

New York Office  
40 Rector Street, 5th Floor  
New York, NY 10006-1738

T 212.965.2200  
F 212.226.7592

[www.naacpldf.org](http://www.naacpldf.org)



Washington, D.C. Office  
1444 Eye Street, NW, 10th Floor  
Washington, D.C. 20005

T 202.682.1300  
F 202.682.1312

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**Via First Class and Electronic Mail ([policereform@atg.state.il.us](mailto:policereform@atg.state.il.us))**

The Honorable Lisa Madigan  
Illinois Attorney General  
Attn: Civil Rights Bureau  
100 West Randolph St., 12th Floor  
Chicago, IL 60601

The Honorable Rahm Emanuel  
Mayor, City of Chicago  
121 N. LaSalle Street  
Chicago City Hall 4<sup>th</sup> Floor  
Chicago, IL 60603

**RE: Comments on the draft consent decree in the matter of *State of Illinois v. City of Chicago*, Case No. 17-cv-6260 (N.D.Ill. July 27, 2018)**

Dear Attorney General Madigan and Mayor Emanuel:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF), we write to thank you for the opportunity to submit comments on the above-captioned draft consent decree. As the nation's oldest civil rights legal organization, LDF has utilized the U.S. Constitution and federal and state civil rights laws to pursue equality and justice for African Americans and other people of color in the areas of education, voting, employment, and housing for almost 80 years. For example, in Chicago, we successfully litigated an employment discrimination case on behalf of a class of African American fire fighter applicants who challenged the city's hiring practices.<sup>1</sup> LDF has also fought to address racial bias at every stage of the criminal justice system – from police stops, to sentencing, to reentry.<sup>2</sup>

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<sup>1</sup> See *Lewis v. City of Chicago*, 643 F.3d 201 (7th Cir. 2011), *aff'g* 2005 WL 693618 (N.D. Ill. 2005) (not reported), *rev'd*, 528 F.3d 488 (7th Cir. 2008), *rev'd*, 560 U.S. 205 (2010).

<sup>2</sup> See, e.g., *Buck v. Davis*, 137 S. Ct. 759 (2017) (ruling in favor of a new sentencing hearing for LDF client Duane Buck after finding that Mr. Buck received ineffective assistance of counsel when his attorney introduced racially-biased testimony in his capital sentencing hearing); Complaint, *Davis v. City of New York*, Case No. 1:10-cv-00699-SAS-HBP (S.D.N.Y. Jan. 28, 2010) (challenging the unlawful stop, questioning and arrest of African American and Latino public housing residents and their guests by New York City Police Department officers); Press Release, LDF, *Class of Job Applicants Reach Settlement Resolving Lawsuit over Discriminatory Impact of WMATA's Criminal Background Screening Policy* (Dec. 7, 2017), <http://www.naacpldf.org/press-release/class-job-applicants-reach-settlement-resolving-lawsuit-over-discriminatory-impact-wma>.



LDF has closely monitored policing reform efforts in Chicago since the November 2015 release of the video showing a Chicago police officer fatally shooting 17-year-old Laquan McDonald as he moved away from officers.<sup>3</sup> We welcomed the U.S. Department of Justice's (DOJ) civil rights probe and report documenting unlawful policing practices of the Chicago Police Department (CPD) that spanned decades.<sup>4</sup> Despite the Trump Administration's abdication of its obligation to address the many civil rights violations highlighted in its own investigative report, your offices, as well as private litigants such as plaintiffs in the case of *Campbell v. City of Chicago*,<sup>5</sup> forged ahead and are negotiating a consent decree that will address long-standing policing problems in Chicago.

We have reviewed the draft consent decree, which contains many promising provisions which, if followed, will create policies, training, and supervisory structures that will help eliminate the use of excessive or lethal force by Chicago police officers. We are particularly encouraged by provisions that address officer codes of silence and collusion and allow a broad-based coalition of organizations to monitor and enforce the agreement. Despite the overall strength of the proposed consent decree, numerous provisions should be revised to support the kind of reform necessary to dismantle the systemic and longstanding unconstitutional policing practices in the CPD.

