



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

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### PCB POLICY REPORT #24-4: Part 2: Improved Guidance on Protective Pat Downs

#### Summary:

Metropolitan Police Department (MPD) officers engage with community members in various encounters every day, ranging from field contacts to investigatory stops, to arrests. To protect against government intrusion on individual liberty, the Fourth Amendment arms people with the right to be free from unreasonable searches and seizures. In order for officers to initiate a lawful stop of a suspect that complies with the Fourth Amendment, officers must have reasonable articulable suspicion that crime is afoot.<sup>1</sup> Next, for officers to lawfully pat down or frisk<sup>2</sup> an individual, an undisputedly more acute infringement on individual liberty, officers must have reasonable articulable suspicion that the person is armed and presently dangerous.<sup>3</sup> The Office of Police Complaints (OPC) cases show that the rapid, often unlawful progression from stops to frisks has contributed to contentious interactions with members of the public that negatively affect community trust. Apart from the concern that unlawful stops and frisks violate constitutional rights,<sup>4</sup> any evidence obtained by officers as the product of an unlawful frisk or search is inadmissible in court.<sup>5</sup> Therefore, it is in MPD's best interest to ensure all stops and pat downs of individuals and their items are lawful.<sup>6</sup> To accomplish this, the Police Complaints Board (PCB) recommends MPD reinforce training for officers on reasonable articulable suspicion needed for pat downs.<sup>7 8</sup>

#### Applicable Directive or Law:

<sup>1</sup> *Terry v. Ohio*, 392 U.S. 1, 30–31 (1968).

<sup>2</sup> The terms “pat down” and “frisk” are used interchangeably throughout the report.

<sup>3</sup> *Terry*, 392 U.S. at 30.

<sup>4</sup> See Henry F. Fradella & Michel D. White, *Reforming stop-and-frisk*, 18 CRIMINOLOGY, CRIMINAL JUSTICE, LAW & SOC'Y, 3 (2017), available [here](#).

<sup>5</sup> See *Mapp v. Ohio*, 367 U.S. 643, 655 (1961) (“...all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible...”).

<sup>6</sup> Peter Hermann, *D.C. gun seizures are soaring – But charges aren't sticking*, THE WASH. POST, (June 1, 2022), available [here](#) (“The experience in the District highlights how aggressive tactics to seize guns can exacerbate tensions with communities and collide with the realities of successful prosecutions”).

<sup>7</sup> The Police Complaints Board (PCB) is issuing this report pursuant to D.C. Code § 5-1104(d), which authorizes the Board to recommend to the District of Columbia Mayor, Council, MPD Police Chief, and the Director of District of Columbia Housing Authority reforms that have the potential to improve the complaint process or reduce the incidence of police misconduct.

<sup>8</sup> The PCB would like to recognize and thank legal intern Alyssa Berry for her contributions to this policy recommendation.

Under the Supreme Court’s Fourth Amendment jurisprudence, an officer may briefly stop a suspect on the street if the officer has reasonable suspicion, as viewed through the eyes of a reasonable and cautious police officer, that “criminal activity may be afoot.”<sup>9</sup> Although the standard is less demanding than probable cause, reasonable suspicion requires more than “a mere ‘inchoate and unparticularized suspicion or hunch’ of criminal activity” and officers must have “at least a minimal level of objective justification” to conduct a stop.<sup>10</sup> In evaluating the totality of the circumstances, “some factors are more probative than others,” but if the observed “behavior of a suspect is capable of too many innocent explanations,” then the intrusion is unreasonable.<sup>11</sup>

To then proceed from a stop to a frisk or pat down, the officer must have a justifiable belief that the individual is armed and presently dangerous to the officer or to others.<sup>12</sup> *Terry v. Ohio*, the seminal case on stops and frisks, gives officers the authority to frisk for weapons during investigatory stops to protect the officer’s safety. In deciding whether the officer had a legitimate and reasonable basis for their suspicion that the subject was armed and dangerous, courts will assess the totality of the circumstances.<sup>13</sup> In *Terry*, the court observed, “even a limited search of the outer clothing for weapons constitutes a severe though brief, intrusion upon cherished personal security, and it must surely be an annoying, frightening, and perhaps humiliating experience.”<sup>14</sup> *Terry* instructs courts to give “due weight” to an officer’s “specific reasonable inferences which he is entitled to draw from the facts in light of his experience.”<sup>15</sup> However, evidence supporting suspicion that a person is trying to hide *something* in an “ambiguous gesture of concealment”<sup>16</sup> typically will not give rise to reasonable suspicion to justify a frisk.<sup>17</sup>

