

APRIL 2018

CITY OF CHICAGO OFFICE OF INSPECTOR GENERAL

EVALUATION OF THE CHICAGO POLICE DEPARTMENT'S COMPLIANCE WITH THE FIREARM OWNERS IDENTIFICATION CARD ACT





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APRIL 25, 2018

TO THE MAYOR, MEMBERS OF THE CITY COUNCIL, THE CITY CLERK, THE CITY TREASURER, AND THE RESIDENTS OF THE CITY OF CHICAGO:

The Public Safety Section (PS) of the City of Chicago Office of Inspector General (OIG) has concluded an evaluation regarding the Chicago Police Department's (CPD) compliance with the clear and present danger reporting requirements for law enforcement agencies under the Illinois's Firearm Owners Identification (FOID) Card Act ("the Act"). OIG launched this inquiry after receiving a complaint in January 2017 that expressed concern about CPD's process of returning firearms to individuals who had threatened suicide.

The Act states,

"If a person is determined to pose a clear and present danger to himself, herself, or to others... by a law enforcement official or school administrator, then the law enforcement official or school administrator shall, within 24 hours of making the determination, notify the [Illinois State Police (ISP)] that the person poses a clear and present danger." See 430 ILCS 65/8.1(d)(2).

"Clear and present danger," as applicable to law enforcement officials, means,

"a person who... demonstrates threatening physical or verbal behavior, such as violent, suicidal, or assaultive threats, actions, or other behavior, as determined by a physician, clinical psychologist, qualified examiner, school administrator, or law enforcement official." See 430 ILCS 65/1.1.

To fulfill this reporting obligation, law enforcement officials are required to complete and submit to ISP a "Person Determined to Pose a Clear and Present Danger" form each time law enforcement makes such a determination.

The PS evaluation determined that CPD has not operated in compliance with the clear and present danger reporting requirements under the Act. The evaluation focused on subset of situations in which it is highly probable that CPD members interacted with an individual posing a clear and present danger pursuant to the Act's definition as applied to law enforcement agencies. Specifically, PS identified 37 incidents between December 6, 2013, and April 29, 2017, in which CPD transported an individual, from whom they recovered a firearm, to a mental health facility. Of those 37 incidents, in only one did CPD make and report a clear and present

determination to ISP. More generally, CPD reported one other clear and present determination to ISP, regarding an incident that did not involve the transportation of an individual to a mental health facility.

The subset of 37 incidents identified by OIG does not represent the universe of all possible situations (nor can OIG calculate the total number of situations) in which CPD members interacted with an individual posing a clear and present danger. However, given the Act's sweeping definition of "clear and present danger" (including physical and/or verbal behavior, whether suicidal or directed at another, and with no requirement that a weapon of any kind be involved) and complete lack of exceptions to law enforcement "clear and present danger" reporting requirements, OIG holds that the number of "clear and present danger" situations likely far exceeds the two reported incidents.

As a result of CPD's noncompliance with the Act, individuals who should not be entitled to possess a firearm under federal or state law continue to exercise that legal right due to CPD's inaction. Furthermore, without CPD reports of clear and present danger to ISP following the recovery and subsequent inventorying of a firearm, CPD may be returning firearms to individuals whose FOID Cards ISP would otherwise have revoked. In a time of continuing high incidence of gun violence in Chicago, and as part of a comprehensive crime strategy, full compliance with the Act's reporting requirement provides CPD a key mechanism by which to prevent unnecessary gun violence and keep firearms away from those who are not legally entitled to their possession. Given the nature of its officers' duties, specifically their interaction and engagement with individuals in active crisis and/or hostile situations, CPD holds the unique and essential position in the scheme of preventative gun violence as the assessor of clear and present danger and prompt for investigations by ISP into whether an individual should be entitled to possess a firearm. Anything less than full compliance with the Act's law enforcement reporting requirement creates cracks through which individuals, likely to harm themselves or others with firearms, may fall.

