

October 12, 2018

The Honorable Robert M. Dow, Jr.
c/o Clerk of Court United States District Court
Everett McKinley Dirksen Federal Building
219 South Dearborn Street, 20th Floor Chicago, IL 60604
Filed via PACER

Subject: Youth-informed provisions and monitoring under
State of Illinois v. City of Chicago, Case No. 17-cv-6260

Dear Judge Dow,

For over 25 years, the Children and Family Justice Center (CFJC) has represented Chicago youth in immigration, juvenile, and criminal court proceedings. This representation forms the basis for our advocacy of law and policy that supports the unique developmental needs of young people. Our work demands deep familiarity with Chicago Police Department (CPD) practices related to minors and we are grateful for your invitation to the public to provide written feedback about the parties' proposed consent decree.

As Chicago-based lawyers for children, we heartily endorse the United States Department of Justice's conclusion that the Chicago Police Department has demonstrated a pattern or practice of unreasonable force that specifically includes the use of excessive force against minors. We therefore request that you retain or strengthen each accountability measure included in the parties' proposed consent decree and approve it as soon as practicable.

Youth of color, predominantly African-American youth, are significantly and disparately impacted by adult-normed, suppression-oriented policing practices in Chicago. While CPD has not issued an annual report since 2010, data available via the Inspector General shows that the Department filed 16,892 Investigatory Stop Reports involving minors in calendar year 2017.¹ According to the latest data reported by researchers using the Freedom of Information Act, CPD

¹ CITY OF CHICAGO OFFICE OF THE INSPECTOR GENERAL INFORMATION PORTAL,
<https://informationportal.igchicago.org/map-investigatory-stop-reports-by-beat-and-district/>.

arrested 17,783 youth under 18 in calendar year 2014, fewer than 3% of whom were non-Hispanic whites.² Countless other encounters between police and teenagers go undocumented.

The Supreme Court has recognized that children are different than adults in ways that affect their behaviors, their culpability for those behaviors, and their susceptibility to police conduct.³ The Court has further indicated that the justice system, including criminal procedure, should account for those differences in a developmentally-appropriate manner.⁴ We appreciate the parties' attention to school-based policing and the inclusion of Illinois' new juvenile interrogation laws as enforceable provisions of the proposed consent decree. However, these provisions alone are not sufficiently protective of young people's unique vulnerability to the police abuse and coercion identified in the Department of Justice report and the Illinois Attorney General's complaint.

Therefore, along with our support for the consent decree, we additionally:

- support the revisions proposed by certain individual and community group plaintiffs⁵ and support their ability to independently enforce provisions of the consent decree.
- request that you consider including or strengthening certain youth-specific protections listed below, particularly those aimed at addressing the widespread abuse and coercion of minors, including through racially-targeted policing of youth, use of excessive force, and the influence this pattern has upon searches and interrogations; and
- support youth-development-informed monitoring that pays particular attention to the way minors are affected by implementation of each provision of the consent decree.

Use of Force

According to the U.S. Department of Justice's 2017 report, CPD engages in a pattern or practice of unconstitutional use of force.⁶ The DOJ found many problems with CPD's functioning, expressing concerns over unnecessary foot pursuits, unwarranted force escalation, and officers

² Mariame Kaba, ARRESTING JUSTICE (THIRD EDITION): JUVENILE ARRESTS IN CHICAGO, 2013 AND 2014 (October 2015), available at <https://chiyouthjustice.files.wordpress.com/2015/11/cpd-juvenile-arrest-stats-2013-2014rev.pdf>.

³ "A child's age is far more than a chronological fact. It is a fact that generates commonsense conclusions about behavior and perception. Such conclusions apply broadly to children as a class. And, they are self-evident to anyone who was a child once himself, including any police officer or judge. Time and again, this Court has drawn these commonsense conclusions for itself. We have observed that children generally are less mature and responsible than adults, that they often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them, that they are more vulnerable or susceptible to outside pressures than adults, and so on." *J. D. B. v. North Carolina*, 564 U.S. 261, 272 (2011) (internal quotes and citations omitted).

⁴ "Criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed." *Graham v. Florida*, 560 U.S. 48, 76 (2010) (discussing application of the Eighth Amendment, soon extended by *J.D.B. v. North Carolina*). See generally, Marsha L. Levick and Elizabeth-Ann Tierney, *United States Supreme Court Adopts a Reasonable Juvenile Standard in JDB v. North Carolina for Purposes of the Miranda Custody Analysis: Can a More Reasoned Justice System for Juveniles Be Far Behind?* 47 *HARV. C.R.-C.L. L. REV.* 501 (2012).

