lower hit rates for nonwhites than for whites, including San Francisco, Los Angeles, Greensboro, NC, Connecticut, and Chicago.<sup>14</sup>

<sup>13</sup> The Stanford Open Policing Project, “Findings.” <https://openpolicing.stanford.edu/findings/>

<sup>14</sup> Ibid.

To be sure, hit rates are important measures of policing, and can be an indication of racial bias. However, to quote Lorie Fridell (2005:56)<sup>15</sup>: “Lower hit rates for minorities than for Caucasians for certain categories of searches are cause for concern. These results are a warning signal or “red flag” requiring the serious attention of law enforcement agencies. They are, however, not proof of racially biased policing.” Hit rates in Milwaukee also historically varied by race. This analysis offers a first 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 the policy changes taking place throughout the Department. It is important to note that the encounters in this sample occurred while MPD was providing officers with trainings focused on constitutional policing standards and practices. Officers may have conducted some encounters in the sample prior to training on the updated policies and procedures governing proper police interactions with the public.

In the random sample of 199 stops where a forcible frisk occurred, officers obtained contraband during 40 frisks—a hit rate of 20 percent. Table 8 provides an overview of hit rates by type of stop indicated as the originating CAD call description.

Table 8. Contraband Hit Rates, by CAD Call Type

	NUMBER OF FRISKS	CONTRABAND HIT RATE
SAMPLE TOTAL	199	20%
TRAFFIC STOP	83	24%
SUBJECT STOP	39	28%
WEAPON/FIREARM-RELATED	33	12%
VIOLENCE-RELATED	2	50%
INVESTIGATION	8	0%
CRIME SUSPECT/SUBJECT	8	0%
PROPERTY CRIME-RELATED	2	50%
INJURY/WELFARE CHECK	1	0%
DRUG-RELATED	3	0%
OTHER REASON	14	21%
MISSING REASON	6	0%

Table 9 breaks the hit rate down by race and ethnicity, to the best of our ability given how the data are structured.

Sixty-seven of the frisks in this sample come from 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=132).

<sup>15</sup> Fridell, L., (2005), Understanding Race Data from Vehicle Stops A Stakeholder’s Guide, Police Executive Research Forum, [https://www.policeforum.org/assets/docs/Free\\_Online\\_Documents/Racially-Biased\\_Policing/understanding\\_percent20race\\_percent20data\\_percent20from\\_percent20vehicle\\_percent20stops\\_percent20- percent20a\\_percent20stakeholders\\_percent20guide\\_percent202005.pdf](https://www.policeforum.org/assets/docs/Free_Online_Documents/Racially-Biased_Policing/understanding_percent20race_percent20data_percent20from_percent20vehicle_percent20stops_percent20- percent20a_percent20stakeholders_percent20guide_percent202005.pdf)

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”). In order to analyze the hit rate for all frisks, we have recoded race and ethnicity for stops documented in RMS into White (Not Hispanic/Latino), Black (Not Hispanic/Latino), Hispanic/Latino, and Other. This allows us to investigate race and ethnicity across the two databases, recognizing that TraCS does not allow for the same degree of specificity for race and ethnicity, as RMS is able to provide and treats “Hispanic” as a race rather than an ethnic category. This means that individuals documented as “Hispanic” in TraCS may be of any unknown race category, but we have categorized them as “Hispanic/Latino” in our analysis along with individuals from RMS-documented encounters where officers affirmatively indicated their ethnicity as Hispanic/Latino.

Table 9 details the hit rates for all frisks, disaggregated by race and ethnicity. In looking at all frisks, we see the highest hit rate among whites at 33 percent, followed by Hispanic/Latino at 27 percent, and blacks with the lowest hit rate of 18 percent. Taking into consideration that the vast majority of frisks in the sample involved subjects that were black, this analysis suggests there is a difference in the rate at which officers find contraband during a frisk with respect to the race or ethnicity of the individual in the encounter.

Table 9. Hit Rate, by Race and Ethnicity

	FRISKS	CONTRABAND HIT RATE
ALL FRISKS	199	20%
BLACK	160	18%
HISPANIC/LATINO	26	27%
WHITE	12	33%
OTHER	1	0%

Table 10 demonstrates the type of contraband found during frisks, broken down by race and ethnicity for all forcible frisks. 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 10. Contraband Type, by Race and Ethnicity

	WHITE	BLACK	HISPANIC/LATIN O	OTHER
NONE	8	131	19	1
OTHER	0	6	1	0
DRUGS	3	14	5	0
WEAPON(S)	1	9	1	0

## SUMMARY OF FINDINGS

This report offers a first look at police encounters as policy, procedure, and practice changes within the Milwaukee Police Department were taking place 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 first half of 2019, contemporaneous with officer training specific to constitutional policing practices. Given that, it is inappropriate to draw strong conclusions about whether officers are adhering to the IOARS standards for initiating and documenting discretionary police encounters. However, the findings of this report can inform future trainings focused on constitutional policing standards and serves as a source of useful information for supervisors. The following summarizes the major findings based on these data.

### **The officer-written narratives regarding the justification for field interviews documented in RMS are far more complete than found in analysis before the Settlement Agreement.**

Dr. David Abrams noted in his pre-litigation analysis that 51 percent of the narratives for field interviews were missing in RMS. Analysis of encounters for this report shows officers providing at least some narrative text in the stop justification field for all field interviews documented in RMS.

### **The Department does not meet the Settlement Agreement requirements 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 38 percent of encounters for the first half of 2019 fail to provide proper IOARS documentation. As noted previously, officers were undergoing extensive training on constitutional policing practices and proper IOARS documentation standards during this same period. Future analyses will offer insight into whether a fully trained department shows greater improvements in establishing reasonable suspicion for discretionary encounters.

### **The Department does not meet 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 80.9 percent of frisks are insufficiently justified frisks or frisks from insufficiently justified stops. 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 that may have been 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 omitted details about frisks that occurred but did document the searches they conducted during the encounter.

**Most of the contraband seized during frisk encounters is obtained during frisks that were insufficiently justified.**

Our analysis of frisk encounters indicates that 82.5 percent of the contraband found during encounters is obtained during insufficiently justified frisks. This reduces the contraband hit rate from 20 percent to 3.5 percent when considering the documented justification for the encounter.

**The contraband hit rate varies by race, and is lowest for subjects that are black.**

Overall, most frisks in the sample occur with subjects that are black (80 percent). Combined with the low rate of contraband seizure overall, we caution any conclusions drawn based on hit rates by race and 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 and has 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 and provide counsel for implementing data-driven practices and policies. She holds a Master's of Social Work in Macro Practice from Boston College and 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 thirty 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 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, inspections and accreditations, and technology. 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
Drug-Related	Drug Dealing
Injury/Welfare Check	Inj Person/Sick
	Welfare Citizen
Investigation	Investigation
Other Reason	911 Abuse Confirmed
	Acc PDO
	Addl Info
	Business Check
	Citizen Contact
	Family Trouble
	Gambling
	Indecent Exposure
	Loose Animal
	MO
	Noise Nuisance
	Patrol
	Reckless Vehicle
	School Monitoring
	Soliciting
	Special Assignment
	Susp Pers/Auto
Truant	
Warrant Service	
Property Crime-Related	Entry
	Prop Damage
	Stolen Vehicle
	Theft
Subject/Traffic Stop	Subj Stop
	Traffic Stop
	Traffic Stop - Targeted
Violence-Related	Battery
	Battery DV
	Fight

	Robbery
	Threat
<b>Weapon/Firearm-Related</b>	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