### **Current MPD Policies:**

MPD policies acknowledge the significance of Fourth Amendment protections by discussing stops and protective pat downs throughout MPD General Order 304.10, Field Contacts, Stops, and Protective Pat Downs. According to the directive, for a stop to be lawful, the officer must have “reasonable suspicion that an individual has committed, is committing, or is about to commit any crime.”<sup>18</sup> MPD members are instructed to consider the totality of the circumstances and base reasonable suspicion on their training and experience while considering factors such as: (1) the stopped individual’s characteristics; (2) the stopped individual’s actions; (3) the individual’s demeanor during a field contact; (4) police training and experience; (5) information

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<sup>9</sup> *Terry*, 392 U.S. at 30.

<sup>10</sup> *Maye v. United States*, 260 A.3d 638, 645 (D.C. 2021) (quoting *Illinois v. Wardlow*, 528 U.S. 119, 123–24 (2000)).

<sup>11</sup> *Golden v. United States*, 248 A.3d 925, 946 (D.C. 2021).

<sup>12</sup> *Terry*, 392 U.S. at 24.

<sup>13</sup> *Jackson v. United States*, 56 A.3d 1206, 1213 (D.C. 2012).

<sup>14</sup> *Terry*, 392 U.S. at 24–25.

<sup>15</sup> *Id.* at 4.

<sup>16</sup> *Champion v. United States*, 307 A.3d 425, 434 (D.C. 2024).

<sup>17</sup> *Golden* at 946 (“Thus, when considered individually, each of the factors relied upon to support the frisk — Officer’s observation of a nondescript bulge on Mr. Golden’s right hip, the officer’s association of that bulge with where he holsters his own firearm, Mr. Golden’s possession of a sweatshirt tied around his waist on a warm evening, Mr. Golden’s (at most) imperfect compliance with Officer Vaillancourt’s request to inspect his waist, and Mr. Golden’s nervousness during the encounter — is excessively ambiguous and of little objective significance”).

<sup>18</sup> See MPD General Order 304.10, Field Contacts, Stops, and Protective Pat Downs, at 3–4, available [here](#).

obtained from witnesses or informants; and (6) information obtained from law enforcement sources.<sup>19</sup>

General Order 304.10 allows members to pat down a stopped individual “if the member has reasonable suspicion that the individual is carrying a concealed weapon or dangerous instrument and that a pat down is necessary to self-protect or protect others.”<sup>20</sup> The standard for a pat down as articulated in General Order 304.10 is whether, under the circumstances, “a reasonably prudent law enforcement officer would be warranted in believing his or her safety or that of other individuals is in danger because the individual may be carrying a weapon or dangerous instrument.”<sup>21</sup> The factors an officer may consider for a pat down are similar to those for a stop, but include extra factors that increase the suspicion of concealed weapons, including a bulge in a stopped individual’s clothes, appearing nervous or using threatening words or actions, being in an area known for criminal activity, movements to suggest hiding a weapon, the time of day when an attack is more difficult to defend or more likely to occur, and prior knowledge that the stopped individual has an arrest or conviction record for weapons or other violent offenses.<sup>22</sup> General Order 304.10 limits the scope of frisks to seeking weapons and notes that frisks are not to be used to conduct full searches.<sup>23</sup>

The pat down procedure as detailed in General Order 304.10 instructs that if officers stop an individual who is carrying an item that is “immediately separable from his or her person,” then the item *shall* be taken from him or her.<sup>24</sup> The officer cannot search inside the object, but the officer should place the item at a safe distance out of the individual’s reach during the stop.<sup>25</sup> Officers have the authority to “briefly inspect” the contents if the officer “reasonably suspects the possibility of harm should he or she return the unsearched item without first inspecting it.”<sup>26</sup> Only then can members determine if the item contains a weapon or other dangerous objects.<sup>27</sup>

### **Case Examples:**

OPC has received multiple complaints involving allegations of unlawful frisks, with at least ten being sustained by a Complaint Examiner since 2019.<sup>28</sup> Statements from officers indicate that they are stopping individuals based on a mere hunch that citizens are carrying guns, rather than their reasonable suspicion that a crime is occurring, has occurred, or is about to occur. Moreover, explanations from these officers failed to articulate adequate reasonable suspicion for a lawful pat down for weapons. In the three illustrative case examples below, the officers’ actions violated the complainant’s constitutional rights and may have resulted, in part, from MPD failing to provide its members with adequate training on the requisite showing necessary for a stop and frisk of an individual.

