



December 6, 2024

Larry B. Snelling
Superintendent of Police
Chicago Police Department
3510 South Michigan Avenue
Chicago, Illinois 60653

Re: Chicago Police Department Response to COPA Recommendations on Prohibitions of Sexual Misconduct (G08-06)

Dear Superintendent Snelling,

The Civilian Office of Police Accountability (COPA) has reviewed the Chicago Police Department's (CPD) response to COPA's policy recommendations for Prohibitions of Sexual Misconduct (G08-06), effective June 21, 2023.¹ COPA appreciates CPD's response and willingness to incorporate several of our recommendations into the policy. COPA is following up on CPD's response to ask for additional clarification on some items and to further discuss COPA's policy recommendations. Below, COPA assesses and provides reasoning for whether each recommendation has been "fully addressed," "partially addressed," or "not addressed" in CPD's response. COPA is also separately submitting an email to CPD's Legal Counsel to request training materials related to several topics mentioned below.

- 1. Partially Addressed – The Department accepted COPA's recommendation to include language about the range of discipline for violations of this policy if separation is not the default disciplinary outcome.** Section II, Subsection B of the revised policy now states:

*The Department has a **zero tolerance** for sexual misconduct, and it is strictly prohibited. The Department will make every effort to prevent such conduct and hold Department members accountable for any violations of this policy. Consistent with the Department directive titled "Complaint and Disciplinary System," Department members may be disciplined up to and including separation from the Department for violations of this policy.*

However, the Department should remove the term "zero-tolerance" from the policy for further clarity. It is not necessary, and labor law research regarding sexual harassment policies indicates that the term "zero-tolerance" is often used inconsistently in policy, leading to misinterpretations about how employers enforce policy and address policy violations. Sexual harassment policies have historically applied the term "zero-tolerance" literally, meaning the offense would always result in discipline, and in its strictest form, result in separation for the first offense. Today, policies often apply the term figuratively, meaning the conduct is still strictly

¹ See COPA letter to CPD regarding the Prohibitions of Sexual Misconduct (G08-06) policy on May 31, 2024.

prohibited but the disciplinary action varies by violation.² To ensure the Department’s sexual misconduct policy is clear, the Department should remove the “zero-tolerance” language because it may suggest the literal use of the term, which does not align with the realities of the Department’s disciplinary system due to the requirements of the disciplinary process (e.g., progressive discipline and possible reductions in discipline in later parts of the disciplinary process).³ Such a “zero-tolerance” standard would also be incompatible with the approach to supervisory prevention and intervention of sexual misconduct in Section VI, Subsection D, which states “[s]upervisors of all ranks are held accountable to prevent, identify, and correct adverse officer behaviors.” A literal “zero-tolerance” standard would require separation instead of correction of adverse behaviors, which could be a “disproportional and inappropriate response”⁴ for certain behaviors and could potentially create unintended consequences, such as a reduction in reporting as Department members may fear automatic separation of the accused.⁵

When reiterating the prohibition against sexual misconduct in this section of the policy, the language would be more clearly stated as:

The Department strictly prohibits sexual misconduct. Consistent with the Department directive titled “Complaint and Disciplinary System,” Department members will be disciplined up to and including separation from the Department for violations of this policy.

2. *Partially Addressed* – The Department stated it has policies that address lockup procedures for searching arrestees; however, those existing policies should be referenced and may need to further address sexual misconduct in lockup facilities.

- a. The Prohibitions of Sexual Misconduct (G08-06) policy should, at a minimum, reference the Department directives that address lock up procedures in Section III, Subsection C and outline which existing general and special orders for “Processing Persons Under Department Control” apply to lock up facilities.⁶ This would be in alignment with other instances where relevant procedures and policies are referenced and linked to (e.g., the reference to guidelines for pat down procedures in the Investigatory Stop System directive). Lock up facilities are a context with specific relevance to sexual misconduct due to the control staff have over the people being processed and the elevated risk for inappropriate strip searches, custodial searches, or other contact.

² Roehling, Mark V. (2020). The Effective Use of Zero Tolerance Sexual Harassment Policies: An Interdisciplinary Assessment. *Labor Law Journal*: Summer, 90-96.

³ See G08-01, Complaint and Disciplinary System (effective December 29, 2023 to present).