⁵ Referring to proposed revisions from Plaintiffs in *Campbell v. City of Chicago*, N.D. Ill. Case No. 17-cv-4467.

⁶ UNITED STATES DEPARTMENT OF JUSTICE, CIVIL RIGHTS DIVISION, INVESTIGATION OF THE CHICAGO POLICE DEPARTMENT (JAN. 13, 2017) [hereinafter *DOJ Report*].

firing upon fleeing suspects.⁷ Of immense importance, the DOJ makes particular note of CPD's use of excessive force against youths.⁸

Psychology informs us that “adolescents clearly differ from adults in crucial ways that suggest the need for a different response from the justice system.”⁹ Youths are physiologically and cognitively immature, rendering them less able to anticipate consequences, discern right from wrong, and self-regulate their emotionally charged behaviors in comparison to their adult counterparts.¹⁰ When confronted by police, these traits of impulsivity and risk-taking often trigger flight-or-fight behavioral responses in youths, leading a fleeing adolescent to face heightened force where no clear or imminent danger may exist.¹¹

The sheer nature of an adolescent's predisposition to risk leads juveniles to have more frequent confrontations with police, making the CPD's response to adolescent behavior even more important. To properly handle these unique factors of youth, policing must be adolescent informed, which is why we recommend the following modifications and additions to the proposed consent decree:

- Section 165: “CPD officers are prohibited from using deadly force except in circumstances where there is an imminent threat of death or great bodily harm to an officer or another person. CPD officers are not permitted to use deadly force against a person who is a threat only to himself or herself or to property. CPD officers may only use deadly force as a last resort. A juvenile's possession of a weapon alone does not justify an officer's use of deadly force.”
- Section 166: “CPD officers are prohibited from using deadly force against fleeing subjects who do not pose an imminent threat of death or great bodily harm to an officer or another person. When dealing with youth, CPD officers are prohibited from using force that exceeds level 1 reportable uses of force against fleeing subjects who fail to pose an imminent threat of death, great bodily harm, or danger to an officer or another person.”

⁷ *Id.*

⁸ *See id.* at 34 (“In one incident, officers hit a 16-year-old girl with a baton and then Tasered her after she was asked to leave the school for having a cell phone in violation of school rules. Officers were called in to arrest her for trespassing. Officers claimed the force was justified because she flailed her arms when they tried to arrest her, with no adequate explanation for how such flailing met the criteria for use of a Taser. This was not an isolated incident.”).

⁹ COMM. ON ASSESSING JUVENILE JUSTICE REFORM, NAT'L RESEARCH COUNCIL, REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH 91 (Richard J. Bonnie et al. eds, 2012).

¹⁰ *Id.*; *See* Laurence Steinberg, *Should the Science of Adolescent Brain Development Inform Public Policy?* 28 ISSUES IN SCIENCE AND TECHNOLOGY 78-106 (2009).

¹¹ Weston J. Morrow, et al., *Examining the Situational and Suspect-Level Predictors of Police Use of Force Among a Juvenile Arrestee Population*, 15 CENTER ON JUVENILE AND CRIMINAL JUSTICE: JUSTICE POLICY JOURNAL, 13 (Spring 2018).

- Section 171: “CPD will provide annual scenario-based training regarding foot pursuits and the a supplemental foot pursuit training bulletin during each use of force training required by this Agreement. The training will emphasize policies prohibiting an officer’s un-holstering or display of a firearm when no objective reasoning is capable of establishing an imminent threat of serious bodily injury or death.”
- Section 172: “~~By no later than January 1, 2021, the Monitor will complete an assessment of CPD data and information to determine whether CPD should adopt a foot pursuit policy. If the Monitor recommends that CPD should adopt a foot pursuit policy, CPD will~~ adopt a foot pursuit policy that will prohibit the pursuit of youths who are not suspects in a specific crime and that will provide guidance for when and how to pursue youth suspects consistent with safety for officers, the public, and the suspect. This policy will be implemented no later than January 1, 2019. Any foot pursuit policy adopted by CPD will be subject to review and approval by the Monitor and the OAG.”

