**Coalition Comments on CPD’s Draft Fourth Amendment Policies**

**Submitted to CPD Portal on 9/9/24**

 CPD’s “Police Encounters and the Fourth Amendment” policy suite (G03-08, G03-08-01, G03-08-02 and G03-08-03) (“the Policies”) requires significant changes to ensure that CPD: (1) complies with the Consent Decree and federal and state law; (2) reduces the disparate impact of CPD’s street and vehicle stops on Black and Brown Chicagoans; and (3) rebuilds community trust in the police among Black and Brown communities impacted by CPD’s decades of illegal and discriminatory policing.

* **The policies must define and prohibit “pretextual” stops**—stops when officers detain a person on the street or in a car for an alleged traffic violation or other minor infraction, but the officers’ real purpose is to investigate other suspected criminal activity, such as possession of weapons or drugs, in the absence of reasonable articulable suspicion or probable cause.
	+ Pretextual stops significantly undermine community trust in police. Community members know that the minor infraction that allegedly caused the officer to stop them is not the real reason for the stop. People feel manipulated and misled when subjected to pretextual stops.
	+ Pretextual stops disproportionately impact Black and Latinx people in Chicago, as established by CPD’s own data reported under the Illinois Traffic and Pedestrian Stop Statistical Study Act.
	+ Ending pretextual stops will promote fairer policing and compliance with the Illinois Civil Rights Act, which outlaws police actions that have a disparate impact based on race or ethnicity.
* **The policies must prohibit temporary detentions for reasons unrelated to public safety.** For example, expired vehicle registrations and minor equipment issues that do not affect public safety should not be the basis for a traffic stop by CPD. Likewise, police should not stop individuals on the street for minor issues that do not affect public safety, such as jaywalking or drinking alcohol in public.
* **The policies must prohibit so-called “consent searches.”** Consent searches are not truly consensual because people feel pressured to agree to allow an armed police officer to search their car or belongings. Community members therefore perceive a request for “consent” to search as a trick – they are told the search is voluntary, but they know that the encounter could end in violence, arrest or worse if they refuse. Equally troubling, CPD officers disproportionately ask Black and Latinx community members for consent to search, compounding racial disparities that exist from the inception of the stop.
	+ **Similarly, officers must be prohibited from asking for “consent” to conduct a pat-down.** The Stop Report should revise boxes #49-53 and 56 to delete all suggestions that a pat-down may be conducted by consent. A pat down only may be conducted based on reasonable articulable suspicion that a person is armed and dangerous.
* **As mandated by the Illinois Civil Rights Act, the policies must require CPD to determine why Chicago police more frequently stop, frisk and search Black and Latinx people compared to white people** and analyze whether other law enforcement strategies could achieve the same or better public safety outcomes while reducing the disparate impact on people of color.
	+ CPD should set an express goal of reducing the disparate impact of its stop-and-frisk practices on people of color, and create a plan to meaningfully reduce these well-documented and long-standing racial disparities.
	+ CPD should conduct a holistic assessment of the alleged public safety benefits of stop-and-frisk practices and weigh those against the grave harms imposed on community members to determine whether CPD’s practices should be changed.
* **The policies must prohibit officers from conducting stops, frisks or searches that are motivated – even in part – by a person’s race, ethnicity, disability, gender, or other protected characteristics, as required by the U.S. Constitution and the Consent Decree.**
	+ The policies prohibit stops, pat-downs, and searches based “soley” on race, ethnicity, or another protected characteristic. They permit CPD officers to make stops, frisks, and searches that are motivated in part by a person’s race or ethnicity. This violates the Equal Protection Clause of the U.S. Constitution. Race and ethnicity are *never* constitutionally permissible grounds for a stop, frisk or search, except when they are part of a description of a specific person.
	+ The Consent Decree ¶¶55-56 also prohibit stops, frisks and searches based on race, ethnicity, or other protected characteristics.
	+ To ensure that CPD officers comply with the U.S. Constitution and the Consent Decree, the word “solely” must be removed from the policies.
