IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

STATE OF ILLINOIS,	)	
Plaintiff,	)	Case No. 17-cv-6260
	)	
V.	)	Honorable
	)	Robert M. Dow, Jr.
CITY OF CHICAGO,	)	
Defendant.	)	

Comments of The Chicago Council of Lawyers Civil Liberties Committee on Proposed Consent Decree Reforming Chicago Police Department

The Chicago Council of Lawyers (CCL) is a long-standing, local, progressive bar association that has been actively involved in police oversight for over a decade. We supported the creation of Chicago Independent Police Review Authority (IPRA), and the more recent creation of the Chicago Office of Police Accountability (COPA). We have held nine annual forums on police accountability in Chicago.

The Civil Liberties Committee of the CCL has reviewed the provisions of the proposed consent decree between the Illinois Attorney General's Office and the City of Chicago regarding proposed reforms to the Chicago Police Department, and submits these comments.

A. General Comments

In the Committee's view, the proposed consent decree represents a significant first step forward in improving the operations and oversight of the Chicago Police Department (CPD). The consent decree should provide that it is a floor rather than a ceiling for future possible reforms.

As the Mayor's Police Accountability Task Force recognized, problems with the performance and oversight of the CPD go back many years and include a

number of disturbing incidents in the decades leading to the Laquan McDonald shooting. (See Task Force Report at pp. 6-7.) The McDonald shooting is a recent incident demonstrating the lack of trust that currently exists between the Chicago Police Department and many of the communities that it serves.

A Consent Decree, enforced by a Monitor appointed by the court, is needed to ensure that necessary reforms in the operations and oversight of the Chicago Police Department are actually carried out. The federal court's involvement will greatly increase the probability that the meaningful reform will actually occur which can restore a measure of trust between the CPD and the public.

We are pleased that new section 441 of the September 23, 2018 draft Consent Decree provides that Chicago will use its best efforts to ensure that COPA has jurisdiction to investigate allegations of sexual misconduct by Chicago Police Officers, and that new section 442 provides that Chicago will ensure that COPA has appropriately trained and experienced staff for such investigations. Currently complaints of sexual misconduct by Chicago Police Officers (other than complaints of domestic violence) are investigated by Police Officers in the Bureau of Internal Affairs (BIA) of the CPD. The CCL Board of Directors adopted in June, 2018 a resolution urging that COPA (and not BIA) be authorized to investigate complaints of sexual harassment and sexual assault by Chicago Police officers. The CCL made this recommendation because,

> [A] woman who has been sexually harassed or assaulted by a police officer probably will be reluctant to tell her story to another police officer. Moreover, assigning a BIA police officer to investigate a complaint of sexual harassment or assault against a fellow officer in another division does not guarantee independent investigations.

B. Specific Suggestions for Additional Provisions

The Civil Liberties Committee has the following observations and suggestions regarding the proposed consent decree:

1. Foot Chase Policy: The current draft (at paragraphs 168-172) provides, among other things, for a 180 day study as to whether a written policy is necessary regarding foot chases. We believe that there is little need for further study and no reason to delay immediate adoption of a foot chase policy along the lines that many other jurisdictions have adopted. As those policies elsewhere recognize, foot chases pose significant risks to both officers and suspects involved in them. Such chases are generally not justified in the absence of a significant and

immediate risk to the public or officers involved. Such chases have also resulted all too frequently in the use of excessive (and sometimes deadly) force by pursuing officers. We know enough to mandate adoption of a policy now.

2. Paragraph 20 gives the CPD 180 days to develop and institute a policy prohibiting the "transport of individuals with the intent to display or l eave them in locations where known rivals or enemies live or congregate." We believe there is no reason for a 180 day delay in adopting such a policy. The consent decree should expressly prohibit "the transport of individuals with the intent to display or leave them in locations where known rivals or enemies live or congregate." If CPD or its officers have any difficulty understanding that prohibition, they can propose any changes or clarifications in that policy to the Court or the Monitor within 180 days of the entry of the decree.

3. Paragraph 429 regarding the website for CPD officers anonymously to report officer misconduct should have the following additional sentence added to it: "Every class at the Academy will be informed about the website and a reminder will be sent yearly to all members of CPD." Doing so would be likely to make the website more effective.

4. Paragraph 440 regarding reports to be investigated by COPA includes as subparagraph e(v): "Other weapons discharges and other uses of CPD-issued equipment as a weapon that result in death or serious injury, at the COPA Chief Administrator's discretion." We would eliminate the last phrase giving the COPA discretion not to investigate in cases of death or serious bodily injury. All such cases should be investigated and reported on by COPA.

