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Re: Coalition Comments on "Police Encounters and Fourth Amendment" Policy Suite

Dear Counsel and Monitor Hickey:

The Coalition writes to emphasize and expand upon on our September 9, 2024, comments on CPD's draft policy suite entitled "Police Encounters and the Fourth Amendment" (G03-08, G03-08-01, G03-08-02 and G03-08-03) ("the Policies").

As described more fully in this letter and in the line-by-line comments in the attached chart, consistent with the Consent Decree's guiding principles, the Policies must be significantly revised to accomplish three goals: clarity, nondiscrimination, and de-escalation. *See* Consent Decree ¶¶ 50-51, 161.

Clarity: The Policies should provide clear, actionable instruction to officers on best practices in their daily interactions with the public – not backward-looking legal jargon used by courts to evaluate an encounter that already may have harmed a member of the community. As described further in the chart below, there are many places where the policies require additional clarity to provide useful guidance for officers. For example, the policies should define the term "discretion" and incorporate that definition into narrative examples of police stops. Discretion is an officer's power to decide whether to take a certain action, such as a stop, frisk, search, or arrest. Legal standards from caselaw consider police actions retrospectively and only go so far to shape prospective decision-making. Officers need to know in advance how to utilize their discretion to

make lawful, professional decisions that honor the dignity and sanctity of human life. To accomplish this, the policies should build on the "Examples of Reporting Stops" (G03-08-02, Section V) section by using the same method to convey best practices and lawful, ethical, professional decision-making. The reporting scenarios are overall well-drafted, using active voice and narrative. That level of clarity is lacking in the "Investigatory Stops" directive (G03-08-01), which should be supplemented with concrete examples of how officers should act upon the listed guidelines and prohibitions when interacting with members of the public. There are also multiple other areas of all four Policies that require updating for consistency and clarity of language, as described in the chart below.

Nondiscrimination: The Policies should end harmful policing practices that disproportionately burden Black and Brown Chicagoans, and commit CPD to undertaking regular analysis of its data and policies to eradicate racially disparate impacts. Specifically, the Policies must expressly prohibit biased, coercive practices that disproportionately harm Black and Brown residents, especially pretextual stops, stops for low-level offenses such as vehicle equipment/registration issues, and so-called "consent" frisks (*see* G03-08-01 Section IV.H). Pretextual stops often escalate into unnecessary uses of force, particularly against Black and Brown community members. Pretextual stops also significantly undermine the community's trust in police, because people who are stopped for some alleged minor violation, such as a vehicle registration issue, know that the officer's true purpose for stopping them is not to address the minor infraction but to fish for evidence of other criminal behavior without reasonable articulable suspicion or probable cause, often based on harmful stereotypes that people of color are more likely to possess contraband or otherwise violate the law. The Policies also should correctly state that protective pat downs only may be based on reasonable articulable suspicion that a person is armed and dangerous, rather than suggesting that officers may ask for consent, which community members of color do not feel free to refuse.

De-escalation: The Policies should explain the categories of police-community interactions in order of least to most intrusive, and expressly require that officers de-escalate at each step. The Fourth Amendment policies should be consistent and read in conjunction with CPD's De-Escalation, Response to Resistance, and Use of Force Policy. *See* G03-02, Section II.B ("Department members are required to use de-escalation techniques to prevent or reduce the need for force, unless doing so would place a person or a Department member in immediate risk of harm, or de-escalation techniques would be clearly ineffective under the circumstances at the time."). The need for de-escalation is not limited to serious uses of force. Pretextual stops escalate the enforcement of minor statutes, with the goal of finding a reason to arrest the person stopped. This is why pretextual stops should be prohibited outright. In a similar vein, the policies must prohibit ordering drivers and passengers out of cars without a documented public-safety reason specific to the circumstances of the stop. They also must prohibit officers from handcuffing people during temporary detentions absent an immediate threat to safety and pointing guns at detained people where deadly force would not be authorized. Because these practices are inherently escalatory, the policies should classify them as unreasonable abuses of officer discretion. And, as discussed more specifically below, the Policies should clarify throughout that de-escalation is required before encounters "evolve." *See* G03-08-02, Section II.D.1.

Our line-by-line comments on the Policies are summarized in the charts below. We look forward to a constructive discussion about these Policies at our regular monthly meeting on December 11, 2024.

Sincerely,

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Police Encounters and the Fourth Amendment (G03-08)

Note: quoted language from the current policy drafts is set forth in red text. The Coalition's suggested alternative language is provided in blue text.

Coalition Comment	CPD Response
Global comment: The policy should define "pretextual stops" and prohibit officers from engaging in them because of the tight link between these encounters and unlawful racial and ethnic profiling. An officer makes a "pretextual stop" when they stop a person for an infraction in order to investigate other suspected criminal activity for which the officer has neither Reasonable Articulable Suspicion nor Probable Cause. *See, e.g.*, Baltimore Police Department Policy 1112, page 3 (Sept. 18, 2024). This could impact a person walking, riding a bike, or driving a vehicle. Police departments for other major metropolitan areas have policies that define, discourage or even outright prohibit pretextual stops. For example, Baltimore Police Department ("BPD") defines "Pretext Stops" as "[s]topping a person for an infraction to investigate other suspected or possible criminal activity for which the BPD member has neither RAS nor Probable Cause. Members must have RAS for the infraction or violation for which they are stopping a person." *Id.* That policy prohibits officers from "[c]onducting Pretext Stops that lack RAS that the subject has committed, is committing, or is about to commit a crime or on the basis of a person's race, national origin, or other demographic categories. Such stops may violate the Fourteenth Amendment, federal law, and BPD policies." *Id*. at 10, ¶ 35. The Seattle Police Department similarly defines and expressly prohibits its officers from engaging in pretextual stops. *See* Seattle Police Department Policy Manual 6.220-POL-2.7. "Pretext is stopping a suspect for an infraction to investigate criminal activity for which the officer has neither reasonable suspicion nor probable cause." *Id.* Immediately beneath this definition, the policy states that pretexts are forbidden under the Washington State Constitution. In line with the comments elsewhere in this letter regarding instruction on the use of discretion, the Seattle PD instructs officers how to perform their duties while abiding by the prohibition on pretextual stops. Regarding traffic stops, "officers will consciously and independently determine that a traffic stop is reasonably necessary in order to address a suspected traffic infraction." *Id.* Regarding any pedestrian or traffic stop during which an officer has authority to perform a protective pat down (or "frisk"), the policy states "a frisk will not be used as a pretext to search for incriminating evidence." 6.220-POL-2.6. The San Francisco and Los Angeles Police Departments have	

