

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  
AUGUST 31, 2006

ISSUED OCTOBER 16, 2006

## **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 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 Wood, with the assistance of Kroll, Inc., as the Independent Monitor in this matter. This is the twelfth quarterly report of the Independent Monitor.<sup>4</sup>

During the twelfth quarter, which ended on August 31, 2006, the Monitor examined a total of 89 paragraphs or subparagraphs (59 paragraphs or subparagraphs of the UOF CJ and 30 paragraphs or subparagraphs of the COC CJ). Of these, the City and the DPD complied with 4 and failed to achieve compliance with 67; the Monitor has not yet completed its evaluation of 13 paragraphs or subparagraphs<sup>5</sup> and withheld its determination of the DPD's compliance with 5 paragraphs.<sup>6</sup> In addition to these, there are 3 paragraphs, all from the UOF CJ, for which the Monitor's previous findings of compliance carried forward to the current quarter.<sup>7</sup>

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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> The paragraphs for which the Monitor has not yet completed its evaluation are generally "implementation" paragraphs, for which the DPD has now complied with the related policy requirements. In these instances, the Monitor's testing of implementation is currently taking place and has not yet been completed. There are varying reasons why the assessments have not yet been completed, including the dates documents were requested and/or submitted and the availability of information relevant to making the assessment.

<sup>6</sup> For each of these paragraphs, the Monitor's review and findings as of the end of the quarter 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 paragraphs 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 generally be fully reported on in the next quarter in which the applicable paragraph is under review.

<sup>7</sup> These 3 paragraphs (U52, U54 and U56) would have been scheduled to be assessed during the current quarter, but were not because of previous findings of compliance. The DPD will remain in compliance with these paragraphs unless some specific event (e.g. a revision to policy) triggers an additional compliance assessment by the Monitor.

As described fully in this report, the City and the DPD continued to make progress in the following areas during the quarter:<sup>8</sup>

- The required ratio of officers to supervisors continues to move significantly closer to compliance.<sup>9</sup>
- The DPD achieved compliance with the implementation requirements related to material witness identification and documentation.<sup>10</sup>
- The DPD reached a significant milestone in connection with the Holding Cell Compliance Committee's mandate to assure compliance with the COC CJ, as all of the required policies have now been developed, approved, and disseminated.
- The *Allegations of Misconduct in Holding Cells Audit* submitted by the DPD was determined to be in compliance. The audit identified systemic problems related to the lack of tracking of DPD command misconduct investigations. The *Use of Force Investigations in Holding Cells Audit*, although not considered complaint, appropriately identified deficiencies with command use of force investigations. The identification of issues by the DPD's Audit Team, if addressed, will assist the DPD in achieving compliance in the future.

Major areas of concern identified during the quarter ending August 31, 2006 include the following:

- The DPD has an insufficient number of in-car video cameras. As a result, many scout cars continue to operate without cameras. Furthermore, with regard to systematically reviewing videotapes, whether in-car (paragraph U98) or processing area (paragraph C64) videos, the majority of the supervisors have not received training and do not have access to the In-sight Video System. The Video Review Protocol, which was developed quite some time ago, has not yet been implemented.
- A review of the use of force auditable forms for a two month time period (May and June 2006) indicates that the forms in some instances are not being completed and in others are not being completed correctly.
- The DPD's Audit Team continues to struggle with writing effective audit reports. This issue is discussed more fully in the Focus Issue, *Challenges Hampering the Effectiveness of the DPD's Audit Team*, in the Introduction Section herein.

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<sup>8</sup> 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. 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>9</sup> Paragraph U73.

<sup>10</sup> Paragraph U57.

- Although the DPD had previously committed to submitting all of the audits required by the Consent Judgments; a total of nine audits were not submitted as required; two of which have never been submitted since the inception of the Consent Judgments. This is indicative of the lack of suitable audit resources, both in the number and experience of its personnel.

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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 Wood, with the assistance of Kroll, Inc.,<sup>11</sup> as the Independent Monitor in this matter. This is the twelfth report of the Independent Monitor.

In the first quarterly report, for the quarter ending November 30, 2003, the Monitor<sup>12</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>13</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>14</sup> the Monitor will review the paragraphs on a periodic schedule over

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<sup>11</sup> The primary members of the Monitoring Team are Joseph Buczek, Jerry Clayton, Penny Cookson, Hazel de Burgh, Ronald Filak, Thomas Frazier, Marshall Johnson, Denise Lewis, Terry Penney, and Sherry Woods.