5. Paragraph 446(b) provides that a complainant will be notified within "60 days" of a final disciplinary decision. This period unduly delays such a notice. There is no justification provided for such a lengthy delay, particularly when others involved in the process receive such notification without delay. The period should be changed to "no more than 14 days."

6. Paragraph 570 provides that CPD will make "reasonably available documents" related to reportable uses of force available to the appropriate investigative agency. We believe the phrase "reasonably available" provides too much discretion to the CPD, especially in light of past failures to make street files available to others. We would change the phrase to "any and all available documents" and make CPD spell out and justify any instances in which providing such documents would be unduly burdensome.

7. Paragraphs 575 through 580 require the creation of a Force Review Unit and a Force Review Board within CPD. We would add a requirement that both bodies be required to publish at least annual public reports regarding their work, in the interests of transparency and accountability.

8. Paragraph 596 provides that supervisors are to assess performance of their subordinates using an "automated electronic system." The paragraph requires the supervisors' performance of this duty to be monitored for compliance. We recommend that that automated notices be sent to the next level up in the supervisory structure if the supervisors in the level below fail to fill out those monthly reviews of officers. This should reduce the chances that a practice will develop of supervisors ignoring or overlooking this duty.

9. Paragraph 609 requires that CPD review and revise forms on an annual basis regarding "use of force, arrests, interactions with individuals in crisis and the disciplinary process." We suggest that a sentence be added to this paragraph requiring the Information Systems Development Group of the CPD to issue an annual report on their work, any recommendations they have put forward for changes, the responses they have received, and any changes that have been made to plans to implement changes, in the interests of transparency and accountability.

10. Paragraph 616 requires that the judge pick from a set of two proposed monitors if the parties are unable to agree on the identity of the monitor. We believe that the judge should be given greater discretion to select from any of the proposed monitors who have responded to the request for a proposal, rather than being limited to the two proposed by the two parties. This will give the judge greater latitude to pick the best possible monitor if the parties are unable to agree on one.

11. Paragraph 622 requires the parties to submit annual reports to the Court about the performance of the Monitor. The Decree generally provides that the Monitor's work is not public and is not subject to FOIA requests. (See next point.) We recommend that these reports regarding the Monitor's performance be made public, at least after the Court has had an opportunity to review the reports and (if appropriate) convene a hearing. The Monitor's performance is a of great public concern, and any issues related to that performance should be open to public notice and debate.

12. Paragraph 675 provides that records maintained by the Monitor will not be deemed public records and will not be subject to FOIA requests or discovery in

any litigation. We believe this provision is overbroad. At a minimum we would suggest that the Monitor determine which of its records need to be treated in confidence and withheld from public view, and that once the decree has been terminated, the Monitor's records should all be opened to public inspection.

13. Paragraph 730 defines "Best Practices" and gives CPD the ability to adopt its preferred procedure if there is a conflict as to what constitutes a particular best practice. The definition should include a requirement that any option selected by CPD must not only mirror the purposes of the Decree, but also be consistent with applicable City Ordinances, State and Federal law.

14. The Decree provides at various places for deadlines that are to be met. Presumably the Monitor will check for compliance with those deadlines and take appropriate measures to remedy any failures to meet the deadlines. However, the Decree should expressly require the Monitor to do so and publicly to report on such efforts.

15. Arrestees Access to Telephones. We understand that the CPD does not make telephones available to arrestees until the end of an initial interrogation period that can last hours or days. The proposed consent decree should mandate that phone must be made available to arrestees within one hour of their arrests or within a similar clearly defined period.

16. Finally, we recommend encouraging the Monitor to work with the CPD to adopt a Code of Ethics for Officers, similar to the Codes of Ethics that Doctors, Attorneys and other professionals and industries utilize. Even in instances where officers are cleared or "exonerated" of rule violations, there may be instances in which it would be appropriate to spell out circumstances in which the officers may have acted legally, but less than ethically. In such instances, the ethical lapses should still be noted.

We appreciate the Court's consideration of these comments.

Respectfully Submitted,

The Civil Liberties Committee

of the Chicago Council of Lawyers

By: _____

One of its Co-Chairs

David R. Melton, Co-Chair

Carl Royal, Co-Chair

Gordon Waldron, Co-Chair

Civil Liberties Committee of the Chicago Council of Lawyers