LDF supports and incorporates by reference comments submitted by the *Campbell* plaintiffs and others.<sup>6</sup> Below, we provide additional recommendations on how to strengthen the consent decree's provisions relating to impartial policing; use of force;

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<sup>3</sup> See, e.g., Press Release, LDF, Stinging DOJ Report Details Entrenched Racial Bias in Chicago Police Department, Systematic Violation of Residents' Constitutional Rights (Jan. 1, 2013), <http://www.naacpldf.org/press-release/stinging-doj-report-details-entrenched-racial-bias-chicago-police-department-systematic-violation-of-residents-constitutional-rights>; Press Release, LDF, LDF Statement on Chicago's Police Accountability Task Force Report (Apr. 15, 2016), <http://www.naacpldf.org/press-release/ldf-statement-chicago%E2%80%99s-police-accountability-task-force-report>; Press Release, LDF, LDF Statement on Department of Justice's Civil Rights Probe of the Chicago Police Department (Dec. 7, 2015), <http://www.naacpldf.org/press-release/ldf-statement-department-justices-civil-rights-probe-chicago-police-department>; Press Release, LDF, LDF Statement on the Laquan McDonald Case and Minneapolis Shootings (Nov. 25, 2015), <http://www.naacpldf.org/press-release/ldf-statement-laquan-mcdonald-case>.

<sup>4</sup> See U.S. DEP'T OF JUSTICE, INVESTIGATION OF THE CHICAGO POLICE DEPARTMENT 18-20, Jan. 13, 2017, <https://www.justice.gov/opa/file/925846/download> [herein after DOJ CHICAGO REPORT].

<sup>5</sup> See Amended Complaint, *Campbell v. City of Chicago*, Case No. 1:17-cv-04467 (N.D.Ill. Sept. 5, 2017) [hereinafter *Campbell* Complaint].

<sup>6</sup> See Demands made by the *Campbell* and *Communities United* Plaintiffs, Chicago Police Department Class Action Lawsuit, <https://www.cpdclassaction.com/changes-to-the-cpd-consent-decree/>; see also Fran Spielman, *Black Lives Matter, other activists demand changes to police consent decree*, CHICAGO SUN TIMES, Aug. 15, 2018, <https://chicago.suntimes.com/news/black-lives-matter-actu-activists-chicago-police-department-reform-consent-decree-laquan-mcdonald/> [hereinafter Plaintiffs' Demands].

investigation of officer misconduct; hiring and training of officers; school police; and monitoring and implementation of the consent decree.

I. Ensure that CPD engages in impartial policing by adopting community-informed policies and practices that will address biased policing.

The draft consent decree appropriately includes provisions requiring CPD to engage in impartial policing. But these provisions do not go far enough to address Chicago's shameful history of police violence and misconduct in its communities of color that has been well-documented for over 40 years. In 1972, the *Misuse of Police Authority in Chicago* report issued by a blue-ribbon panel convened by Chicago Congressman Ralph Metcalfe (the Metcalfe Report) detailed horrifying first-hand accounts from African American men and women, young and old, who were severely beaten, degraded, and wrongfully arrested, as well as accounts of innocent people who were shot and killed in cold blood by CPD officers.<sup>7</sup>

The comprehensive findings of the Metcalfe Report, however, had little to no impact on policing in Chicago; indeed, shortly after the report's release, former Chicago Police Commander Jon Burge's reign of terror against the city's African American neighborhoods began in earnest. Between 1972 and 1991, Burge and his henchmen tortured more than 200 suspects, most of them African Americans, including youths, using tactics that included severe beatings, suffocation, burning with cigarettes and radiators, and electric shocks to genitals and other parts of the body.<sup>8</sup>

Most recently, in 2016, Chicago's Police Accountability Task Force (PATF) found that CPD's reliance on investigatory stops and searches wrongly targeted Black and Latinx drivers, who were searched approximately four times as often as white drivers, even though contraband was found on white drivers twice as often as drivers of color.<sup>9</sup> Additionally, PATF discovered that 72% of street stops that did not lead to arrests involved African Americans.<sup>10</sup> DOJ's 2017 investigative report supplemented these findings by concluding that CPD's pattern or practice of excessive force falls

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<sup>7</sup> See REPORT AND RECOMMENDATIONS OF THE BLUE RIBBON PANEL CONVENED BY THE HONORABLE RALPH H. METCALFE, REPRESENTATIVE, FIRST CONGRESSIONAL DISTRICT OF ILLINOIS, THE MISUSE OF POLICE AUTHORITY IN CHICAGO 1-18, <https://chicagopatf.org/wp-content/uploads/2016/01/metcalfe-report-1972.pdf> (1972).

<sup>8</sup> *Campbell Complaint*, *supra* note 5; G. Flint Taylor, *The Chicago Police Torture Scandal: A Legal and Political History*, 17 CUNY L. Rev. 329, 332, 346-47, 379 (2014).