⁴ Society for Human Resource Management. (September 1, 2009). Legal Trends: Anti-harassment.

⁵ Society for Human Resource Management. (March 8, 2024). Review EEOC’s Proposed Guidance Before Investigating Harassment.

⁶ See G06-01-01, Field Arrest Procedures (January 28, 2022 to present); G06-01-02, Restraining Arrestees (effective December 8, 2017 to present); G06-01-03, Conducting Strip Searches (effective December 8, 2017 to present); S06-01-04 Arrestee Identification Process; S06-01-07, Required Lockup Standards and Reporting (effective February 29, 2012 to present); S06-01-02, Detention Facilities General Procedures and Responsibilities (effective January 28, 2022 to present).

b. The Department stated it can further review existing signage in lock up facilities regarding what information is given to individuals in lock up for reporting sexual misconduct. The current arrangement and language used for signage was not provided and how such a review would be done, including the timeline, was not made clear either. Depending on the location and characteristics of signage, the opportunity for observing information about reporting sexual misconduct could be limited. Signage should be highly visible and intentionally placed in areas that allow enough time and access for an individual to fully review. There should also be specific directions on how people can obtain information or resources regarding sexual harassment, sexual abuse, and retaliation and a version of that should be verbally or physically provided directly to detained individuals upon arrival at a lock up facility.⁷ The Department should also directly communicate that it partners with community-based agencies, as referenced in Section IX of the policy.

3. **Fully Addressed – The Department accepted this recommendation and revised Section V by expanding the specific prohibitions for sexual misconduct.** However, the Department should review the location and language for Item V.B.4.b. and Note V.B.14. as they may have been unintentionally switched. Specifically, Item V.4. discusses a member’s authority on or off duty, aligning with Note V.B.14. which discusses member conduct on or off duty. Likewise, Item V.14. discusses the use of Department resources, aligning with Item V.B.4.b. which discusses law enforcement resources and information systems.
4. **Not Addressed – The Department’s response does not address member conflicts of interest with community members involved in a police investigation or police response.** The Department referred to its “Conflicts of Interest” (G08-01-03) policy, which focuses on conflict of interest explicitly for Log Number Investigations and disciplinary decisions.⁸ The Department should address conflicts of interest that go beyond complaint investigations, specifically when it comes to Department member personal relationships with members of the community who are arrestees, suspects, witnesses, or victims in the context of a *police investigation or police response*. See COPA’s recommendation regarding inherent (and sensitive) power, vulnerability, and trust dynamics.⁹
5. **Partially Addressed – The Department stated it has policies that address pat down procedures and gender preferences; however, these existing policies need further review due to the allegations of sexual misconduct COPA has received in past complaints.**¹⁰ The Department should further examine pat down procedures in the Investigatory Stop System (S04-13-09)¹¹ and procedures to respect individual gender preferences and accommodations in Interactions with

⁷ See COPA letter to CPD regarding the Prohibitions of Sexual Misconduct (G08-06) policy on May 31, 2024; Copple, James E., and Patricia M. Dunn. *Gender, Sexuality, and 21st Century Policing: Protecting the Rights of the LGBTQ+ Community, Appendix B. Sample Policy: Sexual Misconduct*. Office of Community Oriented Policing Services. 2017.

⁸ See G08-01-03, Conflict of Interest (effective December 31, 2022).

⁹ See COPA letter to CPD regarding the Prohibitions of Sexual Misconduct (G08-06) policy on May 31, 2024.

¹⁰ See COPA Logs 2019-0001059, 2019-0003821, 2019-0004971, and 2022-0001827.

¹¹ See S04-13-09, Investigatory Stop System (effective July 10, 2017 to present).

Transgender, Intersex, and Gender Nonconforming (TIGN) Individuals (G02-01-03).¹² These are specifically referenced by the Prohibition of Sexual Misconduct (G08-06) policy, which is appropriate and relevant due to the personal nature of the contact that pat downs involve. The Department should also conduct a transparent assessment of any related training(s) that might prevent inappropriate or unnecessary physical contact, as outlined in COPA's initial recommendation letter. COPA may consider specific recommendations about such policies and training in the future.

6. Fully Addressed – The Department accepted COPA's recommendations by incorporating the language on member use of Department information systems and personal social media outlets into the policy.