<sup>12</sup> The word "Monitor" will be used to describe both the Monitor and the Monitoring Team throughout this report.

<sup>13</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>14</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.

the life of the Consent Judgments.<sup>15</sup> The paragraphs that were scheduled for review during the twelfth quarter, which ended on August 31, 2006, are assessed in this report.<sup>16</sup>

## II. MONITOR'S ROLE

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The Monitor's role is to conduct compliance assessments,<sup>17</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, which are orders of the Court, 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. The Consent Judgments can only be modified by court order.

## III. EFFORTS TOWARD COMPLIANCE

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During the twelfth quarter, the Monitor began to test the DPD's implementation of the policies that it has successfully disseminated. The DPD is commended for its accomplishments in those areas where implementation is taking place in a significant manner even if substantial compliance has not yet been achieved. For example, under paragraph U73, which requires that the DPD and the city develop a plan to ensure regular field deployment of an adequate number of supervisors of patrol units and specialized units, the DPD has made significant improvements since the Monitor's last evaluation of assessment.<sup>18</sup> Furthermore, the DPD obtained court orders before taking into custody all material witnesses identified in the period of the Monitor's evaluation to achieve compliance with paragraph U57. However, for many of the other UOF CJ

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<sup>15</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's 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 Monitor has developed a review schedule for the COC CJ paragraphs under the two-year extension; the schedule is incorporated into the Report Card accompanying this report. The minimum duration of the UOF CJ is twenty quarters. The Monitor's review schedule does not affect the due dates mandated by the Consent Judgments for the City and the DPD.

<sup>16</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.

<sup>17</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. The Monitor shall, where appropriate, employ sampling techniques to measure compliance.

<sup>18</sup> See Current Assessment of Compliance under paragraph U73.

paragraphs where implementation is being tested, documentation is not being properly completed and initial training has not yet taken place.<sup>19</sup>

Similarly under the COC CJ, the DPD's implementation efforts are being hindered primarily by the lack of completion of the requisite documentation by detention area personnel. As previously reported, in order to achieve substantial compliance with the COC CJ, if detainees continue to be held in DPD buildings, the City and the DPD will have to expend funds to retrofit the holding cells in the districts.<sup>20</sup>

#### 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 has submitted final copies of the *Methodologies* for both Consent Judgments to the parties. Any future modifications to the methodologies will generally be made on a paragraph-by-paragraph basis.

Under the *Methodologies*, the DPD will generally be assessed as compliant when either a reliable audit has been submitted that concludes compliance or at least 94% compliance is achieved for a statistically valid random sample<sup>21</sup> of incidents from as recent a period as is practicable.

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

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<sup>19</sup> Paragraph U111 requires that initial training on this Agreement be provided to all City and DPD employees whose job responsibilities are affected by this Agreement within 120 days of each provision's implementation.

<sup>20</sup> The City and the DPD have indicated that they are exploring several options in order to come into compliance with the COC CJ including joining in a new regional facility and arranging for pre-arraignment transfers to the Wayne County Sheriff's Department.

<sup>21</sup> If the total population of incidents is so small that the process of selecting a statistically valid random sample would take longer to perform than to evaluate 100% of the incidents in the population, 100% testing will be performed.

in complying with those provisions. Specifically, the Report Card summarizes the *overall* grade of compliance with each paragraph and subparagraph<sup>22</sup> of the Consent Judgments for the five most recent quarters, including the current quarter, in which compliance has been assessed.<sup>23</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. The next evaluation is estimated based on available information at the date of issuance of this Quarterly Report and accompanying Report Card. These estimated dates are subject to change as information develops and circumstances change.