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<sup>19</sup> *Id.* at 4–5.

<sup>20</sup> *Id.* at 7.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 7–8.

<sup>23</sup> *Id.* at 9.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> See OPC cases [18-0155](#), [18-0298](#), [18-0526](#), [23-0586](#), [21-0233](#), [23-0772](#), [22-0342](#), [22-0335](#), [22-0218](#), [22-0198](#).

### ***Case Example 1:***

In August 2023, the complainant alleged that MPD officers harassed him when they unlawfully stopped and frisked him while he was talking on his cell phone in front of a business in Northeast, D.C. Body-worn camera footage (BWC) showed the complainant carrying a fanny pack on his right side under his arm as his right arm was swinging freely. Subject Officer #1 told OPC that officers on patrol saw the complainant pin down the satchel with his arm and noted the corner of the satchel looked to be weighted, indicating there was “some type of object in there.” Subject Officer #2 said to the complainant, “Okay, we’re going to talk to you for a second,” to which the complainant responded, “No y’all not.” Six police officers then surrounded the complainant after approaching him from his front, rear, and left side and told him he was detained.

While officers attempted to place the complainant in handcuffs, four of the officers squeezed, patted, and manipulated the bag, while the remaining officers held the complainant in place. After the complainant was handcuffed, Subject Officer #1 again grabbed the complainant’s bag and lifted it. After being handcuffed for another minute, the officers released the complainant.<sup>29</sup>

A Complaint Examiner sustained the unlawful stop and frisk allegations because the officers’ alleged observations that the complainant walked back toward a parking lot, held his bag containing “some object” close to his body, and became “wide-eyed” after seeing officers were not enough to constitute reasonable suspicion necessary for a stop and frisk. Instead, the Complaint Examiner found the observations as articulated by the officers were innocuous, vague descriptions that could justify a stop and frisk on almost any person carrying a bag that contains anything weighted. First, without requisite reasonable suspicion of any crime, the stop was unlawful. Second, the facts did not support a protective pat down of the complainant as officers were only able to state that the complainant’s bag contained some weighted item. At most, the officers’ observations provided a mere hunch that the complainant was carrying a gun in his bag. Lastly, it is important to note the officers did not follow the procedure as detailed in MPD General Order 304.10 because they did not remove the bag prior to frisking the complainant.

### ***Case Example 2:***

In June 2023, the complainant filed a complaint with OPC for harassment of the complainant’s friend (“subject”) after officers impermissibly stopped the subject and frisked his satchel.<sup>30</sup> Three officers approached the subject from behind while he was standing outside an apartment building talking to friends. The subject briefly turned toward the officers, making his bag momentarily visible to them as the bag rested flat on his left hip, square in shape. The subject officer approached the subject and immediately asked for the subject’s consent to touch his bag, to which he responded, “No.” Without consent, the subject officer reached over and pushed down twice on the center of the subject’s bag with his right hand, as the subject and the complainant immediately protested. When the complainant asked the officer why he frisked the bag, the officer merely stated that the bag looked like it contained a firearm from the side. A Complaint Examiner sustained the stop and frisk allegations against the subject officer because the stop and pat down were conducted without adequate reasonable suspicion. Specifically, the officer stopped and frisked the subject for nothing other than innocuous behaviors that law-abiding

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<sup>29</sup> OPC Case 23-0772, available [here](#).

<sup>30</sup> OPC Case 23-0586, available [here](#).

community members display every day in the District. Lastly, per MPD policy, the officer should have removed the bag for safety purposes prior to patting it down for a weapon, but he failed to do so.