- a. The policy now specifies member use of Department resources in Section V, Subsection 4, Item b and references the Access to Computerized Data, Dissemination and Retention of Computer Data (G09-01-01).¹³
- b. The Department made effective the Use of Social Media (G09-01-06)¹⁴ and the Prohibitions of Sexual Misconduct (G08-06) policy now outlines social media prohibitions for Department members in the Note under Section V, Subsection 9.

7. Not Addressed – The Department contended the directives listed in COPA's recommendation do not address member sexual misconduct. While the directives do not directly address sexual misconduct, they provide relevant guidance on interacting with people in settings and situations that present certain risks for sexual misconduct. At a minimum, the Note for Section VI, Subsection B, Part 2 should reference the directives related to the populations mentioned in the note, as those directives outline expected member conduct when interacting with people who have a perceived or actual vulnerability or when otherwise operating in situations where people are in a vulnerable state or situation. This is similar to how the policy references the Investigatory Stop System (S04-13-09) and Interactions with Transgender, Intersex, and Gender Nonconforming (TIGN) Individuals (G02-01-03) when addressing pat down procedures in Section V, Subsection B, Part 6.¹⁵ Generally, the Department should adopt and maintain a consistent approach to referencing and linking other directives when they provide relevant requirements and procedures for members.

8. Not Addressed – The Department stated the policy outlines mandated reporting for Department members, but the policy should provide additional information on mandated reporting for Department members. The policy should reference the specific laws on mandatory reporting, such as the Illinois Abused and Neglected Child Reporting Act¹⁶ and other

¹² See G02-01-03, Interactions with Transgender, Intersex, and Gender Nonconforming (TIGN) Individuals (effective June 30, 2021 to present); S04-13-09, Investigatory Stop System (effective July 10, 2017 to present).

¹³ G09-01-01, Access to Computerized Data, Dissemination and Retention of Computer Data (effective February 3, 2012 to present).

¹⁴ See G09-01-06, Use of Social Media Outlets (effective June 24, 2024).

¹⁵ See G02-01-03, Interactions with Transgender, Intersex, and Gender Nonconforming (TIGN) Individuals (effective June 30, 2021 to present); S04-13-09, Investigatory Stop System (effective July 10, 2017 to present).

¹⁶ ILCS 325, Section 5, Abused and Neglected Child Reporting Act.

relevant law enforcement training requirements.¹⁷ This would be similar to the Department’s approach in Older Adults At Risk (S02-01-07)¹⁸ outlining law enforcement responsibilities under the Illinois Adult Protective Services Act.¹⁹ Additionally, the Department may consider developing a mandated reporting policy delineating Department member requirements and procedures specifically for reporting child abuse or neglect. Alternatively, the Department may consider developing a policy that outlines mandated reporting more generally to address the many contexts where Department member mandated reporting applies. Such a policy could serve as a helpful place for CPD members to refer to in any situation related to mandated reporting. If developed, the mandated reporting policy should then be referenced in Department policies where applicable, including the Prohibitions of Sexual Misconduct (G08-06) policy.

9. The Department responded to each of COPA’s policy recommendations regarding sexual misconduct prevention, early warning signs, and peer intervention measures. These are assessed individually below.

- a. *Partially Addressed* – COPA will request relevant Department member training for further review and evaluation.
- b. *Not Addressed* – If the Department incorporates the model policies’ early warning signs of sexual misconduct (or explains why they were excluded) in its upcoming policy review, this would partially address COPA’s recommendation.²⁰ However, to fully address this recommendation, the Department should provide an update regarding the status of the Officer Support System (OSS) Pilot Program (D20-04) including current program expectations and the plan for continued implementation.²¹ The OSS Program should also incorporate the model policies’ early warning signs of sexual misconduct.
- c. *Partially Addressed* – While the Use of Social Media (G09-01-06) policy makes it clear that Department members’ social media content *can* be reviewed, the process for doing so is still unclear (e.g., who is responsible for the review). This uncertainty also exists in Section VI of the Prohibitions of Sexual Misconduct (G08-06) policy, where the role of supervisors in prevention and intervention (Subsection D) does not mention or reference the review of social media content. The Department should more clearly outline the review process for member social media content in both the Use of Social Media (G09-01-06)²² and the Prohibitions of Sexual Misconduct (G08-06) policies. Also,

¹⁷ Illinois Law Enforcement Training and Standards Board, 3-Year Mandate Training Requirements for Reporting Child Abuse and Neglect.