recently officially restricted the use of Pretext Stops. Both departments note the disparate racial impacts and breakdown of community trust inherent in the practice. SFPD's policy states: "Pretext Stop - A pretext stop occurs when a member conducts a traffic stop as a pretext to investigate whether the person stopped is engaged in criminal activity unrelated to the traffic violation." "Pretext Stops Restricted - Pretext stops produce little if any public safety benefits, while imposing substantial fiscal and societal costs. They may only be used in a manner that is consistent with this policy." "9.07.01 Purpose: The San Francisco Police Department's traffic enforcement efforts shall focus on ensuring the safety of our sidewalks and roadways. To that end, the goal of this General Order is to curtail the practice of stopping vehicles for low-level traffic offenses as a pretext to investigate hunches that do not amount to reasonable suspicion that a crime occurred. Pretext stops are disproportionately carried out against people of color and return negligible public safety benefits. The fiscal, human, and societal costs they impose on our City are unjustified in light of more effective public safety tools at the Department's disposal." San Francisco Police Department General Order 9.07, Eff. 07/17/24. LAPD's policy, 240.06 – Limitation On Use of Pretextual Stops, is a good example of comprehensive, straightforward language describing how officers should make decisions, with prohibited behavior and the disciplinary consequences clearly noted. Philadelphia, and Ann Arbor, Michigan have also banned Pretext Stops. CPD should incorporate this language and join these departments that explicitly disavow pretextual stops due to their harmful, disparate racial impacts. The ban on pretextual stops should be illustrated using scenarios describing officers' conscious decision-making in the course of conducting the different types of temporary detentions.	
Global comment: The Policies should prohibit officers from conducting investigatory stops and traffic stops for low-level violations that do not immediately affect public safety, consistent with the Consent Decree's requirement of de-escalation (*see* ¶¶ 153 *et seq.)*. We recommend inserting this prohibition in several places, with specific examples.	

G03-08, Section II; and G03-08-01, Section II both should add the following policy statement: "It is the policy of the Chicago Police Department that officers must utilize their discretion strategically and utilize de-escalation techniques to prevent or reduce the need for interactions with members of the public. Before initiating an interaction with a member of the public such as an investigatory stop or probable cause stop, officers must consider whether the interaction is necessary to promote public safety. Officers shall not initiate interactions that are not necessary to promote public safety." G03-08, Section V.B should instruct officers as follows: "Officers shall not initiate investigatory stops or probable cause stops for low-level violations that are not related to public safety. Officers shall not initiate investigatory stops or probable cause stops for the following alleged infractions: jaywalking; drinking in public; vehicle registration violations (e.g., missing sticker, missing front license plate or otherwise improperly displayed license plate); and vehicle equipment violations that do not affect road safety (e.g., having one unlit or broken headlight or taillight)." G03-08, Section VIII.A.5 should add that officers will be instructed during training that they are prohibited from initiating investigatory stops or probable cause stops for the reasons listed in the prior paragraph. Similarly, G03-08-01, Section IV, should add: "Department members are prohibited from … initiating investigatory stops or probable cause stops for low-level violations that are not related to public safety, including but not limited to: jaywalking; drinking in public; vehicle registration violations (e.g., missing sticker, missing front license plate or otherwise improperly displayed license plate); and vehicle equipment violations that do not affect road safety (e.g., having one unlit or broken headlight or taillight)."	
Global comment: The policies should define "discretion" and include more direct guidance to officers on how to make lawful, professional decisions in compliance with the law and the Consent Decree specifically. First, we recommend defining discretion in G03-08 Section IV: "Discretion - the power to decide within the limits of the law." *See* Discretion, Black's Law Dictionary. (12th ed. 2024) ("Freedom in the exercise of judgment; the power of free decision-making."); *id* Sole Discretion ("An individual's power to make decisions without anyone else's advice or consent.") Second, in several areas, the policies include judicial tests developed to retrospectively answer questions like, "Was this person temporarily detained or under custodial arrest?" But judicial analysis occurs long after	

the stop in question and, in most cases, excludes consideration of the officer's subjective intent. Here, these policies should inform officers' forward-looking decision-making about *whether or not they should detain or arrest a person in specific circumstances*. To this end, CPD should add narrative examples of the types of stops and searches where appropriate throughout G03-08-01. For instance, G03-08-02 Section V.A-D includes narrative scenarios demonstrating how to report stops. These exact scenarios, or others in the same basic style, can be easily used to illustrate de-escalatory, professional decision-making. Section V.B.3. is a good example: "An officer observes a man smoking a cigarette on a Chicago Transit Authority platform. The officer detains the individual and obtains his identification for the purpose of issuing an Administrative Notice of Ordinance Violation (ANOV). **During the detention, it is learned that the man just lost a family member. The officer decides to issue a verbal warning to the individual."** We suggest elaborating on that officer's decision: "Recalling the obligation not to escalate situations and to treat all people with dignity and courtesy, the officer decides to issue a verbal warning…". We are cognizant that use of discretion is covered to some extent in training. It also merits express discussion in these policies, as it is the key variable in any police interaction as far as the public is concerned.	
Global comment: Wherever it appears, the Reasonable Articulable Suspicion standard must state that the suspicion relates to a specific person and a specific crime. The definition in IV.J should state: "To have Reasonable Articulable Suspicion to conduct a temporary detention, an officer must possess specific and articulable facts that, combined with rational inferences from those facts, create a suspicion that the **specific** person is committing, is about to commit, or has committed a **specific** criminal offense." *See United States v. Adair*, 925 F.3d 931, 937 (7th Cir. 2019) (stating "*Terry* requires an individualized inquiry – an assessment of the facts and circumstances pertinent to a specific person); *United States v. Williams*, 731 F.3d 678, 688 (7th Cir. 2013) (holding a frisk of a person was unlawful where it was unsupported by "articulable facts that could establish specifically that [the person] was armed and dangerous.") Parallel changes should be made throughout the policies.	
Global comment: Related to the comment directly above, wherever the policies discuss the requirements of the Reasonable Articulable Suspicion standard, they should be clear that officers must document "facts" and not only "factors" in the narrative section of the Stop Report form. The Policies use the terms "fact" and "factor" inconsistently and imprecisely. There is a meaningful difference between these terms. Facts are concrete and specific, whereas factors are broad causal categories, as shown in the following definitions.	

