

REPORT OF  
THE INDEPENDENT MONITOR  
FOR THE  
DETROIT POLICE DEPARTMENT



**Kroll**

*Office of the Independent Monitor  
of the Detroit Police Department*

REPORT FOR THE QUARTER ENDING  
FEBRUARY 28, 2005

ISSUED APRIL 15, 2005

## **EXECUTIVE SUMMARY**

On June 12, 2003, the United States Department of Justice (DOJ) and the City of Detroit (City) (collectively, the parties) filed two Consent Judgments (CJs) with the United States District Court for the Eastern District of Michigan (Court).<sup>1</sup> The Consent Judgments were negotiated and agreed to by the parties. On the same date, the parties filed a motion indicating the joint selection of an Independent Monitor, subject to the Court's approval, to "review and report on the City and the DPD's [Detroit Police Department's] implementation"<sup>2</sup> of the Consent Judgments. On July 18, 2003,<sup>3</sup> the Court entered both Consent Judgments. On July 23, 2003, after hearing testimony concerning qualifications, the Honorable Julian A. Cook, Jr., U.S. District Court Judge, appointed Sheryl Robinson, with the assistance of Kroll, Inc., as the Independent Monitor in this matter. This is the sixth quarterly report of the Independent Monitor.<sup>4</sup>

During the sixth quarter, which ended on February 28, 2005, the Monitor examined 52 paragraphs or subparagraphs of the UOF CJ and 38 paragraphs or subparagraphs of the COC CJ. Of these, the City and the DPD complied with 2 and failed to achieve compliance with 87; the Monitor withheld its determination of the DPD's compliance with the remaining paragraph.<sup>5</sup> However, as described below and reported fully in this report, during this quarter, the City and the DPD made significant progress in the areas of policy revision and the number of audits completed, among others:

- A record number of DPD policies and training directives were approved by the Chief of Police and the Board of Police Commissioners during the sixth quarter.<sup>6</sup> The following

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<sup>1</sup> The two judgments are the Use of Force and Arrest and Witness Detention Consent Judgment (UOF CJ) and the Conditions of Confinement Consent Judgment (COC CJ).

<sup>2</sup> UOF CJ at paragraph U124 (hereinafter UOF CJ paragraphs will be referenced by "U"). COC CJ at paragraph C79 (hereinafter COC CJ paragraphs will be referenced by "C").

<sup>3</sup> The "effective date" of the Consent Judgments.

<sup>4</sup> The Monitor's quarterly reports may be found on the Internet at [www.krollworldwide.com/detroit](http://www.krollworldwide.com/detroit).

<sup>5</sup> For each of these paragraphs, the Monitor's review and findings to date are included in this report. The Monitor is mindful that this report is issued some 45 days after the end of the quarter. Therefore, for paragraph assessed during the current quarter, the Monitor will make every effort to mention significant developments that occurred after the end of the quarter in footnotes throughout the report. For those paragraphs that were not assessed during the current quarter, developments that occurred during the current quarter or after the quarter's end will be fully reported on in the next quarterly report.

<sup>6</sup> The Monitor understands that the majority of these policies have not yet been disseminated to DPD personnel. As indicated throughout this report, some of the policies are still under the review and approval process by the DOJ, others are being assessed by the Monitor and others have been disseminated or are in the process of being disseminated. Throughout this report, the Monitor will refer to various submissions by the DPD to DOJ and the Monitor by the date of the cover letter or by the date that the Monitor received the document. It is noted that there is often a difference between the cover letter date and the postmark date, ranging usually from several days to a week.

policies were submitted or resubmitted to the Monitor and the DOJ during this quarter: Directive 404.1, *Definitions*; Directive 101.9, *Special Purpose Committees*; *Emergency Response Plan*; Directive 403.8, *Control Plan for Tuberculosis Prevention*; Directive 403.2, *Infectious Disease Control*; Directive 305.3, *Precinct Cellblocks*; Directive 305.1, *Prisoner Processing*; Special Order 03.28, *Handicap Prisoner Housing & Procedures*; Directive 201.4, *Canine Unit*; Directive 304.2, *Use of Force*; Training Directive 04-7, *Use of Force Reporting and Investigations*; Training Directive 04-2, *Positional Asphyxia*; Training Directive 04-3, *Use of Force Continuum*; Directive 304.1, *Firearms*; Special Order 03.39, 2004 Firearms Qualifications Program; Directive 304.4, *PR-24 Collapsible Baton*; Directive 304.3, *Chemical Spray Device*; Training Directive 04-4; *Garrity Protocol*; Directive 203.11, *Eyewitness Identification and Lineups*; Directive 203.9, *Custodial Questioning*; Directive 203.1, *Crime Scene Investigation*; Audit Protocol; Directive 401.1, *Performance Evaluation Ratings*; Directive 306.1, *Evidence and Property Handling*; Directive 305.1, *Detainee Intake and Assessment*; Directive 402.3, *Administrative Reports*; and Directive 103.2, *General Purchasing Procedure*.<sup>7</sup>

- During this quarter, the DPD submitted 10 audits in total (2 for the UOF CJ and 8 for the COC CJ); made improvements in these audits compared to the 3 audits submitted in the prior quarter; took formal audit training in December 2004 and early January 2005; improved the timeliness of its audit review and approval process; and updated its annual Audit Protocol.
- According to the DPD, a total of 751 disciplinary cases were closed during 2004, which leaves a total of 61 (pre-2004) backlogged cases pending adjudication. This is a significant positive development. The Monitor looks forward to the elimination of all backlogged cases and to the issuance of guidelines dictating the maximum period of time that should elapse between each stage of the disciplinary process.

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The cover letter date is not meant to indicate when the DOJ or the Monitor actually received the submissions. The DPD is now making a number of its submissions by email.

<sup>7</sup> After the end of the quarter, the DPD submitted or resubmitted Directive 102.6, *Citizen Complaints*; Directive 304.4, *Board of Review*; Directive 303.3, *In-Car Video Camera*; Disciplinary Matrix; Directive 203.9, *Custodial Questioning*; Directive 203.1, *Crime Scene Investigation*; Directive 102.4, *Discipline*; Directive 202.7, *Foot Pursuit*; External Complaints and Office of the Chief Investigator In-Service Training Manual; Training Directive 04-7, *Use of Force Reporting and Investigations*; and Directive 304.3, *Chemical Spray*.

Significantly, after the end of the quarter, the DOJ granted the City and the DPD approval on the following policies: Directive 304.1, *Firearms*; Training Directive 04-2, *Positional Asphyxia*; Directive 203.1, *Crime Scene Investigation*; Training Directive 04-3, *Use of Force Continuum*; Training Directive 04-5, *Detainee Suicide Prevention: Managing the Risk*; Directive 305.5, *Detainee Health Care*; Directive 305.7, *Transportation of Detainees*; *Guidelines for Detainee Screening*; Directive 305.1, *Detainee Intake/Assessment*; and Directive 403.2, *Infectious Disease Control*. The DOJ provided conditional approval for Directive 304.4, *PR-24 Collapsible Baton* pending the adoption of additional recommendations. The DOJ also granted approval of the following related forms: Detainee Intake Form, DPD 651; Detainee Medical Care/Referral Form; Mental Health High Risk Monitoring Log, DPD 661a; Detainee Medical Treatment/Medication Disbursement Log, DPD 664; Detainee Custodial Care Transfer Log, DPD 662; Medical Health High Risk Monitoring Log; Authorization for Human Immunodeficiency Virus (HIV) and Hepatitis (HBV) Testing and Medical Records Release.

- The City and the DPD also made noteworthy progress toward the development of its risk management database.

Major areas of concern identified during the quarter ending February 28, 2005 include the following:

- There were qualitative deficiencies with each audit submitted during the quarter, and many of the audits were submitted long after they were due. In addition, there are another 7 audit topics (5 for the UOF CJ and 2 for the COC CJ) that were due by August 31, 2004 that are now many months overdue.
- The COC CJ requires the DPD to complete semi-annual audits by January 31, 2004 and every six months thereafter. This deadline was skipped altogether and the DPD focused on completing the 9 audits required by August 31, 2004.<sup>8</sup> For the six months ended January 31, 2005, the DPD submitted 3 of the 9 required audits, and does not intend to complete the remaining 6 audits. Resource issues were blamed as the reason for skipping the first 9 audits, but this reason is not justified for the 6 that were recently skipped.
- On February 21-23, 2005, the Monitor conducted site assessments at the DPD precincts to visually inspect each holding cell for cleanliness and equipment repairs (as required by paragraphs C39 and C43). Three of the precinct's holding cells and cell block areas were not clean and additional precincts had sinks, toilets and lighting fixtures that were not working.<sup>9</sup> Based on the conditions of these precincts, it is evident that these individual holding cells are not being adequately maintained.

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<sup>8</sup> Of the 9 audits required by August 31, 2004, 7 were submitted late, and 2 remain overdue.

<sup>9</sup> Please see the Current Assessment of Compliance for paragraphs C39 and C43 for further details.

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- A. Acronyms Frequently Utilized in Quarterly Reports Issued by the Independent Monitor
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## SECTION ONE: INTRODUCTION

### I. BACKGROUND

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On June 12, 2003, the DOJ and the City filed two Consent Judgments with the United States District Court for the Eastern District of Michigan. The Consent Judgments were negotiated and agreed to by the parties. On the same date, the parties filed a motion indicating the joint selection of an Independent Monitor, subject to the Court's approval, to "review and report on the City and the DPD's implementation" of the Consent Judgments. On July 18, 2003, the Court entered both Consent Judgments. On July 23, 2003, after hearing testimony concerning qualifications, the Honorable Julian A. Cook, Jr., U.S. District Court Judge, appointed Sheryl Robinson, with the assistance of Kroll, Inc.,<sup>10</sup> as the Independent Monitor in this matter. This is the sixth report of the Independent Monitor.

In the first quarterly report, for the quarter ending November 30, 2003, the Monitor<sup>11</sup> outlined the history of the DOJ investigation, the Technical Assistance (TA) letters and the DPD's reform efforts. The Monitor also summarized the complaint filed against the City and the DPD and the overall content of the Consent Judgments.<sup>12</sup> The Monitor's duties and reporting requirements were also described. As the Consent Judgments require that the DPD achieve and maintain substantial compliance for a specified period of time,<sup>13</sup> the Monitor will review the paragraphs on a periodic schedule over the life of the Consent Judgments.<sup>14</sup> The paragraphs that were scheduled for review during the sixth quarter, which ended on February 28, 2005, are assessed in this report.<sup>15</sup>

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<sup>10</sup> The primary members of the Monitoring Team are Joseph Buczek, Ronald Davis, Hazel de Burgh, Ronald Filak, Thomas Frazier, Denise Lewis, Jeffrey Schlanger, David Schoenfeld, and Sherry Woods.

<sup>11</sup> The word "Monitor" will be used to describe both the Monitor and the Monitoring Team throughout this report.

<sup>12</sup> Complaint, Case no. 03-72258. The complaint, Consent Judgments and TA letters are publicly available at [http://www.usdoj.gov/crt/split/documents/dpd/detroit\\_cover\\_2.html](http://www.usdoj.gov/crt/split/documents/dpd/detroit_cover_2.html).

<sup>13</sup> Non-compliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance, shall not constitute failure to maintain substantial compliance. At the same time, temporary compliance during a period of otherwise sustained noncompliance shall not constitute substantial compliance. Paragraphs U149 and C106.

<sup>14</sup> The initial duration of the COC CJ was eight quarters. As previously reported, on December 27, 2004, the Court issued an order granting the City motion for a two-year extension of the COC CJ; however, the Court did not extend the internal deadlines required under the COC CJ. The minimum duration of the UOF CJ is twenty quarters. The Monitor's review schedule does not effect the due dates mandated by the Consent Judgments for the City and the DPD.

<sup>15</sup> As previously mentioned, for the paragraphs under review for this quarter, the Monitor makes every effort to report on significant matters that have taken place after the end of the quarter, although this is not possible in every instance. These occurrences appear in footnotes throughout the report.



## II. MONITOR'S ROLE

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The Monitor's role is to conduct compliance assessments,<sup>16</sup> make recommendations, provide TA and report on the DPD's progress toward substantial compliance with the Consent Judgments on a quarterly basis. The Monitor carries out this role with a healthy respect for the critical role the Department plays in enforcing the law and the significant risks taken by DPD officers each day. The Consent Judgments are meant to improve the overall policing in the City of Detroit by remedying the unconstitutional conduct alleged by the DOJ in its complaint filed against the City and the DPD.

## III. EFFORTS TOWARD COMPLIANCE

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During the sixth quarter, the City and the DPD made significant progress with its policies by revising and obtaining approval for a record number of policy revisions, and it continues to make progress in other areas, as described throughout this report. However, similar to other police departments in other jurisdictions under similar court-ordered judgments, the City and the DPD have been challenged by steep learning curves in the early stages, which are a delaying factor in the departments' efforts to achieve substantial compliance. Despite their substantial recent efforts in the policy and procedural revision area, unfortunately, these efforts have not yet resulted in substantial compliance. This is true because substantial compliance has several components, which may include policy/procedural revisions, implementation,<sup>17</sup> training/instruction and audit.

As mentioned in our previous reports, one of the most prevalent initial challenges facing the Department is policy development and revision, which must take place in an effective manner before many of the other reforms can be achieved. After the policy and/or procedural revisions are completed, the DPD must then direct its attention to the applicable implementation, training and auditing components of compliance. It was noted that during the last three quarters the DPD developed or revised a significant number of policies and submitted various policies to the Monitor for compliance assessments or to DOJ for review and approval. In fact, as noted throughout the report, the DPD submitted a record number of policy revisions during this

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<sup>16</sup> Paragraphs U138 and C93 require that the Monitor regularly conduct compliance reviews to ensure that the City and the DPD implement and continue to implement all measures required by the Consent Judgments.

<sup>17</sup> Paragraphs U133 and C88 require that the Monitor conduct compliance reviews and additional reviews as the Monitor deems necessary in order to monitor and report on the City and the DPD's implementation of each substantive provision of the Consent Judgments. Paragraphs U132 and C86 require that the Monitor maintain regular contact with the parties in monitoring the implementation of the Consent Judgments.

quarter.<sup>18</sup> The City and the DPD also made significant process in revising policies in response to the DOJ's TA and recommendations from the Monitor. According to the City and the DPD, several policies have been disseminated and others will be disseminated in the near future.

As reported in previous quarters, the COC CJ could have terminated two years after its effective date<sup>19</sup> if the City and the DPD had achieved substantial compliance with each of the provisions of the COC CJ by the one year anniversary date of the execution of the agreement.<sup>20</sup> Then the City and the DPD would have had to maintain substantial compliance for at least one year. Instead, the City and the DPD acknowledged, via their Motion to Extend the COC CJ, filed on July 19, 2004, that they had not attained compliance with the COC CJ by the one-year anniversary date.<sup>21</sup> Judge Cook held a hearing on the Motion to Extend on August 25, 2004. The City then filed a Supplemental Motion to Extend the COC CJ on September 10, 2004.<sup>22</sup> On October 7, 2004, the Court ordered that the City provide additional detailed information regarding its plan to comply with the COC CJ. On October 29, 2004, the City filed a supplemental brief which provided additional information regarding a timeline and funds needed. The City has also informally provided additional information in response to questions from the Monitor regarding its motion. During this quarter, on December 27, 2004, the Court granted the City's motion to extend the duration of the COC CJ for two years until an effective deadline of July 18, 2007. The Court wrote that the City, having articulated a detailed plan and schedule for compliance in its motion that was to the satisfaction of the Court, must now demonstrate that it has the commitment and willingness to meet its obligation without any further delays or extensions of time. The Court noted that in granting this motion, it has not and will not relieve the City of any other deadlines that are presently reflected in the COC CJ.

#### IV. METHODOLOGIES

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The *Methodologies to Aid in Determination of Compliance with the Consent Judgments (the Methodologies)* generally outline the methods that will be employed by the Monitor to determine compliance by the City and the DPD with each substantive provision of the Consent Judgments. The Monitor submitted the *Methodologies* for the UOF CJ to the parties on July 30, 2004. The

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<sup>18</sup> As mentioned in the Executive Summary and in this report, the DOJ approved a number of policies within a month after the end of the quarter.

<sup>19</sup> As previously indicated, July 18, 2003 is the effective date of the Consent Judgments.

<sup>20</sup> Paragraph C106.

<sup>21</sup> In accordance with the schedule established by the Court, the DOJ submitted questions regarding the City's motion on July 27, 2004. The City responded to these questions on August 4, 2004, and the DOJ filed its response to the City's motion on August 10, 2004.

<sup>22</sup> The DOJ filed a response to the supplemental motion on September 24, 2004.

DOJ and the City and the DPD responded with written comments.<sup>23</sup> The City and the DPD have the Monitor's draft *Methodologies* for the majority of the paragraphs in the COC CJ and the COC CJ methodologies will be resubmitted during the seventh quarter.

In the course of conducting compliance assessments, among various other activities, the Monitor conducts interviews of various City and DPD personnel and other individuals. It is the Monitor's general practice, unless otherwise noted, to use matrices to ensure that the same general questions and subject matter are covered in interviews.

## V. REPORT CARD

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As a tool to assist the reader of this report, the Monitor is attaching as Appendix B a "Report Card," which provides a "snapshot" of the DPD's compliance with each of the substantive provisions of the Consent Judgments. It also serves as a tool to summarize the DPD's progress in complying with those provisions. Specifically, the Report Card summarizes the *overall* grade of compliance with each paragraph and subparagraph<sup>24</sup> of the Consent Judgments for the five most recent quarters, including the current quarter, in which compliance has been assessed.<sup>25</sup> The quarter in which the most recent evaluation was made is also indicated, as is the quarter in which the Monitor anticipates conducting the next evaluation of compliance for each paragraph. This is an estimate based on available information at the date of issuance of this Monitor's report and Report Card. These estimates are subject to change as information develops and circumstances change.

## VI. FOCUS ISSUES

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### A. OVERDUE AUDITS

In previous quarterly reports, the Monitor expressed concern that the DPD's audits were not being completed in a timely manner due to the DPD's lengthy internal review process. To address this, the Chief of Police recently designated the Commanding Officer of Risk Management Bureau (RMB) as the individual to approve the DPD's audit reports and submit

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<sup>23</sup> The UOF CJ methodologies were resubmitted to the parties on March 23, 2005. The parties will continue to have further discussions regarding the methodologies and revisions will be made on an as needed basis.

<sup>24</sup> Although subparagraphs are often specifically identified in the Consent Judgments, the Monitor has split certain paragraphs that include more than one topic. The purpose of this is to facilitate the future evaluation of and reporting on each sub-topic.

<sup>25</sup> The Monitor emphasizes that the Report Card provides summary information and should be read in conjunction with this report so that the reader may obtain a thorough understanding of the level and nature of the DPD's compliance with the provisions of the Consent Judgments.

them to the Monitor and the Chief of Police simultaneously. The audit report is then synopsised by a DPD sworn supervisor assigned to the Civil Rights Division (CRD)<sup>26</sup> to be distributed to the precinct commanding officers. This revised process enabled the DPD to complete and submit 7 of the 14 audits that were noted as being outstanding in the Monitor's previous quarterly report. Going forward, this streamlined review process is expected to ensure that the DPD's audits are reviewed and distributed in a timelier manner.

By February 28, 2005, there were 7 topics<sup>27</sup> for which an audit was not yet distributed. Although these audits were due by August 31, 2004, and the Monitor has provided TA on each of these audits, only one is close to completion, and the DPD Audit Team (AT) has not yet progressed beyond the planning stage for the remaining 6 audits. In addition, there are another 9 audits that were due to be submitted by January 31, 2004, and another 6 audits that were due to be submitted by January 31, 2005 that were not submitted.

While it no longer makes sense for the DPD to conduct these audits, as they would be more than a year outdated and/or their findings would be too close in proximity to the findings from the August 31, 2004 audits that were only recently completed, the Monitor cautions the DPD against skipping audits in the future. Audits are required to be completed in accordance with the timetable set out in the Consent Judgments. They are meant to be used as a tool to evaluate the DPD's performance relative to its policies, procedures and the requirements of the Consent Judgments, and to inform the DPD of how to improve its performance.

## B. AUDIT PROTOCOL

The DPD submitted its 2004/2005 Audit Protocol on February 28, 2005 for the fiscal year 2004/2005.<sup>28</sup> The Monitor is concerned that the schedule for audits contained in the 2004/2005 Audit Protocol does not include 14 of the 26 audits required by the UOF and COC CJs, nor does it adequately address the overdue and skipped audits as described in the previous focus issue, above. The Audit Protocol attributes the partial audit schedule to insufficient DPD audit staff resources and training. While this reason may have been justified in the first year of the Consent Judgments, it is not really justified in the second year.

During discussions regarding these issues, the DPD's CRD executive staff advised that although certain audits are not in the formal audit schedule, the DPD's AT and the Holding Cell Compliance Committee (HCCC) audit staff will make every attempt to conduct more audits than listed in the Annual Audit Protocol. To help in achieving this goal, the Monitor suggested

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<sup>26</sup> The DPD's Civil Rights Integrity Bureau (CRIB) is now the Civil Rights Division.

<sup>27</sup> The seven audit topics include Use of Force Investigations, Prisoner Injury Investigations, Misconduct Investigations, Witness Identification and Questioning, Office of the Chief Investigator External Complaint Investigations, Holding Cell Use of Force Investigations, and Holding Cell Misconduct Investigations.

<sup>28</sup> See paragraph U92 below for the current assessment of the Audit Protocol.

strategies for the DPD to better utilize its current resources, including identifying specific personnel to specialize in some of the more technical audit processes, such as sampling, developing audit workplans, fieldwork review, and report editing and finalization. CRD executive staff were receptive to these suggestions and advised that they are in the process evaluating the skills of its audit personnel in order to restructure the deployment of its resources.

## VII. MONITOR'S PLEDGE

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The Monitor continues to be dedicated to making this process a transparent one, and continues to share the interest of all parties in having the City and DPD achieve substantial compliance with the Consent Judgments in a timely manner.

To that end, we have provided the parties with interim assessments of compliance throughout each quarter, including the quarter ending February 28, 2005. The Monitor has also made numerous recommendations and provided TA to the DPD as part of its ongoing efforts to assist the DPD in achieving compliance with the Consent Judgments. Furthermore, a draft copy of this report was made available to the parties at least 10 days prior to final publication in order to provide the parties with an opportunity to identify any factual errors,<sup>29</sup> and to provide the parties with an opportunity to seek clarification on any aspect of compliance articulated in this report.

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<sup>29</sup> As required by paragraphs U142 and C97.

## **SECTION TWO: COMPLIANCE ASSESSMENTS - THE USE OF FORCE AND ARREST AND WITNESS DETENTION CONSENT JUDGMENT**

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This section contains the Monitor's compliance assessments of the UOF CJ paragraphs scheduled for review during the quarter ending February 28, 2005.

### **I. USE OF FORCE POLICY**

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This section of the UOF CJ (paragraphs U14-26) requires the DPD to make revisions to its Use of Force (UOF) policies, specifically, its general UOF policy, use of firearms policy and chemical spray policy. The DPD must also choose an intermediate force device, develop policy for the device, incorporate the device into the UOF continuum, and provide annual training on the use of the device.

#### **A. GENERAL USE OF FORCE POLICIES**

This section comprises paragraphs U14-19. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2004. The Monitor found the DPD in non-compliance with each due to the fact that the policies required by the paragraphs were not formally submitted to the DOJ for review and approval as of the end of the quarter.<sup>30</sup>

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U14-19 during the quarter ending May 31, 2005.

#### **B. USE OF FIREARMS POLICY**

This section comprises paragraphs U20-23. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that as of the end of the quarter the DPD was revising proposed Directive 304.1, *Firearms*, which is meant to address the paragraphs' requirements. The DPD must obtain DOJ's approval of its use of force policies.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U20-23 during the quarter ending August 31, 2005.

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<sup>30</sup> Throughout this report, for those paragraphs not assessed during the current reporting period ("current quarter"), the Monitor will include a brief description of the basis for its previous compliance assessments. The Monitor will not update any progress on these paragraphs since the last assessment, outside of any submissions or approvals outlined in the Executive Summary, until the next quarter in which the paragraph is under review by the Monitor.

### C. INTERMEDIATE FORCE DEVICE POLICY

This section comprises paragraph U24. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that it was in the process of revising its UOF policies, including Directive 304.2, *Use of Force*, and Training Directive 04.3, *Use of Force Continuum*, both of which are meant to address, among other things, the requirements of paragraph U24. In addition, the Monitor noted its understanding that a roll-out plan for the intermediate force device was being developed which, according to the DPD, will include information concerning the UOF continuum, procurement, training and integration. The DPD must obtain DOJ's approval of its use of force policies.

The Monitor is scheduled to again assess the DPD's compliance with paragraph U24 during the quarter ending August 31, 2005.

### D. CHEMICAL SPRAY POLICY

This section comprises paragraphs U25-26. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending August 31, 2004, finding the DPD in non-compliance with each due to the fact that as of the end of the quarter it was revising proposed Directive 304.3, *Chemical Spray*, which is meant to address the requirements of the paragraphs. The DPD must obtain DOJ's approval of its use of force policies.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U25-26 during the quarter ending August 31, 2005.