<sup>9</sup> CHICAGO POLICE ACCOUNTABILITY TASK FORCE, RECOMMENDATIONS FOR REFORM: RESTORING TRUST BETWEEN THE CHICAGO POLICE AND THE COMMUNITIES THEY SERVE 8-9, [https://chicagopatf.org/wp-content/uploads/2016/04/PATF\\_Final\\_Report\\_4\\_13\\_16-1.pdf](https://chicagopatf.org/wp-content/uploads/2016/04/PATF_Final_Report_4_13_16-1.pdf) (2016) [hereinafter PATF REPORT].

<sup>10</sup> *Id.* at 8-9 (findings from a statistical review of over 250,000 street stops that did not result in an arrest in the summer of 2014).

disproportionately on Chicago’s communities of color, and that racism and racial discrimination is rampant in CPD operations and practices.<sup>11</sup>

Addressing racially and otherwise biased policing practices will require a long-term commitment to developing and revising policies, training curricula, and accountability structures within CPD. To this end, we recommend the following revisions to the draft consent decree:

A. Solicit input on nondiscrimination policies, training curricula, and strategic plans from all community members.

The consent decree seeks to address the decades old biased-based policing practices of the CPD by requiring the department to comply with federal, state, and local laws by prohibiting discrimination on the basis of “race, color, sex, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military status, source of income, credit history, criminal record, or criminal history.”<sup>12</sup> Yet the agreement limits public input for the development of nondiscrimination policies and training “to members of the community and community-based organizations with relevant knowledge and experience.”<sup>13</sup> The parties should revise the consent decree to ensure that all community members may provide feedback on all policies, practices, and trainings relating to impartial policing. Any draft policies, training curricula, and strategic plans should be posted on a public website for a specified public comment period.

B. Require proactive, periodic public reporting of disaggregated incident-level data regarding use of force incidents, police misconduct complaints, and stops, searches, and arrests.

Eradicating racial discrimination in CPD operations begins with transparency and public accountability. Accordingly, data collection, public reporting, and evaluation are vital to a policing reform model that seeks to remove racial disparities in police practices and operations.<sup>14</sup> CPD’s current data collection and public disclosure practices are an enormous obstacle to instituting appropriate transparency and accountability systems. The DOJ investigative report found that “deficiencies in how the City and CPD collect, analyze, and publish data regarding police activities contribute to the

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<sup>11</sup> See DOJ CHICAGO REPORT, *supra* note 4, at 15, 68-69, 147-148.

<sup>12</sup> Consent Decree at para. 49, *Illinois v. City of Chicago*, Case No. 17-cv-6260 (July 27, 2018) [hereinafter Proposed Consent Decree].

<sup>13</sup> *Id.* at para. 48.

<sup>14</sup> See U.S. DEPT OF JUSTICE, OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING, FINAL REPORT OF THE PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING 19, 24-25, 36 (2015), <https://ric-zai-inc.com/Publications/cops-p311-pub.pdf>.

Department's failure to identify and correct unconstitutional policing."<sup>15</sup> Importantly, DOJ reported that the city provides the public with data that is incomplete, inaccurate, untimely, and insufficient to allow the public to determine if CPD is policing constitutionally and effectively.<sup>16</sup> The PATF Report correspondingly found that CPD's public reporting of many types of data is limited. CPD reports detailed crime incident data daily, but it provides little information allowing the public to evaluate CPD performance.<sup>17</sup>

While the draft consent decree contains provisions requiring the collection of certain data, including use of force, crisis intervention, and officer performance through an early intervention system, only use of force data must be publicly reported and only in the aggregate. The consent decree does not require any proactive public disclosure of incident-level information, which represents a substantial shortcoming compared to recent developments on data transparency in policing.<sup>18</sup> We recommend that CPD collect and publicly report all incident-level data, including complaints, use of force, stop, search and arrests, disaggregated by race, ethnicity, gender, age, and other protected classes. Indeed, this type of public reporting of data is necessary for members of the public to monitor and enforce the consent decree as contemplated in paragraph 646.

Though Illinois law currently requires the collection of data on all pedestrian and vehicular stops, searches, and arrests conducted by state and local law enforcement officers and periodic reporting of these data,<sup>19</sup> the law is set to expire in less than a year, on July 1, 2019.<sup>20</sup> Accordingly, the consent decree should expressly require the collection and proactive public disclosure of stop, search, and arrest data in an accessible format and publish it online on a quarterly basis. This recommendation is

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<sup>15</sup> DOJ CHICAGO REPORT, *supra* note 4, at 124.