Fact: 1. Something that actually exists; an aspect of reality <it is a fact that all people are mortal>. • Facts include not just tangible things, actual occurrences, and relationships, but also states of mind such as intentions and the holding of opinions. **2.** An actual or alleged event or circumstance, as distinguished from its legal effect, consequence, or interpretation <the jury made a finding of fact>. Fact, Black's Law Dictionary (12th ed. 2024) **Factor:** 1**.** An agent or cause that contributes to a particular result <punishment was a factor in the court's decision>. Factor, Black's Law Dictionary (12th ed. 2024) Facts and factors are both relevant and should both be documented. However, the way in which the policies currently use the terms interchangeably risks confusing officers. The preferred language is used in G03-08-02 Section II.D.2: "Members will not justify an investigatory stop solely by describing an individual's behavior as 'suspicious' without further articulating **specific facts** that the individual has committed, is committing, or is about to commit a crime." Following the instruction of Section II.D.2, the word "facts" should be substituted for the word "factors" throughout the Policies: G03-08-01 Section III.K.; G03-08-02 Section II.C.1.d, Section II.D; Section IV.B; and G03-08-02 Section V (throughout the Examples); and the draft Stop Report at Box # 48. For instance, Section V.C., Probable Cause Stop with a Search, states, "the officer observes various factors that develop [RAS]." This should be changed to "the officer observes various facts that develop [RAS]." Clarifying this distinction will promote the polices' goal of ending the use of boilerplate terms. A factor without facts is just a boilerplate term.	
Global comment: CPD must specify that violations of these Policies will result in discipline, up to and including termination, for officers who violate community members' rights. The prohibitions in these policies and explanations of legal standards carry little meaning if officers can violate the policies with impunity.	
Global Comment: The Policies refer to CPD officers inconsistently, variously using the terms "officers," "department members" and "sworn department members." CPD should standardize these references or, if different meanings are intended by these various terms, those differences should be defined and described in the Policies.	

Section III: Section III should be retitled: "Understanding Legal Authority: United States Constitution, Illinois Constitution, and the Illinois Civil Rights Act."

In addition to the text of the Fourth Amendment, this section should include the text of Section 1 of the Fourteenth Amendment; Article I, Section 6 of the Illinois Constitution; and Section 5 of the Illinois Civil Rights Act. The section should also include a short, high-level description of these sources of law, how they inform CPD policy, and how officers should follow and enforce them in their day-to-day decision-making.

We suggest the following: "The policies and procedures in this directive are governed by multiple sources of law, beginning with the United States and Illinois Constitutions. In line with the Chicago Police Department's mission statement, core values, and obligations under the Consent Decree, Department members will adhere to the letter and spirit of the law when exercising their discretion to perform Investigatory Stops, searches, and seizures of people or property. Constitutional law enforcement requires the protection of the people's civil and human rights.

Fourth Amendment
"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath and affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Ill. Const. art. I, § 6 – Searches, Seizures, Privacy and Interceptions
The people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means. No warrant shall issue without probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized.

Note: Temporary Detentions, Custodial Arrests, and uses of force are all "seizures" under the Fourth Amendment and Illinois Constitution, Art. I, Section 6. Pat Downs and Protective Search of a Vehicle are "searches." When an officer finds evidence of a crime during a lawful search, they can seize that evidence.

Most of the legal standards in these directives come from cases where courts interpreted the Fourth Amendment. Specifically, these directives concern the types of searches and seizures officers can perform without first obtaining a warrant signed by a judge. Since the Fourth Amendment forbids "unreasonable searches and seizures," the standards for officers to

perform these actions without a warrant are rooted in the concept of reasonableness. Officers are required to articulate facts supporting Reasonable Articulable Suspicion to ensure people are not subjected to unreasonable, warrantless searches and seizures. Fourteenth Amendment, Sec. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. Illinois Civil Rights Act of 2003, Sec. 5. (a) No unit of State, county, or local government in Illinois shall: (1) exclude a person from participation in, deny a person the benefits of, or subject a person to discrimination under any program or activity on the grounds of that person's race, color, national origin, or gender; or (2) utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, national origin, or gender. 740 ILCS 23/5. Note: Taken together, the Fourteenth Amendment, the Illinois Civil Rights Act, and other civil rights laws not cited here, mean that Department members must enforce the law equally. The law prohibits officers from making decisions based on stereotypes, bias, or animus, and also prohibits police practices that have an unjustified disparate impact based on race, ethnicity, and other protected characteristics. Officers must not engage in conduct with disparate impacts on racial minorities, disabled people, people with limited English proficiency, and other protected groups. Furthermore, this directive on Police Encounters and the Fourth Amendment should be read in conjunction with CPD General Order G0-02 - First Amendment Rights which, among other things, prohibits officers from stopping, seizing or searching people in retaliation for the exercise of their First Amendment rights.	
Section IV.A. and Section V.A. CPD should consider breaking the term "Consensual Encounter" into two distinct consensual interactions: Voluntary Contact and Field Interview. The Baltimore Police Department took this approach in their recent, analogous policy. Baltimore Police Department Policy 1112.	