## II. INCIDENT DOCUMENTATION, INVESTIGATION, AND REVIEW

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This section of the UOF CJ (paragraphs U27-41) requires the DPD to make significant changes to its policies related to general investigations of police action and to investigations of UOF, prisoner injury, critical firearms discharges and in-custody deaths. In addition to various changes in general investigatory procedures, reports and evaluations, the UOF CJ requires that the DPD develop a protocol for compelled statements<sup>31</sup> and develop an auditable form to document any prisoner injury, UOF, allegation of UOF and instance where an officer draws a firearm and acquires a target. The DPD Shooting Team must respond to and investigate all critical firearms discharges and in-custody deaths, and the DPD must develop a protocol for conducting investigations of critical firearms discharges. The DPD's Internal Controls Division (ICD) must investigate a variety of incidents, pursuant to the requirements of the UOF CJ, including all serious UOF (which includes all critical firearm discharges), UOF that cause serious bodily injury, and all in-custody deaths. Finally, the UOF CJ requires the DPD to create a command level force review team (CLFRT) that is charged with critically evaluating and reporting on critical firearms discharges and in-custody deaths.

### A. GENERAL INVESTIGATIONS OF POLICE ACTION

This section comprises paragraphs U27-33. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending August 31, 2004.<sup>32</sup> The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

#### *Paragraphs U27-30 and U32-33 – Revision of General Investigation Policies; Investigation Procedures; Investigatory Interview Procedures; Prohibitions of Investigatory Interviews; Investigatory Reports and Evaluations; Review of Investigations*

Paragraph U27 requires the DPD and the City to revise their policies regarding the conduct of all investigations to ensure full, thorough and complete investigations. All investigations must, to the extent reasonably possible, determine whether the officer's conduct was justified, and the DPD and the City must prohibit the closing of an investigation being conducted by the DPD and/or the City simply because a subject or complainant is unavailable, unwilling or unable to cooperate, including a refusal to provide medical records or proof of injury.

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<sup>31</sup> Paragraph U31 requires the DPD and the City to develop a protocol for when statements should (and should not) be compelled pursuant to Garrity v. New Jersey, 385 U.S. 492 (1967).

<sup>32</sup> Throughout this report, for those paragraphs assessed and reported on during the current quarter, information regarding the Monitor's previous compliance assessments, and the basis for those assessments, can be found in the "Background" sections of the respective paragraphs.

Paragraph U28 requires the DPD and the City to ensure that investigations are conducted by a supervisor who did not authorize, witness or participate in the incident and that all investigations contain the criteria listed in this paragraph.

Paragraph U29 requires the DPD and the City to revise their procedures for all investigatory interviews to require the criteria listed in this paragraph.

Paragraph U30 requires the DPD and the City to prohibit the use of leading questions that improperly suggest legal justifications for the officer's(s') actions when such questions are contrary to appropriate law enforcement techniques; and to prohibit the use of interviews via written questions when it is contrary to appropriate law enforcement techniques.

Paragraph U32 requires the DPD to revise its policies regarding all investigatory reports and evaluations to require the criteria listed in this paragraph.

Paragraph U33 requires the DPD to revise its policies regarding the review of all investigations to require those criteria listed in this paragraph.

### ***Background***

The Monitor last assessed the DPD's compliance with paragraphs U27-30 and U32-33 during the quarter ending August 31, 2004. The Monitor found the DPD in non-compliance with each of these paragraphs due to the fact that DPD was still in the process of revising Directive 304.2, *Use of Force*, and Training Directive 04-07, *Use of Force Reporting*, to address comments, TA and recommendations from the DOJ.

### ***Current Assessment of Compliance***

The DPD resubmitted proposed Directive 304.2, *Use of Force*, to the DOJ for review and approval on February 24, 2005. Along with Directive 304.2, the DPD also resubmitted Training Directive 04-07, *Use of Force Reporting and Investigations* to the DOJ. According to the City of Detroit's Sixth Quarter Status Report to the Independent Monitor, for the Quarter Ending February 28, 2005 (Sixth Quarter Status Report), this training directive is meant to address, among other things, the requirements of paragraphs U27-30 and U32-33. As of the end of the quarter, the DOJ was in the process of reviewing these resubmissions.<sup>33</sup> Once the DPD completes its revisions, the Monitor will review Training Directive 04-07 as it pertains to paragraphs U27-30 and U32-33.

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<sup>33</sup> The DOJ reviewed the Training Directive 04-07 along with Directive 304.2, due to the overlap of subject matter. On March 25, 2005, after the end of the quarter, the DOJ submitted a letter to the DPD offering additional recommendations regarding the Use of Force Policy. The DPD resubmitted the policy on March 26, 2005.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs U27-30 and U32-33.

### **Paragraph U31 – Protocol for Garrity Statements**

Paragraph U31 requires the DPD and the City to develop a protocol for when statements should (and should not) be compelled pursuant to Garrity v. New Jersey, 385 U.S. 493 (1967).

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U31 during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that the protocol was still under review by the DPD as of the end of the quarter.

### ***Current Assessment of Compliance***

The RMB of the DPD developed a protocol for paragraph U31 that purports to specify the conditions under which statements should and should not be compelled pursuant to Garrity v. New Jersey, 385 U.S. 493. The Protocol was submitted to the Monitor on December 21, 2004. The Monitor reviewed the protocol during the current quarter, but had not provided the DPD with comments on the protocol as of then end of the quarter.<sup>34</sup>

Based on the foregoing, the Monitor withholds the determination of compliance for paragraph U31.

## **B. UOF AND PRISONER INJURY INVESTIGATIONS**

This section comprises paragraphs U34-36. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2004, finding the DPD in non-compliance with each due to the fact that the policies required by the paragraphs are included in Directive 304.2, *Use of Force*, and Training Directive 04-07, *Use of Force Reporting and Investigations*, which were being reviewed by the DOJ as of the end of that quarter. On December 17, 2004, the DOJ submitted a letter to the City and the DPD outlining the DOJ's continuing concerns regarding Directive 304.2, *Use of Force*; Directive 304.3, *Chemical Spray*; Directive 304.1, *Firearms*; Directive 201.4, *Canine Operations*; PR-24 Training Directive, *Use of Force Continuum Training Directive*, and *Positional Asphyxia Training Directive*.

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<sup>34</sup> On March 23, 2005, after the end of the quarter, the Monitor met with the DPD and outlined several concerns with the Garrity Protocol. The parties will further discuss the development of the protocol during the quarter ending May 31, 2005.

In addition, at the end of the quarter ending November 30, 2004, the UOF Auditable Form UF-0002 was being revised and the guidelines providing instructions for the completion of the form were being developed.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U34-36 during the quarter ending May 31, 2005.

### C. REVIEW OF CRITICAL FIREARMS DISCHARGES AND IN-CUSTODY DEATHS

This section comprises paragraphs U37-41. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2004, finding the DPD in non-compliance with each. The Monitor determined that:

- The Force Investigation Unit I (FIU I), which is also referred to as the Deadly Force Unit and is responsible for investigating critical firearm discharges and in-custody deaths, is composed of Homicide Section and ICD officers as required by paragraph U37.
- Neither the Force Review Team's (FRT) Standard Operating Procedures (SOP) nor the FIU's SOP included or incorporated all of the requirements of paragraphs U27-36, as required by paragraph U38.
- The DPD's draft Directive 304.4, *Board of Review*, stated that "FIS" is jointly responsible for the investigation of all police shootings by DPD members and in-custody deaths along with the Homicide Section of the Criminal Investigations Bureau as required by paragraph U37. However, "joint" responsibility is not clear from the FIU SOP.
- There were multiple documents that contain partial components of the protocol for conducting investigations of critical firearm discharges that is required by paragraph U38. These documents do not necessarily reference each other.
- Although Directive 304.4, which is meant to address the requirements of paragraphs U39-41, was posted on the DPD's website on October 26, 2004 for review and comment from the public, it was under review by the Board of Police Commissioners (BOPC) as of the end of the quarter ending November 30, 2004.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U37-41 during the quarter ending May 31, 2005.

### III. ARREST AND DETENTION POLICIES AND PRACTICES

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This section of the UOF CJ (paragraphs U42-60) requires the DPD to make significant changes to its policies, practices and procedures related to arrests, investigatory stops and frisks, witness identification and questioning, the detention of material witnesses, arrestee restrictions, custodial detention, prompt judicial review, holds and command notification regarding arrests and witness detention issues. For many of these areas, the DPD must develop auditable forms to document officer violations of the UOF CJ requirements or to capture certain events.

This section also requires DPD supervisors to conduct reviews of all reported violations and take corrective or non-disciplinary action. Precinct commanders and, if applicable, specialized unit commanders, are required to review within seven days all reported violations of DPD arrest, investigatory stop and frisk, witness identification and questioning policies and all reports of arrests in which an arraignment warrant was not sought, and to review on a daily basis all reported violations of DPD prompt judicial review, holds, restrictions and material witness policies. The Commanders' reviews must include an evaluation of the actions taken to correct the violation and whether any corrective or non-disciplinary action was taken.

#### A. ARREST POLICIES

This section comprises paragraphs U42-43. The Monitor reviewed the DPD's compliance with these paragraphs during the quarter ending November 30, 2004. The Monitor elected to withhold a determination of compliance with these paragraphs based on the discussions between the parties regarding the probable cause definition applicable under the paragraphs. The Monitor is scheduled to assess the DPD's compliance with paragraphs U42-43 during the quarter ending May 31, 2005.

#### B. INVESTIGATORY STOP POLICIES

This section comprises paragraphs U44-45. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2004, finding the DPD in non-compliance with each. Regarding paragraph U44, the Monitor found that although Directive 202.2, *Search and Seizure*, generally meets the requirements of the Consent Judgment, it did not include the required auditable form, nor had it been disseminated to the field as of the end of the quarter. The Monitor found that Directive 404.1, *Definitions*, adequately defines an investigatory stop and reasonable suspicion, but it had not been approved by the BOPC or disseminated to the field as of the end of the quarter ending November 30, 2004.

The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during quarter ending May 31, 2005.

## C. WITNESS IDENTIFICATION AND QUESTIONING POLICIES

This section comprises paragraphs U46-48. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2004, finding the DPD in non-compliance with each as the revised policy addressing the paragraphs' requirements had not been approved by the DOJ as of the end of the quarter. The Monitor noted that after the end of the quarter, the DOJ forwarded to the DPD a letter outlining specific components of the proposed policy that did not adequately address the requirements of paragraphs U46 and U48.

The Monitor is scheduled to assess the DPD's compliance with paragraphs U46-48 during the quarter ending May 31, 2005.

## D. PROMPT JUDICIAL REVIEW POLICIES

This section comprises paragraphs U49-51. The Monitor last assessed the DPD's compliance with paragraphs U49 and U51 during the quarter ending August 31, 2004; the Monitor last assessed the DPD's compliance with paragraph U50 during the quarter ending November 30, 2004. The Monitor again assessed the DPD's compliance with paragraphs U49-51 during the current quarter. The results of our current assessments follow.

### *Paragraph U49 – Revision of Policies and Requirements of Arraignment within 48 Hours*

Paragraph U49 requires the DPD to revise its policies to require prompt judicial review, as defined in the UOF CJ, for every person arrested by the DPD. The DPD must develop a timely and systematic process for all arrestees to be presented for prompt judicial review or to be released.

#### *Background*

The Monitor last assessed the DPD's compliance with paragraph U49 during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that although the *Arrests* policy approved by the BOPC and the Chief of Police properly defined prompt judicial review, the DPD had yet to disseminate it to the field and had yet to establish a timely and systematic process for all arrestees to be presented for prompt judicial review.

#### *Current Assessment of Compliance*

During the current quarter the DPD revised Directive 202.1 based upon TA provided by the Monitor. The DPD similarly revised the relevant auditable forms.

The Monitor reviewed the revised directive and determined that Section 202.1 – 3.11 properly defines prompt judicial review as required by the UOF CJ and places emphasis on the fact that officers have *up to, but not to exceed*, 48 hours to present an arrestee for arraignment, absent

extraordinary circumstances. Additionally, Section 202.1 – 8 of this directive requires that for all arrests the arrestee shall be brought before a judicial officer for a prompt judicial review (arraignment) without unnecessary delay.<sup>35</sup>

Paragraph U49 also requires that the DPD establish a timely and systematic process for all arrestees to be presented for prompt judicial review or to be released. Directive 202.1 partially addresses this requirement by requiring an arrestee to be released immediately should a warrant request be denied by the prosecutor's office. However, this directive neither delineates nor references any other systematic process to ensure that most, if not all, arrestees will be arraigned within 48 hours. The DPD is currently developing and documenting a systematic process.

Within Directive 202.1 the DPD references three auditable forms, one of which, Form UF-004, relates to prompt judicial review and warrant request requirements. On February 8-9, 2005, the Monitor completed an additional TA review of all UOF CJ auditable forms, including Form UF-004, and related guidance documents, as requested by the DPD. As part of that TA review, the Monitor and the DPD AT personnel discussed each point raised during previous TA sessions that had not yet been addressed. DPD personnel indicated they would make final revisions to the forms based on the Monitor's TA guidance. As of the end of the quarter, the newly revised forms have not yet been resubmitted to the Monitor or implemented.<sup>36</sup> In the meantime, the previous versions are being used by DPD personnel.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U49.

### **Paragraph U50 – Requirement of Warrant Request**

For each arrestee, paragraph U50 requires the DPD to submit to the prosecutor's office, within 24 hours of the arrest, a warrant request for arraignment on the charges underlying the arrest.

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U50 during the quarter ending August 31, 2004 and withheld a determination of compliance pending the testing of the dissemination of Directive 202.1 to the field. The Monitor concluded that Section 202.1-8 of Directive 202.1 conformed to the policy requirements of the Consent Judgment.

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<sup>35</sup> The DPD cited specific examples of unnecessary delays, including a delay for the purpose of gathering additional evidence to justify the arrest, a delay to give the investigator additional time to interrogate the person or a delay motivated by ill will against the arrested individual.

<sup>36</sup> On March 2, 2005, after the end of the quarter, the DPD resubmitted the auditable forms. The Monitor has not yet evaluated revised Form UF-004, and expects to complete its evaluation during the quarter ending May 31, 2005.

### *Current Assessment of Compliance*

During the current quarter, the Monitor was advised that the DPD had not yet disseminated Directive 202.1. As a result, the Monitor was unable to conduct testing of the dissemination of Directive 202.1 to the field, as anticipated.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U50.<sup>37</sup>

### *Paragraph U51 – Documentation of Late Request for Arraignment Warrants and Late Arraignments*

Paragraph U51 requires the DPD to document on an auditable form all instances in which an arraignment warrant is submitted more than 24 hours after the arrest, all instances in which it is not in compliance with the prompt judicial review policy, and all instances in which extraordinary circumstances delayed the arraignment. The documentation must occur by the end of the shift in which there was:

1. A failure to request an arraignment warrant within 24 hours;
2. A failure to comply with the prompt judicial review policy, or
3. An arraignment delayed because of extraordinary circumstances.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U51 during the quarter ending August 31, 2004, finding the DPD in non-compliance primarily due to an inadequate auditable Form UF-004. The Monitor did, however, review Directive 202.1 and concluded that it, from a policy perspective, specifically addressed the written requirements of paragraph U51.

### *Current Assessment of Compliance*

During the current quarter, the DPD revised auditable Form UF-004 based upon TA provided by the Monitor. As described in the Current Assessment of Compliance for paragraph U49, the Monitor completed additional TA reviews of all UOF CJ auditable forms during the current quarter and DPD personnel indicated they would make final revisions to the forms based on the Monitor's TA guidance.<sup>38</sup>

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<sup>37</sup> As indicated in the Current Assessment of Compliance for paragraph U49, the DPD further revised Directive 202.1 during the current quarter; however, these revisions did not impact paragraph U50.

<sup>38</sup> The auditable forms were resubmitted on March 2, 2005, after the end of the quarter. The Monitor has not yet evaluated revised Form UF-004, and expects to complete its evaluation during the quarter ending May 31, 2005.



During the current quarter, the Monitor was advised that the DPD had not yet disseminated Directive 202.1. In the meantime, the Monitor reevaluated Directive 202.1's documentation requirements and found that Section 202.1 - 8.1.1(a) and (b) does not include a requirement that the DPD document all instances in which it is not in compliance with the prompt judicial review policy. The Directive does include the other instances in which documentation is required: when the request for an arraignment warrant is submitted more than 24 hours after the arrest and when extraordinary circumstances delayed the arraignment.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U51.<sup>39</sup>

## E. HOLD POLICIES

This section comprises paragraphs U52-53. The Monitor assessed the DPD's compliance with these paragraphs for the first time during the quarter ending August 31, 2004. The Monitor again assessed the DPD's compliance these paragraphs during the current quarter. The results of our current assessments follow.

### *Paragraphs U52-53 – Revision of Hold Policies; Documentation of All Holds*

Paragraph U52 requires the DPD to revise its hold policies to define a hold as that term is defined in the UOF CJ and require that all holds be documented. The policy must establish a timely and systematic process for persons in DPD custody who have holds issued by a City of Detroit court to have those holds cleared by presenting the arrestee to the court from which the warrant was issued or the setting and posting of bond where applicable. The fact that an arrestee has not been arraigned or charged on the current arrest shall not delay this process.

Paragraph U53 requires the DPD to document all holds, including the time each hold was identified and the time each hold was cleared. On a daily basis, the DPD must document on an auditable form each instance in which a hold is not processed within twenty-four hours.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U52-53 during the quarter ending August 31, 2004, finding the DPD in non-compliance with each due to the fact that it had not issued any proposed or revised policy that addressed the paragraphs' requirements, and existing policy did not meet all of their requirements.<sup>40</sup>

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<sup>39</sup> As indicated in the Current Assessment of Compliance for paragraph U49, the DPD further revised Directive 202.1 during the current quarter; however these revisions did not impact paragraph U51.

<sup>40</sup> Paragraph U53 has been deemed by the Monitor to be an implementation paragraph dependent upon the issuance of adequate policy pursuant to paragraph U52. Under the Methodologies employed by the Monitor in assessing

### *Current Assessment of Compliance*

Although the DPD has drafted a revised Directive 305.2, *Detainee Registration*, this directive remains in draft form. The DPD provided the most recent version to the Monitor for review and comment during February 2005. The Monitor provided TA on Auditable Form UF-007 in February 2005.<sup>41</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs U52-53.

## F. RESTRICTION POLICIES

This section comprises paragraphs U54-55. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending August 31, 2004. The Monitor again assessed the DPD's compliance with paragraphs U52-53 during the current quarter. The results of our current assessments follow.

### *Paragraphs U54-55 – Restriction Policies; Documentation of Restrictions*

Paragraph U54 requires the DPD to revise existing and develop new policies regarding a detainee's access to telephone calls and visitors. The policy must permit detainees with access to attorneys and reasonable access to telephone calls and visitors.

Paragraph U55 requires that whenever a detainee is restricted from either using the telephone or receiving visitors, such restriction must be documented, reviewed at the time the restriction is placed and re-evaluated, at a minimum, each day in which the restriction remains in effect. All violations of the DPD's restriction policy must be documented on an auditable form by the end of the shift in which the violation occurred.

### *Background*

The Monitor last assessed the DPD's compliance with paragraphs U54-55 during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that it had yet to finalize the relevant policy and auditable forms.

### *Current Assessment of Compliance*

The Monitor reviewed Directive 305.4, *Holding Cell Areas*, and determined that it adequately addresses the requirements of paragraphs U54 and U55. However, the DPD has yet to finalize

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compliance, until the policy requirements are addressed pursuant to paragraph U52, the DPD will not be able to comply with paragraph U53.

<sup>41</sup> This and other UOF CJ auditable forms were resubmitted on March 2, 2005, after the end of the quarter.

and implement the related auditable form UF-008, which is designed to address the documentation of restrictions and reportable violations of policy. In addition, the directive was not disseminated to the field as of the end of the quarter.<sup>42</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs U54 and 55.<sup>43</sup>

## G. MATERIAL WITNESS POLICIES

This section comprises paragraphs U56-57. The Monitor last assessed the DPD's compliance with paragraph U56 and U57 during the quarters ending November 30, 2004 and August 31, 2004, respectively. The Monitor again assessed the DPD's compliance with paragraphs U56-57 during the current quarter. The results of our current assessments follow.

### *Paragraph U56 – Revision of Material Witness Policies*

Paragraph U56 requires the DPD to revise existing material witness policies to define a material witness as a witness subpoenaed to testify in a criminal case.<sup>44</sup> Furthermore, the DPD must remove the term “police witness” from all DPD policy and procedure.

#### *Background*

The Monitor last assessed the DPD's compliance with paragraph U56 during the quarter ending November 30, 2004. The DPD provided the Monitor with its latest versions of Directive 202.1, *Arrests*, and related Training Directive 04-1, which it indicated were disseminated to the field. The Monitor determined that Directive 202.1 accurately defined a material witness and Training Directive 04-1 contained verbiage that clearly instructed that “No material witness shall be taken into DPD custody without a member first obtaining a court order.” However, the DPD was unable to provide substantiation that a complete dissemination of the directive occurred. As a result, the Monitor concluded that the DPD was in non-compliance.

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<sup>42</sup> According to the DPD, the final approved policy was disseminated to the field, after the end of the quarter, on March 21, 2005. The Monitor will test dissemination of policy to the field during its next regularly scheduled review of this paragraph.

<sup>43</sup> The training requirements for paragraph U54-55 are evaluated at paragraphs U111, U115, and U116. The audit requirements for paragraphs U54-55 are addressed at paragraph U96.

<sup>44</sup> Paragraph 1aa of the UOF CJ defines a material witness.

### *Current Assessment of Compliance*

During the current quarter, the DPD made additional revisions to Directive 202.1, none of which affected Section 202.1-4.4 dealing with a Material Witness. The Monitor's conclusion that the Directive's verbiage meets the requirements paragraph U56 remains unchanged.

In an effort to determine whether the term "police witness"<sup>45</sup> is included in current DPD policy and procedure, the Monitor conducted the following procedures:

- Obtained and reviewed the most recently posted forms used by the DPD, as contained on its Intranet. No references to "police witness" were noted.
- On an unannounced basis reviewed 12 Homicide Division investigation files in their entirety.<sup>46</sup> No references to "police witness" were noted.
- On an unannounced basis reviewed hard copies of forms contained in filing cabinets and a storage closet contained within the Homicide Division. No references to "police witness" were noted.

Notwithstanding the above, as with our previous assessment, the DPD has yet to demonstrate that it has effectively disseminated this policy to the field.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U56.

### *Recommendation*

The Monitor recommends that the DPD expeditiously disseminate Directive 202.1 to include an audit trail of receipt by necessary personnel particularly in light of the fact that this particular directive meets the requirements of the UOF CJ.

### *Paragraph U57 – Requirement to Obtain a Court Order*

Paragraph U57 requires the DPD to obtain a court order prior to taking a material witness into DPD custody. Each material witness must also be documented on an auditable form with a copy of the court order attached thereto.

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<sup>45</sup> As reported by the Monitor in its quarterly report dated October 18, 2004, it is the Monitor's understanding that Directive 202.1 will supersede policy included in the current version of the DPD's Manual that was issued during early 2003. The Manual, as previously reported, uses the term "police witness." Previously, at the beginning of every calendar year the DPD issues a new manual that incorporates any policy changes enumerated in Directives. A new manual was not issued at the beginning of 2004. However, the City of Detroit's Fourth Quarter Status Report indicates that the term "police witness" has been removed from all pertinent DPD policy and procedure directives.

<sup>46</sup> The 12 Homicide investigations reviewed spanned the period June 2004 through January 2005.

## *Background*

The Monitor last assessed the DPD's compliance with paragraph U57 during the quarter ending August 31, 2004 finding the DPD in non-compliance due to the fact that it had yet to finalize Form UF-006 (Detention of Material Witness). The Monitor noted that a court order must be obtained prior to the taking of a material witness into custody and the court order must be attached to the mandatory auditable form.

## *Current Assessment of Compliance*

During the current quarter, the Monitor provided additional TA on Form UF-006 and other auditable forms on February 8-9, 2005. As of the end of the quarter, the DPD was in the process of revising the forms.<sup>47</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U57.

## **H. DOCUMENTATION OF CUSTODIAL DETENTION**

This section comprises paragraphs U58. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending November 30, 2004, finding the DPD in non-compliance as it was in the process of formulating its CRISNET Records Management System to capture all information required by paragraph U58. The Monitor noted that in the interim, the DPD issued several teletypes that mandated the recording of dates and times; however, the teletypes did not meet all of the requirements of the paragraph.

The Monitor is scheduled to again assess the DPD's compliance with paragraph U58 during the quarter ending May 31, 2005.

## **I. COMMAND NOTIFICATION**

This section comprises paragraphs U59-60. The Monitor last assessed the DPD's compliance with paragraph U59 during the quarter ending November 30, 2004, finding the DPD in non-compliance due to the fact that the DPD's Search and Seizure policy was not disseminated to the field and the DPD had not finalized its witness identification and questioning policy. The Monitor is scheduled to again assess the DPD's compliance with paragraph U59 during the quarter ending May 31, 2005.