PS recommends that CPD institute agency directives that require CPD employees to complete and submit the "Person Determined to Pose a Clear and Present Danger" form to ISP within 24 hours after making the determination that an individual poses a clear and present danger, and ensure that all officers have access to the form during their shifts. CPD should also create relevant curricula and provide adequate training for current and new employees that includes: 1) an introduction to the FOID Card Act, with special attention paid to CPD's reporting duties and the importance of the information being provided to ISP; 2) guidance on what constitutes clear and present danger; and 3) instruction on how to properly complete and submit the "Person Determined to Pose a Clear and Present Danger" form and identification of other necessary documentation that should be submitted to ISP along with the form.

CPD concurred with PS findings and recommendations and indicated that it has taken the following steps to bring the Department into compliance with the Act:

- Drafted and began the implementation process for a standalone directive that instructs its officers as to the reporting requirements, definition of “clear and present danger,” and process for properly reporting individuals to ISP using the “Person Determined to Pose a Clear and Present Danger” form pursuant to the Act;
- Revised existing directives to include information regarding law enforcement reporting requirements; and
- Updated the Police Academy’s “Legal Issues and Law Enforcement Response” training curricula to reflect CPD’s reporting obligations pursuant to the Act.

We thank CPD management and staff for their cooperation, especially those individuals in the Office of the General Counsel, Evidence and Recovered Property Section, Firearm Investigation Team, Crisis Intervention Team, and Research and Development, whose assistance was central to this evaluation.

Respectfully,

A handwritten signature in blue ink, appearing to read 'J. Ferguson', is positioned above the printed name.

Joseph M. Ferguson
Inspector General
City of Chicago

I. EVALUATION BACKGROUND

The Public Safety Section (PS) of the of the City of Chicago Office of Inspector General (OIG) has concluded an evaluation that determined that the Chicago Police Department (CPD) has not operated in compliance with the clear and present danger reporting requirements for law enforcement agencies under the Illinois's Firearm Owners Identification (FOID) Card Act ("the Act").¹

The Act states,

If a person is determined to pose a clear and present danger to himself, herself, or to others... by a law enforcement official or school administrator, then the law enforcement official or school administrator shall, within 24 hours of making the determination, notify the [Illinois State Police (ISP)] that the person poses a clear and present danger.²

To fulfill this reporting obligation, law enforcement officials are required to complete and submit to ISP a "Person Determined to Pose a Clear and Present Danger" form each time law enforcement makes such a determination.³

CPD reported to OIG that the Department has submitted only two "Person Determined to Pose a Clear and Present Danger" forms to ISP between December 6, 2013, the effective date of the Act's law enforcement reporting requirement,⁴ and April 7, 2017.⁵ Information OIG collected during this evaluation indicated that CPD should have submitted significantly more than the two it submitted to ISP during the period. As a result of CPD's noncompliance, ISP did not receive the mandatory notifications and information needed to trigger a determination of whether to deny or revoke a FOID Card. In addition, the shortfall in timely, consistent, or proper reporting clear and present danger situations to ISP may be resulting in CPD returning firearms to individuals whose FOID Cards ISP may otherwise have revoked.

¹ OIG received a complaint in January 2017 that expressed concern about CPD's process of returning firearms to individuals who had threatened suicide. Following a review of CPD directives and interviews with CPD officials, OIG narrowed the scope of its inquiry to CPD's compliance with the FOID Card Act's clear and present danger reporting requirement for law enforcement agencies.

² 430 ILCS 65/8.1 (d)(2). As further discussed below, the FOID Card Act defines a "clear and present danger," as applicable to law enforcement officials, as occurring when a person "demonstrates threatening physical or verbal behavior, such as violent, suicidal, or assaultive threats, actions, or other behavior, as determined by a physician, clinical psychologist, qualified examiner, school administrator, or law enforcement official." 430 ILCS 65/1.1.