CPD's Definition:

> Consensual Encounter - A voluntary contact between an officer and a person during which the person must feel free to walk away or leave the officer's presence at any time during the encounter.

BPD's Definitions:

A. Voluntary Contact - A non-investigative consensual encounter between a BPD member and one or more person(s) with the intent of engaging in a casual and/or non-investigative conversation (e.g., chatting with a local business owner or resident about community relations). During a Voluntary Contact, the person(s) is/are free to leave or decline any request by the member at any point.
B. Field Interview - A consensual, non-hostile contact or approach during which a member may ask questions or try to gain information for a legitimate law enforcement purpose related to a criminal or civil matter as long as the member does not indicate or imply that a person is not free to leave or is obligated to answer the member's questions.

BPD's terminology is preferable for several reasons. It provides significantly more detail than CPD's definition, which leaves out the officer's purpose for initiating the encounter. Closely related to the recommendation to define the term discretion and illustrate its application, these policies should emphasize the *purpose* of these police actions. The purpose of a "Consensual Encounter" is not merely to make sure a person feels free to leave; that is a legal requirement differentiating these interactions from detentions. Neither interaction is a detention, but there is a meaningful difference between striking up a conversation entirely unrelated to any investigatory purposes, and interviewing a witness. Also, Department members commonly use the terms "Field Interview" or "Witness Interview" and are likely to grasp the distinction between two types of Consensual Encounter.

Emphasizing "voluntary contacts" as a category of interactions with the public with no connection to detaining, searching, or arresting people is a positive step towards compliance with the Consent Decree's community policing principles. Voluntary Contact is a "non-investigative" interaction between police and the public. The Consent Decree requires CPD to "integrate a community policing philosophy" into its operations. Consent Decree, ¶ 9. "Strong community partnerships and frequent positive interactions between police and members of the public make policing safer and more effective." *Id.* at ¶ 8. BPD's Voluntary Contact definition

exemplifies those positive interactions such as "chatting with a local business owner or resident about community relations." This change would also further the presumed intent of Section V.A.6.a-o. This "list of factors relevant in the determination whether a police encounter with a person is consensual" is an objective, judicial test. These factors are relevant and useful for illustrating prohibited, intimidating police tactics. However, these factors are most germane in the context of litigating whether a person was legally seized or not. Unlike the courts examining those questions after the fact, officers should know their purpose for initiating an encounter: is it a Voluntary Contact or Field Interview? Basing the definitions on the purpose of the interaction is a more direct way to ensure officers do not exceed the scope of a consensual encounter.	
Section IV: The policies should define the term "Boilerplate" in this section and give more examples of prohibited boilerplate language. The Baltimore Police Department defines the term as: "Words or phrases that are standardized, "canned" or patterned and that do not describe a specific event, situation or set of circumstances (e.g., 'furtive movement' without describing what that movement was or 'fighting stance' without describing the body positioning involved)." Baltimore Police Department Policy 1112. The Policies use the phrase "boilerplate terms" at G03-08-02 Section III.B.2.c, but it is undefined. The policies also used prohibitory language from ¶ 815 of the Consent Decree at G03-08-01 Section IV.K. and G03-08-02 Section II.D.2: "CPD officers will not justify an investigatory stop solely by describing an individual's behavior as 'suspicious,' without further articulating specific facts that the individual has committed, is committing, or is about to commit a crime." These are positive changes. But to clarify the prohibition, CPD should define "Boilerplate terms," and include further examples of prohibited, standardized phrases. Spelling out which phrases are considered Boilerplate and insufficient to establish facts supporting Reasonable Articulable Suspicion or Probable Cause is a crucial step to ensuring officers are properly interpreting their legal authority and documenting the actual basis for stopping someone.	
Section IV: The polices should define the word "Contraband." Our suggested definition is: Contraband items consist of goods or merchandise, possession of which is prohibited by law. The policies should instruct officers that people are free to possess small bags or plastic prescription bottles in their pockets. Officers must not abuse the Plain Touch Doctrine by claiming they could recognize a	

legally-prohibited substance by feeling a bag or container through a person's clothes, when such bags or containers are not contraband in all circumstances. *People v. Mitchell*, 165 Ill. 2d 211, 228 (1995) ("Where an object is not readily identifiable [as contraband], probable cause is absent, and 'plain touch' provides no support for its seizure.").	
Section IV.I. The Policy's definition of "Public Place" misstates the law in numerous, serious ways and must be revised to remove reference to "the common areas of schools, hospitals, apartment buildings, office buildings, transport facilities, and stores." Although streets, highways, and parks that are public property are not disputed to be public places, the remaining locations in the list (schools, hospitals, apartment buildings, office buildings, transport facilities, and stores) are generally likely to be private property and, most importantly, the law is settled that people still have reasonable expectations of privacy in each location. This definition seriously misleads officers and elides the established judicial framework for Fourth Amendment analysis: "The fourth amendment protects people, not places." *Katz v. United States*, 389 U.S. 347, 351 (1967). Courts analyze these questions on a rigorous case-by-case basis, which this definition ignores. Officers must not violate people's expectations of privacy in their persons, papers, and effects in any of these places. Federal and Illinois law protect people's reasonable expectation of privacy in common areas of apartment buildings. *United States v. Whitaker*, 820 F.3d 849, 854 (7th Cir. 2016) (recognizing the "expectation of privacy in the common areas of a multi-unit apartment building."); *People v. Burns*, 2016 IL 118973, ¶ 37 (2016) (holding that a common landing in a locked apartment building is Fourth-Amendment-protected curtilage). The reasonable expectation of privacy in office buildings is also protected. "It has long been settled that one has standing to object to a search of his office, as well as of his home." *Mancusi v. DeForte*, 392 U.S. 364, 369 (1968); *see also United States v. Shelton*, 997 F.3d 749, 764 (7th Cir. 2021) (finding a reasonable expectation of privacy in the defendant's office and noting her "right to exclude the police, the public, and co-workers."). Commercial areas, including office buildings, are not categorically open to police inspection. *See People v. Janis*, 139 Ill. 2d 300, 317 (1990). A public school may be a public building in which, nevertheless, staff and students still enjoy reasonable expectations of privacy. "Portions of that	