## VI. FOCUS ISSUES

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### A. CHALLENGES HAMPERING THE EFFECTIVENESS OF THE DPD'S AUDIT TEAM

Since the DPD submitted its first audit report under the Consent Judgments, the Monitor has been reporting concerns regarding the inconsistency in the quality of DPD audits, as well as a shortage of audit staffing resources and a lack of applicable audit-related experience and skills among members of the DPD Audit Team (AT).<sup>24</sup> Although the Monitor has noticed a progressive increase in skill level of individual AT members with regard to the processes associated with specific audit methodologies, concerns persist related to inadequate reporting and a lack of personnel with sufficient audit related expertise to draft, properly review and submit quality audit reports. Specifically, deficient quality control processes and inadequate report writing and reviewing techniques continue to be a challenge for the DPD and the AT's supervisory staff.<sup>25</sup>

As an illustration, although the DPD AT submitted all of the first nine audits due in 2006 by the required due dates, the quality of most audits were deficient, as only three of those nine audits were found in compliance despite the fact that most audits have generally used proper

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<sup>22</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>23</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.

<sup>24</sup> See the Focus Issue entitled *DPD Audit Team Resource and Staffing Needs* in the Monitor's Report for the Quarter Ending February 28, 2006 for the most recent example of the Monitor's reporting on these issues.

<sup>25</sup> Since October 2003, the Monitor has provided the AT with numerous hours of Technical Assistance regarding appropriate audit procedures, quality control processes, and report writing and reviewing techniques. Based on the continual audit reporting deficiencies noted during the Monitor's reviews, on December 20, 2005, the Monitor formally offered additional Technical Assistance for audit report writing. Although verbally discussed with the DPD over the subsequent months, this offer was only recently accepted by the DPD.

methodologies in the planning and execution stages.<sup>26</sup> This is a significant source of concern to both the Monitor and to AT staff given the diligent efforts of many of the AT's staff and significant improvements that have been made to the quality of the underlying audit processes.

The deficiencies identified in DPD audits continue to be related to substantially incorrect, inconsistent and/or inaccurate reporting.<sup>27</sup> Based upon the Monitor's most recent reviews and discussions with the AT staff, these deficiencies appear to be due, at least in part, to a lack of adequate supervision during the execution and reporting phase of the audits. AT staff acknowledged that the recently-submitted audit reports received little or no supervisory review, since the reports were literally being constructed until the final moments before submission. In addition, the failure to properly allocate and manage resources has contributed to the difficulties encountered by the AT.<sup>28</sup> Based upon its recent discussions with the newly assigned AT Commanding Officer, the Monitor is hopeful that these supervisory issues will be addressed. However, until they are, the fact remains that the hard work being performed by some of the individual AT members is being undermined by the inability to effectively communicate their findings in clear, concise and comprehensible audit reports.

The audit component is essential to the DPD's compliance efforts and a cornerstone of the reform process within the DPD organization. The DPD has successfully developed its policies and is moving forward with the training on those policies; however, without an adequate audit function with effective report writing and proper supervisory oversight to provide quality and timely evaluations of the Department, the DPD will likely struggle to effectively implement these policies and achieve overall compliance with the Consent Judgments.

## 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 August 31, 2006. The Monitor has also made

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<sup>26</sup> The Monitor recently reviewed four of the five audits submitted by the DPD on July 31, 2006, concluding that three of the four audits were non-compliant.

<sup>27</sup> The Monitor notes that these reporting deficiencies are not simply typographical, grammatical or format-related.

<sup>28</sup> For example, when reviewing the *Food Service Program and Personal Hygiene Policy Audit*, the Monitor noted an unnecessary level of review of documents, which is an indication of time resource issues related to audit staffing. Given the fact that audit staff resources are thin, effective time management is essential. Audits should be completed effectively using the least amount of time possible and when completed, resources should be transferred to assist with other audits due for submission. Also, refer the Current Assessment of Compliance for paragraph U95 for another example related to the *Arrest Audit*, which was not submitted after a considerable amount of work had been conducted.

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 August 31, 2006.

### **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, the DPD must revise its general UOF policy, use of firearms policy and chemical spray policy. The DPD must 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, 2006.<sup>30</sup> Although the DPD is compliance with the policy requirements of paragraphs U14-19, the Monitor had not yet tested implementation of the policy due to its recent effective dissemination. The Monitor is scheduled to test implementation during the quarter ending November 30, 2006.

#### **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, 2005.<sup>31</sup> The Monitor again assessed compliance with these paragraphs during the current quarter. The results of our current assessments follow.

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<sup>30</sup> Throughout this report, for those paragraphs not assessed during the current quarter, the Monitor will include a brief description of the basis for its previous compliance assessments. The Monitor will generally 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. We have made an exception to this procedure in prior reports in connection with the testing of dissemination of policy for paragraphs not scheduled for assessment.