Interrogation

Interrogation techniques utilized by the CPD on youths do not account for the behavioral differences between youths and adults, and numerous studies have shown that youths particularly are likely to give false information—and even falsely confess—to police interviewers, who may lie to youths about laws.¹² Moreover, data shows that only about 1% of arrestees have a lawyer present while in custody of the CPD.¹³ Due to CPD’s pattern or practice of excessive force against youth, lack of sufficient training for CPD officers,¹⁴ and youths’ capacity to not fully comprehend the consequences of their interactions with officers during interrogations,¹⁵ it is imperative that youths have direct access to an attorney before, during, and after any CPD

¹² For example, behavior indicating untruthfulness in adults does not necessarily correspond to the same behavior exhibited by youths. Specifically, experienced police interviewers look to behaviors that indicate lying such as fidgeting, slouching, and lack of eye contact, yet many youths commonly slouch, avoid eye contact, and exhibit similar behaviors regardless of whether they are telling the truth—especially in the presence of authority figures.

See INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE (IACP) & OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION (OJJDP), *Reducing Risks: An Executive’s Guide to Effective Juvenile Interview and Interrogation* 1, 4 (Sep. 2012) [hereinafter *Reducing Risks*].

¹³ See First Defense Legal Aid (FDLA) website, (last visited Oct. 8, 2018) <https://www.first-defense.org/>; Rosa Flores, *In Chicago, Less Than 1% Saw a Lawyer After Arrest*, CNN, May 25, 2016, <https://www.cnn.com/2016/05/25/us/chicago-police-arrests-civil-rights/index.html>.

¹⁴ *DOJ Report* at 93.

¹⁵ See *Reducing Risks* at 4 (“Because the pre-frontal cortex is not fully developed until the end of adolescence, it does not regulate a teenager’s judgment and decision-making as well as in adults. This explains certain classic adolescent traits that every parent already recognizes: [a] Difficulty weighing and assessing risks, which can lead to unsafe decisions like skateboarding on a railing or driving too fast[; b] Emphasis on immediate rewards rather than long-term consequences, which can contribute to poor choices like having unprotected sex[; c] Vulnerability to external pressure, which can result in negative decisions like joining gangs or caving in to peer pressure[.] These traits also make adolescents particularly likely to respond to the fear and stress of interrogation by making involuntary or false statements. This is a reality that has recently been embraced by the United States Supreme Court.”).

interrogations. Therefore, to safeguard the constitutional rights of youth, and to account for the behavioral differences between youth and adults, we recommend the following modifications and additions to the proposed consent decree:

- Section 31: “CPD will provide arrestees and suspects access to a phone and the ability to make a ~~phone call~~ reasonable number of phone calls as soon as practicable upon within an hour of being taken into custody and before any questioning.”
- Section 34: “CPD will clarify in policy that juveniles in CPD custody have the right to an attorney visitation, regardless of parent or legal guardian permission, even if the juvenile is not going to be interviewed, and within 30 minutes of arresting a youth, CPD shall contact the Cook County Public Defender, First Defense Legal Aid, or another organization appointed by the Cook County Circuit Court to represent arrestees. CPD shall not question a youth arrestee until counsel arrives.”
- Section 35: “If a juvenile has been arrested CPD will notify the juvenile’s parent or guardian as soon as possible, and in any event, no later than one hour after the arrest. The notification may either be in person or by telephone and will be documented in any relevant reports, along with the identity of the parent or guardian who was notified. Officers will document in the arrest or incident report attempts to notify a parent or guardian. If a youth is subsequently interviewed or interrogated, CPD will do so only in the presence of the student’s parent/guardian and/or attorney, and with the guardian’s permission, regardless of whether the student is being interviewed in a custodial capacity or as a non-suspect witness. To the extent possible, all interviews shall be electronically recorded in their entirety.”

Crisis Intervention Team

Crisis Intervention Team (CIT) is responsible for CPD’s crisis intervention response to people experiencing a behavioral or mental health crisis. Evidence shows “that police intervention is harmful to the vast majority of people experiencing a mental or behavioral crisis.”¹⁶

Accordingly, it is imperative that only CPD officers with the proper training to handle persons experiencing a behavioral or mental health crisis respond to youth individuals in crisis.