office space such as a teacher's desk and locked file cabinets could conceivably be reserved for the teacher's exclusive use, giving rise to an expectation of privacy." *Plock v. Bd. of Educ. of Freeport Sch. Dist. No. 145*, 545 F. Supp. 2d 755, 757–58 (N.D. Ill. 2007). And private schools indisputably are private property. The law also protects people's expectations of privacy in their hospital room. *See People v. Pearson*, 2021 IL App (2d) 190833, ¶ 53 (2d Dist. 2021). The rights of doctors and hospital staff are similarly protected. *See O'Connor v. Ortega*, 480 U.S. 709, 719 (1987).	
Section IV. The defined terms A-J should be re-ordered to build on each other conceptually. In other words, the terms should progress from the least intrusive to most intrusive restriction on Fourth Amendment rights. This is a simple change that promotes understanding of the distinctions between legal concepts. Moreover, it reinforces the Consent Decree's requirement, and CPD's commitment, to de-escalation. As drafted, Consensual Encounter is a logical first term and the definition is free of other undefined terms. Whether CPD adopts the recommendation to divide Consensual Encounters into Voluntary Contacts and Field Interviews, this concept does not need to move in the list. However, the next term in the draft, Custodial Arrest, includes the terms Temporary Detention and Probable Cause before they are defined later in the list. We suggest the following re-ordering: A. Public Place B. Consensual Encounter (Voluntary Contact/Field Interview) C. Temporary Detention D. Reasonable Articulable Suspicion E. Investigatory Stop F. Protective Pat Down G. Plain Touch Doctrine H. Probable Cause I. Probable Cause Stop J. Custodial Arrest	
Section V.A: Whether or not CPD adopts the Voluntary Contact/Field Interview terminology, CPD policy should require officers conducting a Consensual Encounter to: (1) clearly identify themselves at the beginning of the encounter by announcing their identity and displaying departmental identification, including a badge (with an exception for undercover operations); (2) inform people that they are free to leave and to decline to	

answer any questions; and (3) to be respectful and keep the contact as brief as possible. Requiring officers to clearly identify themselves and explicitly state that people are free to leave and refuse to answer questions would promote community trust. As discussed above, the policies already contemplate the risk that officers' coercive conduct can transform a putative Consensual Encounter into an unlawful detention. These disclaimers directly mitigate that risk. Furthermore, they would promote trust by assuring community members that CPD officers take their rights and freedoms seriously. Communicating respect for individuals and their liberty may in fact promote productive police-community interactions.	
Section V.A.6: CPD should add the age of the individual to the list of factors in Section V.A.6 determining whether a police encounter is consensual. Youth are less sophisticated than adults and more likely to perceive officer actions and requests as a restraint on their freedom to leave.	
Section IV.B.2.b: This subsection, in its explanation that Probable Cause Stops are not limited to pedestrians, should specify that "drivers" of vehicles—rather than "occupants" of vehicles—may also be subjected to Probable Cause Stops. CPD has not shown that a passenger can be stopped based on Probable Cause of a Vehicle Code violation when the passenger is not driving the vehicle. *See People v. Gonzalez*, 184 Ill. 2d 402, 416 (1998) ("[A] traffic violation does not afford probable cause to stop a passenger, as it does for the driver."). While a vehicle passenger may be temporarily detained under *Terry* standards simply due to the fact that they were riding in a car that has been stopped by police, the temporary detention of the passenger is not a Probable Cause Stop. *People v. Bunch*, 207 Ill. 2d 7, 13-14 (2003) (holding that temporary detention and questioning of a vehicle passenger is a "more analogous to a *Terry* investigative stop"). This section should be revised to explain that a Probable Cause Stop of a driver does not, in itself, provide Reasonable Articulable Suspicion to question or pat down any vehicle passenger. Officers must have independent Reasonable Articulable Suspicion that the passenger is committing a crime before questioning them, and must have Reasonable Articulable Suspicion that the passenger is both armed and dangerous in order to conduct a pat-down of the passenger.	
Section V.B.2.c Note: This Note should be revised to use active voice with the officer as the subject of the sentences. The Note begins, "Detention can be fluid, and its status may change as the encounter	

evolves." We recommend instead: "Officers should have a clear understanding and intention when their actions escalate an encounter from a Temporary Detention to a Custodial Arrest, and officers must consider de-escalation at each step." The same revision should be made to G03-08-02 Section II.D.1.	
Section V.B.3: "Control" is an undefined term and should be deleted because it is confusing and overbroad. The subsection should be re-titled "Temporary Detention of Occupants of a Vehicle."	
Section V.B.3.a: The limitless discretion afforded officers to order a person out of a vehicle is highly problematic and does not adequately protect against the risk of escalatory, biased and procedurally unjust policing. Additionally, ordering a person out of a vehicle is likely to increase the risk that the stop will become unreasonably prolonged and therefore become unlawful. *See Rodriguez v. United States*, 575 U.S. 348 (2015) (holding that, absent Reasonable Articulable Suspicion, officers may not prolong a traffic stop beyond the time necessary to address the traffic violation that warranted the traffic stop); *United States v. Rodriguez-Escalera*, 884 F.3d 661 (7th Cir. 2018) (a vehicle stop in which an officer brought an occupant of the vehicle into the squad car for questioning was unlawfully prolonged). A reasonable limit on officers' discretion to order occupants out of a vehicle will protect against procedurally unjust outcomes and unlawfully prolonged stops, safeguard community trust, and limit discriminatory policing. Other police departments in major metropolitan areas have placed such reasonable constraints on officers' discretion in this area. For example, the Baltimore Police Department prohibits officers from "[o]rdering a motorist to exit a vehicle" unless the order is supported by the same Reasonable Articulable Suspicion that was the basis for the original stop, which is unlikely to be the case in a routine Probable Cause traffic stop, or the officer has "*additional* articulable justification for further limiting a person's freedom." Baltimore Police Department Policy 1112 at 7 (emphasis added). CPD should amend its policy to contain similar language, as follows. Section V.B.3.a should be revised as follows: "Officers shall not order the driver or passengers out of the vehicle during a lawful Temporary Detention without a reasonable and documented public-safety reason specific to the circumstances of the stop."	
Section V.B.3.b: As discussed above regarding Section IV.B.2.b, CPD must distinguish between drivers and passengers, rather than referring to "occupants" of a vehicle.	