¹⁸ See S02-01-07, Older Adults At Risk (effective August 26, 2020).

¹⁹ ILCS 320, Section 20, Adult Protective Services Act.

²⁰ See COPA letter to CPD regarding the Prohibitions of Sexual Misconduct (G08-06) policy on May 31, 2024; Stinson, Philip M., Taylor, Robert W., and John Liederbach. “The Situational Context of Police Sexual Violence: Data and Policy Implications.” *Family & Intimate Partner Violence Quarterly* 12, no. 4 (Spring 2020) 59-68; Tremblay, Thomas, Archambault, Joanne S., Kimberly A. Lonsway. Model Policy Resource: Law Enforcement Sexual Misconduct Prevention and Accountability. *End Violence Against Women International*. December 2022.

²¹ See D20-04, Officer Support System (OSS) – Pilot Program (effective June, 30 2022 to present).

²² See G09-01-06, Use of Social Media Outlets (effective June 24, 2024).

the Use of Social Media (G09-01-06)²³ review processes should be cited, where relevant, in the Prohibitions of Sexual Misconduct (G08-06) policy.

- d. *Not Addressed* – The Department did not indicate it currently performs routine audits of Department member performance for potential warning signs of sexual misconduct or that it will implement such a process in the future. The Department stated during the next review of the policy, it will consider the recommendation.
- e. *Partially Addressed* – The Department explained how a supervisor can request a confidential log number; however, the Department should make available a comprehensive set of actions for supervisors to prevent further sexual misconduct or retaliation. COPA will request relevant Department member training for further review and evaluation.
- f. *Not Addressed* – COPA will request relevant Department member training for further review and evaluation.

10. Fully Addressed – The Department stated COPA’s recommendation for developing a victim advocacy group directory will be directed to the appropriate Department unit. Once the directory is implemented on the Department’s intranet system, the Department should notify COPA of the location of the addition.

11. Partially Addressed – The Department referred to the Bureau of Internal Affairs (BIA) annual report, which contains statistical information about sexual misconduct allegations. This annual report provides limited information about sexual misconduct allegations and no information about possible prevention and detection efforts.²⁴ The BIA annual report provides the number of sexual misconduct allegations handled by BIA or District Accountability Sergeants. COPA’s recommendation stated the Department should publish an annual report on sexual misconduct that focuses on 1) assessing prevention and detection efforts (e.g. supervision, early-warning systems, etc.), 2) evaluating the Department’s professional standards, 3) reviewing training practices and procedures (e.g. for pat-downs), and 4) identifying and responding to any outstanding policy violations (e.g. corrective action). The Department should accordingly expand on the information included in the BIA annual report, or provide such information in the CPD annual report or a separate report.²⁵ This would not only indicate an ongoing and intentional effort to understand and prevent the issues represented by the statistics, but also an effort to address recommendations made by COPA and other organizations about those issues.

Thank you for considering COPA’s initial and follow-up recommendations on this important topic. As mentioned previously, COPA will also be requesting various training materials related to policies and trainings mentioned in this letter. This is part of our ongoing commitment to work collaboratively with CPD to operationalize recommendations. COPA requests a response to the above recommendations

²³ See G09-01-06, Use of Social Media Outlets (effective June 24, 2024).

²⁴ See Chicago Police Department (2024) Bureau of Internal Affairs Annual 2023 Report.

²⁵ Chicago Police Department (2024) 2023 Annual Report.

from the Superintendent of Police or a designee within 60 days, pursuant to Section 2-78-130(b) of the Municipal Code of Chicago.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Andrea Kersten', with a stylized flourish at the end.

Andrea Kersten
Chief Administrator
Civilian Office of Police Accountability

cc:

Angel Novalez, Chief of Office of Constitutional Policing, Chicago Police Department
Allyson Clark-Henson, Deputy Managing Director, Chicago Police Department
Dana O'Malley, Chief of Staff, Chicago Police Department
Scott Spears, General Counsel, Chicago Police Department
Justin Escamilla, Deputy Chief Administrator, Civilian Office of Police Accountability
Morgan McGuirk, Research Associate, Civilian Office of Police Accountability