<sup>16</sup> *Id.* at 125.

<sup>17</sup> PATF REPORT, *supra* note 9, at 45. The PATF report described the disparity in publicly available statistics by noting that “[t]he ‘Statistical Reports’ section of CPD’s website does not contain any information since 2010. Rather, it provides Annual Reports for 1965 through 2010, monthly index crime reports for 1999 through 2010, crime trend reports from 1991 through 2007, beat-level data for 2007 through 2010, murder reports from 1999 through 2008 and juvenile reports from 1991 through 2008.”

<sup>18</sup> *See, e.g.*, Austin Police Department, <http://www.austintexas.gov/department/apd-reports> (providing raw racial profiling data corresponding to racial profiling reports); Police Data Initiative, <https://www.policedatainitiative.org/datasets/> (listing voluntary disclosure datasets by 67 law enforcement agencies on stops, citations, and arrests, among other subject matters).

<sup>19</sup> 624 ILL COMP. STAT. ANN. 5/11-212 (West 2018).

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

consistent with other recent police department consent decrees, such as those involving the Baltimore<sup>21</sup> and Ferguson<sup>22</sup> police departments.

Importantly, the ACLU settlement agreement with Chicago city officials does not prohibit the department from publicly disclosing raw data. We understand the consent decree contemplates the ACLU will continue to provide analysis of these data under the terms of their settlement agreement with the city, however CPD can and should also publicly disclose the underlying data.

C. Eliminate pretextual and discriminatory arrests by utilizing alternatives to arrests for low-level offenses.

The draft consent decree requires CPD to assess the frequency and demographic disparities of misdemeanor arrests and administrative notices of violation effectuated by CPD members and to make changes to policies to address the findings of the evaluation.<sup>23</sup> The agreement should go further by requiring CPD to adopt greater protections against practices that result in unnecessary, discriminatory interactions with police for certain misdemeanor and non-violent offenses.

First, consistent with the recommendation of the Chicago Community Consent Decree created by the *Campbell* plaintiffs, we recommend the parties develop and enforce a policy instructing that for minor non-violent and quality of life offenses falling under Title 8 of the City of Chicago Municipal Code, officers follow the least intrusive response under the circumstances, as reasonably understood by the officer at the time.<sup>24</sup> For example, officers should use verbal warnings and/or counseling or referrals to mediation, community-based, or public health diversion programs in lieu of arrests or citation; and citations should be issued in lieu of arrest where possible.<sup>25</sup> Adopting this requirement will reduce the likelihood that officers needlessly arrest or issue citations to individuals for minor offenses because it requires an affirmative obligation to ramp down law enforcement response.

Second, the consent decree should require CPD officers to obtain permission from a supervisor prior to effectuating an arrest, or if impracticable under the

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<sup>21</sup> See Consent Decree at paras. 82-86, *U.S. v. Police Dep't of Baltimore*, Case No. 1:17-cv-00099-JKB (D. Md. Jan. 12, 2017), <https://www.justice.gov/opa/file/925056/download> [hereinafter Baltimore Consent Decree].

<sup>22</sup> See Consent Decree at para. 70, *U.S. v. Ferguson*, 4:16-cv-00180-CDP (E.D. Mo. Apr. 29, 2016), <https://www.justice.gov/opa/file/833431/download>.

<sup>23</sup> Proposed Consent Decree, *supra* note 12, at para. 71.

<sup>24</sup> PLAINTIFFS IN *CAMPBELL V. CITY OF CHICAGO*, CHICAGO COMMUNITY CONSENT DECREE para. 57 (May 15, 2018), [https://static1.squarespace.com/static/59932fa0d2b857ba8912040a/t/5afee33e758d466fdfe03fa5/1526653759820/chicago\\_community\\_consent\\_decree\\_final.pdf](https://static1.squarespace.com/static/59932fa0d2b857ba8912040a/t/5afee33e758d466fdfe03fa5/1526653759820/chicago_community_consent_decree_final.pdf) [hereinafter CHICAGO COMMUNITY CONSENT DECREE].

<sup>25</sup> *Id.* at para. 57.



circumstances, as soon as practicable thereafter for certain non-violent, quality of life, and discretionary offenses.<sup>26</sup> Supervisors approving or disapproving the request should be required to ensure the existence of probable cause and that the officer adhered to the policy of “least intrusive response.”<sup>27</sup> The consent decree in *U.S. v. Police Department of Baltimore* includes similar provisions.<sup>28</sup>

Also, CPD should adopt systems to track all citations issued for low-level, misdemeanor offenses and analyze the data at least annually to assess the extent to which officers are adhering to the policy to identify officers who require additional instruction, training, guidance, or discipline.<sup>29</sup> The data collected should include information on race, gender, and ethnicity.