The Monitor last assessed the DPD's compliance with paragraph U60 during the quarter ending August 31, 2004. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

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<sup>47</sup> On March 2, 2005, after the end of the quarter, the DPD resubmitted the revised UOF CJ auditable forms.

### **Paragraph U60 – Daily Reporting Requirements**

Paragraph U60 requires the Commander of each precinct or, if applicable, a specialized unit to review in writing all reported violations of the following:

- Prompt Judicial Review
- Holds
- Restrictions
- Material Witness Detention

Such review must be completed on the day the violation occurs. The Commander must evaluate actions taken to correct the violation and determine whether any corrective or non-disciplinary action was indeed taken.

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U60 during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that the underlying policies that specifically address the requirements of the paragraph either had not yet been implemented and related auditable forms were under revision.

On June 25, 2004 the Monitor provided TA to the DPD with regard to multiple auditable forms. During August 2004 the DPD addressed the Monitor's concerns and revised its auditable forms. One such revision involved incorporating the Commanding Officer review component of paragraph U60 into the related auditable forms.<sup>48</sup>

### ***Current Assessment of Compliance***

Within revised Directive 202.1, the DPD references three auditable forms, all of which must be reviewed by the Commander of the respective precinct or, if applicable, of the specialized unit. The revised auditable forms had not been implemented as of the end of the current reporting period.

Section 202.1-4.4 discusses in detail the DPD's policy regarding a Material Witness.<sup>49</sup> Inclusive is a section requiring the Commander to review all exceptions to the DPD's Material Witness policy on a daily basis AND that such review shall include actions taken to correct the exceptions and whether any corrective or non-disciplinary action was taken in connection with

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<sup>48</sup> Namely Form UF-004 (Warrant/Arrest Compliance), Form UF-006 (Detention of Material Witness), Form UF-007 (Hold Form) and Form UF-008 (Detainee Telephone and/or Visitor Restriction).

<sup>49</sup> Refer to the Current Assessment of Compliance for paragraph U56, above.

them. Although the definition section did not include this latter requirement, this section, as far as Material Witness reviews are concerned, adequately addresses the requirement.

Sections 202.1 – 7 and 202.1 - 8 provide guidance with regard to arrests and the DPD’s prompt judicial review policy. Inclusive are references to the Commander’s Daily Review Report that mirror Section 202.1 – 3.3 of the directive and address the first component of paragraph U60. However, these sections do not include the requirement that the Commander include an evaluation of corrective action.

In addition to material witness and prompt judicial review policies, paragraph U60 requires the Commanding Officer’s review of Holds and Restrictions. These topics are not addressed in Directive 202.1; however, according to the DPD, they will be addressed in other directives yet to be issued, including Directive 305.2, *Detainee Registration* and Directive 305.4, *Holding Cell Areas*. The other auditable forms that would be used to document holds, restrictions and material witness detention pursuant to the UOF CJ were being revised as of the end of the quarter.<sup>50</sup> Similarly, although Directive 202.1 references the auditable form used to document violations of the prompt judicial review policy (Form UF-004), the Monitor understands that the revised version of this auditable form has not yet been issued to the field.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U60.

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<sup>50</sup> On March 2, 2005, after the end of the quarter, the DPD resubmitted the revised UOF CJ auditable forms.

#### IV. EXTERNAL COMPLAINTS

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This section of the UOF CJ (paragraphs U61-69) requires the DPD to revise its policies and procedures regarding the intake, tracking, investigation and review of external complaints. There are specific requirements relative to the roles and responsibilities of the Office of the Chief Investigator (OCI) and the DPD, including the development and implementation of an informational campaign and the review and evaluation of each allegation in an external complaint investigation.<sup>51</sup>

Section IV's introductory section comprises paragraphs U61-63. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2004. The Monitor found the DPD in non-compliance with paragraph U61 due to the fact its revised Citizen Complaints Policy failed to include adequate information concerning a plan for each agency's responsibility for conducting community outreach and education regarding citizen complaints, as required by the paragraph.

Regarding paragraph U62, the Monitor found the DPD in compliance with subparagraphs U62c, which requires the DPD to broadcast public service announcements that describe the complaint process, and U62d, which requires the DPD to permanently post a placard describing the complaint process, with relevant phone numbers, in the lobby of each DPD precinct. The Monitor found the DPD in non-compliance with subparagraph U62b, which requires the DPD to distribute complaint forms, fact sheets and informational posters at City Hall, OCI, all DPD precincts, libraries, on the internet and, upon request, to community groups and community centers. The Monitor noted that although the DPD and the City put forth a good faith effort in an attempt to address the requirements of this subparagraph, an initial distribution of materials is not enough to achieve compliance and materials must be maintained at the various locations on a continuing basis.

Regarding paragraph U63, which requires all officers to carry informational brochures and contact forms in their vehicles at all times while on-duty, the Monitor withheld a determination of the DPD's compliance pending its implementation of the contact form that was approved by the DOJ during the quarter; implementation was required by January 9, 2005.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U61-63 during the quarter ending May 31, 2005.

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<sup>51</sup> The OCI reports to the BOPC and is responsible for conducting all external complaint investigations.



## A. INTAKE AND TRACKING

This section comprises paragraphs U64-66. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2004. The Monitor found that the OCI and DPD were continuing to assign a unique complaint number and provide a description of the basis for all complaints the DPD in compliance and, thus, were in compliance with paragraph U66. However, the Monitor found the DPD in non-compliance with paragraphs U64 and U65. Non-compliance with both paragraphs was due to the fact that the DPD had not yet disseminated its revised Directive 102.6, *Citizen Complaints*. The Monitor noted that that the directive, as well as the OCI's SOP, adequately addressed the paragraphs 65 requirement that intake officers or employees refrain from including an opinion regarding a complainant's mental competency or veracity, the directive had not yet been disseminated to the field as of the end of the quarter ending November 30, 2004.

## B. EXTERNAL COMPLAINT INVESTIGATION

This section comprises paragraphs U67-69. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2004, finding the DPD in non-compliance with each due to the fact that its revised Directive 102.6, *Citizen Complaints*, had not yet been disseminated to the field. The Monitor noted that although the directive failed to address all of the requirements of paragraph U67, which requires the DPD and the City to revise its policies regarding external complaint investigations. It adequately addressed the external complaint review process time limit requirements of paragraph U68 and the external complaint dispositions required in paragraph U69.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U67-69 during the quarter ending May 31, 2005.

## V. GENERAL POLICIES

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This section of the UOF CJ (paragraphs U70-77) requires the DPD to develop, revise, and/or enforce a variety of general policies. The DPD is required to ensure that all terms are clearly defined in policies that it develops, revises, and augments, and to make proposed policy revisions available to the community.

This section also requires the DPD to advise its personnel that taking police action in violation of DPD policy will subject them to discipline, possible criminal prosecution, and/or civil liability. In addition, the DPD must enforce its policies requiring all DPD officers to report misconduct committed by another DPD officer.

The DPD must also revise its policies regarding off-duty officers taking police action, revise its policies regarding prisoners and develop a foot pursuit policy. Finally, the DPD and the City are required to develop a plan for adequate deployment of supervisors in the field.

The Monitor last assessed the DPD's compliance with paragraphs U70 and U71 during the quarter ending November 30, 2004, finding the DPD in non-compliance with each. Regarding paragraph U70, the Monitor determined that although the DPD had progressed in formulating and revising policy and procedure, as of the end of the quarter, it had not yet finalized and disseminated most policy and procedure required under the UOF CJ. Regarding paragraph U71, the Monitor determined that the DPD has established an adequate system to identify, forward, post and remove proposed policy from its Website; however, the OCI's protocol for reviewing and responding to citizen comments either had yet to be memorialized in writing or had not been provided to the Monitor as of the end of the quarter. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending May 31, 2005.

During the current quarter, the Monitor again assessed the DPD's compliance with paragraphs U72-77. The results of our current assessments follow.

### **Paragraph U72 – Police Action in Violation of DPD Policy**

Paragraph U72 requires the DPD to advise all officers, including supervisors, that taking police action in violation of DPD policy shall subject officers to discipline, possible criminal prosecution, and/or civil liability.

#### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U72 during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that it had yet to disseminate the BOPC approved Directive 102.3, *Code of Conduct*.

### *Current Assessment of Compliance*

During the current quarter, the DPD and the BOPC approved revised Directive 102.3, *Code of Conduct*. However, this directive had not been disseminated to the field as of the end of the current quarter.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U72.

### *Paragraph U73 – Sergeants in the Field*

Paragraph 73 requires the DPD and the City to develop a plan to ensure regular field deployment of an adequate number of supervisors<sup>52</sup> of patrol units and specialized units that deploy in the field to implement the provisions of this agreement.

### *Background*

The Monitor assessed compliance with this paragraph during the quarter ending May 31, 2004, at which time the Monitor concluded the DPD was in non-compliance primarily due to inadequate documentation in daily attendance sheets that precluded the Monitor from determining whether each platoon in the Homicide section was adequately staffed with at least one supervisor.<sup>53</sup>

During the quarter ending November 30, 2004, the Monitor attempted to again assess the DPD's compliance with this paragraph by reviewing daily attendance records for selected precincts and specialized units for the period September 1 through September 10, 2004. Although the Monitor noted improvement in the documentation of attendance by officers and supervisors, the Monitor could not conclude on compliance given the limited population reviewed. As a result, the Monitor withheld a determination of compliance pending expansion of its population to include a review of all precincts and platoons.

### *Current Assessment of Compliance*

In an effort to test whether the DPD was adhering to its self-mandated structure of one supervisor for every five officers in the field,<sup>54</sup> the Monitor requested and received daily attendance records

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<sup>52</sup> Paragraph “pp” of the UOF CJ defines a supervisor as a sworn DPD employee at the rank of sergeant or above and non-sworn employees with oversight responsibility for DPD employees.

<sup>53</sup> The DPD provided the Monitor with an article, “The Structural Dimensions of Community Oriented Police Departments,” and a fact sheet entitled “Rider’s Pattern and Practice Settlement Agreement”—these documents were the basis for the DPD mandating the staffing of one supervisor for every five officers. This documentation, among other things, recommended that community oriented police departments operate with a structure of between 6.5 and 8 officers per supervisor.

<sup>54</sup> The DPD issued a memo on December 1, 2003 that instructed all Command Staff in precincts to staff each shift with a minimum of three Sergeants. Specialized Units were instructed to staff each shift with at least one Sergeant.

for all precincts and specialized units for the period September 1 through September 10, 2004. All daily attendance records were reviewed for six precincts. In total 304 platoons or shifts were reviewed.

The Monitor determined that for 99 platoons or shifts, the DPD either had no documented staffed supervision<sup>55</sup> for listed officers and investigators, or documented supervision exceeded a ratio of eight officers to one supervisor in the field. This translates into a compliance rate of 67.4%.<sup>56</sup> When calculating compliance with the DPD's self-mandated structure of one supervisor for every five officers in the field, an additional 74 platoons or shifts were not in compliance. Thus, according to the documentation provided, only 43% of platoons or shifts were staffed for the entire shift with a ratio of 5 or less officers in the field for each supervisor.<sup>57</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U73.

### **Paragraph U74 – Officers to Report Misconduct**

Paragraph U74 requires the DPD to enforce its policies requiring all DPD officers to report any misconduct committed by another officer, whether committed on- or off-duty.

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U74 during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that the DPD's Code of Conduct Directive had yet been issued to the field and its Firearms Directive was under revision.

### ***Current Assessment of Compliance***

The Monitor reviewed Directive 102.3, *Code of Conduct*, and determined that the DPD recognizes that "...any action taken in violation of any laws, regulations, procedures, commands or contrary to DPD policy, shall subject an officer to possible criminal prosecution, civil liability and/or disciplinary action, which may result in reprimand, suspension, forfeiture of pay,

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The DPD based this staffing on a standard requiring one supervisor for every five officers in the field. On any given shift the DPD typically deploys five cars per precinct with two officers per car. An additional five officers are assigned to administrative duty within the precinct station. This averages to 15 officers per shift.

<sup>55</sup> It is unknown to the Monitor whether the lack of documentation indicated that there was no supervision or that there was supervision, but it was not documented. The Monitor provided its work product to the DPD during mid-February for review, comment and rebuttal. The DPD had not responded as of the end of the quarter.

<sup>56</sup> The Monitor elected to calculate compliance using recommended staffing ratios as documented in research previously provided by the DPD that are not as stringent as the DPD's self-mandated policy. Please refer to footnote in the Background Section for this paragraph.

<sup>57</sup> Based on the findings of non-compliance after reviewing six precincts the Monitor elected not to review the remaining seven precincts and specialized units.

dismissal, or any other penalty the Chief of Police may lawfully direct...” The directive further states that “Officers...who fail to report the misconduct of officers to a supervisor, whether on or off duty, shall be subject to disciplinary action...”

Although Directive 102.3 requires the reporting of misconduct, it has yet to be disseminated to the field.<sup>58</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U74.

### **Paragraph U75 – Off-Duty Police Action**

Paragraph U75 requires the DPD to revise existing policy regarding off-duty officer police actions. Specifically, off-duty officers are:

- a. required to notify on-duty DPD or local law enforcement officers before taking police action, absent exigent circumstances, so that they may respond with appropriate personnel and resources to handle the problem;
- b. prohibited from carrying or using firearms or taking police action in situations where the officer’s performance may be impaired or the officer’s ability to take objective action may be compromised; and
- c. required to submit to field sobriety, breathalyzer, and/or blood tests if it appears that the officer has consumed alcohol or is otherwise impaired.

### ***Background***

The Monitor last assessed the DPD’s compliance with paragraph U75 during the quarter ending August 31, 2004, at which time the Monitor withheld a compliance determination pending an evaluation of the dissemination and implementation of Directive 202.1.

### ***Current Assessment of Compliance***

During the current quarter, the DPD further revised Directive 202.1, *Arrest Policy*. The Monitor reviewed the revised directive and determined that it continues to address the policy requirements of paragraph U75. However, this policy, along with others<sup>59</sup> and related auditable forms have yet to be disseminated to the field.

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<sup>58</sup> In its Report for the Quarter Ending August 31, 2004, the Monitor reported that this directive did not identify the methods by which the DPD would enforce this requirement. It is the DPD’s position that its complaint and UOF investigation processes will inherently ferret out any instances of non-compliance.

<sup>59</sup> Including Directive 304.1, *Firearms Policy* and Directive 102.3, *Code of Conduct*. In its Sixth Quarter Status Report, the DPD noted that the DOJ reviewed Directive 304.1 concluding that it did not address issues and concerns

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U75.

### **Paragraph U76 – Handling of Prisoners**

Paragraph U76 requires the DPD to revise policies regarding prisoners to:

- a. require officers to summon emergency medical services to transport prisoners when the restraints employed indicate the need for medical monitoring;
- b. require officers to utilize appropriate precautions when interacting with a prisoner who demonstrates he or she is recalcitrant or resistant, including summoning additional officers, summoning a supervisor and using appropriate restraints; and
- c. prohibit arresting and transporting officers from accompanying prisoners into the holding cell area.

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U76 during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that Directive 305.4, *Holding Cell Areas*, did not address section (a), requiring the summoning of emergency medical services to transport services when the restraints employed indicate the need for medical monitoring.

### ***Current Assessment of Compliance***

During the current quarter, the Monitor reviewed revised DPD Directive 305.4, *Holding Cell Areas*, to determine whether it addresses the policy requirements of paragraph U76. The Monitor determined that the directive adequately addresses all three requirements of paragraph U76. However, although this directive has been approved by the DPD and the BOPC, it has not yet been disseminated to the field pending the completion of the related auditable form.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U76.

### **Paragraph U77 – Foot Pursuit Policy**

Paragraph U77 requires the DPD to develop a foot pursuit policy that, at a minimum:

- a. Requires officers to consider particular factors in determining whether a foot pursuit is appropriate, including the offense committed by the subject, whether the subject is armed, the

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raised by its subject matter experts (SMEs). The DPD revised the directive to address DOJ concerns; the DOJ approved the directive, after the end of this quarter, in a letter dated March 23, 2005.

location, whether more than one officer is available to engage in the pursuit, the proximity of reinforcements, and the ability to apprehend the subject at a later date;

- b. Emphasizes alternatives to foot pursuits, including area containment, surveillance, and obtaining reinforcements;
- c. Emphasizes the danger of pursuing and engaging a subject with a firearm in hand; and
- d. Requires officers to document all foot pursuits that involve a UOF on a separate, auditable form,<sup>60</sup> such as the UOF report.

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U77 during the quarter ending August 31, 2004, finding the DPD in non-compliance largely due to the fact that the then-current DPD policy regarding foot pursuits included the definition of probable cause that did not comport with the UOF CJ definition.<sup>61</sup>

### ***Current Assessment of Compliance***

In order to assess the DPD's compliance with paragraph U77, the Monitor reviewed the DPD's revised Directive 202.7, *Foot Pursuit*, which was approved by the BOPC on February 3, 2005. The directive was resubmitted to the Monitor on February 22, 2005. The Monitor concluded that it adequately addresses the requirements of paragraph U77.

The DPD has indicated that it recently disseminated this policy to the field.<sup>62</sup> At this time, the final auditable form required by this paragraph, for foot pursuits that involve a UOF, has not yet been implemented.<sup>63</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U77.

### ***Recommendation***

As with other paragraphs, the Monitor recommends that the DPD expeditiously disseminate its directives, including Directive 202.7, to include an audit trail of receipt by necessary personnel,

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<sup>60</sup> The UOF CJ defines an auditable form as a discrete record of the relevant information maintained separate and independent of blotters or other forms maintained by the DPD.

<sup>61</sup> The DPD intends to file a motion in Court regarding the definition of probable cause in the UOF CJ.

<sup>62</sup> The DPD has since authorized dissemination of this policy to the field effective March 31, 2005, after the end of this quarter. During the next scheduled review the Monitor will test the dissemination of this policy to the field.

<sup>63</sup> The DPD resubmitted its UOF auditable forms on March 2, 2005, after the end of the quarter. The forms have been revised based upon TA provided by the Monitor on February 8-9, 2005.

particularly in light of the fact that this particular directive meets the requirements of the UOF CJ.

One component of Directive 202.7 tactically instructs officers to make wide sweeping turns while rounding buildings. Although not a compliance issue, the Monitor has concerns with this instruction in light of other tactical instructions contained within the same Directive. It is recommended that the DPD instruct officers to exercise caution while rounding buildings and obstructions similar to its instructions with regard to breaching walls and fences.

## **VI. MANAGEMENT AND SUPERVISION**

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This section of the UOF CJ (paragraphs U78-105) requires the DPD to devise a comprehensive risk management plan that will consist of a Risk Management Database, a performance evaluation system and an auditing protocol. The plan must also provide a mechanism for the regular and periodic review of all DPD policies, and for the regular occurrence of meetings of DPD management to share information and evaluate patterns of conduct that could potentially increase the DPD's liability. This section of the UOF CJ also includes requirements in connection with the DPD's use of video cameras, as well as the DPD's policy and practices regarding discipline.

The Monitor last assessed the DPD's compliance with paragraph U78, the introductory paragraph to section VI, during the quarter ending November 30, 2004, finding the DPD in non-compliance. In order to achieve compliance with this paragraph's requirements, the DPD must achieve compliance with the UOF CJ paragraphs related to each the Risk Management database; the DPD was in non-compliance with the majority of these paragraphs. The Monitor is scheduled to again assess the DPD's compliance with paragraph U78 during the quarter ending May 31, 2005.

### **A. RISK MANAGEMENT DATABASE**

This section comprises paragraphs U79-U90. It provides specific requirements relative to the Risk Management Database, including the development and implementation of a new computerized relational database for maintaining, integrating and retrieving data necessary for the supervision and management of the DPD. While the Risk Management Database is being developed, paragraph U89 requires an interim system to be developed and implemented.

The Monitor last assessed the DPD's compliance with paragraph U79-83 and U86-88a.-c. during the quarter ending November 30, 2004, finding the DPD in non-compliance with each due to the fact that its Comprehensive Risk Management Plan was not finalized as of the end of the



quarter.<sup>64</sup> The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending May 31, 2005.

The Monitor last assessed the DPD's compliance with paragraphs U84-85, U88d.-e., and U89 during the quarter ending August 31, 2004. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.<sup>65</sup>

### **Paragraph U84 – Risk Management Database Review Protocol**

Paragraph U84 requires the DPD to prepare, for the review and approval of the DOJ, a Review Protocol for using the Risk Management Database that addresses data analysis, supervisory assessment, supervisory intervention, documentation and auditing.

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U84 during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that the Review Protocol, submitted to the DOJ on July 6, 2004, was still under review by the DOJ. Since that time, the DOJ has provided the DPD with TA on the development of the risk management database over which it has review and approval.

### ***Current Assessment of Compliance***

The DPD resubmitted the Review Protocol and other documents related to the risk management database to the DOJ on October 25, 2004. The DOJ provided the DPD with a list of questions regarding the MAS and IMAS on December 10, 2004. The parties held a conference call on January 24, 2005 to discuss the systems. As of the end of the quarter, the DOJ was in the process of reviewing the documents.<sup>66</sup>

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<sup>64</sup> The DPD submitted the components of the Comprehensive Risk Management Plan, including the Data Input Plan, Report Protocol, Review Protocol, RFP (collectively referred to as the Management Awareness System or MAS), and an Interim Management Awareness System (IMAS) to the DOJ for review and approval on October 25, 2004. During this quarter, the DOJ reviewed the documents and submitted a letter to the DPD, dated December 10, 2004, which included a list of technical and logistical questions regarding the proposed IMAS and MAS.

<sup>65</sup> The Monitor is not scheduled to assess compliance with paragraphs U88f and g until the quarters ending August 31, 2005 and February 28, 2006, respectively, as the deadlines for compliance with these paragraphs are June 30, 2005 and December 31, 2005, respectively. However, if the DPD makes significant progress on an accelerated schedule, the Monitor will report on it. Paragraph U90 has no specific deadline; the Monitor will assess the DPD's compliance with this paragraph on an as-needed basis, as the DPD's actions pursuant to it are driven by the availability of relevant new technology and its experience with the operational Risk Management Database.

<sup>66</sup> On March 22, 2005, after the end of the quarter, the DOJ submitted a letter to the DPD outlining additional concerns and recommendations regarding the MAS and IMAS.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U84.

### **Paragraph U85 – Risk Management Database Modules**

Paragraph U85 requires the DPD to seek to ensure that the Risk Management Database is created as expeditiously as possible. As part of this effort, the DPD, in consultation with the DOJ, must organize the Risk Management Database into modules in developing the Data Input Plan, the Report Protocol, the Review Protocol and the Request for Proposals (RFP) and in negotiating with contractors, such that difficulties with one aspect of the Risk Management Database do not delay implementation of other modules.

#### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U85 during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that DPD was in the process of revising the Data Input Plan, Review Protocol and RFP to include the comments and recommendations provided by the DOJ.

#### ***Current Assessment of Compliance***

The DPD resubmitted documents related to the risk management database to the DOJ on October 25, 2004. The DOJ provided the DPD with a list of questions regarding the MAS and IMAS on December 10, 2004. The parties held a conference call on January 24, 2005 to discuss the systems. As of the end of the quarter, the DOJ was in the process of reviewing the documents.<sup>67</sup>

Based on the foregoing, the DPD in non-compliance with the provisions of paragraph U85.

### **Paragraph U88d – Risk Management Database Review Protocol**

Paragraph U88d requires the DPD to submit the Review Protocol to the DOJ for review and approval by March 30, 2004.

#### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U88d during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that the DPD was revising the Review Protocol to address comments and recommendations from the DOJ.

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<sup>67</sup> On March 22, 2005, after the end of the quarter, the DOJ submitted a letter to the DPD outlining additional concerns and recommendations regarding the MAS and IMAS.

### *Current Assessment of Compliance*

The DPD resubmitted the Review Protocol and other risk management database-related documents to the DOJ for review and approval on October 25, 2004. The DOJ provided the DPD with a list of questions regarding the MAS and IMAS on December 10, 2004. The parties held a conference call on January 24, 2005 to discuss the systems. As of the end of the quarter, the DOJ was in the process of reviewing the documents.<sup>68</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U88d.

### *Paragraph U88e – Risk Management Database Selection of Contractor*

Paragraph U88e requires the DPD to select the contractor to create the risk management database by May 31, 2004.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U88e during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that the DPD had neither issued an RFP nor selected a contractor to create the Risk Management Database.

### *Current Assessment of Compliance*

The DPD submitted a RFP to the DOJ for approval on October 25, 2004. The DOJ provided the DPD with a list of questions regarding the MAS and IMAS on December 10, 2004. The parties held a conference call on January 24, 2005 to discuss the systems. As of the end of the quarter, the DOJ was in the process of reviewing the documents.<sup>69</sup> The RFP has not yet been issued by the DPD, which must obtain DOJ's approval prior to issuance.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U88e.