Additionally, the current language, broadly asserting that officers may subject occupants of a vehicle "to the control of officers," will likely mislead officers into believing that the passenger of a lawfully stopped vehicle may be frisked without Reasonable Articulable Suspicion that the passenger is both armed and dangerous. CPD should clarify that no passenger in a vehicle may be subjected to a Protective Pat Down without Reasonable Articulable Suspicion that the individual is both armed and dangerous. Section V.B.3.b should be revised as follows: "Passengers of a lawfully stopped vehicle are Temporarily Detained and not free to leave, even though the officer may not have Reasonable Articulable Suspicion that a specific passenger has committed a specific crime. Passengers may not be subjected to a Protective Pat Down unless the officers has Reasonable Articulable Suspicion that the passenger is armed and dangerous.	
Section V.C: The section on Custodial Arrests is a key area where the policies need to do more to structure officer decision-making. This section is also framed in terms of backward-looking judicial analysis: "The following factors may be considered to determine if an Investigatory Stop has elevated to a Custodial Arrest: a. Duration of the encounter, etc." The syntax here creates a problem of substance because the stop is not "elevating" to an arrest, rather, the officer is arresting a person. In keeping with the comments on discretion throughout this letter, the decision to arrest is perhaps the most critical area where CPD needs to provide clear guidance. Rather than simply stating legal tests, this section should be expanded to explain facts that would or would not justify an officer utilizing their discretion to arrest a person in various circumstances. Section V.C.3 lists "circumstances that *may* justify an arrest." (emphasis added). Officers certainly need to know that information. The policies are silent, however, as to whether officers *should* arrest people under those circumstances. The policies should explicitly state that, consistent with the duty to de-escalate, Custodial Arrests are a last resort.	
Section VI.C.1: The Coalition appreciates the significant change in policy that now requires officers to have reasonable articulable suspicion before asking for consent to search a person. This is a beneficial change that is likely to reduce the chances for abuse and manipulation of members of the public. To fully explain the scope of this limitation for officers, we suggest the following addition after the current text of VI.C.1: "Officers are prohibited from asking individuals to consent to a search during Consensual Encounters [Voluntary Encounters/Field Interviews.]"	
Section VI.C.2: For consent to be truly voluntary, people need to be fully informed of their right to refuse to consent to a search. We suggest	

adding language to that effect: "Officers must inform the person that they have the right to refuse the search, and that if they refuse consent, a search will not be performed."	
Section VI.C.5: This subsection wrongly suggests that the burden falls on the consenter to affirmatively restrict the scope of the search. That is contrary to the law. A driver could, for example, limit the scope of a search implicitly by saying, "You may search the passenger compartment of my car," and need not say, "You may search the passenger compartment of my car but you may not search any other area." The Fourth Amendment only requires a sentence like the former in order for the search to be restricted. As phrased, Section VI.C.5 incorrectly implies that consenters must expressly *restrict* the scope of the search. To clarify, we suggest the following: "The consenter can restrict the place(s) to be searched by granting permission to search only a certain location and the officer must limit the search to the location approved by the consenter. The consenter may revoke consent to search at any time during the search and the officer must immediately end the search if consent is revoked."	
Section VI.D.1.b: This section on the plain view doctrine should clarify that the officer must be lawfully in a position from which to view the contraband. *See United States v. Shelton*, 997 F.3d 749, 767 (7th Cir. 2021). We suggest: "it must be immediately apparent to the officer, without manipulation of other objects, and from the officer's lawful vantage point, that the item is contraband prior to the seizure of the item." This change is important because officers must know that they must document and explain on a Stop Form how they were able to see the contraband in plain sight, and it will discourage officers from expanding the search into a general search of the vehicle or other location. Additionally, we believe the policy should incorporate the important principle stated in *Coolidge v. New Hampshire*, 403 U.S. 443, 466 (1971), that "the 'plain view' doctrine may not be used to extend a general exploratory search from one object to another until something incriminating at last emerges." We suggest adding in this section: "The Plain View Doctrine does not allow officers to make a general search of a vehicle."	
Section VI.D.2.a: This section should include clarifying language to ensure officers fully understand the "limited" scope of the protective search of a vehicle. *See Michigan v. Long*, 463 U.S. 1032, 1049 (1983). For example: "In other words, if an officer has Reasonable Articulable Suspicion that an occupant of a lawfully stopped vehicle is both armed	