³ ISP's "Person Determined to Pose a Clear and Present Danger" form is available at: <http://www.isp.state.il.us/docs/2-649.pdf>.

⁴ Public Act 98-600 of the 98th Illinois General Assembly (2013-14) added the clear and present danger reporting obligation for law enforcement officials to the FOID Act and had an effect date of December 6, 2013.

⁵ CPD submitted the two forms to ISP on February 13, 2017, and March 17, 2017. CPD submitted the latter form following OIG's initiation of this review.

II. FOID CARD ACT & CLEAR AND PRESENT DANGER REPORTING REQUIREMENTS

The Act states,

It is hereby declared as a matter of legislative determination that in order to promote and protect the health, safety and welfare of the public, it is necessary and in the public interest to provide a system of identifying persons who are not qualified to acquire or possess firearms, firearm ammunition, stun guns, and tasers within the State of Illinois by the establishment of a system of Firearm Owner's Identification Cards, thereby establishing a practical and workable system by which law enforcement authorities will be afforded an opportunity to identify those persons who are prohibited by Section 24-3.1 of the Criminal Code of 2012, from acquiring or possessing firearms and firearm ammunition and who are prohibited by this Act from acquiring stun guns and tasers.⁶

The Act, moreover, authorizes the ISP "to deny an application for or to revoke and seize a Firearm Owner's Identification Card previously issued... only if [ISP] finds that the applicant or the person to whom such card was issued" meets certain enumerated criteria. These criteria include, but are not limited to, "a person whose mental condition is of such a nature that it poses a clear and present danger to the applicant, any other person or persons or the community."⁷

To ensure that ISP receives information pertinent to the denial or revocation of a FOID Card, the Act requires a number of state and local agencies and individuals, in their official capacity, to notify ISP of persons who pose a clear and present danger, under specific circumstances.⁸ Of relevance to OIG's review, the Act mandates that law enforcement officials notify ISP of persons they have "determined to pose a clear and present danger to himself, herself, or to others" within 24 hours of making the determination.⁹ As applicable to law enforcement officials, the Act defines "clear and present danger" as a person who "demonstrates threatening physical or verbal behavior, such as violent, suicidal, or assaultive threats, actions, or other behavior, as determined by a physician, clinical psychologist, qualified examiner, school administrator, or law enforcement official."¹⁰

⁶ 430 ILCS 65/1.

⁷ 430 ILCS 65/8(f). See 430 ILCS 65/8 for additional grounds under which ISP may deny an application for or revoke a FOID card.

⁸ These Illinois agencies and officials include: the Circuit Clerk, the Department of Human Services, school administrators, and law enforcement officials. In addition, the FOID Card Act requires Illinois-based physicians, clinical psychologists, and qualified examiners to notify the Department of Human Services of persons who pose a clear and present danger. 430 ILCS 65/8.1.

⁹ 430 ILCS 65/8.1(d).

¹⁰ 430 ILCS 65/1.1 (emphasis added). "Clear and present danger" is also defined by the Act as "a person who... communicates a serious threat of physical violence against a reasonably identifiable victim or poses a clear and imminent risk of serious physical injury to himself, herself, or another person as determined by a physician, clinical psychologist, or qualified examiner," with no mention of law enforcement officials. As such, law enforcement

The definition of clear and present danger applicable to law enforcement officials is broad, and potentially applies to a high number of people CPD members may encounter. For instance, CPD and ISP agree that an individual need not possess a weapon for the Department to determine that he or she poses a clear and present danger.

To facilitate reporting, ISP created the “Person Determined to Pose a Clear and Present Danger” form, which requires reporting officials to complete and submit, along with any supporting documentation, to ISP.¹¹ Once notified, ISP is charged with making a determination, per enumerated statutory grounds, as to whether or not to deny an application for or revoke an individual’s FOID Card.¹²

officials are not required to determine “clear and present danger” in accordance with this alternative definition. See 430 ILCS 65/1.1. See also 20 Il. Admin. Code 1230.120.