II. Require CPD officers to use de-escalation prior to the use of force, expand the categories of reportable use of force, and adopt a foot pursuit policy.

In the wake of DOJ’s scathing investigative findings that CPD engages in a pattern or practice of unconstitutional use of force, CPD adopted a revised use of force policy, which prioritizes the sanctity of life.<sup>30</sup> While this is a step in the right direction, the consent decree appropriately requires the CPD to go further.

Various provisions of the consent decree state that officers should use de-escalation techniques when it is “safe and feasible” to do so, suggesting that the use of de-escalation tactics is discretionary. Because de-escalation is a core principle of CPD, LDF recommends that the parties replace “safe and feasible” with language used in the Baltimore consent decree as follows: “[CPD] will require officers to use de-escalation techniques, including verbal persuasion and warnings...*whenever possible*, before resorting to force and to reduce the need for force.”<sup>31</sup> (Emphasis added.)

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<sup>26</sup> *Id.* at paras. 56-58 (recommended offenses for the citation program include obstructing, assaulting, or resisting an officer; disorderly conduct; failure to obey an officer; gambling; making a false statement to an officer; misdemeanor trespassing offenses; drug possession for personal consumption; drinking on the public way; narcotics-related loitering; gang loitering; mob action; loitering; house of ill-fame; prostitution; solicitation of prostitution; theft of items of less than \$1000; fare jumping; selling nontransferable railroad tickets; selling or giving away transfers; misdemeanor vandalism; public urination or defecation; ragpicking, peddling, junk collecting; begging or soliciting; contributing to delinquency of minor; and chronic illegal activity premises).

<sup>27</sup> *Id.* at para. 58.

<sup>28</sup> Baltimore Consent Decree, *supra* note 21, at paras. 61-66.

<sup>29</sup> CHICAGO COMMUNITY CONSENT DECREE, *supra* note 24, para. 57.

<sup>30</sup> See DOJ CHICAGO REPORT, *supra* note 4, at 22; see also Chicago Police Department Use of Force Policy, available at [http://home.chicagopolice.org/wp-content/uploads/2017/05/G03-02\\_Use-of-Force\\_TBD.pdf](http://home.chicagopolice.org/wp-content/uploads/2017/05/G03-02_Use-of-Force_TBD.pdf).

<sup>31</sup> Baltimore Consent Decree, *supra* note 21, at para. 125.

The consent decree lists various CPD de-escalation tactics.<sup>32</sup> To ensure officers' use of de-escalation tactics, the consent decree should also state that a CPD officer who witnesses another officer using unnecessary, illegal, and/or excessive force should take measures to de-escalate the fellow officer's wrongful use of force. Additionally, the consent decree should include a provision making clear that officers will not be penalized for using de-escalation tactics or for the time it takes to successfully employ the tactic.

The consent decree should expressly prohibit officers from using tactics that escalate an incident, including but not limited to taunting, humiliating, threatening, or using slurs regarding the subject's status, race, and/or identity. The DOJ investigative report, PATF report, and countless Chicago residents have noted that CPD frequently calls subjects racial slurs and/or insensitive names. These actions serve only to escalate an encounter.

Additionally, ensuring officers clearly understand which types of force are reportable is critical to holding accountable officers who use excessive force. LDF recommends that pointing a gun or Taser be included as a reportable use of force. Pointing weapons at individuals is a level of force that often leaves victims and their families traumatized. This occurred in 2016 when a CPD officer held a loaded gun to a 3-year old girl's chest while she watched other officers hold a gun to her grandmother's head and slam her mother's body into the wall. Five years later, the young girl still "has nightly nightmares and wakes up screaming, '[t]he police are coming,' [and] will "need psychiatric care into adulthood".<sup>33</sup> Similarly, in November 2017 CPD officers entered an apartment, pointed their guns at 5 and 9-year old boys and their parents, screamed profanities at the family, and arrested the children's father. When the officers discovered they were in the wrong apartment over an hour later, they left without ever apologizing; the children are now experiencing emotional and behavioral problems, suffering from PTSD, and must attend therapy, according to news reports.<sup>34</sup> The draft consent decree must protect members of the public from this type of police use of force.