### *Paragraph U89 – Interim Risk Management System*

Paragraph U89 states that prior to the implementation of the new Risk Management Database, the DPD must develop an interim system to identify patterns of conduct by DPD officers or groups of officers.

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<sup>68</sup> On March 22, 2005, after the end of the quarter, the DOJ submitted a letter to the DPD outlining additional concerns and recommendations regarding the MAS and IMAS.

<sup>69</sup> See footnote 75.

## *Background*

The Monitor last assessed the DPD's compliance with paragraph U89 during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that it had not implemented an interim risk management system to satisfy the requirements of the paragraph.

## *Current Assessment of Compliance*

The DPD submitted the proposed IMAS Plan to the DOJ and the Monitor with a cover letter dated August 5, 2004. The IMAS Plan is meant to address the requirements of paragraph U89. The DOJ reviewed the plan and provided TA to the DPD on August 25, 2004 and September 8, 2004.<sup>70</sup> The DPD resubmitted the IMAS Plan to the DOJ on October 25, 2004 for review and approval. The DOJ provided the DPD with a list of questions regarding the MAS and IMAS on December 10, 2004. The parties held a conference call on January 24, 2005 to discuss the systems. As of the end of the quarter, the DOJ was in the process of reviewing the documents.<sup>71</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U89.

## **B. PERFORMANCE EVALUATION SYSTEM**

This section comprises one paragraph, paragraph U91, which requires the DPD to ensure that performance evaluations for all DPD employees occur at least annually and include consideration of civil rights integrity, adherence to federal constitutional amendments and civil rights statutes and for supervisors, the identification of at-risk behavior in subordinates.

The Monitor last assessed the DPD's compliance with paragraph U91 during the quarter ending August 31, 2004, finding the DPD in non-compliance as it was in the process of revising the Performance Evaluation Forms to address the paragraph's requirements.

The Monitor is scheduled to again assess the DPD's compliance with paragraph U91 during the quarter ending August 31, 2005.

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<sup>70</sup> Although the DOJ does not have review and approval over paragraph U89, it was agreed that the DOJ would provide TA regarding the interim plan given the fact that the DOJ has review and approval over the risk management database pursuant to paragraph U88.

<sup>71</sup> On March 22, 2005, after the end of the quarter, the DOJ submitted a letter to the DPD outlining additional concerns and recommendations regarding the MAS and IMAS.

## C. OVERSIGHT

This subsection of the UOF CJ (paragraphs U92-99) requires the DPD to establish an internal audit process, to perform annual<sup>72</sup> audits of all precincts and specialized units on eight aspects of policing,<sup>73</sup> to perform periodic random reviews of scout car camera videotapes and video recording equipment, and to meet regularly with local prosecutors to identify any issues in officer, shift or unit performance. Each of these oversight provisions requires the DPD to examine a number of issues, but a common theme among them all is the requirement to assess and report on the appropriateness of the police activity being examined.

The Monitor last assessed the DPD's compliance with paragraphs U92-97 during the quarter ending November 30, 2004. The Monitor last assessed the DPD's compliance with paragraph U98 during the quarter ending August 31, 2004. The Monitor again assessed the DPD's compliance with paragraphs U92-95 and U97-98 during the current quarter. The results of our current assessments follow.

The Monitor last assessed the DPD's compliance with paragraph U96, which requires the DPD to conduct regularly scheduled annual audits of the DPD's custodial detention practices, during the quarter ending November 30, 2004, finding the DPD in non-compliance. The Monitor determined that the DPD's first Custodial Detention Practices Audit contained deficiencies related to timeliness, sampling, scope and reporting. The Monitor is scheduled to again assess the DPD's compliance with paragraph U96 during the quarter ending August 31, 2005.

The Monitor last assessed the DPD's compliance with paragraph U99 during the quarter ending November 30, 2004, finding the DPD in compliance, as bi-monthly meetings between the DPD and the prosecutor's office met the requirements of the paragraph. The Monitor is scheduled to again assess compliance with paragraph U99 during the quarter ending May 31, 2005.

### *Paragraph U92 – Audit Protocol*

Paragraph U92 requires the DPD to develop an Audit Protocol to be used by all personnel when conducting audits. The Audit Protocol must establish a regular and fixed schedule for all audits required by the UOF CJ<sup>74</sup> to ensure the audits occur with sufficient frequency and cover all DPD units and commands.

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<sup>72</sup> On October 4, 2004, in response to a Joint Motion from the parties, the Court amended the audit schedule in the UOF CJ by requiring the DPD's UOF CJ audits to be completed annually by August 31, 2004, and every year thereafter.

<sup>73</sup> Including UOF investigations; prisoner injuries; allegations of misconduct; arrests; stops and frisks; witness identification and questioning; custodial detention practices, and complaint investigations.

<sup>74</sup> This Audit Protocol must also address the audits required by the COC CJ (paragraphs C65-72).

## *Background*

The DPD's first Audit Protocol was submitted on February 16, 2004. The Monitor withheld a determination of compliance with paragraph U92 for the quarters ending February 29, 2004, May 31, 2004, and August 31, 2004 due to ongoing discussions between the parties regarding the frequency of the audits.<sup>75</sup> In its previous quarterly reports, the Monitor noted that neither the Audit Protocol nor the DPD's Quarterly Status Reports to August 31, 2004 adequately addressed the need for the DPD to provide periodic audit status reports to the Chief of Police.<sup>76</sup> While the DPD's Quarterly Status Reports included information summarizing the status of the DPD's progress on each of the audits, they did not identify that such audits were overdue, nor did they provide any reasons for the delay in issuance of such audits.

As reported in the Monitor's Report for the Quarter Ending November 30, 2004, the Court granted the parties' "Joint Motion to Amend the Consent Judgments" and amended<sup>77</sup> the frequency of the audits in the UOF CJ and the COC CJ on October 4, 2004; however, the audit timetable set out in the Audit Protocol dated February 16, 2004 met the requirements of the amended UOF CJ, but did not meet the requirements of the amended COC CJ. Additionally, the DPD's Audit Protocol required that it be "updated and submitted to the Chief of Police for review and approval on an annual basis before the commencement of each fiscal year."<sup>78</sup> The DPD acknowledged the need to update the Audit Protocol to include: an audit schedule that meets the requirements of the UOF CJ and COC CJ, and the requirement to issue a periodic status report to the Chief of Police.<sup>79</sup> However, the DPD fiscal year ended June 30, 2004, and as of November 30, 2004, the DPD had not submitted an updated Audit Protocol. Accordingly, the Monitor found the DPD in non-compliance with paragraph U92 for the quarter ending November 30, 2004.

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<sup>75</sup> The schedule contained in the Audit Protocol was inconsistent with the requirements specified in the original Consent Judgments.

<sup>76</sup> The Monitor's *Methodologies* require periodic audit status reports to be issued to the Chief of Police summarizing the DPD's overall compliance and progress on each of the audits listed in the Audit Protocol for the recent fiscal year.

<sup>77</sup> All of the audit paragraphs in the UOF CJ and COC CJ were amended. The UOF CJ has an annual audit timetable, and the COC CJ has a semi-annual audit timetable.

<sup>78</sup> Audit Protocol, February 13, 2004, Page 2.

<sup>79</sup> The DPD's Fifth Quarter Status Report includes information summarizing the status of the DPD's progress on each of the audits required, but does not identify that such audits are overdue, nor does it provide any reasons for the delay in issuance of such audits.

### *Current Assessment of Compliance*

On February 28, 2005, the DPD's AT submitted its 2004/2005 Audit Protocol to the Monitor.<sup>80</sup> Due to the timing of this submission (at the end of the current quarter), the Monitor completed its review of the audit schedule contained therein, but did not undertake an assessment of the content of the entire 2004/2005 Audit Protocol.<sup>81</sup>

Although the 2004/2005 Fiscal Year Audit Protocol establishes a schedule listing the audits required by the Consent Judgments, the Audit Protocol indicates that 14 of the 26 audits required<sup>82</sup> will not be completed due to staffing shortages as well as the need to increase the level of proficiency of DPD's audit staff. Accordingly, the audit schedule in the 2004/05 Audit Protocol is insufficient.

While the Monitor agrees that the AT must increase the number and proficiency levels of its audit personnel, the Monitor notes that the DPD was aware of and, in fact, articulated these same shortcomings in its previous Audit Protocol, dated February 13, 2004. Since then, the DPD has had more than a year to address its audit staffing levels and the DPD's audit personnel have received group and individual training beginning in September 2003 in the form of TA provided by the Monitor related to audit planning, sampling, and reporting. The Monitor continues to provide such TA on an ongoing basis. The DPD's audit personnel also attended the LAPD's *Police Performance Auditing* course in January 2005.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U92.

### *Paragraph U93 – Audit Reporting Requirements*

Paragraph U93 requires the DPD to issue a written report on the results of each audit<sup>83</sup> to the Chief of Police and to all precincts or specialized unit commanders. The UOF CJ requires such audit reports to be completed by August 31, 2004, and annually thereafter. These reports must include an examination of consistency throughout the DPD. The commander of each precinct and specialized unit must review all audit reports regarding employees under his or her command and, if appropriate, take disciplinary or non-disciplinary corrective action.

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<sup>80</sup> Because the Audit Protocol was finalized and submitted during the current quarter, the timeliness of the submission (i.e. meeting the June 2004 deadline) is not a factor in the Monitor's compliance assessment for this quarter.

<sup>81</sup> The Audit Protocol is also discussed in the Introduction to this report under Focus Issues.

<sup>82</sup> The 2004/05 Audit Protocol indicates that three of the eight UOF CJ audits will not be completed as required by August 31, 2005, five of the nine COC CJ audits will not be completed as required by January 31, 2005, and six of the nine COC CJ audits will not be completed as required by July 31, 2005.

<sup>83</sup> Annual audits are required to be completed by paragraphs U94-97.

## *Background*

The Monitor last assessed the DPD's compliance with paragraph U93 during the quarter ending November 30, 2004, finding the DPD in non-compliance due to the fact that although the DPD submitted one<sup>84</sup> of the audits required by the UOF CJ to the Chief of Police, the audit did not include an examination of consistency throughout the DPD.

## *Current Assessment of Compliance*

During the current quarter, the DPD submitted two audit reports in response to the UOF CJ: the Arrest Practices Audit and the Stops and Frisks Audit. The Arrest Audit did not include a comparison of findings by precinct or an examination of consistency throughout the DPD.<sup>85</sup> As reported in the Current Assessment of Compliance for paragraph U95b, below, the Stop and Frisk Audit was received by the Monitor near the end of the current quarter; accordingly, the Monitor has not yet completed its evaluation of that audit in order to assess compliance with paragraph U93 or paragraph U95b. The Monitor expects to report the findings from this assessment in its Report for the Quarter Ending May 31, 2005.

The Monitor has requested documentation to support the distribution to, and subsequent actions of, the Precinct and/or Specialized Unit Commanders in relation to the Arrest Audit. The Monitor had not received such documentation as of the end of the quarter.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U93.

## *Paragraph U94 - Audits of UOF, Prisoner Injuries and Misconduct Investigations*

Paragraph U94 requires the DPD to conduct regularly scheduled annual audits of UOF, investigations, prisoner injury investigations, and investigations into allegations of misconduct. Such audits must cover all precincts and specialized units. These audits were due by August 31, 2004, and annually thereafter.

## *Background*

The Monitor last assessed the DPD's compliance with paragraph U94 during the quarter ending November 30, 2004, finding the DPD in non-compliance due to the fact that none of the audits required by this paragraph were submitted as of the end of that quarter.

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<sup>84</sup> The audit submitted was in response to paragraph U96, Custodial Detention Practices.

<sup>85</sup> The Monitor reports on its evaluation of this audit under the Current Assessment of Compliance for paragraph U95a, below.



### *Current Assessment of Compliance*

The DPD had not submitted any audits required by paragraph U94 as of the end of the current quarter. According to the DPD's AT, planning for the Use of Force and Allegations of Misconduct Investigations Audits began on February 21, 2005 and planning for the Prisoner Injury Investigations Audit has not yet begun.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U94.<sup>86</sup>

### **Paragraph U95 – Audits of Probable Cause, Stops and Frisks and Witness Identification and Questioning Documentation**

Paragraph U95 requires the DPD to conduct regularly scheduled annual audits of arrest practices, stops and frisks, and witness identification and questioning documentation. Such audits must cover all precincts and specialized units and must include an evaluation of the scope, duration, content, and voluntariness, if appropriate, of the police interaction. The arrest practices audit must also include a comparison of the number of arrests to requests for warrants and number of arrests for which warrants were sought to judicial findings of probable cause. These audits were due by August 31, 2004, and annually thereafter.

For ease of reporting, the Monitor has split paragraph U95 into the following three components:

- U95a – Arrest Practices Audit
- U95b – Stops and Frisks Audit
- U95c – Witness Identification and Questioning Audit

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U95 during the quarter ending November 30, 2004, finding the DPD in non-compliance due to the fact that none of the audits required by this paragraph were submitted as of the end of that quarter.

### *Current Assessment of Compliance*

#### *U95a – Arrest Practices Audit*

The DPD submitted the Arrest Practices Audit to the Monitor on January 13, 2005. In order to assess compliance with paragraph U95, the Monitor reviewed the audit report submitted by the

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<sup>86</sup> The Monitor will continue to find the DPD in non-compliance for each audit until such time as the required audits have been submitted. When such audits are submitted, the quality of such audits will be evaluated.

DPD and selected AT working papers, including the initial audit work plan, audit matrices, and other related documents. The Monitor did not review additional working papers related to the fieldwork from this audit as a result of discussions of its preliminary findings with the DPD.<sup>87</sup>

The Monitor's findings, which have been discussed with the DPD's AT, are highlighted below:

- The Arrest Practices Audit was not completed on a timely basis and related to incidents that occurred almost one year ago.<sup>88</sup> Accordingly, the data used in the audit is stale.
- The Monitor notes the AT included juvenile arrests in the total population. If they had been identified as a separate stratum it would have allowed the AT to assess if there were separate concerns for juvenile arrests.
- The audit did not evaluate the content of the arrest reports, the voluntariness of the police interaction, nor whether supervisory oversight was documented.
- The *Summary of Findings* was not expressed in quantitative terms. The findings were not clearly linked to objectives, were not presented in a manner that allowed a comparison by precinct, and did not contain overall findings for the Department.
- The sampling was not properly stratified, and used an insufficient number of arrests for certain precincts.
- For some objectives, the audit contained conclusions that were contradictory.<sup>89</sup>
- The audit appropriately summarized the recommendations in a separate section, but would be more comprehensible if the recommendations were clearly linked to each objective.
- As with prior quarterly reports, the Monitor identified stylistic deficiencies in the audit report that may not directly impact compliance with the UOF CJ but affect its understandability and effectiveness.

Based on the foregoing, the Monitor finds the DPD in non-compliance with subparagraph U95a.

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<sup>87</sup> This audit was completed prior to formal training provided to the DPD AT by the Monitor's staff and the LAPD as discussed above, and consequently contained deficiencies similar to those identified by the Monitor and detailed in the Monitor's Report for the Quarter Ending November 30, 2004.

<sup>88</sup> The arrests occurred between January 19, 2004 and February 15, 2004.

<sup>89</sup> For example, the report concludes that the Third Precinct did not comply with the timeliness requirement for preparing the Commander's Review report; however, in the summary table the report indicates this objective was not evaluated.

### *U95b – Stops and Frisks Audit*

The DPD submitted the Stops and Frisks audit on February 18, 2005. Because the audit was received by the Monitor near the end of the current quarter, the Monitor has not yet completed its evaluation of the audit in order to assess compliance with subparagraph U95b. The Monitor expects to report its findings in its Report for the Quarter Ending May 31, 2005.

### *U95c – Witness Identification and Questioning Audit*

During the current quarter, the Monitor continued to provide the DPD's AT with TA relating to the planning of the Witness Identification and Questioning Audit. As of the end of the current quarter, the DPD had not submitted any audits required by this subparagraph.

Based on the foregoing, the Monitor finds the DPD in non-compliance with subparagraph U95c.

### **Paragraph U97 – Audits of OCI Audits of External Complaints and Investigations**

Paragraph U97 requires the Chief Investigator (CI) of the OCI to designate an individual or entity to conduct annual audits that examine external complaints and complaint investigations, and to review all audit reports regarding officers under OCI command and take appropriate disciplinary or non-disciplinary corrective action.

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U97 during the quarter ending November 30, 2004, finding the DPD in non-compliance due to the fact that the DPD had not submitted an audit in response to this paragraph as of the end of that quarter.

### ***Current Assessment of Compliance***

The DPD had not submitted an audit required by paragraph U97 as of the end of the current quarter. The DPD began the planning for this audit during the current quarter.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U97.<sup>90</sup>

### **Paragraph U98 – Random Reviews of Videotapes and Recording Equipment**

Paragraph U98 requires the DPD to conduct and document periodic random reviews of scout car camera videotapes for training and integrity purposes. In addition, the DPD must require periodic

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<sup>90</sup> The Monitor will continue to find the DPD in non-compliance for this audit until such time as it has been submitted. When this audit is submitted, the quality of the audit will be evaluated.

random surveys of scout car video recording equipment to confirm that it is in proper working order.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U98 during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that the DPD was still in the process of developing a uniform written protocol and a supervisor video review form, which, along with Directive 303.3, *In Car Video Cameras*, will address the requirements of paragraph U98.

### *Current Assessment of Compliance*

As of the end of the quarter, the DPD had not yet submitted a review protocol or revised Directive 303.3, *In-Car Video Cameras*, based on the TA provided by the Monitor on October 13, 2004.<sup>91</sup> The DPD's revised policy or procedure must define how it will conduct random periodic reviews and surveys.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U98.

## **D. USE OF VIDEO CAMERAS**

This section comprises paragraphs U100-102. It requires the DPD to develop a policy on the use of video cameras that provides a systematic approach for activation, recording, review and preservation of video cameras and tapes. Additionally, the DPD is required to repair and replace all non-functioning video equipment. Other paragraphs in the UOF CJ and COC CJ that require periodic random reviews of videotapes and periodic random surveys of recording equipment are U98 and C64, which are also discussed in this report.

Consistent procedures throughout the DPD in this area will facilitate the availability of information for investigative purposes and will assist in the identification of at-risk behavior and violations of police procedure. These policies will also serve to protect DPD officers by providing an accurate record of encounters with citizens.

The Monitor last assessed the DPD's compliance with paragraphs U100-102 during the quarter ending August 31, 2004. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

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<sup>91</sup> On March 18, 2005, after the end of the quarter, the Monitor received Directive 303.3, the Video Review Protocol and related documents from the DPD.

**Paragraphs U100-102 – Non-Functioning Video Cameras; Video Camera Policy; Video Recording Policy**

Paragraph U100 requires the DPD to repair or replace all non-functioning video cameras.

Paragraph U101 states that the DPD policy on video cameras shall be revised and augmented to require: activation of scout car video cameras at all times the officer is on patrol; supervisors to review videotapes of all incidents involving injuries to a prisoner or an officer, uses of force, vehicle pursuits and external complaints; and that the DPD retain and preserve videotapes for at least 90 days, or as long as necessary for incidents to be fully investigated.

Paragraph U102 states that the DPD policy on video cameras shall require officers to record all motor vehicle stops, consents to search a vehicle, deployments of a drug-detection canine, or vehicle searches.

***Background***

The Monitor last assessed the DPD's compliance with paragraphs U100-102 during the quarter ending August 31, 2004, finding the DPD in non-compliance with each primarily due to the fact that as of the end of the quarter, the DPD was still in the process of developing a uniform written protocol and policies and procedures that address the requirements of the paragraphs. The Monitor previously determined that Directive 303.3 met the requirements of the UOF CJ; however, the policy had not yet been disseminated. In addition, several precincts had non-functioning video equipment that was in the process of being repaired or replaced, and several precincts had non-functioning microphones. Finally, the DPD was still in the process of implementing the new digital video capture system, *Insight Digital Video System*, as well as the policies and procedures for in-car video cameras across all precincts.

***Current Assessment of Compliance***

In the DPD's Sixth Quarter Status Report, the DPD stated that it has developed uniform written policies and procedures that address the requirements of paragraphs U98 and U100-102 in response to the new digital video system. However, as of the end of the quarter, the DPD had not submitted a review protocol or written policies and procedures to the Monitor.<sup>92</sup> Until these procedures are implemented and officers are receiving adequate training on their provisions, the DPD cannot meet the overall requirements of these paragraphs.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs U100-102.

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<sup>92</sup> On March 18, 2005, after the end of the quarter, the Monitor received the Video Equipment Policy and the video review protocol from the DPD. The Monitor will evaluate this submission and report its findings during the next scheduled review of this paragraph.

## E. DISCIPLINE

This section comprises paragraphs U103-105. It requires the DPD to eliminate the current backlog of disciplinary cases and to establish guidelines and create a scheduling process that will prevent backlogs from developing in the future. In order to provide guidelines for uniformity in discipline, the DPD must create a matrix that establishes a presumptive range of discipline for each type of rule violation.

The Monitor last assessed the DPD's compliance with paragraphs U103-105 during the quarter ending August 31, 2004. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### *Paragraph U103 – Backlog of Disciplinary Cases*

Paragraph U103 requires the City to ensure that adequate resources are provided to eliminate the backlog of disciplinary cases and that all disciplinary matters are resolved as soon as reasonably possible.

#### *Background*

The Monitor last assessed the DPD's compliance with paragraph U103 during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that it was currently developing the policy that will include a process for scheduling disciplinary hearings, trials, and appeals at appropriately frequent intervals, and will establish guidelines dictating the maximum period of time that should elapse between each stage of the disciplinary process. It was the Monitor's understanding that this policy will incorporate the requirements of this paragraph, as previously reported, and that it was still under internal review by the DPD. The Disciplinary Administration Unit was upgraded to a section with additional personnel, as a means of reducing the disciplinary case backlog.

#### *Current Assessment of Compliance*

According to the DPD's Sixth Quarter Status Report, the DPD is in the process of further refining procedures to meet the requirements of paragraphs U103 and U104. The DPD has instituted a plea forum that allows negotiations to take place between the union attorney, the member and the Department advocate. According to the DPD, a total of 751 disciplinary cases were closed in the year 2004 which leaves a total of 61 backlogged cases pending adjudication. Although the DPD correctly points out in its Sixth Quarter Status Report that there is some unavoidable delay between the time when a member initially commits an infraction and the time the case is ready to go before the proper forum; this paragraph requires the elimination of backlogged cases. The DPD has made significant progress by closing 751 cases in 2004. Once the remainder of the backlogged cases are eliminated and paragraph U104 guidelines are developed and implemented so that all disciplinary matters are resolved as soon as reasonably

possible (as required by this paragraph) then the DPD can achieve compliance with this paragraph. The guidelines will define what period of delay is acceptable by dictating the maximum period of time that should elapse between each stage of the disciplinary process.<sup>93</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U103.

### *Paragraph U104 – Guidelines for Disciplinary Process*

Paragraph U104 requires the DPD to schedule disciplinary hearings, trials, and appeals at appropriately frequent intervals, to prevent a disciplinary backlog from developing. As part of determining how often to schedule such hearings, the DPD must establish guidelines dictating the maximum period of time that should elapse between each stage of the disciplinary process.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U104 during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that it had not established guidelines that met the requirements of the paragraph. The Disciplinary Administration Unit was upgraded to a section with additional personnel, as a means of reducing the disciplinary case backlog.

### *Current Assessment of Compliance*

As indicated in the Current Assessment of Compliance for paragraph U103, the DPD has indicated that it has developed and instituted a plea forum, which is a positive step toward preventing a disciplinary backlog from developing. However, as of the end of the quarter, the DPD was still in the process of revising its policies and procedures to meet the requirements of paragraph U104 (namely guidelines dictating the maximum period of time that should elapse between each stage of the disciplinary process as required by this paragraph). Although the DPD's Sixth Quarterly Report states that the DPD is in compliance with this paragraph, until the guidelines are established and implemented, the requirements of the paragraph have not been fulfilled.<sup>94</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U104.

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<sup>93</sup> On March 1, 2005, after the end of the quarter, the Monitor received Directive 102.4, *Discipline*, from the DPD. The Monitor will review this submission and report on its findings during the next scheduled review of this paragraph.

<sup>94</sup> On April 13, 2005, after the end of the quarter, the Monitor received a document from the DPD that purports to establish guidelines dictating the maximum period of time that should elapse between each stage of the disciplinary process. The Monitor will evaluate this submission and report its findings during the next scheduled review of this paragraph.

### **Paragraph U105 – Disciplinary Matrix**

Paragraph U105 requires the DPD to create a disciplinary matrix that: establishes a presumptive range of discipline for each type of rule violation; increases the presumptive discipline based on both an officer's prior violations of the same rule as well as violations of other rules; requires that any departure from the presumptive range of discipline must be justified in writing; provides that the DPD shall not take only non-disciplinary corrective action in cases in which the disciplinary matrix calls for the imposition of discipline; and provides that the DPD shall consider whether non-disciplinary corrective action also is appropriate in a case where discipline has been imposed.

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U105 during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that the revised disciplinary matrix was under internal review as of the end of the quarter.