and dangerous, a carefully limited search of the vehicle for weapons may be performed."	
Section VI.D.2.b: This language is overbroad. Instead of saying the search is limited to the passenger area of the vehicle, "*including*" certain places—language which implies the whole passenger area is up for grabs—the policy should accurately reflect the law. The search must be limited to only those places in the passenger compartment of the vehicle from which an occupant could reasonably obtain a weapon. *Michigan v. Long*, 463 U.S. 1032, 1049 (1983) (holding that the search must be "limited to those areas" of the "passenger compartment of an automobile . . . . in which a weapon may be placed or hidden"). We suggest: "The search is limited to the passenger area of the vehicle, the glove box, and any container inside the passenger area that can reasonably contain a weapon."	
Section VI.D.5: This section must be revised consistent with Paragraph 806(i) of the Consent Decree and recent Illinois caselaw. The "plain smell doctrine" has been rejected by the Illinois Supreme Court. *People v. Redmond*, 2024 IL 129201, ¶ 66 (2024) (holding "the odor of burnt cannabis, alone, is insufficient to provide probable cause for police officers to perform a warrantless search of a vehicle."). The section should be rewritten to prohibit officers from relying on the smell of cannabis – burnt or raw – to justify stops and searches. All references to the so-called "plain smell doctrine" should be removed from the Policies.	
Section VII. This section must explain in detail how CPD intends to solicit and incorporate feedback from the public regarding the implementation of these policies. The feedback mechanisms should include working groups, focus groups, trained testers, and annual community surveys. The Consent Decree exists to remedy the community's actual experience of being policed. CPD needs to take community feedback seriously to ensure that policies on paper are translated to changed officer behavior on the ground. Given that CPD rejected *all* of the community feedback generated and presented to Interim Superintendent Waller in 2023 as part of the Stop and Frisk Settlement Agreement, CPD needs to spell out how its processes moving forward will improve upon past efforts and will result in CPD *accepting and acting upon the community's recommendations.*	
Section VIII.5.b: This subsection omits the phrase "as soon as," used in ¶ 805(b)(i-ii) of the Consent Decree, which significantly alters the meaning of the Court's requirement. Without the "as soon as," the requirement that officers inform a person they have stopped that the person is being detained and not required to answer questions could be read as optional.	

The polices use the “as soon as” phrasing later in G03-08-01 Section VI.1.a-b. For consistency and because it is the better policy, CPD should use that phrasing exclusively.	

Investigatory Stops (G03-08-01)

Coalition Comment	CPD Response
Global Comment: The Investigatory Stops Policy (G03-08-01) requires the addition of concrete, scenario-based examples throughout the policy. For instance, the Guidelines in Section III of the policy should be amplified by adding at least one example under each of sub-paragraphs (A)-(I) to explain how officers are to act on each of these requirements during encounters with members of the public. Likewise, we recommend adding a specific example under each of the Prohibitions in Section IV, subparagraphs (A)-(L), showing how these prohibitions limit officers' actions and decisions in particular scenarios.	
Section II.G. 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.	
Section III.B Example: This is a restatement of legal standards and not a narrative example. However, this would be an apt location for a narrative example as described above.	
Section III.E: This section essentially prohibits unlawfully extending a Temporary Detention, but it is both confusing and inaccurate as written: "Unnecessarily prolonging an Investigatory Stop could make the temporary detention unlawful if probable cause does not exist for an arrest." By its terms, if the stop has been "unnecessarily prolong[ed]," then it is an unlawful, unreasonable seizure. Rather than defining a stop as one that lasts no longer than reasonably necessary, which does not indicate to officers that such language is an affirmative *requirement*, we recommend instructing officers clearly and directly: "Prolonging a Stop beyond what is necessary to issue a citation or warning, conduct a name check, or, if applicable, run a computer check on a vehicle's registration, will make the Stop unlawful if Probable Cause does not exist for an arrest."	
Section III.D.1-2: To reiterate the point made in reference to G03-08 Section V.A., officers should clearly identify themselves. Instead of a simple, categorical rule that officers verbally announce their identity as	

police officers, this section creates a complicated set of exceptions depending on what uniform the officer is wearing. The exceptions could swallow up the rule, and the result is that officers can read this to mean identifying themselves by name and rank as Chicago Police officers is not required. This section should be revised to plainly require announcing their identities when interacting with the public.	
Section III.F: Under Illinois law, during a temporary detention an officer "may demand the *name and address of the person and an explanation of his actions."* 725 ILCS 5/107-14(a) (emphasis added). However, an officer may not demand that a person produce a driver's license or other identification card (unless the person is driving a car and stopped for an alleged driving infraction). Therefore, the language in Section III.F should be changed as follows: "During an investigatory stop, persons may be asked ~~to identify themselves~~ to provide their name and address and to provide an explanation for their actions…" The current language may wrongly suggest that officers have a right to demand an identification card from individuals during investigatory stops, contrary to Illinois law.	
Section IV.D-G and I-K: Each of these prohibitions must remove the word "solely." As written, Section IV.G permits 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 prohibits stops, frisks and searches based on race, ethnicity, or other protected characteristics. Section IV.G must use the same language as Consent Decree ¶¶ 55-56. Additionally, utilizing the word "solely" in the other subsections wrongly suggests to officers that they could base an investigatory stop on a combination of these prohibited factors, such as a person's race *and* presence in a "high crime area." This will lead to unacceptable and unconstitutional racial profiling, as well as a waste of police resources devoted to investigatory stops that are based on stereotypes rather than actual public safety considerations.	
Section IV: This section should add that officers are prohibited 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." *See United States v. Williams*, 731 F.3d 678, 687 (7th Cir. 2013). As *Williams* states, many of these factors are not	

only insufficient, standing alone, to provide Reasonable Articulable Suspicion, they are generally "of very little import" to the Reasonable Articulable Suspicion determination. *Id.*	
Section IV: The list of "Prohibitions" also should add that CPD officers are forbidden from engaging in the practice of "trolling," where officers initiate and escalate stops at the end of their shift for the purpose of receiving overtime pay for processing paperwork. Trolling is a discriminatory practice that is deeply corrosive to community trust and generates wholly unnecessary danger to the public and officers.	
Section IV: The list of "Prohibitions" should add that CPD officers are forbidden from pointing guns at people during Temporary Detentions unless deadly force is authorized under CPD's Use of Force Policies.	
Section VI.B: Consistent with the Coalition's comments regarding G03-08, Section VI.C, stated above, this section should: - Prohibit officers from asking for consent to search a person during a Consensual Encounter/Voluntary Contact/Field Interview; - Require officers to inform people of their right to refuse consent and that if they refuse, a search will not be conducted; - Instruct officers that the consenter can restrict the place(s) to be searched by granting permission to search only a certain location and the officer must respect that limitation; and - Remind officers that the consenter can revoke consent at any time and the officer must immediately end the search if consent is revoked.	
Section V.A.1, NOTE: This Note should explain how the officer in the example "develops" Reasonable Articulable Suspicion that a person detained based on Probable Cause may be armed and dangerous to the officer or others nearby, based on specific behaviors by the person or other articulable facts directly observed by the officer. Please spell out the specific facts that would give rise to RAS in the example.	