The DOJ investigative report revealed that CPD officers regularly "engage in tactically unsound and unnecessary foot pursuits, and that these foot pursuits too often end with officers unreasonably shooting someone—including unarmed individuals."<sup>35</sup> Yet the consent decree states that the Monitor will assess CPD data and determine

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<sup>32</sup> Proposed Consent Decree, *supra* note 12, at para. 151.

<sup>33</sup> Fran Spielman, *Aldermen authorize \$6M in settlements tied to police wrongdoing*, CHICAGO SUN TIMES, June 25, 2018, <https://chicago.suntimes.com/news/aldermen-authorize-6m-in-settlements-tied-to-police-wrongdoing/>.

<sup>34</sup> Dave Savini, *CPD Officers Raid Wrong Home, Point Guns At 9-Year-Old Boy; 'My Life Flashed Before My Eyes'*, CHICAGO CBS, Aug. 14, 2018, <https://chicago.cbslocal.com/2018/08/14/chicago-police-cpd-raid-wrong-home-point-guns-at-9-year-old-boy-peter-mendez/>.

<sup>35</sup> DOJ Investigative Report, *supra* note 1, at 5.



whether CPD should adopt a foot pursuit policy. This provision should be replaced with a statement requiring CPD to create a sound foot policy that will be approved by the Monitor. The foot pursuit policy should emphasize the inherent danger in such pursuits and require officers to weigh the importance of apprehending a suspect with the likelihood of danger to the public and CPD members.

III. Expand the jurisdiction of the Civilian Office of Police Accountability to include sexual assault and misconduct by officers.

An equally disturbing form of CPD misconduct is sexual assault; CPD officers, at varying levels of seniority, have been charged with sexually assaulting individuals in their custody.<sup>36</sup> In response, the consent decree requires the development and implementation of a policy prohibiting sexual misconduct by CPD members as well as guidelines for the appropriate police response to gender-based violence.<sup>37</sup> Additionally, the consent decree appears to split jurisdiction of administrative investigations of sexual misconduct and assault between the Civilian Office of Police Accountability (COPA) and the Bureau of Internal Affairs (BIA).<sup>38</sup> The consent decree also anemically states that city officials should use their best efforts to expand the jurisdiction of the Civilian Office of Police Accountability (COPA) to include allegations of officer-involved sexual misconduct.<sup>39</sup>

We strongly recommend that COPA's jurisdiction be expanded to clearly encompass administrative investigations of sexual assault, in addition to misconduct; in turn, the consent decree should require city officials to take all necessary steps to ensure that COPA has the financial and human resources necessary to serve as an independent investigator of these allegations against CPD officers.<sup>40</sup> An independent investigation is essential in circumstances of sexual misconduct and assault. Additionally, the Monitor should solicit community input to conduct an assessment of CPD's policies and practice regarding sexual misconduct and assault.

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<sup>36</sup> See Eric Horng, *Now-retired Chicago police officer charged in 2016 sexual abuse of woman inside police station*, ABC CHICAGO, March 29, 2018, <https://abc7chicago.com/now-retired-cpd-officer-charged-in-2016-sexual-abuse-of-woman-inside-police-station/3278764/>; Megan Crepeau, *Chicago cop charged with sexually assaulting suspect who was in custody at hospital*, CHICAGO TRIBUNE, March 20, 2018, <http://www.chicagotribune.com/news/local/breaking/ct-met-chicago-cop-charged-sex-assault-20180320-story.html>.

<sup>37</sup> Proposed Consent Decree, *supra* note 12, at paras. 57-58.

<sup>38</sup> *Id.* at 421-23.

<sup>39</sup> *Id.* at paras. 421-22.

<sup>40</sup> Plaintiffs' Demands, *supra* note 6.

IV. Protect the rights of children and youth, including in schools.

The draft consent decree provides that Chicago Public Schools (CPS) may continue to contract with the CPD to assign police to schools. But research shows that CPD's presence in schools leads to excessive force and frequent arrests of young students of color, often for minor disciplinary infractions that would normally be handled within the school disciplinary system.<sup>41</sup> For example, in 2011 alone, CPD made 4,600 arrests of children and youth; 86% of these arrests were for minor misdemeanors and disproportionately affected students of color.<sup>42</sup> Since CPS students are approximately 40% African American and 45% Latinx, CPD presence in schools, without proper oversight, policies, and transparency will continue to disproportionately target children of color, feeding them into the juvenile and criminal justice systems.

