



## GOVERNMENT OF THE DISTRICT OF COLUMBIA OFFICE OF POLICE COMPLAINTS

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POLICE COMPLAINTS BOARD

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### PCB POLICY REPORT #15-2: PROPER AND TIMELY TRAINING OF DCHA OPS OFFICERS ON CONTACTS, STOPS, AND FRISKS

#### **Summary of Issue:**

The Office of Police Complaints (OPC) received a complaint from a District resident who alleged that three police officers from the District of Columbia Housing Authority's Office of Public Safety (OPS) harassed three African American men standing outside of a public housing complex by unlawfully stopping and handcuffing them. The OPS officers involved asserted that they made the stop after being asked to investigate a drug complaint. According to one of the officers, when they responded to the scene, they observed three black males standing and sitting in front of the identified location. As the officers began to approach the location, one or two of the three men began to walk away. The officer stated that based on the nature of the complaint, the fact that the men attempted to walk away, and the "profile of the neighborhood," they had reasonable suspicion to stop the men and handcuff them. The stop ultimately led to the arrest of the individual who walked away, when that person refused to cooperate and was arrested for assault on a police officer.

Because one of the officers had used force during the course of the incident, the matter was reviewed by OPS's Use of Force Review Board (Review Board). Although the Review Board determined that the officer's use of force was justified, in its report of findings and recommendations, the Review Board stated that it was "very concerned with the approach and tactics utilized by these officers when they first arrived on the scene." The Review Board noted that the officers had very little information upon which to base reasonable suspicion for a stop and pat-down search. It concluded that a stop and frisk of the three individuals was inappropriate in this incident, and that based on the information the officers had at the time, only a contact was justified. The Review Board recommended that the three OPS officers receive additional training in the area of contacts, stops, and frisks. Two of the officers involved, however, reported to OPC during their interviews that they never received such training.<sup>1</sup> This report examines the stop issues raised by the OPC complaint as well as the training and discipline issues raised by the Review Board's report.<sup>2</sup>

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<sup>1</sup> The third officer separated from OPS before OPC could interview him.

<sup>2</sup> The Police Complaints Board (PCB) is issuing this report pursuant to D.C. Code § 5-1104(d) (2015), which authorizes the Board to recommend to the District of Columbia Mayor, Council, and the Chiefs of Police of the MPD and the District of Columbia Housing Authority's Office of Public Safety reforms that have the potential to improve the citizen complaint process or reduce the incidence of police misconduct.

**Applicable Directive or Law:**

DCHAPD General Order 301 provides the authority for citizen contacts, stops, and frisks. According to the general order, which was issued on December 1, 1998, a stop is defined as the “temporary detention of a person for the purpose of determining whether probable cause exists to arrest that person.”<sup>3</sup> OPS officers may conduct a stop of a suspect “[i]f an officer reasonably suspects that a citizen has committed, is committing, or is about to commit a crime . . . .”<sup>4</sup> The directive defines reasonable suspicion as “more than a hunch or mere speculation, but less than probable cause to make an arrest.”<sup>5</sup> Among the factors OPS officers may consider when determining whether reasonable suspicion exists include the detained person’s actions and the area of the stop. According to the General Order, “A person’s actions may indicate flight from an actual or possible crime scene, hiding, or discarding possible items of evidence.”<sup>6</sup> The directive lists “a person’s presence in an area of a known offense soon after its commission or in an area known for the type of criminal activity of which the suspicion is based” as another factor to be considered.<sup>7</sup> The General Order further requires officers conducting stops to document their actions on a MPD Form 251 or MPD Form 76. Officers must include on the form “all pertinent details of the incident, including all factors relied upon in determining that the stop was justified.”<sup>8</sup>

As set forth above, DCHAPD General Order 301, consistent with long-standing Fourth Amendment jurisprudence, requires that before a police officer may subject a citizen to a stop, he or she must have reasonable, articulable suspicion that the person to be stopped either has committed, is committing, or is about to commit a crime. *See, e.g., Terry v. Ohio*, 392 U.S. 1 (1968). Additionally, the District of Columbia Court of Appeals has identified factors that are considered in determining the reasonableness of an officer’s suspicion: “the time of day, flight, the high crime nature of the location, furtive hand movements, an informant’s tip, a person’s reaction to questioning, a report of criminal activity or gunshots, and the viewing of an object or bulge indicating a weapon.” *Anderson v. U.S.*, 658 A.2d 1036, 1038 (D.C. 1995). The Court of Appeals has further stated that a determination of reasonable suspicion must be based on the “totality of the circumstances” surrounding the incident. *See, e.g., U.S. v. Gomez*, 597 A.2d 884, 889 (D.C. 1991).

**Policy Concerns:**

Based on the actions of the involved officers, who pointed to the same faulty reasonable suspicion as the basis for the stop, PCB is concerned that this issue may be a department-wide weakness. Because of the frequency with which OPS officers interact with the community, it is important that these officers understand how to conduct stop and frisks correctly. Although the Review Board determined that the involved officers did not have reasonable suspicion for the stop, OPS fell short on adequately addressing the misconduct identified through its own investigation when it did not provide the recommended training. By not properly addressing this

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<sup>3</sup> DCHAPD General Order 301.3.2, Preliminary Investigations, (effective Dec. 1, 1998).

<sup>4</sup> DCHAPD General Order 301.6.2.

<sup>5</sup> DCHAPD General Order 301.3.4.

<sup>6</sup> DCHAPD General Order 301.6.5.

<sup>7</sup> *Id.*

<sup>8</sup> DCHAPD General Order 301.10.2.

issue, the department effectively excused this conduct. The department's failure to properly address this issue has also left other residents of DCHA properties vulnerable to officer misconduct, as major violations are not being remedied. Moreover, because all three OPS officers involved in the incident apparently believed that their actions were lawful, PCB is concerned that there may be systemic deficiencies in training.

**Recommendations:**

To help improve the citizen complaint process and facilitate better relations between OPS officers and residents, PCB therefore recommends that OPS examine their training and disciplinary processes regarding citizen contacts, stops, and frisks. Specifically, PCB recommends that:

1. OPS follow up on the Review Board's training recommendations and ensure that those OPS officers involved in the incident and currently on the force receive the suggested training.
2. The Department considers providing additional Fourth Amendment stop and frisk training to all of its sworn members, and institute progressive discipline in cases where officers continue to conduct unlawful stops and frisks after receiving training.
3. Given the age of OPS's directive on contacts, stops, and frisks, the Department review DCHAPD General Order 301 to bring it up to date and make it consistent with the recommendations listed in this report.<sup>9</sup>

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<sup>9</sup> Shortly before its issuance, PCB circulated a draft of this report to OPS for its review. OPS stated that it would be providing refresher training to its officers on arrests, searches, and seizures. The Department also stated it was working with the United States Attorney's Office for the District of Columbia to provide additional training to its force on Fourth Amendment issues. Finally, OPS stated that its officers are receiving updated reference material on U.S. Supreme Court case law regarding stop and frisks, arrests, searches, and other seizures.