¹¹ While school administrators and law enforcement officials are required to use the “Person Determined to Pose a Clear and Present Danger” form to report individuals to ISP, reporting protocols differ for physicians, clinical psychologists, and qualified examiners, which is beyond the scope of the current project. See 430 ILCS 65/1.1.

¹² 430 ILCS 65/8.

III. DETERMINING CPD WAS NOT IN COMPLIANCE WITH THE STATE OF ILLINOIS' CLEAR AND PRESENT DANGER REPORTING REQUIREMENTS

OIG requested electronic copies of all "Person Determined to Pose a Clear and Present Danger" forms CPD members completed and submitted to ISP. In addition, OIG conducted interviews with Department personnel. In response, the Department provided copies of two forms CPD members had submitted to ISP between December 6, 2013, and April 7, 2017.¹³ While OIG cannot calculate the total number of situations in which CPD members interacted with an individual posing a clear and present danger as defined and applicable to law enforcement officials under the Act during the time period under review, OIG holds that the number of situations likely far exceeds the two reported incidents.

In an effort to identify a subset of situations in which it is highly probable that CPD members interacted with an individual posing a clear and present danger, OIG focused on CPD incidents that involved a Non-Criminal Mental Health Transport with a recovered and inventoried firearm. A Non-Criminal Mental Health Transport incident occurs when a CPD member transports an individual to a mental health facility.¹⁴ These incidents do not result in the arrest of the individual and, under CPD orders, are classified as "non-criminal."¹⁵ In accordance with the Department's Incident Reporting Guide, members are required to use the non-criminal mental health transport classification (IUCR-5079) "when Chicago Police transport [a] mentally ill person to [a] hospital."¹⁶

While many interactions with individuals with mental health concerns are unlikely to involve a clear and present danger component, CPD's Special Order S04-20-02, "Persons Subject to Involuntary or Voluntary Admission Non-Arrestees," states,

A peace officer may take a person into custody and transport him or her to a mental health facility when the peace officer has reasonable grounds to believe that the person is subject to involuntary admission and in need of immediate hospitalization to protect such person or others from physical harm.¹⁷

Situations involving both a Non-Criminal Mental Health Transport incident and the recovery and inventory of a firearm are indicative of a situation in which an individual

¹³ CPD submitted the two forms to ISP on February 2, 2017 and March 17, 2017. CPD submitted the latter form following OIG's initiation of this review.

¹⁴ CPD orders and forms use the term "hospital" and "mental health facility" interchangeably.

¹⁵ City of Chicago, Chicago Police Department, "Incident Reporting Guide," accessed January 23, 2018, http://directives.chicagopolice.org/forms/CPD-63.451_Table.pdf

¹⁶ City of Chicago, Chicago Police Department, "Incident Reporting Guide," accessed January 23, 2018, http://directives.chicagopolice.org/forms/CPD-63.451_Table.pdf

¹⁷ Special Order S04-20-02 also states that "supervisors may authorize Department transportation to a mental health intake facility for persons seeking voluntary admission when, in their judgment, a police purpose is served."

posed a clear and present danger either to him/herself or others.¹⁸ CPD Special Order S04-20-01, “Responding to Incidents Involving Persons in Need of Mental Health Treatment” states,

If a person is in need of mental health treatment, and... is armed, Department members will not attempt to take the subject into custody without the specific direction of a supervisor unless there is an immediate threat of physical harm to the subject, Department members, or others.¹⁹

While this subset of incidents does not represent the universe of all possible situations in which CPD members interacted with an individual posing a clear and present danger, it provides an illustrative example of situations in which it is likely that a CPD member determined that an individual posed a clear and present danger and, per the FOID Card Act, should have subsequently completed and submitted to ISP a “Person Determined to Pose a Clear and Present Danger” form.