### ***Current Assessment of Compliance***

In its Sixth Quarter Status Report, the DPD indicated that the Disciplinary Matrix has been forwarded to the Monitor and to the DOJ for review. However, as of the end of the quarter, the Monitor had not yet received this document from the DPD.<sup>95</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U105.

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<sup>95</sup> On March 14, 2005, after the end of the quarter, the Monitor received the Disciplinary Matrix. The Monitor will evaluate this submission and will report its findings during the next scheduled review of this paragraph.



## VII. TRAINING

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This section of the UOF CJ (paragraphs U106-123) directs the DPD to coordinate and review all UOF and A&D training to ensure quality, consistency, and compliance with applicable law and DPD policy. Significantly, the DPD must provide annual training for all DPD recruits, officers and supervisors in a number of areas including UOF, arrests and other police-citizen interactions and custodial detention. Furthermore, the DPD must develop a firearms protocol and provide supervisory, investigator and field training. The Department must also select and train trainers, evaluate all training, conduct needs assessments, and create and maintain individual training records for all officers. The UOF CJ provides specific requirements for review and reporting on these issues to the Monitor and the DOJ.

In previous reports, the Monitor noted that a substantial portion of the training required under the UOF CJ is based on Departmental policy, which was still under revision, and that effective training curricula development must include consultation with the affected commands and with the individuals assigned to draft and/or revise the underlying policies.

As described in the Monitor's Report for the Quarter ending August 31, 2004, on August 22, 2004, the DPD established the Curriculum Research and Development function to develop a competency-based curriculum that includes specific learning objectives, measurable outcomes and scenario-based lesson plans. This unit is commanded by a Police Inspector, who holds a PhD in Education. According to the DPD, a group of in-house subject matter experts have been identified to develop curriculum under the Inspector's guidance.

### A. OVERSIGHT AND DEVELOPMENT

This section comprises paragraphs U106-111. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2004, finding the DPD in non-compliance with each. Non-compliance with paragraphs U106,<sup>96</sup> U107,<sup>97</sup> 109<sup>98</sup> was based on the fact that, as of the end of this quarter, although significant progress has been made, the DPD had not finalized or received DOJ approval, where required, on the majority of its UOF and A&D policies and, consequently, had not developed the UOF and A&D training, nor had it developed or approved the lesson plans, required by the UOF CJ.

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<sup>96</sup> Paragraph U106 requires the DPD to coordinate and review all UOF and A&D training.

<sup>97</sup> Paragraph U107 provides various standards that the DPD must comply with in connection with UOF and A&D training.

<sup>98</sup> Paragraph U109 requires the DPD to ensure that only mandated objectives and approved lesson plans are taught by instructors and that instructors engage students in meaningful dialogue regarding particular scenarios.

Non-compliance with paragraph U108, which requires the DPD to create and maintain individual training records for all officers, was based on the fact that although the DPD was entering current training information into the MCOLES' Information and Tracking Network (MITN) system, as of the end of the quarter, the system did not contain all of the information required by the paragraph 108.<sup>99</sup>

Non-compliance with paragraph U110, which requires the DPD to meet with the City Law Department on a quarterly basis concerning the conclusion of civil lawsuits alleging officer misconduct, was based on the fact that although the DPD and the City's Law Department were holding quarterly meetings that addresses the requirements of the paragraph, the DPD was not distributing required information from the meetings to risk management and training staff after each meeting.<sup>100</sup>

Paragraph U111 requires the City and the DPD to distribute and explain the UOF CJ to all DPD and relevant City employees; provide initial training on it to DPD and City employees whose job responsibilities are affected by it within 120 days of each provision's implementation; and provide training on the policies contained in the UOF CJ during in-service training. Although the DPD indicated that CRIB distributed copies of, and provided initial training on, the Consent Judgments as required by paragraph U111, attendance logs received by the Monitor did not indicate that non-DPD City employees whose job responsibilities are affected by the UOF CJ received initial training on it, nor had training on the policies contained in the UOF CJ taken place during in-service training since these policies have not been finalized, or where required, approved.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U106-111 during the quarter ending May 31, 2005.

## B. USE OF FORCE TRAINING

This section comprises paragraph U112 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending November 30, 2004, finding the DPD in non-compliance due to the fact that lesson plans reflecting the revised Directive 304.2 were being

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<sup>99</sup> Paragraph U108 requires the DPD to create and maintain individual training records for all officers for all in-service and pre-service training conducted on or after the effective date of the Consent Judgments. During the current quarter, the Monitor inquired as to how the DPD intends to comply with the requirements of paragraphs U143 and C98, which state that the City and the DPD shall maintain an officer's training records during the officer's employment with the DPD and for three years thereafter. The DPD indicated that it working on a plan for compliance. The Monitor will evaluate the substantive part of these paragraphs during the quarter ending May 31, 2005.

<sup>100</sup> The Monitor previously recommended that the DPD begin to distribute information from these meetings to staff of the Risk Management and Training Bureaus, as required by this paragraph. In the DPD's Fifth Quarter Status Report, it states that this information is only distributed "if adverse behavioral patterns are discovered." The Monitor noted that this does not meet the requirements of the paragraph.

modified as of the end of that quarter. The Monitor is scheduled to again assess the DPD's compliance with paragraph U112 during the quarter ending May 31, 2005.

### C. FIREARMS TRAINING

This section comprises paragraph U113 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending November 30, 2004, finding the DPD in non-compliance due to the fact the firearms training should be based on the revised firearms policy, which had not yet received DOJ approval at that time as required by paragraphs U20-23. In addition, the Monitor had not received a copy of the Firearms Training Protocol required by the paragraph.

The Monitor is scheduled to again assess the DPD's compliance with paragraph U113 during the quarter ending May 31, 2005.

### D. ARREST AND POLICE-CITIZEN INTERACTION TRAINING

This section comprises paragraph U114 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending November 30, 2004, finding the DPD in non-compliance due to the fact the lesson plan for its Mechanics of Arrest and Search Training Course, which was scheduled to begin January 24, 2005, was still under revision as of the end of the quarter. The Monitor also noted that the policies upon which the training will be based -- Arrest, Investigatory Stop and Frisk and Witness Identification and Questioning -- had not yet been implemented by DPD officers and the auditable forms relating to these policies had not yet been finalized.

The Monitor is scheduled to again assess the DPD's compliance with paragraph U114 during the quarter ending May 31, 2005.

### E. CUSTODIAL DETENTION TRAINING

This section comprises paragraphs U115-117. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending August 31, 2004. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

#### **Paragraph U115 – Annual Custodial Detention Training**

Paragraph U115 requires the DPD to provide all DPD recruits, officers and supervisors with annual training on custodial detention. Such training must include DPD policies regarding arrest, arraignment, holds, restrictions, material witness and detention records.

## *Background*

The Monitor last assessed the DPD's compliance with paragraph U115 during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that the DPD's Training Bureau had not developed the training required by this paragraph as of the end of the quarter. The DPD indicated that it conducted a national best practices review of custodial detention training.

## *Current Assessment of Compliance*

On January 17-21, 2005, the DPD delivered Custodial Detention training to specific DPD precinct personnel designed as a "train-the-trainer" course. The DPD intends that once the designated "trainers" have completed the training, they will in turn deliver the training to the detention officers within the precincts. The training was based upon lesson plans that the DPD developed<sup>101</sup> but which were not commented upon by the Monitor prior to the training being conducted. The Monitor attended the training sessions on January 17, 18, and 19, 2005 and performed a cursory review of the lesson plans, which were received on January 14, 2005, prior to attending the training.<sup>102</sup>

The Monitor identified a number of deficiencies in the lesson plans and in the training, the most significant of which was the absence of relevant forms and logs for the different lesson plans.<sup>103</sup> Attendees were told that once the forms and logs were completed, they would be sent to them, along with an instruction sheet on how to complete them.<sup>104</sup>

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<sup>101</sup> The lesson plans were based, in part, on a review of Best Practices; the DPD received Training Manuals and department procedures from the Philadelphia, Los Angeles and St. Louis Police Departments. In addition, information pertaining to detention practices was received from the Commission on Accreditation for Law Enforcement Agencies (CALEA) and International Association of Chiefs of Police (IACP)

<sup>102</sup> The DPD indicated that it had attempted to forward the lesson plans earlier, but the package it sent was returned as undeliverable.

<sup>103</sup> The forms -- including Detainee Intake, Mental Health Screening, Authorization for Medication Treatment, Detainee File Folder -- were not yet ready for dissemination.

<sup>104</sup> Based upon DPD schedules, on March 2-3, 2005, after the end of the quarter, the Monitor met with the DPD Training Group responsible for assembling the training materials and delivering the lesson plans and conducted a thorough review of the lesson plans. During those meetings, the Monitor provided detailed feedback regarding the numerous deficiencies identified, including the items described above, regarding the lesson plans and the training conducted. Although the Monitor understands the need to expeditiously conduct the training; the Monitor believes that due to the critical nature of the auditable forms and logs, the attendees should receive direct, verbal instruction on their use and completion, rather than trying to obtain that information from an instruction sheet. The DPD Training Group indicated that they will revise the lesson plans to address the deficiencies identified by the Monitor, and include auditable forms and logs, and re-deliver the training to the designated "trainers" prior to their delivering the training to all precinct detention officers.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U115.

**Paragraph U116 – Advise Officers Not to Delay Arraignment**

Paragraph U116 requires the DPD to advise officers that the DPD arraignment policy shall not be delayed because of the assignment of the investigation to a specialized unit, the arrest charge(s), the availability of an investigator, the gathering of additional evidence or obtaining a confession.

***Background***

The Monitor last assessed the DPD’s compliance with paragraph U116 during the quarter ending August 31, 2004, finding the DPD in non-compliance. The Monitor determined that Directive 202.1, *Arrests*, which is meant to address the requirements of a number of UOF CJ paragraphs, including paragraph U116, did not address all of the paragraph’s requirements.

***Current Assessment of Compliance***

During the current quarter, the Monitor reviewed the most current version of Directive 202.1, *Arrests*, in an attempt to determine whether it accurately and adequately addresses the requirements of paragraph U116. As written, Section 202.1-7.2 provides examples of unreasonable delays, including delays “for the purpose of gathering additional evidence to justify the arrest, a delay motivated by ill-will against the arrested individual and a delay for delay’s sake.” However, the directive does not address investigator availability, assignment to a specialized unit, the arrest charge(s) or the gathering of evidence to obtain a confession.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U116.

**Paragraph U117 – Advise Officers that Material Witness Designation is a Judicial Determination**

Paragraph U117 requires the DPD to advise officers that whether an individual is a material witness, and whether that material witness should be committed to custody, is a judicial determination.

***Background***

The Monitor last assessed the DPD’s compliance with paragraph U117 during the quarter ending August 31, 2004, finding the DPD in non-compliance. The Monitor determined that although Directive 202.1, *Arrests*, and related Training Directive 04-01, addressed the requirements of the paragraph U117, auditable forms UF-004, Warrant/Arraignment Compliance and UF-006, Detention of Material Witness were not finalized and issued. The CRD Audit Team was in the process of developing new auditable forms that incorporate TA provided by the Monitor.

### *Current Assessment of Compliance*

During the current quarter, the DPD made additional revisions to Directive 202.1, none of which affected Section 202.1-4.4. The Monitor's conclusion that the Directive meets the requirements paragraph U117 remains unchanged.<sup>105</sup> The Monitor also provided TA on UOF forms UF-004, Warrant/Arraignment Compliance, and UF-006, Detention of Material Witness. As of the end of the quarter, the DPD was in the process of addressing these comments.<sup>106</sup>

Notwithstanding the above, as with our previous assessment, the DPD has yet to demonstrate that it has effectively disseminated this policy to the field.<sup>107</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U117.

## F. SUPERVISORY TRAINING

This section comprises paragraphs U118-120. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending August 31, 2004. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### *Paragraph U118 – Training on the Evaluation of Written Reports*

Paragraph U118 requires the DPD to provide supervisors with training in the appropriate evaluation of written reports, including what constitutes a fact-based description, the identification of conclusory language not supported by specific facts and catch phrases, or language that so regularly appears in reports that its inclusion requires further explanation by the reporting officer.

#### *Background*

The Monitor last assessed the DPD's compliance with paragraph U118 during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that the DPD had yet to develop the curriculum for the training required by the paragraph. The DPD indicated that the Training Bureau was conducting a best practices review for supervisor training in the appropriate

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<sup>105</sup> Training Directive 04-01 continues to meet the requirements of the paragraph.

<sup>106</sup> On March 2, 2005, after the end of the quarter, the DPD resubmitted the UOF CJ auditable forms after making revisions based upon TA provided by the Monitor.

<sup>107</sup> According to the DPD, Training Directive 04-01 was approved and disseminated to the field, after the end of the quarter, on or about March 21, 2005. The Monitor will test dissemination of this policy pursuant to paragraphs U56 and U57 during the quarter ending August 31, 2005.

evaluation of written reports and revised policies would be forwarded to Curriculum Research and Development in order to facilitate the development of lesson plans and curriculum.

### *Current Assessment of Compliance*

As of the end of the quarter, the DPD had yet to develop the curriculum for the training required by paragraph U118. The DPD has indicated that lesson plans are being developed to reflect best practices.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U118.

### *Paragraph U119 – Leadership and Command Accountability Training*

Paragraph U119 requires DPD supervisors to receive leadership and command accountability training and to learn techniques designed to promote proper police practices. This training must be provided to all DPD supervisors within 30 days of assuming supervisory responsibilities and must be made part of annual in-service training.

### *Background*

The Monitor attempted to assess the DPD's compliance with paragraph U119 during the quarter ending August 31, 2004, finding the DPD in non-compliance. Although the DPD developed Sergeants and Lieutenants "Leadership Development" courses, additional lesson plans were under development by the Training Division to comply with the requirements of this paragraph.

### *Current Assessment of Compliance*

As of the end of the quarter, the DPD had yet to develop the curriculum for the training required by paragraph U119. The DPD has indicated that lesson plans are being developed to reflect best practices.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U119.

### *Paragraph U120 – Risk Assessment Training*

Paragraph U120 requires the DPD to provide training on risk assessment and risk management to all DPD supervisors, including the operation of the Risk Management Database.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U120 during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that neither the Risk Management Database nor the training had been developed as of the end of the quarter. The

DPD indicated that the curriculum for training on risk assessment and management for all DPD supervisors, including the operation of the Risk Management Database, will be based on the approved plan and procedures.

### *Current Assessment of Compliance*

According to the DPD, the RMB began conducting classes for newly promoted supervisors on Implementing Risk Management in a Law Enforcement Agency commencing August 10, 2004. Currently 167 supervisors have been trained, including 60 in January 2005. The Risk Management training is currently being entered into the IMAS database. This paragraph requires that the training, which must be provided to all supervisors, cover the operation of the MAS which has not yet been fully developed or approved by the DOJ.<sup>108</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U120.

## G. INVESTIGATOR TRAINING

This section comprises paragraphs U121-122. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending August 31, 2004. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### *Paragraphs U121 and U122 – Training for Evaluating Credibility; Handling External Complaints*

Paragraph U121 requires the DPD to provide training on appropriate burdens of proof, interview techniques and the factors to consider when evaluating officer, complainant or witness credibility to all officers who conduct investigations to ensure that their recommendations regarding dispositions are unbiased, uniform and legally appropriate.

Paragraph U122 requires the DPD to provide all supervisors charged with accepting external complaints with appropriate training on handling external complaints that emphasizes interpersonal skills. The DPD must provide training on the DPD external complaint process, including the role of the OCI and the IAD in the process, to all new recruits and as part of annual in-service training.

### *Background*

The Monitor last assessed the DPD's compliance with paragraphs U121 and U122 during the quarter ending August 31, 2004, finding the DPD in non-compliance with each due to the fact

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<sup>108</sup> See Current Assessment of Compliance of paragraphs U84, 85 and 88, above.



that the investigative training curriculum that will address the requirements of the paragraphs was still under development as of the end of the quarter.

### *Current Assessment of Compliance*

As of the end of the quarter, the DPD had not yet provided the training required under paragraphs U121 and U122. The DPD indicated that it submitted its Investigator Training lesson plan and its External Complaints lesson plan, which is incorporated in the Investigator Training lesson plan, as an attachment to its Sixth Quarter Status report. The Monitor received the attachments after the end of the quarter.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs U121 and U122.

## H. FIELD TRAINING

This section comprises paragraph U123 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending August 31, 2004. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

### *Paragraph U123 – Enhancement of Field Training Officer Program*

Paragraph U123 requires the DPD to develop, subject to DOJ approval, a protocol to enhance the Field Training Officer (FTO) program within 120 days of the effective date of the UOF CJ. The protocol must address the criteria and method for selecting and removing the FTOs and for training and evaluating FTOs and trainees.

### *Background*

The Monitor last attempted to assess the DPD's compliance with paragraph U123 during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that as of the end of the quarter the DPD was revising the protocol to enhance its FTO program based upon analysis and recommendations provided by the DOJ.

### *Current Assessment of Compliance*

The DPD submitted its Field Training Officer forty-hour (40) basic certification course to the Monitor on February 11, 2005. The following data has been submitted for review for completion of this paragraph:

1. FTO 40-hour basic certification course lesson plan

2. Verbal judo lesson plan
3. Ethics and Integrity in policing lesson plan
4. Anger management
5. FTO protocols and National review of best practices comparison in response to the DOJ letter dated April 30, 2004.
6. Field training program manuals from Phoenix (Arizona), Miami Dade County (Florida), Mesa (Arizona) and Dallas (Texas) Police Departments.

The Monitor is currently reviewing the documents submitted.

This paragraph requires that the DPD develop a protocol to enhance its FTO program. This program is subject to DOJ approval. The protocol has not yet been submitted to the DOJ for approval. The DPD has indicated that it is currently revising its protocols to reflect best practices.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U123.

## **VIII. MONITORING, REPORTING, AND IMPLEMENTATION**

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Paragraph U139 is the only paragraph in this section of the UOF CJ for which the Monitor will be assessing compliance. This paragraph requires the DPD to reopen for further investigation any investigation the Monitor determines to be incomplete, subject to certain restrictions. As reported in its Report for the Quarter Ending May 31, 2004, the Monitor had not yet reviewed investigations under paragraph U139 since the DPD had not yet revised the majority of the policies and investigatory procedures under the UOF CJ. The Monitor still has not yet reviewed DPD investigations, as the DPD has not yet implemented the majority of the policies and investigatory procedures under the UOF CJ.

## **SECTION THREE: COMPLIANCE ASSESSMENTS - THE CONDITIONS OF CONFINEMENT CONSENT JUDGMENT**

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This section of the report contains the Monitor's compliance assessments of the COC CJ paragraphs scheduled for review during the quarter ending February 28, 2005.

It is important to note that the organization of the COC CJ paragraphs vary, in that some paragraphs have separate but related "policy"-required paragraphs within the COC CJ,<sup>109</sup> while others do not.<sup>110</sup> These varying formats impact the way in which the Monitor assesses compliance with each paragraph. Specifically, the Monitor's compliance assessments of paragraphs that do not have a separate policy-related paragraph include a review for a written guidance or instruction.<sup>111</sup> This review for a written guidance or instruction is included to ensure that the required procedures are mandated by the DPD and appropriate DPD personnel have received the necessary direction to carry out the requirements of the COC CJ.

During the current quarter, the Monitor completed a focused review of the DPD's First Precinct. As noted in previous quarterly reports, in January 2004, the Monitor reported that arrestees were being held in what appeared to be a "holding cell," as defined by the COC CJ, while being processed in the First Precinct. The City and the DOJ have differing interpretations of whether the First Precinct maintains a "holding cell"<sup>112</sup> and have been engaged in ongoing discussions relating to the processing and detention of arrestees at the First Precinct. The DOJ requested, and the City and the DPD agreed, that the Monitor conduct a three month focused review and evaluation of the processing of arrestees at the First Precinct, to include issues such as the time each arrestee arrived and departed from the First Precinct, tracking and evaluating the number of arrestees processed each day during the three-month evaluation period, and reporting on whether the conditions of the First Precinct meet the requirements of the relevant paragraphs of the COC CJ.

Notwithstanding a number of limitations encountered with the DPD's paperwork, the Monitor identified and reviewed 350 prisoner entries and determined that 82% of the detainees reviewed were not held more than three hours in the First Precinct facility.

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<sup>109</sup> See, for example, paragraph C39 – Cleanliness of Cells and paragraph C40 – Cleaning Policy.

<sup>110</sup> See, for example, paragraph C45 - Access to Toilets and Potable Water.

<sup>111</sup> As described in the Introduction to *the Methodologies*, this is the Policy Component of compliance.

<sup>112</sup> The term "holding cell" is defined in the Definitions section of the COC CJ (Section I, Paragraph k) to include any room or area in which individuals in DPD custody are confined, including cells at the DPD precinct stations, specialized units, and the Detroit Receiving Hospital (DRH).

The Monitor has included the First Precinct in all of its regularly scheduled evaluations. The DPD generally has not included the First Precinct in its compliance efforts. For example, the DPD did not submit an emergency preparedness plan for the First Precinct as required by paragraph C24, although it has submitted all other precinct plans to the DOJ for review and approval. Also, the DPD excluded the First Precinct from all of the COC CJ required audits submitted thus far (Food Service, Detainee Safety, Environmental Health and Safety, Emergency Preparedness, and Fire Safety).

During this quarter, the Monitor provided the parties with a written report outlining the findings from the First Precinct Focused Review. During the quarter ending May 31, 2005, the parties are expected to either reach an agreement on the interpretation of the requirements of the COC CJ or seek assistance from the Court.

## **I. FIRE SAFETY POLICIES**

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This section of the COC CJ comprises paragraphs C14-22. It requires the DPD to develop, implement, and provide training on specific fire safety policies and procedures and develop and implement a comprehensive fire safety program in all DPD facilities that maintain holding cells.

The Monitor last assessed the DPD's compliance with paragraphs C20-22 during the quarter ending February 29, 2004; the Monitor last assessed the DPD's compliance with paragraphs C14-C19 during the quarter ending November 30, 2004. The Monitor concluded that, with the exception of paragraph C20,<sup>113</sup> the DPD was in non-compliance with each. Although the Detroit Fire Department (DFD) had conducted its inspections of the DPD buildings containing holding cells as required, the inspections revealed numerous Life Safety Code violations with the sprinklers, fire alarms, fire doors, egress routes, fire separators, etc. The Monitor acknowledged that the City intends to construct a new facility to comply with the COC CJ requirements; however until such time that all buildings that contain holding cells either meet the requirements of the Life Safety Code or are no longer used to confine prisoners, the DPD will be unable to achieve compliance with the Fire Safety Policies of the COC CJ.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs C14-22, during the quarter ending August 31, 2005.

## **II. EMERGENCY PREPAREDNESS POLICIES**

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This section of the COC CJ comprises paragraphs C23-25. It requires the DPD to develop and implement emergency preparedness plans for all facilities that maintain holding cells. The COC

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<sup>113</sup> The Monitor determined that the DPD was enforcing its No Smoking Policy as required by paragraph C20.

CJ requires that the plan be designed to ensure that each precinct and the entire Department have a clear understanding of what actions are required in the event of an emergency.

The Monitor last assessed the DPD's compliance with paragraphs C23-25 during the quarter ending November 30, 2004, finding the DPD in non-compliance with each. The DPD had neither fully developed nor implemented its Department-wide Emergency Response Plan as of the end of the quarter.<sup>114</sup> The Monitor noted that although the DPD had submitted to the DOJ for review and approval documentation titled "*Fire Safety and Evacuation Procedures*," until such time that the Comprehensive Emergency Preparedness Program is approved by the DOJ and implemented, the DPD will be unable to achieve compliance with the emergency preparedness policies of the COC CJ. In addition, although the Monitor found that Directive 305.4, *Holding Cells Areas*, meets the requirements of paragraph C25, it had not been implemented as of the end of the quarter ending November 30, 2004. In addition, the log referenced in the policy that will document the conduct of regular and routine inventory, testing and maintenance of all holding cell keys and locks had not yet been finalized.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs C23-25 during the quarter ending August 31, 2005.

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<sup>114</sup> Prior to implementation, the emergency preparedness program must be approved by the DOJ.

### III. MEDICAL AND MENTAL HEALTH CARE POLICIES

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This section of the COC CJ comprises paragraphs C26-34. It requires the DPD to develop and implement a medical and mental health care program, which includes a series of policies, procedures and protocols. These policies and procedures must be designed and developed to ensure that the DPD is adequately identifying and responding to the medical and mental health care conditions and needs of its prisoners. The policies and procedures must be approved by a qualified medical and mental health professional. The comprehensive medical and mental health screening program required by paragraph C27 must include specific intake screening procedures and medical protocols (paragraphs C28-29) and must be reviewed and approved by the DOJ prior to implementation.

The Monitor last assessed the DPD's compliance with paragraphs C26-34 during the quarter ending November 30, 2004, finding the DPD in non-compliance with C26-29 and C31-34.<sup>115</sup> Although all of the policies required by these paragraphs had been submitted to the DOJ for review and approval and to the Monitor (with the exception of the revised Detainee Intake Form) they had not yet been approved by DOJ or implemented by the DPD as of the end of the quarter ending November 30, 2004. Additionally, at that time, the DPD had not addressed the suicide hazards that existed throughout the holding cells, Department-wide, such as exposed pipes, radiators and overhead bars.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs C26-34 during the quarter ending May 31, 2005.