***Case Example 3:***

In March 2022, the complainant filed a complaint with OPC alleging MPD officers unlawfully frisked him. The complainant was sitting in his wheelchair on the sidewalk with other people standing around him when the incident occurred. Officers exited their vehicle and engaged the group in conversation, but the complainant did not participate. At the same time, other officers shined their flashlights into the complainant's vehicle, which was parked next to the group. Approximately forty minutes into the stop, a K-9 unit arrived and gave a positive indication that the vehicle contained a firearm. Several officers then surrounded the complainant and told him they were going to conduct a pat down. The complainant protested and explicitly told the officers he did not consent to a pat down. Nevertheless, the officers proceeded to frisk his jacket, pants, and the bag hanging on the back of his wheelchair. The officers did not locate any weapons in the complainant's car, nor did they find any on the complainant's person.

While the officers were able to lawfully conduct a vehicle search due to the positive indication of a firearm by the K-9, a Complaint Examiner found that the facts were not sufficient to support a frisk of the complainant. Furthermore, the Complaint Examiner found the officers made vague and unspecific assertions about the complainant putting his hands in his lap or adjusting himself in his wheelchair over the course of forty minutes to provide support for their reasonable suspicion. However, during that time, the complainant did not leave the scene, evade the officers, or act in any way that would lead a reasonable officer to believe he was armed and dangerous. The Complaint Examiner noted that if the officers truly believed the complainant was presently armed and dangerous, they would not have waited nearly an hour to conduct a stop and frisk.<sup>31</sup> The Complaint Examiner also suggested that the pat down was based on frustration rather than a reasonable suspicion of the complainant carrying a gun on his person or a concern for protection of themselves or others.

**Guidance from Other Jurisdictions:**

Many police departments throughout the United States include guidance for officers that helps them distinguish the legal threshold for a field contact, a stop, and a pat down. For example, the Baltimore Police Department (BPD) uses the reference guide below in Policy 1112, Field Interviews, Investigative Stops, Weapons Pat-Downs & Searches, to assist members in determining the minimum legal requirements for each type of contact with community members.<sup>32</sup> A similar reference guide may benefit MPD members in determining the reasonable suspicion necessary for investigative stops as compared to pat downs.

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<sup>31</sup> OPC Case 22-0342, available [here](#).

<sup>32</sup> BPD Policy 1112, available [here](#).

TYPE OF CONTACT	JUSTIFICATIONS		MINIMUMS FORMS REQUIREMENTS		
	Reasonable Articulable Suspicion	Probable Cause	Citizen/ Police Contact Receipt	Form 309	Incident Report, Form 8
Voluntary Contact					
Field Interview			X		
Investigative Stop	X*			X	X
Weapons Pat-Down	X*			X	X
Searches		X		X	X
Arrest		X			X
Vehicle Stop – Traffic Violation		X			
Vehicle Stop – Criminal Investigation	X		X		X <sup>1</sup>

\*Remember that for an Investigative Stop, the member must have RAS that the person is committing, is about to commit, or has committed a crime. For a Weapons Pat-Down, the member must have RAS the person is armed.<sup>33</sup>

## Recommendations:

To help improve community relations and trust between MPD and community members, protect individual freedoms, and prevent the exclusion of otherwise admissible evidence, the PCB recommends the following:

- 1. MPD should provide additional guidance to its members on General Order 304.10, specifically that members do not have the legal authority to perform a protective pat down merely because an individual is stopped. Rather, MPD should reinforce that officers must have reasonable suspicion that the individual is armed and presently dangerous before conducting a frisk.**

OPC acknowledges the external pressure on MPD officers to get guns off the street and maintain public safety. However, officers must lawfully perform protective pat downs in a way that preserves both the constitutional rights of the community member and the safety of the investigating officer. Subsequent to a lawful stop, the officer must have reasonable suspicion that the person presently is armed and dangerous to perform the pat down. It would also be beneficial for MPD to provide officers a quick reference guide similar to the BPD guide above. Reinforcing this policy through roll-call training and annual professional development training will alleviate confusion among officers and allow prosecutors to paper cases.

- 2. MPD should reinforce to its members that General Order 304.10 requires officers to remove bags that are immediately separable from an individual before performing a frisk.**

The OPC cases indicate that MPD officers are generally unaware of the policy to remove immediately separable objects from individuals that are stopped. MPD can remind officers of this policy by including it in training for new recruits and with roll-call training and annual professional development training for more experienced officers.<sup>34</sup>

<sup>33</sup> *Id.*

<sup>34</sup> OPC and the PCB provided a draft version of this recommendation to MPD for review and comment. MPD agreed with the recommendations and noted that they are continuing to train members on the Fourth Amendment and the legal requirements for protective pat downs.