OIG requested an inventory of all incidents occurring between December 6, 2013, and April 29, 2017, that involved both a Non-Criminal Mental Health Transport and the recovery and inventory of a firearm. CPD reported a total of 37 incidents during this period.²⁰ Yet, CPD submitted only one “Person Determined to Pose a Clear and Present Danger” form for the 37 incidents of this kind.²¹

¹⁸ As discussed above, an individual need not possess any weapon for a CPD member to determine that he or she poses a clear and present danger. Likewise, a mental health diagnosis, crisis, or the need for a Non-Criminal Mental Health Transport are not necessary elements for a CPD member to determine that an individual poses a clear and present danger.

¹⁹ In the analysis that follows, OIG did not assess whether Department members transported individuals because they were directed to do so by their supervisors or because there existed an immediate threat of physical harm. In addition, OIG did not review the criteria supervisors consider when directing CPD members in these situations.

²⁰ OIG did not evaluate the 37 case incident reports to confirm that the Non-Criminal Mental Health Transports were executed in compliance with relevant General and Special Orders. In addition, OIG did not evaluate whether the 37 transports were for voluntary or involuntary admission. The analysis assumes that CPD recovered the firearm due to the individual’s mental health state and that the weapon(s) recovered were from the person and not recovered subsequent to the transport as the result of some other investigation.

²¹ During this period, CPD also reported a clear and present danger determination resulting from an incident that did not involve a Non-Criminal Mental Health Transport to ISP on February 13, 2017. CPD provided OIG information regarding a separate clear and present danger investigation dated October 6, 2017, which is after the period of review covered in this report, related to an IUCR-5080 Non-Criminal – Other Non-Criminal Persons incident. (CPD, moreover, did not provide OIG a copy of a completed ISP “Person Determined to Pose a Clear and Present Danger” form relating to this incident). Of note, the latter incident did not involve the recovery and inventory of a firearm.)

A. CPD'S DIRECTIVES AND TRAINING DID NOT ADDRESS THE DEPARTMENT'S CLEAR AND PRESENT DANGER REPORTING REQUIREMENTS

After conducting interviews with CPD officials, OIG determined that no CPD directive advised personnel on how to make a determination of clear and present danger using the specific description and guidance outlined in the FOID Card Act. CPD officials stated that they originally believed that mental health facilities carried the burden of reporting incidents involving a Non-Criminal Mental Health Transport.

Further, no CPD training, either mandatory or voluntary, instructed CPD employees to complete and submit the "Person Determined to Pose a Clear and Present Danger" form within 24 hours of a clear and present danger determination.

IV. OIG RECOMMENDATIONS TO CPD TO ENSURE COMPLIANCE WITH THE FOID CARD ACT

To ensure compliance with the FOID Card Act, CPD should,

- institute agency directives that require CPD employees to complete and submit the “Person Determined to Pose a Clear and Present Danger” form to ISP within 24 hours after making the determination that an individual poses a clear and present danger;²²
- ensure that all officers have ready access to the “Person Determined to Pose a Clear and Present Danger” form during their shifts; and
- create relevant curricula and provide adequate training for current CPD employees and new recruits that includes:
 1. an introduction to the FOID Card Act, with special attention paid to CPD’s reporting duties and the importance of the information being provided to ISP;
 2. guidance on what constitutes clear and present danger; and
 3. instruction on how to properly complete and submit the “Person Determined to Pose a Clear and Present Danger” form and identification of other necessary documentation that should be submitted to ISP along with the form.

²² CPD should not rely on external parties, such as healthcare professionals or others, to fulfill the Department’s notification responsibilities under the Act.

V. EVALUATION CONCLUSION

CPD's noncompliance with the State of Illinois' FOID Card Act is of particular concern because the Department failed to provide ISP with the mandatory notifications and information necessary to trigger a determination to deny or revoke a FOID Card. By extension, individuals who should not be entitled to possess a firearm under federal or state law continue to exercise that legal right due to CPD's inaction. If CPD is not reporting incidents of clear and present danger to ISP following the Department's recovery and subsequent inventorying of a firearm, CPD may be returning firearms to individuals whose FOID Cards ISP would otherwise have revoked.