#### *Paragraph C30 – Infectious Disease Policy*

Paragraph C30 requires the DPD to develop and implement a policy on infectious disease control, in consultation with qualified medical health professionals. The policy must establish appropriate housing of prisoners believed to have infectious diseases and mandate measures to prevent the spread of infectious diseases, such as proper handling of bio-hazardous materials. Once implemented, the policy must be reviewed and approved, in writing, by qualified medical health professionals on an annual basis and prior to any changes or alterations to the plan.

#### *Background*

The DPD resubmitted the Infectious Disease Control Policy on September 22, 2004, identifying it as a component of the Comprehensive Medical and Mental Health Screening Program

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<sup>115</sup> The Monitor had not completed its assessment of paragraph C30 during the quarter. The assessment was completed during the current quarter and is included immediately below.

(CMMHSP) required by paragraph C27. The Monitor had not completed its evaluation of the policy to determine if it complies with the requirements of paragraph C30 as of the end of the previous reporting period.<sup>116</sup>

### *Current Assessment of Compliance*

During the current quarter, the Monitor completed its assessment of the DPD's Infectious Disease Policy, which was submitted to the Monitor on September 22, 2004. Although the Monitor noted that the policy was comprehensive and well written, the Monitor identified areas within the policy that require clarification and expansion in order to ensure that it includes adequate measures to prevent the spread of infectious disease.<sup>117</sup> In addition, as of the end of the current quarter, the policy had not been disseminated to the field or implemented.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C30.

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<sup>116</sup> The CMMHSP is subject to DOJ review and approval; however, the Monitor reviews those portions of the policy that are not subject to DOJ review and approval, such as the Infectious Disease Policy.

<sup>117</sup> On March 1, 2005, after the end of the quarter, the DPD resubmitted the policy to the Monitor. The Monitor determined that it adequately addresses the issues previously identified by the Monitor and meets the policy requirements of the COC CJ. On March 22, 2005, after the end of the quarter, the DOJ approved the Infectious Disease Policy as it pertains to paragraphs C27-29, over which the DOJ has review and approval.

## IV. PRISONER SAFETY POLICIES

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This section of the COC CJ comprises paragraphs C35-38. It requires the DPD to develop and implement prisoner safety policies for all facilities that maintain holding cells. These procedures and policies are to be designed to ensure that each precinct, and the entire Department, have clear and concise policies and procedures that will ensure that safety and well-being of prisoners.

The Monitor last assessed the DPD's compliance with paragraphs C35-38 during the quarter ending August 31, 2004. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### *Paragraph C35 – Ensure Safety Level*

Paragraph C35 requires the DPD to ensure a reasonable level of safety of staff and prisoners through the use of appropriate security administration procedures.

#### *Background*

The Monitor last assessed the DPD's compliance with paragraph C35 during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that it had not finalized or implemented the policies and procedures that addressed the requirements of paragraphs C36-38.

#### *Current Assessment of Compliance*

Compliance with paragraph C35 is contingent upon the DPD attaining compliance with paragraphs C36-38.

Based on the non-compliant status of paragraphs C36-38, below, the Monitor finds the DPD in non-compliance with paragraph C35.

### *Paragraph C36 – Security Screening of Prisoners*

Paragraph C36 requires the DPD to develop and implement a prisoner security screening program for all buildings containing holding cells. At a minimum, this program must establish protocols based upon objective, behavior-based criteria for identifying suspected crime partners, vulnerable, assaultive or special management prisoners who should be housed in observation cells or single-occupancy cells; and require that security screening information is documented and communicated between consecutive shifts.



## ***Background***

The Monitor last assessed the DPD's compliance with paragraph C36 during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that it had not implemented new policies and procedures that addressed the requirements of the paragraph. The Monitor noted that on September 10, 2004, the DPD submitted Directive 305.1, *Detainee Intake/Assessment*, as an appendix to its Fourth Quarter Status Report. According to the HCCC, this policy, and the auditable logs and forms referenced therein, had not yet been implemented in DPD buildings that contain holding cells.

## ***Current Assessment of Compliance***

The DPD revised Directive 305.1, *Detainee Intake/Assessment*, based on TA provided by the DOJ and submitted the revised directive to the Monitor and DOJ on February 3, 2005.<sup>118</sup> The Monitor is currently reviewing the resubmitted policy. According to the HCCC, as of the end of this quarter, this policy, and the auditable logs and forms referenced therein, have not yet been implemented in DPD buildings that contain holding cells.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C36.

## **Paragraph C37 – Cell Check Policies**

Paragraph C37 requires the DPD to develop and implement procedures for the performance, documentation and review of routine cell checks in all holding cells to ensure safe housing. At a minimum, these procedures will require that cell checks on the general population are performed at least twice per hour and that cell checks on prisoners in observation cells and DRH holding cells are performed every 15 minutes, unless constant supervision is required, and that detention officers document relevant information regarding the performance of cell checks in an auditable log.

## ***Background***

The Monitor last assessed the DPD's compliance with paragraph C37 during the quarter ending August 31, 2004, finding the DPD in non-compliance because it had not yet implemented the policies or auditable forms required by the paragraph. The Monitor received and reviewed Directive 305.4, *Holding Cell Areas*, on June 21, 2004 and determined that it addressed all of the paragraph's requirements with the exception of the requirement for constant supervision. The DPD advised the Monitor that the requirements regarding constant supervision were contained in

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<sup>118</sup> On March 22, 2005, after the end of the quarter, the DOJ approved the Detainee Intake/Assessment Policy as it pertains to paragraphs U27-29, over which the DOJ has approval. The Monitor is reviewing this policy as it relates to paragraphs that are not subject to DOJ approval.

Directive 305.1, *Detainee Intake/Assessment*.<sup>119</sup> The Monitor also noted that the Holding Cell Areas policy did not provide adequate specific direction for performing cell checks; however, the Monitor expected that the DPD would ensure that adequate and specific direction was provided to the appropriate personnel via the training required by paragraph C77.

### *Current Assessment of Compliance*

As described in the Current Assessment of Compliance for paragraph C36, above, the Monitor is currently reviewing Directive 305.1, *Detainee Intake/Assessment*, which the DPD resubmitted on February 3, 2005.<sup>120</sup>

Additionally, in order to assess compliance with paragraph C36 and a number of other COC CJ paragraphs during the current quarter, the Monitor conducted unannounced site assessments and visual inspections of all buildings containing holding cells.<sup>121</sup> Those inspections revealed that the precincts continue to use individualized methods to record cell checks, such as various types of logs and/or grease boards, and the specific information collected varied by precinct.

As of the end of the current quarter, Directive 305.4, *Holding Cell Areas*, Directive 305.1, *Detainee Intake/Assessment*, and standardized auditable cell check logs have not yet been implemented.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C37.

### *Paragraph C38 – Observation Cell Policy*

Paragraph C38 requires the DPD to record in a written policy and implement a procedure that requires detention officers to provide continual direct or on-site remote observation of all observation cells while they are occupied.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph C38 during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that it had not implemented new policies and procedures that addressed the requirements of the paragraph as of the end of the quarter. Directive 305.1, *Detainee Intake/Assessment*, which the HCCC indicated addresses the

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<sup>119</sup> The Monitor confirmed that the constant supervision requirement is contained in the Detainee Intake/Assessment policy. However, as described in the Current Assessment of Compliance, this directive has not yet been disseminated or implemented.

<sup>120</sup> The Monitor provided the DPD with its comments on this policy on April 5, 2005, after the end of the quarter.

<sup>121</sup> The Monitor conducted site assessments at Precincts 1-3 and 5-13 and DRH on February 21-23, 2005.

requirements of paragraph C38, among others, and the auditable logs and/or forms referenced therein, had not yet been implemented in DPD buildings that contain holding cells.

*Current Assessment of Compliance*

As of the end of the current quarter, Directive 305.1, *Detainee Intake/Assessment*, and the auditable logs and/or forms referenced therein, has not yet been implemented in DPD buildings that contain holding cells.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C38.

## V. ENVIRONMENTAL HEALTH AND SAFETY POLICIES

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This section of the COC CJ (paragraphs C39-46) requires the DPD to develop and implement environmental health and safety policies for all facilities that maintain holding cells. These procedures and policies are to be designed to ensure the cleanliness and maintenance of the cell block areas to ensure the safety of DPD prisoners.

The Monitor last assessed the DPD's compliance with paragraphs C39-46 during the quarter ending August 31, 2004. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### Paragraph C39 – Cleanliness of Cells

Paragraph C39 requires the DPD to ensure that all holding cells are cleaned immediately and, thereafter, are maintained in a clean and sanitary manner.

#### *Background*

The Monitor last assessed the DPD's compliance with paragraph C39 during the quarter ending August 31, 2004, at which time the Monitor withheld a determination of compliance. Although the Monitor's random unannounced inspections indicated that the holding cells were clean at the time of the inspections, the Monitor was unable to obtain an adequate sample of cleaning documentation to ensure that cleaning is taking place on a regular basis.

#### *Current Assessment of Compliance*

During the site assessments conducted at all buildings containing holding cells,<sup>122</sup> the Monitor interviewed DPD personnel regarding the existence of a regular cleaning schedule and visually inspected each holding cell to determine if the cells were clean.

The cell block inspections revealed that although most of the precincts had clean holding cells and cell block areas at the time of the inspections, the holding cells and cell block areas in the 2<sup>nd</sup>, 3<sup>rd</sup>, and 7<sup>th</sup> Precincts were not clean. A number of cells in the 2<sup>nd</sup> Precinct had food on the floor in the holding cells and within one of the cells, an unknown dried substance, brownish in color, was spread on the wall near the toilet. The 3<sup>rd</sup> Precinct also had trash and grime on the floors of the cells. The 7<sup>th</sup> Precinct had grime and trash on the floors, as well as food containers on top of the holding cells. The Monitor discussed the observations with the detention officers and supervisors on-site and inquired as to how long the cells had been unclean and who has the

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<sup>122</sup> The Monitor conducted site assessments at Precincts 1-3 and 5-13 and the DRH on February 21-23, 2005.

responsibility for cleaning the holding cells. The Monitor was informed that the detention officers are required to perform the cleaning of the cells. However, in the precincts visited that were found to be clean, the Monitor was informed that each precinct has a specific person assigned from maintenance division to perform the cleaning.

Based on the conditions of the 2<sup>nd</sup>, 3<sup>rd</sup>, and 7<sup>th</sup> Precincts, it was evident that these individual precincts are not maintaining the holding cells in a clean and sanitary manner. The details of the conditions at the precincts were provided to the HCCC.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C39.

### **Paragraph C40 – Cleaning Policy**

Paragraph C40 requires the DPD to design and implement a cleaning policy for all holding cells. This policy will require routine cleaning and supervisory inspection of the holding cells and nearby areas.

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph C40 during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that it had not yet implemented Directive 305.4, *Holding Cell Areas*, which was submitted to address the requirements of paragraphs C39 and C40,<sup>123</sup> among others, and the auditable log for recording the cleaning of the cells referenced in the policy, had not been finalized as of the end of the quarter.

### ***Current Assessment of Compliance***

On October 18, 2004, the DPD resubmitted Directive 305.4, *Holding Cell Areas*, which had been revised to address requirements of other COC CJ paragraphs. However, as of the end of the current quarter, the directive and the cleaning logs referenced therein, had not yet been implemented in DPD buildings that contain holding cells. The DPD has indicated that it is currently testing the log to ensure that it adequately captures necessary information, and will implement the policy and the log when satisfied that the log is suitable.<sup>124</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C40.

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<sup>123</sup> The Monitor reviewed the directive and determined that it addressed the requirements of paragraph U40, including the supervisory inspections.

<sup>124</sup> On March 24, 2005, after the end of the quarter, the DPD submitted the cleaning log and the holding cell cleaning guidelines to the Monitor.

### **Paragraph C41 – Maintenance Policy**

Paragraph C41 requires the DPD to design and implement a maintenance policy for all holding cells that requires timely performance of routine maintenance, as well as the documentation of all maintenance requests and responses in an auditable log.

#### ***Background***

The Monitor last assessed the DPD’s compliance with paragraph C41 during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that Directive 305.4, *Holding Cell Areas*, which was submitted to address the requirements of paragraph C41, among others, did not meet the criteria established in the paragraph. The policy referred to “Security” inspections, rather than maintenance inspections. In addition, although the policy mentioned “sanitation and emergency equipment considerations,” it did not require precinct personnel to inspect the working order of equipment in the holding cells such as toilets, sinks, and lighting.<sup>125</sup>

#### ***Current Assessment of Compliance***

On October 18, 2004, the DPD resubmitted revised Directive 305.4, *Holding Cell Areas*, which now adequately addresses the requirements of paragraph C41. However, as of the end of the current quarter, the policy has not yet been implemented in DPD buildings that contain holding cells and the Maintenance Log referenced in the policy remains under development. The DPD has indicated that it is currently testing the log to ensure that it adequately captures necessary information, and will implement the policy and the log when satisfied that the log is suitable.<sup>126</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C41.

### **Paragraph C42 – Heating and Ventilation**

Paragraph C42 requires the DPD to provide adequate heating and ventilation for all buildings containing holding cells.

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<sup>125</sup> On September 1, 2004, the Monitor met with the DPD regarding the Monitor’s evaluation of the Holding Cell Areas Policy.

<sup>126</sup> On March 24, 2005, after the end of the quarter, the DPD submitted the holding cell maintenance guidelines to the Monitor.

For ease of reporting, the Monitor has split paragraph C42 into the following two components:

- C42a – Adequate Ventilation
- C42b – Adequate Heating

### *Background*

As reported in the Monitor's Report for the Quarter Ending November 30, 2003, the Monitor determined that in order to meet the requirements of this paragraph, the DPD must ensure that each facility that maintains holding cells achieves a minimum of six (6) air exchanges per hour and ensure that the temperature in the cell blocks does not drop below 64 degrees Fahrenheit.<sup>127</sup> In mid-February 2004, the DPD provided the Monitor with a report issued by Great Lakes Heating and Cooling (Great Lakes), dated October 23, 2003, which indicated that following the remediation efforts undertaken by Great Lakes, the DPD had established a minimum of six air exchanges per hour in each of the facilities that maintain holding cells. The report provided details on all remediation efforts undertaken by the DPD to establish the mandated six air exchanges per hour; it also provided measurements for each cell block facility, the amount of air necessary to affect six air exchanges per hour for each cell block, and the total air handling capacity of precincts' air handling equipment. Based on the information provided and the opinion of the Monitor's ventilation expert, the Monitor noted that it was satisfied that the DPD is providing adequate ventilation in the buildings containing holding cells.

The DPD submitted Directive 305.4, *Holding Cell Areas*, on June 21, 2004 to address the heating requirements of paragraph C42. The Monitor reviewed this policy during the quarter ending August 31, 2004 and determined that it did not adequately address the requirements of the paragraph, as it was not specific regarding acceptable temperatures. On September 1, 2004, the Monitor met with the DPD regarding its evaluation of the policy. The DPD accepted the Monitor's evaluation and recommendations and indicated that the policy would be revised.

### *Current Assessment of Compliance*

#### *C42a – Adequate Ventilation*

Based on the information provided in the report issued by Great Lakes Heating and Cooling, dated October 23, 2003, and information provided by the Monitor's ventilation expert, there is no reason to believe that the ventilation would change without affirmative action by the DPD. During the site assessments conducted at all buildings containing holding cells during the current

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<sup>127</sup> The Monitor consulted with the Detroit Health and Wellness Promotion, the Michigan Occupational Safety and Health Administration (MIOSHA), and the Monitor's own SME in an attempt to identify the appropriate standards. Six air exchanges is the standard most often cited when discussing adequate ventilation.

quarter,<sup>128</sup> the Monitor considered the climate in the holding cell areas based on a reasonable comfort level and checked the venting for air flow. There was no indication that the ventilation is not functioning within the guidelines outlined in the report. As such, the Monitor is satisfied that the DPD is providing adequate ventilation in the buildings containing holding cells.

Based on the foregoing, the Monitor finds the DPD in compliance with subparagraph C42a

#### *C42b – Adequate Heating*

During the site assessments at all buildings containing holding cells, described above, the Monitor verified that the temperature within all of the holding cells was within the range of 66-80 degrees specified by revised DPD Directive 305.4, *Holding Cell Areas*.<sup>129</sup> The directive appropriately specifies that if the holding cell temperature falls out of this range, the precinct personnel are required to notify building maintenance and transfer prisoners to other holding cells. However, as of the end of the current quarter, the policy has not yet been implemented.

Based on the foregoing, the Monitor finds the DPD in non-compliance with subparagraph C42b.

#### *Paragraph C43 – Cell Block Repairs*

Paragraph C43 requires the DPD to repair all broken or malfunctioning lighting, toilets, sinks and windows in holding cells and observation cells.

#### *Background*

The Monitor last assessed the DPD's compliance with paragraph C43 during the quarter ending February 29, 2004, finding the DPD in compliance. The Monitor determined that the DPD had repaired all of the malfunctioning lights, toilets and sinks (where present) in all of its operational cells and cell blocks. The Monitor also identified a number of non-operational cells throughout the precincts that had various maintenance problems. The Monitor determined that these non-operational cells were not being utilized.

#### *Current Assessment of Compliance*

During the site assessments conducted at all buildings containing holding cells during the current quarter,<sup>130</sup> the Monitor physically checked for adequate water flow in sinks and toilets by testing the faucets and flushing the toilets. The inspections revealed that 8.4% of the total number of

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<sup>128</sup> The Monitor conducted site assessments at Precincts 1-3 and 5-13 and DRH on February 21-23, 2005.

<sup>129</sup> The Monitor used a hand-held thermostat to record temperature readings.

<sup>130</sup> See footnote 126.



toilets inspected were either leaking or not working,<sup>131</sup> 7.3% of the total number of sinks were not working,<sup>132</sup> and five precincts had lighting fixtures with burned-out light bulbs.<sup>133</sup> These details were provided to the HCCC.

In summary, the Monitor's inspections and visual observations of 100% of the equipment in the holding cells revealed that the DPD did not meet the minimum benchmark of at least 94% for the level of compliance required with this paragraph, as outlined in *the Methodologies*. During the inspections, the Monitor discussed the non-working equipment and in all cases the precinct personnel advised the Monitor that requests for repair of that equipment had been made. In some cases the personnel stated it had been months since they had requested the repairs.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C43.

### Paragraph C44 – Lighting

Paragraph C44 requires the DPD to ensure that lighting in all cell block areas is sufficient to reach 20 foot-candles of illumination at desk level and in personal grooming areas.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph C44 during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that the precincts do not maintain the capability of meeting the 20 foot-candle standard required by paragraph C44. The DPD had indicated that the lighting requirements would not be addressed until the retrofitting of the holding cells occurred, as the lighting must be coordinated with the installation of sprinkler systems and the removal of suicide hazards.

### *Current Assessment of Compliance*

As stated in the Monitor's Report for the Quarter Ending November 30, 2004, the City and the DPD contend that the central detention facility planned under Proposal S<sup>134</sup> will comply with all of the physical requirements contained within the COC CJ, including the 20 foot-candle standard required by paragraph C44. However, construction of this facility will take approximately 24 months to complete. Until such time that all buildings that contain holding cells either meet the

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<sup>131</sup> The non-working or leaking toilets were located in the Second, Seventh, Eighth, Ninth, and Eleventh Precincts.

<sup>132</sup> The Third, Seventh, Eighth, Ninth, Eleventh, Twelfth and Thirteenth Precincts had sinks that did not work.

<sup>133</sup> The Third, Seventh, Eighth and Thirteenth Precincts had burned out light bulbs in some lighting fixtures within and above the holding cells.

<sup>134</sup> Proposal S was approved by City voters on November 2, 2004.

COC CJ's lighting requirements or are no longer used to confine prisoners, the DPD will be unable to achieve compliance with paragraph C44.

The Monitor continues to be concerned about the lack of lighting in holding cells, as many cells are so dark that detention officers are unable to visually observe prisoners. In one case, the detention officer advised the Monitor that he uses a flashlight to illuminate the cell. This situation represents a danger to the officers who work within these precincts and the prisoners who are detained within the holding cells.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C44.

### **Paragraph C45 – Access to Toilets and Potable Water**

Paragraph C45 requires the DPD to provide all prisoners with reasonable access to toilets and potable water 24 hours-a-day.

#### ***Background***

The Monitor last assessed the DPD's compliance with paragraph C45 during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that it had not yet developed written instruction for providing prisoners with 24-hour access to toilets and potable water.<sup>135</sup>

#### ***Current Assessment of Compliance***

During the site assessments conducted at all buildings containing holding cells during the current quarter,<sup>136</sup> the Monitor sought to determine whether the DPD was continuing its practice of having at least one detention officer present at all times in the holding cell area to ensure that prisoners have reasonable access to water and/or use of a toilet. The onsite inspections revealed that a detention officer was present in the holding cell area and had water and disposable drinking cups available for prisoners in all precincts; however, in a few precincts, the detention officer is not always physically within audible range. In those cases, the prisoners must request access to toilets or water during the cell checks. Although this could be considered "reasonable" access, the Monitor is concerned that no written guidance/instruction has been disseminated (documented distribution)<sup>137</sup> to ensure that detention officers are aware of the procedure, thereby

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<sup>135</sup> The Monitor noted that approximately fifty percent of all DPD holding cells do not have built-in toilet/sink facilities. For those precincts that do not have built-in toilets or drinking facilities within the individual cells, prisoners are required to ask a detention officer for a cup of water or access to a toilet.

<sup>136</sup> The Monitor conducted site assessments at Precincts 1-3 and 5-13 and DRH on February 21-23, 2005.

<sup>137</sup> As stated in previous reports, the Monitor's compliance assessment of this paragraph includes a review of the applicable written guidance (or *Policy Component* of compliance) providing instruction on the paragraph's

ensuring that all prisoners are provided with reasonable access to toilets and potable water 24 hours-a-day.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C45.

### *Paragraph C46 – Hepa-Aire Purifiers*

Paragraph C46 requires the DPD to ensure that all Hepa-Aire purifiers comply with the Michigan Occupational Safety and Health Agency standards.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph C46 during the quarter ending August 31, 2004, finding the DPD in compliance. The Monitor determined that, according to the manufacturer, the Hepa-Aire purification systems in a number of the DPD cell blocks were installed incorrectly. Due to health concerns, the systems needed to be either re-installed correctly or deactivated. The Monitor visually inspected the filtration systems in each precinct and determined that all Hepa-Aire filtration systems were unplugged and non-operational. The Monitor recommended that the DPD remove the Hepa-Aire filtration systems from the holding cell areas, thereby ensuring that they are not accidentally turned on. The DPD informed the Monitor that it intended to remove the filtration systems. Thereafter, the Monitor confirmed that all Hepa-Aire filtration systems had been removed.

### *Current Assessment of Compliance*

During the quarter, the Monitor verified during onsite inspections that all Hepa-Aire filtration systems remain removed.

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph C46.

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requirements. On October 18, 2004, the DPD resubmitted Directive 305.4, *Holding Cell Areas*; however, the HCCC indicated that this policy has yet to be implemented. Until such time that the above policy has been implemented and it has been demonstrated that all appropriate DPD personnel have received written direction and procedures that they are to provide prisoners with reasonable access to toilets and water 24 hours a day, the DPD will be unable to achieve compliance with paragraph C45.

## VI. POLICIES CONCERNING PERSONS WITH DISABILITIES

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This section of the COC CJ (paragraphs C47-48) requires the DPD to develop and implement appropriate policies concerning persons with disabilities for all facilities that maintain holding cells. These procedures and policies are to be designed to ensure the prisoners with disabilities are provided with appropriate facilities and care.

The Monitor last assessed the DPD's compliance with paragraphs C47-48 during the quarter ending August 31, 2004. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### *Paragraph C47 – Accommodations for Persons with Disabilities*

Paragraph C47 requires the DPD to ensure that persons with disabilities are provided with reasonable accommodations.

#### *Background*

As reported in the Monitor's Report for the Quarter Ending February 29, 2004, the DPD designated the 5<sup>th</sup> and 6<sup>th</sup> Precincts as "handicapped accessible" holding cell facilities, which were determine to be adequately accessible to prisoners with disabilities. During the quarter ending August 31, 2004, the Monitor conducted inspections and submitted a request for documentation of all prisoners sent, transferred, conveyed or otherwise housed at the 5<sup>th</sup> and 6<sup>th</sup> Precincts *due to disabilities* during a specified time period. The DPD was unable to provide the above information because it did not track disabled prisoners or the conveyance of those prisoners to the designated precincts. As a result, the Monitor was unable to determine compliance. Although paragraph C47 does not require the tracking of disabled prisoners, the DPD indicated that it would implement a method to do so, in order to prove a means for its compliance with the paragraph to be assessed. The detention officers interviewed during the Monitor's inspections were aware of the procedures to transfer prisoners who need accommodations to either the 5<sup>th</sup> or 6<sup>th</sup> Precincts; however, none of them were aware of the DPD Special Order No. 03-28, "*Handicap Prisoner Housing and Procedures*," dated June 16, 2003, which the DPD submitted to the Monitor on February 27, 2004.

