

To: Attorney General Lisa Madigan

Re: Proposed Policing Consent Decree with the City of Chicago

Date: August 17, 2018

For over 25 years, the Children and Family Justice Center (CFJC) has represented Chicago youth in conflict with the law. This representation forms the basis for our advocacy of law and policy that supports the unique developmental needs of young people. It requires deep familiarity with Chicago Police Department (CPD) practices.

As Chicago-based lawyers for children, we heartily endorse the US Department of Justice's conclusion that CPD has demonstrated a pattern or practice of unreasonable force that specifically includes the use of excessive force against minors. We support revisions to the proposed consent decree as outlined by community group plaintiffs in both suits (*State of Illinois v. City of Chicago* and *Campbell v. City of Chicago*) in the strongest possible terms.

The changes to the consent decree outlined by community groups can help to protect against the most egregious uses of force and promote accountability and transparency.

But changes to the way CPD interacts with young people should not stop there. Generations of young people in the City of Chicago have been subject to unconstitutional, undesirable, ineffective, and destabilizing police practices, many of which continue today. Against this backdrop, community policing efforts, police "youth programs," and trust-building exercises are theater.

Every former teenager should be able to recall how much young people abhor hypocrisy. Yet adults in Chicago government say they expect youth to look beyond their past experiences with law enforcement, to respect and cooperate with CPD. Chicago officials simultaneously permit or even encourage officers to: lie to young people about both law and fact; interrogate young people without counsel when not prohibited by law; escalate conflict by handling youth roughly even within each category of force; and engage in lower-level but constant and counter-productive harassment of youth (including following youth in public spaces, dispersing youth from public spaces, labeling youth as gang-involved, and insulting or threatening youth).

Youth exposed to these policing tactics are more likely to develop legal cynicism to such a degree that it can adversely affect not only their own life trajectories, but overall public safety.

For these reasons, we believe the consent decree should create clear and consistent policies in support of Chicago's young people and CPD's stated goal of procedural justice, and offer a few additional youth-specific recommendations:

CPD use of non-lethal force against minors must be fully investigated in every case and the “code of silence” about officer abuse of children must be broken.

An officer who immediately escalates an ordinary arrest or stop of a person under 18 to a “non-impact pain compliance” tactic without proper justification is not only in violation of CPD policy, but has potentially committed child abuse under IL law, especially if done in front of other children.

The officer who commits such an abuse, as well as every officer who witnesses it, including the officer's partner on scene or any supervisor reviewing video of the incident, are mandatory reporters of child abuse.

- External agencies should review CPD use of nonlethal force against minors as potential child abuse cases.
- CPD policies and internal reviews should clearly prohibit unjustified pain inflicted on minors.
- CPD officers must be held accountable to their duties as child abuse mandatory reporters concerning the pattern and practice of excessive nonlethal force against youth.

CPD policy should prohibit officers from interrogating minors outside the presence of counsel.

CPD has a long and well-documented history of coerced interrogations. Even if it did not, children cannot be expected to independently understand and exercise their constitutional rights. Children are routinely told they must obey adult demands, including demands for information, making otherwise lawful interrogations unreasonably coercive in effect. Given CPD's pattern and practice of excessive force, including against children, the consent decree should provide attorney representation for minors over and above state law requirements.

- An attorney should be present at every police interrogation of a minor.
- Information gathered from informal field interviews of youth should not be admissible against the minor interviewee.

CPD policy should prohibit officers from lying to minors or deceiving them about law or fact.

Children learn the law by adults telling them what it is, not independent statutory research. Additionally, young people often (incorrectly) believe that police are not allowed to lie to them.

Therefore, officers intentionally misstating any law or fact to youth is a highly coercive tactic that, if believed by a young person, is quite likely to result in a young person's will being overborne such that they are unable to effectively assert their constitutional rights. Conversely, when youth are able to recognize an officer's attempt at deception as such, they (often incorrectly) perceive the officer to be violating the law or engaging in official misconduct. This has largely the same effect: the perception of active police misconduct chills youth ability to assert constitutional rights (e.g., against unlawful search or self-incrimination).