Reporting Temporary Detentions (G03-08-02)

Coalition Comment	CPD Response
Section IV.H. The terms "act of furtherance" and "order to remain" are unclear and are not defined in this policy. They should be removed to use consistent language requiring that an officer can articulate facts supporting Reasonable Articulable Suspicion that an occupant of a vehicle has committed a specific crime before the officer extends a detention to run a name check or perform other investigatory actions to confirm or dispel their articulated suspicion.	
Section V.A: This section should include several examples of Investigatory Stops that are not based on a specific description of a person. We suggest one example for a pedestrian and one for a driver. Officers need to be instructed about when they can stop a pedestrian and a driver for investigatory reasons that are related to the officer's immediate observations of the person's behavior (rather than a flash message containing information that someone else observed). Additionally, there should be one or more examples of when an officer is *not* permitted to stop a pedestrian or a driver because the observed behaviors and circumstances do *not* support Reasonable Articulable Suspicion that the individuals are committing crimes.	
Section V.C: This subparagraph should explain how the officer in the example "develops" Reasonable Articulable Suspicion that a driver may be armed and dangerous, based on specific behaviors by the driver or other articulable facts directly observed by the officer. Additionally, this section should indicate that the officer's search of the vehicle is a limited, protective search of the places in the passenger compartment from which the driver could reasonably obtain a weapon.	
Section V.D: This subparagraph contains an example of a "consensual encounter" where the officer "did not detain any of the individuals," without explaining (as required) that the officer *had no factual basis* to detain anyone and therefore *must not* detain anyone.	

Department Review of Temporary Detentions (G03-08-03)

Coalition Comment	CPD Response
Global comment: At each level of review – supervisory, executive, 4th Amendment Street Stop Review Unit, and external audit – CPD must review body-worn camera footage of a sample of stops that may have resulted in policy violations, such as stops where officers report using force. It is impossible to verify whether officers are complying with law and CPD policy unless CPD utilizes camera footage to independently verify whether stops, frisks and searches were legally supported and truthfully recorded.	
Section II.A.1-2: CPD should permit a "Deficiency Rejection" of a Stop Report only when the supervisor identifies purely ministerial errors—never for incomplete or improperly completed checkboxes, fields, or narratives relating to the factors leading to, or reason for the Investigatory Stop, Protective Pat Down or search. The following types of errors would be a sufficient basis for a Deficiency Rejection, as currently stated in the definition: "misspellings, typographical errors, grammatical errors, [and] punctuation errors..." However, the definition of "Deficiency Rejection" should delete the following: "incomplete or improperly completed fields; lack or omission of some factors of the totality of the circumstances that support Reasonable Articulable Suspicion to conduct the Investigatory Stop, Protective Pat Down, or other search; failure to document a valid reason a receipt was not issued; failure to document a valid reason a receipt was not issued; or failure to match the hard copy with the submitted electronic version." Additionally, Section II.A. should include the following: "Note: No Deficiency Rejection will be issued based on incomplete or improperly completed checkboxes, fields, or narratives concerning the factors leading to, or reasons for, an Investigatory Stop, Protective Pat Down, or search." CPD's proposed process would allow officers to change substantive information after the fact, which precludes adequate accountability and analysis of CPD's Consent Decree compliance.	
Section III.A.3. This section confusingly asks for the reasonable articulable suspicion "that justified the request for consent to perform a Protective Pat Down…" But this contradicts the instruction in G03-08, Sections III.H, and VI.A.1, that a Protective Pat Down only may be justified based on RAS that a person is armed and dangerous. There is no such thing as a "consent frisk." Accordingly, III.A.3 should delete "Protective Pat Down or other…"	

Section IV.C: 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.	
Section IV.D.3: The policy should explain how an executive officer is to randomly select 10% of the Stop Reports from each unit to review. Additionally, units with fewer than 10 Stop Reports should be audited—not exempted from the audit on the basis that they qualify for a "negative report." If there are fewer than 10 Stop Reports, an executive officer should review all the Stop Reports from that unit.	
Section V.B: The Policy must set out the exact date when CPD's "annual Stop Report analysis" will be completed, e.g., March 1 of each year to analyze the data for the prior calendar year. The Policy also should require CPD to regularly and publicly report the status of its progress on: (a) the development of CPD's data plan pursuant to ¶¶ 836-37 of the Consent Decree; and (b) the development of CPD's plan for "taking over the responsibility for obtaining and publishing future independent subject matter reports from the Monitor," pursuant to ¶ 844.	
Section V.B: CPD must use its own data to identify racial disparities in Investigatory Stops, Probable Cause Stops, Protective Pat Downs, and searches, and consider how to minimize those stark racial disparities. CPD's current practice of publishing certain data to the public is insufficient because CPD does not currently utilize the data in a self-critical fashion. Currently, section V.B. only states, "The Department will… conduct an annual Stop Report analysis to identify any patterns, trends, or emerging concerns relative to Department Investigatory Stops." Should the Department discover a pattern of racial disparities, the Policies are silent as to what CPD is obligated to do with that information. The Policies must set out remedial measures and goals for correction where CPD's data shows trends of discrimination against protected classes of people.	
Section VIII. 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 criminal case.	
Section IX. This section should state that CPD will continue to post ISR data on its website quarterly (rather than annually), 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.	

Global Comment: The policy should require CPD to release public quarterly reports tracking the following:
 	
• The total number of stops, frisks, and searches citywide;
• The total number of stops, frisks and searches aggregated by:
  • race, national origin, gender and age;
  • police district and beat;
  • consent to search;
  • arrest;
  • justification for stop, frisk or search; and
  • discovery of contraband, specifying the type and amount of contraband	

Global Comment: The policy should require CPD to promptly provide data and cooperation to ensure the Office of Inspector General can cross-reference stop records, arrest records, and use of force reports to determine whether an individual's inclusion in a gang database and/or the Strategic Subject List results in an unnecessarily escalated police response.	