#### *Current Assessment of Compliance*

During the current quarter, the Monitor confirmed that the tracking and documentation of all disabled prisoners had begun and again requested documentation supporting the conveyance of

prisoners to the 5<sup>th</sup> or 6<sup>th</sup> Precinct due to disabilities.<sup>138</sup> The DPD provided tracking logs, which contain information detailing the usage of the DPD wheelchairs. The logs provided indicate that during the period February 2, 2005 to March 17, 2005, no prisoners required the use of a wheelchair.

In order for the Monitor to assess compliance with paragraph C47, the DPD must have the ability to track not only prisoners who require the use of a wheelchair, but all prisoners who are conveyed and/or housed at the 5<sup>th</sup> and 6<sup>th</sup> Precincts due to any type of disability. It should be noted that the only documentation of a disabled prisoner reviewed by the Monitor was during the focused review of the First Precinct. The Monitor discovered that a disabled prisoner who required a wheelchair was transferred to the 2<sup>nd</sup>, rather than the 5<sup>th</sup> or 6<sup>th</sup> Precincts.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C47.

### **Paragraph C48 – Detention of Persons with Disabilities**

Paragraph C48 requires the DPD to develop and implement a policy concerning the detention of individuals with disabilities in consultation with qualified medical and mental health professionals. The policy must be approved in writing by qualified medical and mental health professionals. Thereafter, the program must be reviewed and approved in writing by qualified medical and mental health professionals at least every year and prior to any revisions to the program.

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph C48 during the quarter ending August 31, 2004, finding the DPD in non-compliance. Although the DPD and the BOPC approved Directive 305.1, *Detainee Intake/Assessment*, which was meant to address the requirements of the paragraph, the directive had not been implemented in DPD buildings that contain holding cells.<sup>139</sup>

### ***Current Assessment of Compliance***

On February 3, 2005, the DPD submitted a revised Directive 305.1, *Detainee Intake/Assessment*, which is meant to address the requirements of paragraph C48. The Monitor is currently reviewing the resubmitted policy.

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<sup>138</sup> The HCCC indicated that the process of tracking this information began in February 2005.

<sup>139</sup> On September 10, 2004, the Monitor received the DPD's appendices to its Fourth Quarter Status Report, which included Directive 305.1 and copies of approval memoranda signed by Drs. Blessman and Gardner (dated April 4, 2003) in response to this paragraph. As the documents were received after the end of the quarter, the Monitor had not yet evaluated the documents for compliance as of the end of the quarter.

According to the HCCC, this policy has not yet been implemented in DPD buildings that contain holding cells.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C48.

## VII. FOOD SERVICE POLICIES

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This section of the COC CJ comprises paragraphs C49-50. It requires the DPD to develop and implement a comprehensive new food service policy with the assistance and approval of a qualified dietician and sanitarian. The new program must ensure that food is prepared and served in a sanitary manner, and that prisoners are fed on a regular basis. In addition, the program must ensure that all prisoners are provided with an alternative meal if they are unable to eat the standard meal for religious or dietary reasons.

The Monitor last assessed the DPD's compliance with paragraphs C49-50 during the quarter ending November 30, 2004, finding the DPD in non-compliance with each due to deficiencies in its Food Service Policy. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending May 31, 2005.

## VIII. PERSONAL HYGIENE POLICIES

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This section of the COC CJ comprises paragraph C51 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending November 30, 2004, finding the DPD in non-compliance. On October 13, 2004, the DPD submitted a revised version of Directive 305.4,  *Holding Cell Areas* , which contains references to Prisoner Personal Hygiene Kits. The Monitor is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending May 31, 2005.

## IX. USE OF FORCE AND RESTRAINTS POLICIES

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This section of the COC CJ (paragraphs C52-54) requires the DPD to revise its policies regarding prisoners and comply with the DPD's UOF policies and procedures for any UOF on prisoners in holding cells. In addition, the DPD must not handcuff prisoners to benches for longer periods of time than are necessary. The DPD is required to submit its revised UOF policies to the DOJ for review and approval.

The Monitor last assessed the DPD's compliance with paragraphs C52-54 during the quarter ending August 31, 2004. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### *Paragraphs C52-54 – Use of Force on Prisoners in Holding Cells Policies; Prisoner Policies; Prisoners in Handcuffs; Prisoners Use of Force Investigations*

Paragraph C52 states that the DPD shall require that any use of force on prisoners in holding cells complies with the DPD's use of force policies and procedures.

Paragraph C53 states that the DPD shall revise and augment its policies regarding prisoners.

Paragraph C54 states that the DPD shall not handcuff prisoners to benches for longer periods of time than are necessary.

### *Background*

The Monitor last assessed the DPD's compliance with paragraphs C52-54 during the quarter ending August 31, 2004, finding the DPD in non-compliance with each due to the fact that Directive 305.4, *Holding Cell Areas*, which is meant to address the requirements of a number of paragraphs, including paragraphs C52-59, did not adequately address the requirements of paragraph C54. Additionally, the directive was not disseminated as of the end of that quarter. As of the end of that quarter, the DPD was also still in the process of revising Directive 304.2, *Use of Force*, and Training Directive 04-07, *Use of Force Reporting*, which address the related use of force policies and procedures required by most of these paragraphs.

### *Current Assessment of Compliance*

During the current quarter, the Monitor reviewed Directive 305.4, *Holding Cell Areas*, which the DPD revised to address deficiencies identified by the Monitor during the quarter ending August 31, 2004. The Monitor determined that the directive includes language that adequately addresses the requirements of paragraphs C52 and C53. The directive states that detainee must not be handcuffed to a fixed object for any longer time than necessary, and in any event, not for longer than three hours. However, this directive has not yet been disseminated and the Monitor's

review of the First Precinct revealed that detainees are being held to fixed objects for longer than a three-hour period.

In addition to the above, after making revisions based upon TA provided by the DOJ, the DPD resubmitted Directive 304.2, *Use of Force*, to the for DOJ review and approval on February 24, 2005. The DPD also resubmitted Training Directive 04-07, *Use of Force Reporting* for the DOJ's recommendations. The DOJ was in the process of reviewing these documents as of the end of the quarter.<sup>140</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs C52-54.

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<sup>140</sup> On March 25, 2005, after the end of the quarter, the DOJ submitted a letter to the DPD offering additional recommendations regarding the Use of Force Policy. The DPD resubmitted the policy on March 26, 2005. .



## X. INCIDENT DOCUMENTATION, INVESTIGATION AND REVIEW

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This section of the COC CJ (paragraphs C55-57) requires the DPD to comply with its general incident investigation policies, UOF investigation policies and prisoner injury investigation policies in connection with all UOF, injuries and in-custody deaths occurring to prisoners in holding cells. The DPD is required to provide its revised UOF policies to the DOJ for review and approval.

The Monitor last assessed the DPD's compliance with paragraphs C55-57 during the quarter ending August 31, 2004. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### *Paragraphs C55-57 – Prisoners Use of Force Investigations; Use of Force on Prisoners in Holding Cells Investigations; Prisoner Injuries*

Paragraph C55 states that the DPD shall require that all uses of force, injuries to prisoners and in-custody deaths occurring in the DPD holding cells are investigated in compliance with the DPD's general incident investigation policies.

Paragraph C56 states that the DPD shall require that all uses of force occurring in DPD holding cells are reported and investigated in compliance with the DPD's use of force investigation policies.

Paragraph C57 states that the DPD shall require that all injuries to prisoners occurring in DPD holding cells are reported and investigated in compliance with the DPD's prisoner injury investigation policies.

### *Background*

The Monitor last assessed the DPD's compliance with paragraphs C55-57 during the quarter ending August 31, 2004, finding the DPD in non-compliance with each. The Monitor determined that although Directive 305.4, *Holding Cell Areas*, adequately addressed the requirements of paragraph C55, it did not adequately address the requirements of paragraphs C56 and C57. Furthermore, the directive was not implemented by the end of the quarter.

In addition to the above, as of the end of the quarter, the DPD was revising Directive 304.2, *Use of Force*, and Training Directive 04-07, *Use of Force Reporting*, which address the related use of force policies and procedures required by most of these paragraphs.

### *Current Assessment of Compliance*

During the current quarter, the Monitor reviewed Directive 305.4, *Holding Cell Areas*, which the DPD revised to include the requirements of paragraphs C56 and 57. The Monitor determined that the revised directive adequately addressed the requirements of the paragraphs. However, the directive was not implemented as of the end of the current quarter, and the forms and logs that are mentioned in the policy have not been finalized.<sup>141</sup>

In addition to the above, the DPD has resubmitted Directive 304.2, *Use of Force*, and Training Directive 04-07, *Use of Force Reporting*, to the DOJ for review and approval on February 24, 2005. The DOJ was in the process of reviewing these documents as of the end of the quarter.<sup>142</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs C55-57.

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<sup>141</sup> The Monitor provided TA on these forms and logs on February 8-9, 2005.

<sup>142</sup> On March 25, 2005, after the end of the quarter, the DOJ submitted a letter to the DPD offering additional recommendations regarding the Use of Force Policy. The DPD resubmitted the policy on March 26, 2005.

## XI. EXTERNAL COMPLAINTS

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This section of the COC CJ (paragraphs C58-59) requires the DPD to comply with its external complaint and investigation policies when responding to all external complaints and incidents occurring in holding cells.

The Monitor last assessed the DPD's compliance with paragraphs C58-59 during the quarter ending August 31, 2004. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### *Paragraphs C58-59 – Acceptance of External Complaints–Holding Cells; Investigation of External Complaints–Holding Cells*

Paragraph C58 requires the DPD to ensure that it accepts and processes all external complaints regarding incidents occurring in holding cells consistent with the DPD's external complaint policies.

Paragraph C59 requires the DPD to ensure that all external complaints it receives regarding incidents occurring in holding cells are investigated and reviewed consistent with the DPD's policies concerning external complaints investigations and review.

### *Background*

The Monitor last assessed the DPD's compliance with paragraphs C58-59 during the quarter ending August 31, 2004, finding the DPD in non-compliance with each due to the fact that the Directive 305.4, which the Monitor determined addresses the requirements of both paragraphs, was not implemented as of the end of the quarter. In addition, the DPD was still revising Directive 102.6, *Citizen Complaints*, which is meant to address the related external complaint policies, investigation and review requirements of these paragraphs.

### *Current Assessment of Compliance*

Directive 305.4, *Holding Cells Areas*, has not yet been implemented by the DPD. With regard to external complaints, the DPD submitted Directive 102.6, *Citizen Complaints*, on November 30, 2004. As of the end of the quarter, the DPD was revising the directive to address recommendations made by the Monitor.<sup>143</sup>

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<sup>143</sup> On March 14, 2005, after the end of the quarter, the Monitor received the latest revised Directive 102.6 from the DPD. The Monitor will review the revised policy during the quarter ending May 31, 2005.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs C58-59.

## **XII. GENERAL POLICIES**

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This section of the COC CJ (paragraphs C60-61) requires the DPD to ensure that all terms are clearly defined in all policies that are developed, revised, and augmented, and to make proposed policy revisions available to the community.

The Monitor last assessed the DPD's compliance with paragraphs C60-61 during the quarter ending November 30, 2004, finding the DPD in non-compliance with each. Regarding paragraph C60, the Monitor determined that as of the end of the quarter, the DPD had not yet finalized and disseminated most policy and procedure required under the COC CJ. Regarding paragraph C61, the Monitor determined that the DPD has established an adequate system to identify, forward, post and remove proposed policy from its Website; however, the OCI's protocol for reviewing and responding to citizen comments either has yet to be memorialized in writing or has not been provided to the Monitor as requested.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs C60-61 during the quarter ending May 31, 2005.

## **XIII. MANAGEMENT AND SUPERVISION**

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This section of the COC CJ (paragraphs C62-72) requires the DPD to operate its holding cells in compliance with its comprehensive risk management plan and to routinely evaluate the operation of the cells to minimize the risks to its staff and prisoners. The DPD must evaluate such operations through the use of video cameras and via regularly scheduled semi-annual<sup>144</sup> audits that assess and report on issues affecting the safety and well-being of DPD personnel and of the prisoners in the DPD's holding cells.<sup>145</sup>

The Monitor last assessed the DPD's compliance with paragraphs C62-64 during the quarter ending August 31, 2004. The Monitor last assessed the DPD's compliance with paragraphs C65-72 during the quarter ending November 30, 2004. During the current quarter, the Monitor again assessed the DPD's compliance with paragraphs C62-72 and continued to provide TA to the

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<sup>144</sup> On October 4, 2004, the Court amended the audit schedule in the COC CJ by requiring the DPD's COC CJ audits to be completed semi-annually with the first and second audits due by January 31 and August 31, 2004, and subsequent audits due by January 31, 2005 and every six months thereafter.

<sup>145</sup> The topics covered by these audits include: UOF; injuries to prisoners and allegations of misconduct in holding cells; fire detection, suppression and evacuation; emergency preparedness; medical/mental health; detainee safety; environmental health and safety; and food service.

members of the HCCC regarding COC CJ audits that were in progress. The results of our current assessments follow.

### **Paragraph C62 – Evaluation of Holding Cells**

Paragraph C62 requires the DPD to routinely evaluate the operation of the holding cells to minimize the risk of harm to staff and prisoners.

#### ***Background***

The Monitor last assessed the DPD's compliance with paragraph C62 during the quarter ending August 31, 2004, finding the DPD in non-compliance. Although the DPD provided the Monitor with a draft plan, which proposed, among other things, that a "command level officer complete a standardized, specific and detailed inspection report of the conditions of the holding cells at DPD facilities," the DPD had neither developed nor implemented a plan that addresses the paragraph's requirements.

#### ***Current Assessment of Compliance***

In its Sixth Quarter Status Report, the DPD stated that compliance with this paragraph was attained with the creation of the HCCC since the committee's goals are to "assure continued compliance with the provisions of the COC CJ." It further states that "CRD personnel have and will continue to conduct audits and inspections to evaluate the operation of the holding cells to ensure minimal risk of harm to staff and prisoners." The Monitor inquired further since in the quarter ending August 31, 2004, the DPD had submitted the draft plan described above in response to the Monitor's request for documents related to this paragraph.

The draft plan differs from the DPD's response in its recent report. The Monitor was recently informed that this plan has been implemented by Field Duty Officers beginning on August 30, 2004. According to the DPD, it was also introduced briefly to Executive Duty Officers in January and February of 2005. It is unclear to the Monitor whether the inspection reports required under the plan are being completed on a daily basis, and whether they are being reviewed in order to evaluate the risk of harm to staff and prisoners. The Monitor is seeking additional information as a supplement to the previous document request and other requests for information in order to evaluate the DPD's compliance efforts with this paragraph.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C62.

### **Paragraph C63 – Risk Management Plan**

Paragraph C63 requires the DPD to operate the holding cells in compliance with the DPD's comprehensive risk management plan including implementation of:

- a. the Risk Management Database (discussed in paragraphs U79-90);
- b. the performance evaluation system (discussed in paragraph U91);
- c. the auditing protocol (discussed in paragraphs 92-99; C65-72);
- d. regular and periodic review of all DPD policies; and
- e. regular meetings of DPD management to share information and evaluate patterns of conduct by DPD that potentially increase the DPD's liability.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph C63 during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that the DPD failed to adhere to the deadlines included in the various paragraphs described in subparagraphs C63a-c. The DPD was in non-compliance with subparagraph C63d because it had not developed a mechanism for conducting regular and periodic reviews of all DPD policies. Lastly, the DPD was found in non-compliance with subparagraph C63e because it failed to conduct regular meetings of DPD management to share information and evaluate patterns of conduct by DPD that could potentially increase the DPD's liability.

### *Current Assessment of Compliance*

In order to achieve compliance with the requirements of subparagraphs C63a-c, the DPD must meet the requirements and adhere to the deadlines included in the UOF CJ paragraphs related to each of the respective subparagraphs a. through c., as described above, as these requirements relate to the operation of the holding cells. Because the DPD is in non-compliance with the majority of these paragraphs, it is also in non-compliance with subparagraphs C63a-c.<sup>146</sup>

In July 2004, in response to a document request from the Monitor for information regarding subparagraph C63d, the DPD provided a copy of draft Directive 101.1, *Directive System*, which provided a system for the regular and periodic review of all DPD policies. The Monitor has not received any documentation that this policy has been implemented.

Similarly, in July 2004, in response to a document request from the Monitor for information regarding subparagraph C63e, the DPD stated that regular meetings of DPD management to share information and evaluate patterns of conduct by DPD that potentially increase the DPD's

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<sup>146</sup> The Risk Management Database is discussed under paragraphs U84, U85 and U88 above; and the Auditing Protocol is discussed under paragraph U92 above. The Monitor received Directive 401.1, *Performance Evaluation Ratings*, and related forms from the DPD on February 3, 2005. The Monitor understands that this directive and its related forms have already been disseminated to the field. Although paragraph U91 is not scheduled for evaluation again until the quarter ending August 31, 2005, the Monitor will conduct the evaluation during the quarter ending May 31, 2005.

liability would be covered by the paragraph U110 meetings. In the Monitor's Report for the Quarter Ending November 30, 2004, under paragraph U78, which mirrors this paragraph in the UOF CJ, the Monitor stated that the requirements of subparagraph U78e (here C63e) differ from the requirements of paragraph U110, which refers to meetings that the DPD should hold with the City Law Department specifically concerning the conclusion of civil lawsuits alleging officer misconduct. The Monitor noted that paragraph U110 meetings could possibly serve the broader purpose of subparagraph U78e (here C63e) meetings; however, the subparagraph C78e meetings are required to be among DPD management and evaluate patterns of conduct that could increase the DPD's liability in any area (not just officer misconduct). The Monitor also noted that the DPD did not specifically address subparagraphs C63d-e in its quarterly report and that the Monitor had not been provided with any information that these reviews are being conducted or that this information is being shared and evaluated by DPD management. Once again, the DPD's Sixth Quarter Status Report does not specifically address subparagraphs C63d-e and only states that the Risk Management Plan is currently under development.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C63.

### *Paragraph C64 - Video Cameras - Holding Cells*

Paragraph C64 states that the DPD policy on video cameras shall be revised and augmented to require:

- a. the installation and continuous operation of video cameras in all prisoner processing areas of DPD holding cells within one year of the effective date of the COC CJ;
- b. supervisors to review videotapes of all incidents involving injuries to a prisoner or an officer, UOF and external complaints;
- c. that the DPD retain and preserve videotapes for at least 90 days, or as long as necessary for incidents to be fully investigated; and,
- d. that the DPD conduct and document periodic random reviews of prisoner processing area camera videotapes for training and integrity purposes and conduct periodic random surveys of prisoner processing area video recording equipment to confirm that it is in proper working order.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph C64 during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that the new digital video capture system was in the process of being implemented in each precinct. Although the Monitor's initial impression of the technology and capability of the new digital video system was quite positive, the system had not yet been installed in all precincts. Additionally, the DPD had not developed uniform written policies and procedures regarding the new digital video system, as required by paragraph C64.

### *Current Assessment of Compliance*

According to the DPD's Sixth Quarter Status Report, a protocol has been developed to address the review and capture of video. As of the end of the quarter, the Monitor had not received the protocol.<sup>147</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C64.

### *Paragraph C65 – Audits of UOF, Prisoner Injuries and Misconduct Investigations in Holding Cells*

Paragraph C65 requires the DPD to conduct regularly scheduled semi-annual audits covering all DPD units and commands (including a sample of command, IAD and Homicide Section investigations) that investigate uses of force, prisoner injuries, and allegations of misconduct in holding cells.

For ease of reporting, the Monitor has split paragraph C65 into the following three components:

- C65a – Holding Cell Use of Force Investigations Audit
- C65b – Holding Cell Prisoner Injuries Investigations Audit
- C65c – Holding Cell Misconduct Investigations Audit

### *Background*

The Monitor last assessed the DPD's compliance with paragraph C65 during the quarter ending November 30, 2004, finding the DPD in non-compliance due to the fact that no audits required by this paragraph were submitted as of the end of that quarter.

### *Current Assessment of Compliance*

#### *C65a and c – Holding Cell Uses of Force and Misconduct Investigations Audits*

The DPD did not submit any audits required by these subparagraphs by the end of the current quarter. According to the DPD's AT, planning for these audits began on February 21, 2005.

Based on the foregoing, the Monitor finds the DPD in non-compliance with subparagraphs C65a and C65c.<sup>148</sup>

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<sup>147</sup> On March 18, 2005, after the end of the quarter, the DPD submitted the Video Review Protocol.

<sup>148</sup> The Monitor will continue to find the DPD in non-compliance for each audit until such time as the required audits have been submitted. When such audits are submitted, the quality of such audits will be evaluated.



### *C65b – Holding Cell Prisoner Injuries Investigations Audit*

In order to assess compliance with paragraph C65b during the current quarter, the Monitor reviewed the holding cell Prisoner Injury Audit report submitted by the DPD on January 31, 2005. This audit was drafted subsequent to the formal training provided to the DPD's AT in December 2004 and January 2005, but the majority of the fieldwork was conducted prior to such training. The Monitor also reviewed selected audit working papers including workplans, crib sheets, matrices and other related documents.<sup>149</sup>

The Monitor noted that this audit report was an improvement over the audits previously submitted by the DPD AT. It was more clear and concise, and used appropriate tables to compare the findings for each command. However, the Monitor also identified several problems and areas for improvement in the processes applied during this audit. The Monitor is confident that these audit processes will improve as the DPD's AT incorporates the concepts taught in the TA and formal training provided by the Monitor and the LAPD's Audit Division in December 2004 and January 2005.

The Monitor's findings, which have been discussed with the DPD's AT, are highlighted below:

- The DPD's AT completed its holding cell Prisoner Injury Audit in a timely manner; however, based on the number of typographical and editing errors, it was apparent that its quality control and review processes were inadequate and did not include sufficient internal evaluation prior to submission to the Monitor.
- The DPD's AT appropriately utilized a 6-month period from April 1 – September 30, 2004 as its audit time period and, because it evaluated 100% of the population identified, there were no sampling deficiencies.
- The DPD's AT inappropriately identified its audit population based on completed Police Action Incident Reports (PAIR), rather than based on "prisoner injury" incidents as defined in the COC and UOF CJs. As a result, the audit evaluated only those prisoner injury investigations where the auditors were able to locate a PAIR,<sup>150</sup> and specifically excluded UOF and misconduct incidents in holding cells.<sup>151</sup>

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<sup>149</sup> Due to the finding of non-compliance early in the Monitor's review, the Monitor did not conduct a meta-audit of the audit's fieldwork.

<sup>150</sup> In an effort to verify the audit population, the Monitor requested a listing of all prisoner injuries and UOF investigations during the audit time period. The DPD was unable to provide all information requested; however, based on the documentation sent, the Monitor was able to confirm inadequacies in the audit population.

<sup>151</sup> Although paragraph C65 requires audits of Uses of Force, Prisoner Injuries, and Misconduct Investigations in holding cells, the DPD can opt to conduct separate audits of these subjects. This audit population did not include an adequate population of any of these investigations.

- Paragraph C65b contains specific qualitative factors that must be assessed in this audit, namely, evaluating the accuracy and consistency of the investigation, the preservation and analysis of evidence, and, the appropriateness of the investigators' conclusions. In addition, the scope of this audit is meant to include evaluating compliance with other provisions in the COC and UOF CJ relating to the investigations of prisoner injuries. Based on the findings presented in the holding cell Prisoner Injury Audit report, it appears that most of these requirements were addressed. The only exception related to the requirement for the DPD on-scene supervisor to notify IAD of all incidents involving a prisoner injury.<sup>152</sup> Due to an oversight during the planning stage, the HCCC excluded this requirement from the scope of the holding cell Prisoner Injury Audit.
- Although most of the recommendations contained in the audit report are valid and corrective in nature, the report inappropriately recommended that the DPD consider challenging the COC CJ terminology. In addition, the HCCC should have included a recommendation for the DPD to train its investigators.

Based on the foregoing, the Monitor finds this audit in non-compliance with subparagraph C65b.

### **Paragraph C66 – Holding Cell Compliance Committee Responsibilities**

Paragraph C66 requires the DPD to form a HCCC that is responsible for assuring compliance with the relevant provisions of the COC CJ. This paragraph also requires the HCCC to conduct regularly scheduled quarterly audits of all facilities that house holding cells to evaluate and report upon compliance with the fire detection, suppression and evacuation program as detailed in the COC CJ. The scope of such audits must include an evaluation of the smoke detectors and sprinklers, the back-up power systems, and the DPD's fire equipment.

For ease of reporting, the Monitor has split paragraph C66 into the following two components:

- C66a - HCCC to Assure Compliance with the COC CJ
- C66b - HCCC Fire Safety Audits

### ***Background***

The Monitor last assessed the DPD's compliance with subparagraphs C66a and b during the quarter ending November 30, 2004, finding the DPD in non-compliance. Although the HCCC made significant progress relevant to the development of policies required by the COC CJ and completed the fieldwork and draft report for the Fire Detection, Suppression and Evacuation Audit, the final audit report had not yet been submitted and the policies had not been implemented.