* Likewise, the policies should remove “solely” from prohibitions on stopping people based on their decision to avoid contact with an officer, their presence in a location, or being with or near others suspected of criminal activity.
* The policies must prohibit officers from considering the following unreliable factors, which often mask discrimination, when deciding to stop, frisk or search: nervous or evasive behavior; furtive gestures, suspicious body movements; past criminal activity or behavior; time of day or night; and an officer’s unexplained “training and experience.”
* **The policies must require de-escalation and the least intrusive police response needed to ensure the safety of the public**. Specifically, the policies should prohibit the following escalatory and unnecessary actions, which are dangerous, and which humiliate, embarrass, and erode community members’ trust of police:
	+ The policies should **prohibit officers from ordering drivers and passengers out of their cars** without a reasonable and documented public-safety reason specific to the circumstances of the stop.
	+ The policies should **prohibit officers from handcuffing people during temporary detentions and searches absent an immediate threat** to the life or safety of the officer or another member of the public.
	+ The policies should **prohibit officers from pointing guns** at people during temporary detentions unless deadly force is authorized.
* **Consistent with ¶806(i) of the Consent Decree, the policies must** **prohibit stops and searches based on the alleged smell of cannabis—raw or burnt**. The policies must delete the instruction that the odor of burning cannabis establishes probable cause to search a vehicle and containers within it; and eliminate references to the “plain smell doctrine.”
* **The policies must specifically prohibit escalation and “trolling.”** The OIG has documented that CPD officers engage in “trolling” by intentionally escalating interactions with community members to receive overtime pay, a practice which increases danger to community members and decreases CPD’s perceived legitimacy.
* The policies must explain how CPD intends to solicit, incorporate and respond to **feedback** from the public regarding stop-and-frisk policies and practices on a regular basis. The feedback mechanisms should include working groups, focus groups, trained testers, and annual community surveys.
* The policies must specify that violations will result in **discipline**, up to and including termination, for officers who repeatedly violate community members’ rights in stop-and-frisk encounters or fail to report stops.
* The policies should **not allow officers to re-submit Stop Reports, even one time**, if the Stop Report fails to document factors that justify a stop, frisk or search; or fails to document a valid reason a Stop Receipt was not issued. Allowing re-submission of stop reports in these circumstances gives officers an opportunity to cover up illegal and unjustified stops.
* The policies should strengthen **supervision** and accountability mechanisms, including supervisor review of body-worn camera footage to verify that officers report every stop and truthfully report the circumstances of each stop. The Fourth Amendment Street Stop Review Unit also should review body-worn camera footage of stops that they audit.
* In addition to prohibiting consideration of the number of investigatory stops and frisks as part of “any bonus, incentive, or promotional process,” CPD also should **prohibit the number of investigatory stops and frisks to be considered in an officer’s performance evaluation in any way**, to avoid any incentives for officers to make more stops. On the other hand, CPD should account for how officers treat people during investigatory stops and temporary detentions—whether officers follow tenets of procedural justice, CPD policy, and all applicable antidiscrimination laws—in evaluating officer performance and consideration of bonuses, incentives, and promotions.
* In conducting its department-wide semi-annual review, TRED should evaluate and publicly report on whether particular units, districts, or teams of officers are more likely to violate the law or CPD policy when conducting stops, frisks and searches. TRED should make recommendations to remedy any such patterns.
* ISR data should be posted quarterly on CPD’s website, as CPD currently does. Publicly-posted ISR data should include the responsible officer’s last name and star number, in addition to the unit number. All Fourth Amendment documentation should be retained by CPD in a manner that allows compliance with prosecutors’ *Brady/Giglio* obligations to turn over records of unjustified stops committed by police officers when those officers are called to be witnesses in a case.