LDF recommends reallocating resources to support programs and human resources, such as school counselors, to improve school climate and keep students safe, rather than assigning CPD police to schools. These programs vary, but may include restorative justice, social and emotional learning, student conflict resolution programs, mentoring, and crisis prevention and intervention.

If CPD continues to assign its officers to schools, then the consent decree must require the department to develop policies that will protect students from police violence and misconduct in and out of school. Recent data shows that from September 1, 2007 to September 14, 2017, CPD shot and killed 35 children and youth. During that same time frame, CPD used Tasers against 751 children and youth.<sup>43</sup> Therefore, CPD must develop policies, with input from CPS and members of the public that prohibit officers from being involved in school disciplinary matters; mandate de-escalation tactics; require the use of alternatives to arrests; prohibit the questioning of youth on school grounds and without their parents, among other policies. Additionally, Taser use in school should be prohibited except in limited circumstances, such as to avoid the necessary use of deadly force. CPD officers assigned to schools must comply with the same use of force reporting requirements as other officers.

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<sup>41</sup> DOJ CHICAGO REPORT, *supra* note 4, at p. 34 (listing examples of CPD excessive force and arrests of children, including an example of a teenaged girl arrested after having her cell phone in school, against school policy, and refusing to leave the school. The CPD officer Tasered the teenager).

<sup>42</sup> Yana Kunichoff, *Police in Chicago public schools operate with no special training and little oversight*, CITY BUREAU, Feb. 1, 2017, <https://www.citybureau.org/stories/2017/2/7/police-in-chicago-public-schools-operate-with-no-special-training-and-little-oversight>; *see also* HANDCUFFS IN HALLWAYS, THE STATE OF POLICING IN CHICAGO PUBLIC SCHOOLS, <http://povertylaw.org/files/docs/handcuffs-in-hallways-final.pdf> (2017) [hereinafter *Handcuffs in Hallways*] (noting that African American children comprised only 40% of the CPS student population, but were the subject of 75% of CPD school arrests in 2011 and 2012 and over 60% of CPS's law enforcement referrals and school-related arrests in 2013).

<sup>43</sup> *See* INDEPENDENT POLICE REVIEW AUTHORITY, THIRD QUARTER 2017 AGENCY OPERATIONS AND FINAL REPORT 22, 24, [https://www.chicagocopa.org/wp-content/uploads/2017/10/Q32017\\_IPRA\\_Final\\_Report.pdf](https://www.chicagocopa.org/wp-content/uploads/2017/10/Q32017_IPRA_Final_Report.pdf) (2017).

The draft consent decree provides that CPS and CPD will create screening criteria for officers in CPS. We recommend that the screening requirements include a review of the officer's personnel and disciplinary files and complaint records. Officers with pending investigations, misconduct, or a history of abuse to children or youth should not be allowed to work within schools.<sup>44</sup> Eligible officers should possess strong interpersonal communication and counseling skills, understand the importance of diversion programs and alternatives to arrest for youth, be respectful to students and families of all backgrounds and cultures, and have an interest in promoting and enriching the lives of young people. The selection criteria should be easily available to

V. Recommendations on retention, hiring, and promotion.

The DOJ's investigative report and the Illinois Attorney General's complaint against the CPD detail numerous deficiencies in the CPD's Field Training Officer (FTO) Program.<sup>45</sup> Specifically, officers are regularly selected as FTOs despite pending disciplinary investigations, numerous complaints, and/or serious disciplinary infractions; FTOs are not formally trained and thus are "often unable to provide effective supervision and guidance;" and due to the lack of an established uniform curriculum, probationary police officers (PPOs) are almost certain to pass their FTO training, regardless of their ability to properly understand or practice CPD policy.<sup>46</sup> Thus, while the consent decree addresses most of the DOJ's critiques and is therefore commendable, we recommend additional provisions to ensure CPD officers receive the quality and quantity of the training needed to properly perform their jobs.

The draft consent decree states CPD will create a policy that attracts and retains qualified FTOs. To prevent the reoccurrence of FTOs with varying levels of skill, training, and understanding of CPD's policies, LDF recommends the FTO policy mandate CPD-wide use of a standardized curriculum. This curriculum should be vetted by experts in each field covered, including implicit bias, and should be updated regularly. FTOs should know, understand, and practice the FTO policy and be regularly evaluated on their ability to demonstrate proficiency in CPD's policies, managing recruits and subordinates, practicing and teaching nonbiased policing, and exercising sound judgment.