In a time of tragically high gun violence in Chicago, and as part of a comprehensive crime strategy, this report highlights an opportunity for CPD to better utilize an important mandatory legal mechanism to keep firearms away from those who are not legally entitled to their possession. Compliance with the FOID Card Act's clear and present danger reporting requirements, designed, in part, to establish a means for law enforcement officials to provide ISP with statutorily mandated notifications and information necessary to make a determination to deny or revoke a FOID Card, is fundamental to this effort.

OIG invited CPD to respond in writing to this evaluation.

VI. AGENCY RESPONSE

In response to OIG's findings and recommendations, CPD concurred and indicated that it has taken the following steps to bring the Department into compliance with the Act:

- Drafted and began the implementation process for a standalone directive that instructs its officers as to the reporting requirements, definition of "clear and present danger," and process for properly reporting individuals to ISP using the "Person Determined to Pose a Clear and Present Danger" form pursuant to the Act;
- Revised existing directives to include information regarding law enforcement reporting requirements; and
- Updated the Police Academy's "Legal Issues and Law Enforcement Response" training curricula to reflect CPD's reporting obligations pursuant to the Act.

The Department's letter indicating its concurrence with the findings of this evaluation is included in Appendix A.

APPENDIX A: LETTER OF CONCURRENCE FROM CPD



Rahm Emanuel
Mayor

Department of Police · City of Chicago
3510 S. Michigan Avenue · Chicago, Illinois 60653

Eddie T. Johnson
Superintendent of Police

Via Electronic Mail

March 19, 2018

Joseph M. Ferguson
Inspector General
Office of the Inspector General
740 North Sedgwick, Suite 200
Chicago, IL 60654

Reference: OIG File #17-0230

Dear Inspector General Joseph M. Ferguson:

This correspondence serves as the Chicago Police Department's response to the Office of the Inspector General (OIG) report of 31 January 2018. The Chicago Police Department (CPD) concurs with the OIG recommendations in order to ensure compliance with Illinois' Firearm Owner's Identification (FOID) Card Act (430 ILCS 65/8.1). To that end, the Chicago Police Department has submitted the attached draft directive for command-staff review prior to the final approval. Moreover, the Department has implemented the attached training curriculum.

Please review these submissions. Should you have any comments, questions, or concerns, please contact me at (312) 745-6100 before 2 April 2018. Command-staff review of the attached draft directive is scheduled to end on that date.

Sincerely,

Handwritten signature of Eddie T. Johnson in cursive script.

Eddie T. Johnson
Superintendent of Police

MISSION

The City of Chicago Office of Inspector General (OIG) is an independent, nonpartisan oversight agency whose mission is to promote economy, efficiency, effectiveness, and integrity in the administration of programs and operations of City government. OIG achieves this mission through,

- administrative and criminal investigations by its Investigations Section;
- performance audits of City programs and operations by its Audit and Program Review Section;
- inspections, evaluations and reviews of City police and police accountability programs, operations, and policies by its Public Safety Section; and
- compliance audit and monitoring of City hiring and employment activities by its Hiring Oversight Unit.

From these activities, OIG issues reports of findings and disciplinary and other recommendations to assure that City officials, employees, and vendors are held accountable for violations of laws and policies; to improve the efficiency, cost-effectiveness government operations and further to prevent, detect, identify, expose and eliminate waste, inefficiency, misconduct, fraud, corruption, and abuse of public authority and resources.

AUTHORITY

OIG's authority to produce reports of its findings and recommendations is established in the City of Chicago Municipal Code §§ 2-56-030(d), -035(c), -110, -230, and 240.

PUBLIC INQUIRIES

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