Therefore, due to the number of youths with significant behavioral differences who interact with the CPD,¹⁷ evidence of verbal and physical abuse¹⁷ by CPD officers when interacting with

¹⁶ Email to Illinois Attorney General, Civil Rights Bureau from Access Living, Aug. 17, 2018; *see* United States Department of Justice, *Investigation of the Chicago Police Department*, CIVIL RIGHTS DIVISION (JAN. 13, 2017) 37 (“[O]ur review of CPD’s force reports revealed that CPD uses force against people in crisis where force might have been avoided had a well-trained CIT officer responded to the scene and employed de-escalation techniques.”); *see also* collection of articles at <http://www.thismess.net/search?q=police+and+autism>.

¹⁷ Email to Illinois Attorney General, Civil Rights Bureau from Access Living, Aug. 17, 2018 (“[O]ver the last 20 years we have seen an increasing number of individuals identified with . . . disabilities, especially children identified with autism.”).

youths,¹⁸ and the importance of de-escalating situations involving youth individuals in crisis,¹⁹ we recommend the following modifications and additions to the proposed consent decree:

- Section 106: “CPD will require that, when available, at least one Certified CIT Officer will respond to any incident identified as involving an individual in crisis. Certified CIT Officers will continue to be prioritized for dispatch to incidents identified as involving individuals in crisis, as assigned. CPD will require that, when available, Certified Advanced CIT Officers, also known as CIT-Y officers, will continue to be prioritized for dispatch to incidents identified as involving youth individuals in crisis, as assigned. If a Certified Advanced CIT Officer is not available, CPD will require that a Certified CIT Officer will be prioritized for dispatch to incidents identified as involving youth individuals in crisis, as assigned. CPD will review and revise the appropriate policies to ensure that, in situations in which a Certified CIT Officer is not available to respond to a call or incident identified as involving an individual in crisis, the responding officer engages in crisis intervention response techniques, as appropriate and consistent with CPD policy and their training, throughout the incident. Responding officers will document all incidents involving an individual in crisis in a manner consistent with this Agreement.”

School-based policing

It is our firm position that the City of Chicago can and should immediately end its practice of stationing sworn police officers in its schools, in favor of a structured approach to school safety that relies primarily on counselor-based responses to ordinary student conflicts, with limited support from nonsworn, school-employed safety personnel when required.

However, in the event that the City of Chicago continues to station sworn police officers at Chicago Public Schools, it must set stringent selection criteria for those officers. We strongly support the *Campbell v. City of Chicago* plaintiffs’ proposed revisions to the consent decree’s section on school-based police (available on request). These include a prohibition against officers with any history of misconduct, requirement that officers stationed at schools receive youth-specific de-escalation training on an ongoing basis; creation of a duty to deescalate and a duty not to intervene absent a real and immediate threat; a clear prohibition on handcuffs, restraints, use of force, and school-based arrests absent a real and immediate threat; prohibition on officers carrying firearms in schools or using Tasers unless lethal force would otherwise be necessary; a prohibition against the current CPD practice of using schools as a data collection

¹⁸ United States Department of Justice, *Investigation of the Chicago Police Department*, CIVIL RIGHTS DIVISION (JAN. 13, 2017) 144 (“Black youth told us that they are routinely called ‘nigger,’ ‘animal,’ or ‘pieces of shit’ by CPD officers. A 19-year old black male reported that CPD officers called him a ‘monkey.’ Such statements were confirmed by CPD officers.”); see also Craig B. Futterman, *Youth/Police Encounters on Chicago’s South Side: Acknowledging the Realities*, UNIV. OF CHICAGO LEGAL FORUM: VOL. 2016, ART. 5, 138 (“Nearly every student with whom we spoke has a friend or family member who has been beaten, arrested, tased, or shot at the hands of the police.”).

¹⁹ Email to Illinois Attorney General, Civil Rights Bureau from Access Living, Aug. 17, 2018 (“It is critical that, when police are present, they recognize when an individual has such a disability and properly de-escalate the situation.”).

tool and an investigation forum of convenience; and a requirement that CPD publicly disclose information about its school-based operations, including arrests and uses of force.

Pre-arrest deflection/diversion

The City of Chicago owes its young people more than to train police officers to use de-escalation tactics and to recognize when youth are experiencing a family, mental health, substance abuse, or interpersonal crisis, though these are important. The City can and should choose to respond to youth needs primarily through its housing, family, social service, health care, education, and parks and recreation departments, offering healthier and more beneficial alternatives to formal police processing and justice system contact. Illinois' Juvenile Court Act contains a robust youth diversion tool, the station adjustment,²⁰ but this mechanism is currently available only after police have made an arrest, a traumatic and potentially dangerous experience for a young person and one that creates official records that can cause collateral consequences for youth and wastes law enforcement resources.