FTO supervision should be consistent. FTOs who demonstrate exceptional training and policing practices should be rewarded with positive feedback, promotions, and a defined promotion track. For example, CPD could incentivize the successful completion of service as an FTO with promotion opportunities and provide

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<sup>44</sup> See HANDCUFFS IN HALLWAYS (noting that in April 2016, 67% of CPD officers in CPS had IPRA complaints lodged against them, 31% had three or more complaints lodged against them, and 11% have ten or more complaints).

<sup>45</sup> DOJ CHICAGO REPORT, *supra* note 4, at p. 97; Complaint at paras. 78-86, *Illinois v. City of Chicago*, Case No. 1:17-cv-6260 (N.D.Ill. Aug. 29, 2017).

<sup>46</sup> DOJ CHICAGO REPORT, *supra* note 4, at 10, 97-99.

renumeration consistent with a more rigorously trained and evaluated cohort of FTOs. This will ensure that officers responsible for teaching new PPOs are of a certain caliber.

The draft agreement discusses PPO performance, discipline, and review. A similar provision should exist for FTOs. This provision should create and define disciplinary measures for FTOs with complaints and misconduct, regardless of how long the FTO has held the position. Because FTOs occupy such a critical role in the development of CPD's incoming officers, setting the tone for an officer's understanding of how CPD policing works, FTO misconduct should be investigated and evaluated promptly and thoroughly.

The consent decree outlines a mechanism by which FTOs can submit feedback. This should be expanded to include feedback from instructors and supervisors and should include an option to submit anonymous feedback. CPD should document its responses to all feedback, including PPO feedback as described in paragraph 293, and its rationale for any subsequent action or inaction.

The success of the revised FTO training program requires implementation of the above policies, as well as thorough and regular evaluations of each step of the program. In addition to the TOC and Education and Training Division and Bureau of Patrol's quarterly and annual review of PPO and FTO feedback, as outlined in paragraphs 293, 295, and 296, both entities should review complaints, personnel and disciplinary files, and use of force data to evaluate the effectiveness of the FTO program.

VI. Extend the time for court monitoring and implementation of consent decree.

The consent decree provides that the City will attempt to achieve full compliance with the agreement within five years of the effective date.<sup>47</sup> However, given the significant level of well-documented police violence and abuse within the CPD, five years is simply not enough time. To ensure appropriate implementation of the agreement, oversight of CPD should last ten years, similar to the consent decree between the DOJ and the Commonwealth of Puerto Rico.<sup>48</sup>

VII. Create guidelines to measure city officials' best efforts.

Throughout the consent decree, there are provisions that require Chicago city officials to use their best efforts to achieve a stated objective. For example, paragraph 425 requires the city to use "best efforts" to engage in a process with the Cook County State's Attorney's Office to share information about a judicial finding that a CPD officer was untruthful, including during suppression hearings. According to the draft consent decree, best efforts "require a party, in good faith, to take all reasonable steps to

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<sup>47</sup> Proposed Consent Decree, *supra* note 12, at para. 690.

<sup>48</sup> See Consent Decree at para. 300, U.S. v. Puerto Rico, Case No. 3:12-cv-2039-GAG (D. Pr. July. 17, 2013), [https://www.justice.gov/sites/default/files/crt/legacy/2013/07/17/prpd\\_agreement\\_7-17-13.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2013/07/17/prpd_agreement_7-17-13.pdf).

achieve the stated objective.”<sup>49</sup> To ensure that city officials have undertaken best efforts, we propose that the parties, court, and community members consider the following action steps:

- 1) A plan created by city officials to meet the consent decree objective;
- 2) Quarterly reports from city official describing actions taken to carry out the plan, including challenges faced and steps taken to overcome the challenges; and
- 3) Any necessary adjustments to plans for the completion of the objective.

This guideline will assist with determining whether city officials have taken all reasonable steps to accomplish specific provisions of the consent decree.

#### VIII. Conclusion

The terms of any final consent decree must hold the promise of transforming the CPD into an agency of sworn officers and civilians who seek to serve and protect communities without regard to race, ethnicity, gender, age, and socio-economic status and consistent with the U.S. Constitution, state and federal laws, and departmental policies. We appreciate the opportunity to comment on the proposed consent decree and look forward to a continued partnership.

Sincerely yours,



Sherrilyn A. Ifill  
President and Director Counsel

Monique L. Dixon  
Deputy Director of Policy and  
Senior Counsel

Sonia Gill Hernandez  
Senior Policy Counsel, Policing  
Reform Campaign

Katurah Topps  
Policy Counsel

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<sup>49</sup> Proposed Consent Decree, *supra* note 12, at para. 705.