Officer deception also operates as an escalation tactic that increases safety risks upon discovery. Youth perception that the officer is actively breaking the law or engaging in official misconduct with impunity can heighten youth fear that other misconduct – including unjustified physical force – is imminent.

- Intentional misstatement of law or fact to a minor should be prohibited misconduct.

CPD policy should explicitly prohibit officers from threatening minors with any force or violence outside of a verbal warning of lawful force.

The recent viral video in which an officer boasts to teenagers that he is “a killer” is not clearly outside the norm for youth in neighborhoods with high rates of police suppression tactics. We strongly recommend that City of Chicago officials and the Attorney General read (or re-read) the words of South Side teens interviewed by researchers at the University of Chicago concerning experiences with police, up to and including repeated threats of being shot, and being physically held in front of a moving train.¹

Any threat of physical violence against a young person is traumatic and coercive. An officer explicitly (or, as in claiming to be “a killer,” implicitly) threatening a minor with violent acts that would be impermissible uses of force if carried out under the circumstances is a threat to public safety.

- Threats of unlawful force against minors should be clearly prohibited and treated as major misconduct.

CPD policy should more clearly prohibit officers from insulting minors.

The DOJ report described police use of racial epithets, insults, and denigrating language, particularly toward teenagers. The report is consistent with what we hear from young people, including use of extreme epithets communicating unlawful bias against youth based on race, gender, gender identity, orientation, religion, and disability (including developmental or cognitive disability).

While CPD's Rules of Conduct technically prohibit disrespect to any person (Rule 8) and engaging in any "unjustified" verbal altercation (Rule 9), these rules are both underexplained and underenforced. Officers must be subject to routine and consistent discipline for any verbal abuse of Chicago's children.

Young people are also inadequately protected from insults that may not overtly communicate bias. When officers tell a young person that he or she is a "piece of shit" (DOJ at 146), specific animus against a protected class may be difficult to prove, but this not only harms youth self-image, but clearly communicates that the child's own government does not consider his or her life to have intrinsic value.

Similarly, officers sharing (true or false) personal information about youth can not only put youth safety in jeopardy, but be used to degrade or insult (e.g., "did you know your friend here is a thief").

- CPD policy should clearly prohibit disrespectful language toward minors.
- CPD policy should discourage communication with youth about sensitive matters in front of peers and prohibit information-sharing about youth that can damage their reputation or put their safety at risk.

CPD policy and practice should explicitly promote youth freedoms.

Chicago's suppression-style policing does not promote freedom of movement, assembly, association, or speech by young people. To the contrary, police actively discourage young people from being present in public settings and participating in group activities. As youth reported to the DOJ, the effect is that their neighborhoods feel like "open air prisons" where they are routinely profiled, stopped, and labeled as gang members (p. 143).

As a public safety agency, CPD's explicit goal should be to promote full use and enjoyment of the outdoors, including public space and public accommodation, by all of the city's children. Patrol officers may intuit that their job is easier if there are fewer youth in public for them to surveil, but this misunderstands the origins of public safety and purpose of their employment. Consistent with research indicating that earlier juvenile curfews **increase** incidents of gun violence,² the City of Chicago must not confuse the

disappearance of minors from the public sphere using constitutionally-questionable tactics for a public safety strategy.

- CPD training and public safety strategy should promote, not discourage, youth participation in public life.
- CPD orders to disperse should be limited, narrowly-tailored, diversion- and deescalation-focused, well-documented, and available for public review (with identifying youth details removed).

Thank you for considering these additional requests on behalf of Chicago youth.

¹ Futterman, Craig B.; Hunt, Chaclyn; and Kalven, Jamie (2016) "Youth/Police Encounters on Chicago's South Side: Acknowledging the Realities," *University of Chicago Legal Forum*: Vol. 2016 , Article 5.

Available at: <https://chicagounbound.uchicago.edu/uclf/vol2016/iss1/5>

² Carr, Jillian and Doleac, Jennifer L., Keep the Kids Inside? Juvenile Curfews and Urban Gun Violence (December 1, 2015). Available at SSRN: <https://ssrn.com/abstract=2486903> or <http://dx.doi.org/10.2139/ssrn.2486903>