To minimize unnecessary and damaging police contact, we strongly support the *Campbell v. City of Chicago* plaintiffs' proposals that the City of Chicago adopt a principle of least intrusive law enforcement response. This should include: developing and using mechanisms for pre-arrest diversion of adults and youth, incentivizing the use of these mechanisms in police evaluations for promotion; ending the abuse of overtime through "trolling" for minor offenses to extend an officer's shift with arrest processing; and requiring supervisory approval for certain low-level and often pretextual arrests.

Youth-informed and accessible policy

The ability of youth to safely disclose their experiences with CPD is key to improved policy, practice, and police accountability. The Department of Justice recommended that the "CPD and the City must focus their efforts on improving relationships within neighborhoods . . . includ[ing] recognizing that Chicago's policing practices have had an unnecessarily negative impact on these communities, and working to change practices to increase police legitimacy and community trust."²¹ Further, with regard to the use of force, the DOJ stated that the "CPD must root out these practices that harm CPD's interaction with the community."²² The failure to review and investigate complaints translates into "lost opportunities to identify misconduct . . . and hold officers and CPD accountable when misconduct occurs."²³

Youth experiences with CPD include dangerous retaliation from officers. For example, CPD had a practice of taking a "young person to a rival gang neighborhood, and either leav[ing] the

²⁰ 705 ILCS 405/5-301 et seq.

²¹ United States Department of Justice, *Investigation of the Chicago Police Department*, CIVIL RIGHTS DIVISION (JAN. 13, 2017), 139.

²² *Id.* at 16.

²³ *Id.* at 8.

[youth] there, or display[ing] the youth to rival members, immediately putting the life of that young person in jeopardy . . .”²⁴ Youth experiencing abusive or dangerous policing conditions are unlikely to receive accessible information about how they can report officer misconduct or receive legal assistance.

- [New] All notices, warnings, signs, complaint forms, community meeting invitations, and campaign materials should be written at a fifth-grade level to ensure comprehension, including by youth.
- Section 26: "CPD's Office of Community Policing will designate CPD members, as needed, to serve as points of contact for organizations to assist with access to police services including those serving communities that have experienced previous challenges with access to police services, such as LGBTQI individuals, religious minorities, immigrants, individuals with disabilities, homeless individuals, ~~and~~ survivors of sexual assault and domestic violence, and youth."
- Section 27: "CPD will facilitate relationships with youth by establishing regular meetings to serve as opportunities to provide input to CPD about the issues affecting their lives and their communities. Meetings with youth will be led by community leaders rather than CPD members and will be held at community-based organizations or other neutral locations. CPD will partner with community-based organizations to identify strategies to include participants that represent a racially, geographically, and socio-economically diverse cross section of Chicago youth, including, but not limited to, at-risk youth and youth who have been arrested, incarcerated, or otherwise involved in the criminal or juvenile legal systems. In furtherance of this objective, during every interaction with youth including but not limited to issuance of a contact card, stop and frisk, questioning or arrest, CPD must offer information about the next youth meeting and relay that it is an opportunity for youth to comment on their experiences with CPD.
- Section 428: "When a CPD member becomes aware of an individual who wants to make a complaint regarding a CPD member's conduct, he or she will promptly provide the individual with COPA's contact information and notify a supervisor of the complaint received in the field. In interactions with youth including but not limited to issuance of a contact card, stop and frisk, questioning or arrest, CPD members will affirmatively offer information about filing a complaint, regardless of prompting by the youth, and provide the youth with information on how to file a complaint by, at minimum, offering COPA's telephone number and the URL to COPA's online complaint form."

²⁴ *Id.* at 15.

Conclusion

We are eager to see the consent decree move forward and appreciate your continued attention to, and monitoring of, the ways in which Chicago's young people are particularly vulnerable to police abuse. Please let me know of any questions or if we may be of service to the court, monitor, or any party.

Sincerely,

A handwritten signature in cursive script that reads "Julie Biehl". The signature is written in dark ink and is positioned above the typed name.

Julie L. Biehl

Director