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<sup>152</sup> Once notified, IAD has the option of delegating the investigation to the supervisor for a command investigation.

## *Current Assessment of Compliance*

### *C66a - HCCC to Assure Compliance with the COC CJ*

During this quarter, the HCCC continued creating and submitting various policies relating to and required by the COC CJ; however, several holding cells policies have not yet been implemented and many of the forms and logs required by the COC CJ remain under development. In addition, although the HCCC made progress in complying with some of the requirements of the COC CJ, including the submission of the audits as described in this report, until such time as the HCCC has assured compliance with the COC CJ through the implementation of relevant policies, procedures and forms, and through the completion of all audits required by the COC CJ, it will be unable to achieve compliance with subparagraph C66a.

Based on the foregoing, the Monitor finds the DPD in non-compliance with subparagraph C66a.

### *C66b - HCCC Fire Safety Audit*

In order to assess compliance with paragraph C66b during the current quarter, the Monitor reviewed the HCCC's Fire Detection, Suppression & Evacuation (Fire Safety) Audit report submitted on January 13, 2005.<sup>153</sup> The Monitor found that although the audit contained some useful information related to fire safety, such as inoperable and open fire doors, it was not submitted in a timely manner, which resulted in stale information, and it contained numerous qualitative deficiencies in connection with its scope, sampling and reporting.<sup>154</sup>

The Fire Safety audit also contained substantive deficiencies unique to the requirements of paragraph C66b, as highlighted below. All of these deficiencies have been discussed with the HCCC.

- The audit report articulated that the scope of the audit included tests of smoke alarms, however five sentences later, the report states that tests were not performed because personnel conducting the audit (from the DFD and the DPD) were not qualified or certified to conduct such tests. Similar conflicts were evident throughout the report in relation to testing back-up power, fire alarms, emergency lighting, and sprinklers. Assuming such tests were not, in fact, conducted, this severely limited the scope of the audit.
- The audit contained no discussion regarding the total population of fire equipment or documentation.

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<sup>153</sup> The Monitor did not review the AT working papers related to planning or fieldwork, as a review of such documents would not have altered the determination of compliance, and would have been of limited benefit to the DPD's AT / HCCC in conducting future audits of this subject.

<sup>154</sup> This audit was completed prior to formal training provided to the DPD's AT / HCCC by the Monitor's staff and the LAPD as described previously in this report, and consequently contained deficiencies similar to those identified by the Monitor and detailed in the Monitor's Report for the Quarter Ending November 30, 2004

- The audit appropriately found the DPD in non-compliance with all COC CJ requirements, except paragraph C20 (No Smoking Policy). However, it must be noted that because the auditors could not perform the required tests of the fire equipment (due to non-qualified audit personnel) and did not review fire documentation (due to non-existence), the audit may not have accurately measured compliance with the COC CJ requirements.

Based on the foregoing, the Monitor finds the DPD in non-compliance with subparagraph C66b.

### **Paragraph C67 – Audit of Emergency Preparedness Program**

Paragraph C67 of the COC CJ requires the HCCC to conduct regularly scheduled semi-annual audits covering all DPD buildings that contain holding cells to evaluate emergency preparedness. The scope of such audits must include evaluating the DPD's key and fire equipment records and evaluating the emergency preparedness of selected detention officers. The HCCC must issue a written report regarding the audit's findings.

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph C67 during the quarter ending November 30, 2004, finding the DPD in non-compliance. The Monitor reviewed the Emergency Preparedness Audit submitted to the Monitor on October 21, 2004 and determined that it contained deficiencies related to timeliness, sampling, scope and reporting.

### ***Current Assessment of Compliance***

In order to assess compliance with paragraph C67 during the current quarter, the Monitor reviewed the Emergency Preparedness Audit Report submitted on January 31, 2005 and the Error Corrections to Emergency Preparedness Programs Audit Report submitted on February 10, 2005.<sup>155</sup>

In summary, although this audit was a non-compliant audit, it addressed all relevant COC CJ paragraphs related to emergency preparedness and presented the information in a format that was more concise and clear than the previous audit report. The Monitor's findings, which have been discussed with the HCCC, are highlighted below:

- The HCCC submitted the Emergency Preparedness Programs Audit by January 31, 2005, which was within the timeframe required by the COC CJ and within six months of the first Emergency Preparedness Audit, which was submitted on October 21, 2004.

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<sup>155</sup> Based on the extent of deficiencies identified during the Monitor's initial evaluation of the audit report, the Monitor's examination of the audit fieldwork working papers was limited in scope and was performed for purposes of providing feedback, rather than testing the quality of the audit fieldwork for compliance purposes.

- This audit included a fire evacuation simulation exercise as one of its testing mechanisms; however, the audit only included one randomly selected precinct (10th Precinct), and did not evaluate emergency preparedness at all precincts.
- The audit included an in-depth review of the contents of the draft Comprehensive Emergency Preparedness Program (CEPP) to test whether such plans had been drafted to include all of the requirements of paragraph C67. This review was resource intensive and unnecessary, given that the CEPP is currently under review by and requires the approval of the DOJ.
- The audit included an interview/scenario process to test 39 detention officers from the precincts included in the audit population (for Precincts 2-3, 5-13 and DRH) about their participation in fire drills and their ability to adequately identify keys by touch and manually unlock cell doors. The audit report concluded that “*staff members had significant working knowledge of their job responsibilities in the event of fire related emergencies.*” However, the questions asked by the auditors did not elicit information to evaluate whether the detention officers would be in compliance with the draft CEPP.<sup>156</sup> As a result, the detention officers may or may not have significant knowledge of their job responsibilities. Additionally, the conclusion refers to “staff members” when only detention officers were interviewed.
- Although the audit indicated included a confirmation of the existence of a draft CEPP for the First Precinct, it did not include an interview of First Precinct personnel to test their compliance with or knowledge of the requirements of the CEPP.<sup>157</sup> The Monitor acknowledges that the parties are involved in on-going discussions regarding whether the First Precinct contains a holding cell; however, First Precinct personnel do in fact conduct and document fire drills and should have been interviewed regarding their participation in such fire drills and their responsibilities during emergencies, as required by C67. Accordingly, the First Precinct should not have been excluded from the scope of this audit.
- Although the recommendations contained in the audit report are valid and will assist the DPD in moving towards compliance, the format for reporting the recommendations was difficult to follow and resulted in duplicative recommendations within the report. The Monitor suggests that the audit reporting format be reorganized and include one section entitled “Recommendations” rather than presenting recommendations throughout the report.
- The audit report contained many typographical and editing errors. The Monitor understands that this was caused, in part, by the DPD’s rush to submit this audit by January 31, 2005 and

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<sup>156</sup> For example, the detention officers were not asked, nor did they articulate, how they would ensure that all prisoners were accounted for once evacuated. The Monitor noted that this is required by the draft CEPP.

<sup>157</sup> The rationale for excluding the First Precinct, as stated in the audit report, was because the gate for the cells was removed, therefore detention officers are not assigned to the First Precinct. The Monitor notes that the building that houses the First Precinct has prisoners in the processing area on a daily basis and houses numerous specialized units that frequently have prisoners being interviewed. In addition, many DPD staff work in the building. .

the limited quality review that was performed of this audit prior to submission. The HCCC appropriately addressed some of these errors by submitting the Error Corrections to Emergency Preparedness Programs Audit Report; however, many editing problems remained uncorrected.<sup>158</sup>

Based on the foregoing, the Monitor finds this audit in non-compliance with paragraph C67.

**Paragraph C68-70 –Audits of Medical/Mental Health, Detainee Safety and, Environmental Health and Safety Programs and Policies**

Paragraphs C68-70 require the HCCC to conduct regularly scheduled semi-annual audits of medical/mental health, detainee safety programs and policies, and environmental health and safety programs. Such audits must cover all DPD buildings that contain holding cells.

***Background***

The Monitor last assessed the DPD's compliance with paragraphs C68-70 during the quarter ending November 30, 2004, finding the DPD in non-compliance due to the fact that no audits required by this paragraph were submitted as of the end of that quarter.

***Current Assessment of Compliance***

In order to assess compliance with paragraphs C68<sup>159</sup>-70 during the current quarter, the Monitor reviewed three audit reports relating to each of these paragraphs' requirements, which were submitted by the DPD on January 13, 2005. Similar to the Fire Safety Audit described above,<sup>160</sup> these audits contained useful information regarding the topics being audited but were not submitted in a timely manner, were stale and contained numerous qualitative deficiencies in connection with their scope, sampling and reporting.<sup>161</sup>

In addition to the timeliness, sampling, scope and reporting shortcomings identified above, the Monitor identified the following issues, all of which have been discussed with the HCCC:

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<sup>158</sup> During discussions with the Monitor, the DPD recognized this problem and indicated that steps have been taken in the management of the audit process to minimize these types of errors in the future.

<sup>159</sup> The assessment of compliance relating to paragraph C68 is in relation to the Medical/Mental Health Program Audit dated May 2004 that was apparently ready for submission to the Monitor on January 13, 2005. There is another Medical/Mental Health Programs Audit, dated January 31, 2005, that was received by the Monitor in early February 2005; the Monitor has not yet completed its evaluation of this audit, but expects to report its findings in its Report for the Quarter Ending May 31, 2005.

<sup>160</sup> Refer to the Current Assessment of Compliance for subparagraph C66b.

<sup>161</sup> These audits were also completed prior to formal training provided to the DPD's AT / HCCC by the Monitor's staff and the LAPD as described previously in this report, and consequently contained deficiencies similar to those identified by the Monitor and detailed in the Monitor's Report for the Quarter Ending November 30, 2004.

*Paragraph C68 – Medical and Mental Health Programs Audit*

- The report contained a limited explanation of the methodology used to identify the population and subsequent sample of prescription medication logs.
- The actual audit report started on page 36. Previous pages contained information related to the status of the medical and mental health policies, which is not usually described in an audit report.
- The charts and graphs used to illustrate some of the findings were unnecessary as each presented only one result. In addition, each chart or graph was different in terms of size, shape and/or orientation, which added to the unnecessary length and complexity of the audit report.

*Paragraph C69 – Detainee Safety Program Audit*

- Although the audit discussed current security screening practices by DPD detention officers, and fully articulated recommendations related thereto, the audit did not include a review of security screening records, as required by subparagraph C69a. The row in the Findings Table relating to sampling security screening records was blank. If no screening documentation was available to be reviewed, the report should have clearly indicated that this was a scope limitation, and was “Unable to be determined.”
- The auditors relied on inappropriate sources of information in order to evaluate DPD’s detainee safety practices.<sup>162</sup>
- The audit contained no discussion regarding the total population of security screening or cell check documentation and only a limited explanation of the method of sampling for cell check documentation. Additionally, the method of sampling described was incorrect.
- The report contained numerous editing errors such as headings that did not match the subsequent text, non-consecutive page numbers, and exhibits in the middle of the report with no explanation or introduction. In addition, the report referenced policies, but did not identify the policy name, number, or version of such policies.
- The audit identified numerous problems with the DPD’s security screening as related to compliance with the COC CJ. The recommendations in the audit did not adequately address each deficiency.

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<sup>162</sup> The auditors relied in information from the DPD’s Officer in Charge to obtain information regarding DPD practices related to prisoner screening, security monitoring equipment and cell check documentation, rather than validating this information directly with the DPD’s detention officers or the DPD’s detention command staff.

*Paragraph C70 – Environmental Health and Safety Program Audit*

- Although the Objectives and Methodology sections of the audit report specify that this audit was in response to paragraph C70, and these sections discussed the cleanliness and maintenance of holding cells, the audit did not include a review of cleaning and maintenance logs/documentation, as required by subparagraph C70b.
- The audit incorrectly states that the subject matter relating to this audit and referenced paragraphs included emergency plans, performance of fire drills, implementation of key control procedures and review of key and lock inventory and maintenance records (page 12). This appears to be the result of “cutting and pasting,” which reveals an internal editing/review problem, as this text is unrelated to the Environmental Health and Safety Audit, and is instead related to the Fire Safety Audit.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs C68-70.

*Paragraph C71 – Food Service Program Audit*

Paragraph C71 requires the HCCC to conduct regularly scheduled semi-annual audits covering all buildings containing holding cells to evaluate the food service program. The scope of such audits must include evaluating whether prisoners held over 6 hours receive regular and adequate meals, and whether their food is handled in a sanitary manner. The HCCC must issue a written report regarding the audits’ findings.

*Background*

The Monitor last assessed the DPD’s compliance with paragraph C71 during the quarter ending November 30, 2004, finding the DPD in non-compliance. The Monitor reviewed the Food Service Program Audit submitted to the Monitor on October 21, 2004 and determined that it contained deficiencies related to timeliness, sampling, scope and reporting.

*Current Assessment of Compliance*

In order to assess the DPD’s compliance with paragraph C71 during the current quarter, the Monitor reviewed the Food Service Program Audit report dated January 31, 2005. The Monitor did not review selected audit working papers, including the audit workplan, cribsheets, matrices and other related documents, as such documents were not provided within sufficient time to allow for a thorough or meaningful review, nor were they provided with sufficient time to include the findings from such a review in this report.<sup>163</sup>

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<sup>163</sup> Based on the extent of deficiencies identified during the Monitor’s initial evaluation of the audit report, the Monitor was able to evaluate the audit’s compliance with paragraph C71 without requiring such documentation.



The Monitor's specific findings, which have been discussed with the DPD's AT / HCCC, are outlined below:

- The Food Service Program Audit was submitted in a timely manner on January 31, 2005.
- The audit involved conducting site visits and observing the meal allocations at all locations with holding cells using a three team audit approach.<sup>164</sup> However, while the number of site visits made and meal allocations observed appear to be sufficient, the sample of sites and meals was not selected on a statistically valid basis.<sup>165</sup>
- The HCCC inappropriately excluded the DRH from this audit because the HCCC determined that since DPD members do not serve food at the DRH, an evaluation of the DRH's food service was not required.<sup>166</sup> The fact that food is not served by DPD personnel does not relieve the DPD from its responsibility to ensure that the DRH complies with all Food Service Policy objectives over which it has control.
- The audit inappropriately excluded a review of the Food Service Program at the First Precinct.<sup>167</sup> The building that houses the First Precinct has prisoners in the processing area on a daily basis, and houses numerous specialized units that frequently have prisoners who are being interviewed / interrogated over periods of time which may exceed six hours. Paragraph C50d specifically requires that food service is provided to prisoners who are held for over six hours.<sup>168</sup> Accordingly, although the Food Service Program at the First Precinct may be different from the Food Service Program at other precincts, the audit scope should have included a review of the Food Service processes used at the First Precinct for any detainees held over six hours.

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<sup>164</sup> The first team was comprised of sanitarians who observed the noon meal allocation at each holding cell; the second team observed the other three meal allocations at selected holding cells; and the third team reviewed documentation to evaluate whether prisoners held over six hours receive regular and adequate meals.

<sup>165</sup> The AT determined that 17 site visits / meal allocation observations were required and arbitrarily chose to observe the noon meal allocation for the first 11 of their sample and then one of the other remaining three meal allocations at every third precinct (having a holding cell) for the remaining 6 of their sample. This introduced a bias into the sample selection process which prevented them from accurately concluding on the population as a whole.

<sup>166</sup> The following objectives should have been tested: whether the DRH's food for DPD detainees is stored in a sanitary manner, whether on-site food service is established and operational; and whether the sanitary conditions of the food service area and refrigerator are adequate.

<sup>167</sup> The rationale for excluding the First Precinct, as stated in the audit report, was because there is no holding cell and no food service at the First Precinct.

<sup>168</sup> As described in the Current Assessment of Compliance for paragraph C67, the Monitor acknowledges that the parties are involved in on-going discussions regarding whether the First Precinct contains a holding cell. Nevertheless, the Monitor contends that the audit should have included a review of the First Precinct to ensure that paragraph C50d requirements are being adhered to.

- Although the audit team was supposed to evaluate detainee meal logs for all holding cells including the DRH, the sample reviewed consisted only of logs from three precincts<sup>169</sup> because the documentation required did not exist at the remaining nine locations. The report further articulates that a statistically valid sample could not be selected because the DPD did not have reliable source documents to identify all arrests.
- While there was an improvement in the report writing over the prior audit submitted,<sup>170</sup> a number of formatting and style issues remained, which created unnecessary confusion and made the report difficult to follow.<sup>171</sup>
- Other tests required to assess compliance with certain audit objectives were either not undertaken or were not well articulated within the report.<sup>172</sup>
- As with the Emergency Preparedness Audit,<sup>173</sup> the Monitor identified many typographical and editing errors in the report, which were due, in part, to the DPD's rush to submit this audit by January 31, 2005 and the limited quality review that was performed of this audit prior to submission.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C71.

### Paragraph C72 – Audit Reporting Requirements

Paragraph C72 requires the results of each of the HCCC audits to be submitted via a written report to the Chief of Police and all precinct and specialized division commanders. The COC CJ requires such audits to be completed by January 31 and August 31, 2004 and every six months thereafter. Paragraph C72 also requires commanders to take disciplinary or non-disciplinary corrective action, when appropriate, regarding employees under their command.

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<sup>169</sup> Precincts 2, 3 and 5 apparently formed the sample population.

<sup>170</sup> For example, there was a stronger connection between the points outlined in the Executive Summary section and the stated nine objectives evaluated in the audit, the use and relevance of the tables included and in the overall format of the report itself.

<sup>171</sup> For example, the narrative under the conclusion headings did not articulate whether the objectives in question were met or not. For five out of the nine objectives evaluated, the audit procedures used to assess the objective in question were not clearly specified. Results were provided with no specific indication as to how they were achieved. There were several instances where the results in the tables were not correctly calculated. There was no final conclusion as to whether the department was or was not in compliance with the requirements of paragraph 71.

<sup>172</sup> For example, there was no specific testing of the food delivery system (as it related to the sanitary condition of the food) or whether chemical sanitation was checked or appropriate.

<sup>173</sup> Refer to the Current Assessment of Compliance for paragraph C67.

## *Background*

The Monitor last assessed the DPD's compliance with paragraph C72 during the quarter ending November 30, 2004, finding the DPD in non-compliance due to the fact that the audit reports submitted to the Chief of Police during that quarter did not adequately convey the results of each audit.

## *Current Assessment of Compliance*

During the current quarter, the DPD submitted a total of eight audit reports in response to the COC CJ, each of which was dated either May 2004 or January 31, 2005. The Monitor determined that four<sup>174</sup> of the seven audits evaluated<sup>175</sup> did not adequately present the findings by precinct.

The Monitor has also requested documentation to support the distribution to, and subsequent actions of, the Precinct and/or Specialized Unit Commanders in relation to all of the audits submitted; however, the Monitor had not received such documentation as of the end of the quarter.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C72.

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<sup>174</sup> The four audits were the Fire Safety Program, the Medical Mental Health, the Detainee Safety and the Environmental Health and Safety audits. These audits were submitted on January 13, 2005.

<sup>175</sup> The Monitor has not yet completed its evaluation of one of the eight audits submitted, the Medical/Mental Health Programs audit dated January 31, 2005. The findings from the Monitor's evaluation of this audit will be included in the Monitor's Report for the Quarter Ending May 31, 2005.

#### XIV. TRAINING

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This section of the COC CJ (paragraphs C73-78) requires the DPD to provide all detention officers with comprehensive training, maintain individual training records, provide training in key areas such as emergency response, intake and medical protocols, safety programs, maintenance protocols, and food preparation and delivery protocols.<sup>176</sup>

As noted previously in this report, on August 22, 2004, the DPD established the Curriculum Research and Development function to develop a competency-based curriculum that includes specific learning objectives, measurable outcomes and scenario-based lesson plans. This unit is commanded by a Police Inspector, who holds a PhD in Education. According to the DPD, a group of in-house subject matter experts have been identified to develop curriculum under the Inspector's guidance.

The Monitor last assessed the DPD's compliance with paragraphs C73-78 during the quarter ending August 31, 2004, finding the DPD in non-compliance with each. The DPD had not developed comprehensive pre-service and in-service training as of the end of the quarter, and the majority of policies and programs required under the COC CJ had not yet been fully developed<sup>177</sup> or implemented, preventing the DPD from developing related training.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs C73-78 during quarter ending August 31, 2005.

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<sup>176</sup> Refer to the UOF CJ training section in this report for additional information regarding DPD training-related issues.

<sup>177</sup> This included the DPD's emergency preparedness, medical/mental health screening, prisoner safety, environmental health and safety and hygiene programs and policies.

## XV. MONITORING AND REPORTING

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Paragraph C94 is the only paragraph in this section of the COC CJ for which the Monitor will be assessing compliance. This paragraph requires the DPD to reopen for further investigation any investigation the Monitor determines to be incomplete, subject to certain restrictions. As reported in its Report for the Quarter Ending May 31, 2004, the Monitor had not yet reviewed investigations under paragraph C94 since the DPD had not yet revised the majority of the policies and investigatory procedures under the COC CJ. The Monitor still has not yet reviewed DPD investigations, as the DPD has not yet implemented the majority of the policies and investigatory procedures under the Consent Judgments.

## **CONCLUSION**

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The City and the DPD continued to make significant progress in the area of policy development and revision during this quarter. Significantly, the City and the DPD achieved a critical milestone, albeit after the end of the quarter, when the DOJ granted final approval of numerous DPD policies in late March. The Monitor continues to be encouraged by the clear demonstration of progress. Once policies are revised, approved by the DOJ, where required, and disseminated, the DPD's next challenge will be implementation and training.

With regard to the Conditions of Confinement, the DPD continues to face challenges in adhering to some of the requirements of the COC CJ in buildings that contain holding cells. To its credit, the DPD has been diligent in requesting and receiving TA from the DOJ and the Monitor regarding adherence with these requirements. The City has committed to building a central detention facility, which according to the City and the DPD, will take approximately 24 months to complete. According to the City, this central detention facility will comply with all of the physical requirements contained within the COC CJ. Nevertheless, although a two-year extension of the duration of the COC CJ was granted on December 27, 2004, the Court did not relieve the City and the DPD of any of the other deadlines in the COC CJ. Therefore, the Monitor will continue to assess the DPD's efforts to bring all existing holding cell facilities into compliance according to the internal deadlines that are contained in the Consent Judgments.

The City and the DPD also submitted 10 audits during the quarter and improved the timeliness of its internal audit review and approval process. The Monitor commends the DPD for completing these additional audits, but also expresses concern regarding the audits that are being "skipped" as described in this Report.

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Independent Monitor

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## APPENDIX A:

### Acronyms Frequently Utilized in Quarterly Reports Issued by the Independent Monitor for the DPD

Following is a listing of acronyms utilized in the Independent Monitor's Quarterly Reports.

<b>ACRONYM</b>	<b>DEFINITION</b>
A&D	Arrest and Detention
AG	Audit Group
AT	Audit Team
BOPC	Board of Police Commissioners
CALEA	Commission on Accreditation for Law Enforcement Agencies
CCR	Citizen Complaint Report
CEPP	Comprehensive Emergency Preparedness Program
CI	Chief Investigator
City	City of Detroit
CJ	Consent Judgment
CLBR	Command Level Board of Review
CLFRT	Command Level Force Review Team
CLO	Compliance Liaison Officer
CMMHSP	Comprehensive Medical and Mental Health Screening Program
COC CJ	Conditions of Confinement Consent Judgment
CRD	Civil Rights Division
CRIB	Civil Rights Integrity Bureau

CSU	Communications Systems Unit
DAS	Disciplinary Administration Section
DDOH	Detroit Department of Health
DFD	Detroit Fire Department
DHWP	Detroit Health and Wellness Promotion
DOJ	Department of Justice
DPD	Detroit Police Department
DRH	Detroit Receiving Hospital
ECD	Emergency Communications Division
FIS	Force Investigation Section
FIU	Force Investigation Unit
FRT	Force Review Team
GAS	Government Auditing Standards
HCCC	Holding Cell Compliance Committee
IACP	International Association of Chiefs of Police
IAD	Internal Affairs Division
ICD	Internal Controls Division
IMAS	Interim Management Awareness System
MAS	Management Awareness System
MCOLES	Michigan Commission on Law Enforcement Standards
MIOSHA	Michigan Occupational Safety and Health Administration
MITN	MCOLES Information and Tracking System



OCI	Office of the Chief Investigator
OIC	Officer in Charge
PAB	Professional Accountability Bureau
PAIR	Police Action Incident Report
PCR	Preliminary Complaint Report
PDO	Police Detention Officer
PSA	Public Service Announcement
RFP	Request for Proposals
RMB	Risk Management Bureau
RMG	Risk Management Group
SME	Subject Matter Expert
SMT	Senior Management Team
SOP	Standard Operating Procedure(s)
TA	Technical Assistance
USAO	United States Attorney's Office
UOF	Use(s) of Force
UOF CJ	Use of Force and Arrest and Witness Detention Consent Judgment
WIQD	Witness Identification and Questioning Documentation