<sup>31</sup> Throughout this report, for those paragraphs assessed and reported on during the current reporting period ("current quarter"), information regarding the Monitor's most recent compliance assessments, and the basis for those assessments, can be found in the "Background" sections of the respective paragraphs.

**Paragraphs U20-23 – Firearms Policy; Firearms Re-qualification; Firearms Policy Regarding Moving Vehicles; Firearms and Ammunition**

Paragraph U20 requires the DPD to revise its use of firearms policies to provide that officers must successfully qualify with their Department-issued firearm and any other firearm they are authorized to use or carry on-duty on a bi-annual basis, as described in paragraph U113.

Paragraph U21 states that officers who fail to re-qualify shall be relieved of police powers and relinquish immediately all Department-issued firearms. Those officers who fail to re-qualify after remedial training within a reasonable time shall be subject to disciplinary action, up to and including a recommendation for termination of employment.

Paragraph U22 requires the firearms policy to prohibit firing at or from a moving vehicle. The policy must also prohibit officers from intentionally placing themselves in the path of a moving vehicle.

Paragraph U23 requires the DPD to identify a limited selection of authorized ammunition and prohibit officers from possessing or using unauthorized firearms or ammunition. The DPD must specify the number of rounds DPD officers shall carry.

***Background***

The Monitor last assessed the DPD's compliance with paragraphs U20-23 during the quarter ending August 31, 2005, finding the DPD in non-compliance with each paragraph. The Monitor tested dissemination of Directive 304.1, *Firearms*, and found that the DPD had adequately disseminated the policy. As a result, the DPD had achieved compliance with the policy component of paragraphs U20-23. The DPD had not yet implemented the policy.

***Current Assessment of Compliance***

With regard to paragraph U20, the Monitor has determined that this is a "policy only" paragraph and that implementation and training will be assessed separately under paragraphs U111 and U113. Therefore, the DPD is in compliance with paragraph U20.

In order to test the implementation of paragraph U21, on August 1, 2006, the Monitor asked how simple it would be to obtain an electronic list of officers who had completed their bi-annual firearms qualification. On August 2, 2006, the DPD responded that an electronic list is maintained; however, due to computer problems it would take two to three weeks to get the information. As a result, the Monitor deferred this testing until the next regularly scheduled compliance assessment of this paragraph.

During the current quarter, the Monitor also reviewed auditable forms documenting uses of force that were submitted in response to a document request. The Monitor requested the production of all use of force auditable forms (UOF-002 and UOF-002A) completed during the period May 20

through June 20, 2006. The Monitor reviewed 29 uses of force during that time period. The form from one of these uses of force, a foot pursuit, indicated that an officer fired at a moving vehicle in violation of the requirements of paragraph U22. The Monitor will look into this incident further during the quarter ending November 30, 2006.

The Monitor previously inquired as to what internal controls the DPD had developed to ensure its compliance with paragraph U23's requirements to prohibit officers from possessing or using unauthorized firearms or ammunition. The DPD had indicated that it was developing an internal audit process. However, the Monitor had not received documentation related to this process as of the end of the quarter.

Also, the Monitor requested information regarding any training that has occurred during the DPD's implementation of these paragraphs<sup>32</sup> and regarding the development of the firearms training protocol under paragraph U113. No information has been provided indicating that the DPD has engaged in providing some sort of interim training even if formal classroom training on the revised policy has not yet occurred. The DPD submitted its revised *Firearms Tactical Training and Qualification In-Service* lesson plan on August 31, 2006, the last day of the quarter.

Based on the foregoing, the Monitor finds the DPD in overall compliance with paragraph U20, and in compliance with the policy requirements of paragraphs U21-23, however, the Monitor finds the DPD in non-compliance with the implementation requirements of paragraph U23 and, therefore in overall non-compliance with the paragraph. In addition, the Monitor has not yet evaluated the DPD's compliance with the implementation requirements of paragraph U21 and withholds a determination of compliance with the implementation requirements of paragraph U22.

### 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, 2005. The Monitor again assessed compliance with these paragraphs during the current quarter. The results of our current assessment follow.

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<sup>32</sup> Paragraph U111 requires that the City and the DPD provide initial training on the UOF CJ to all City and DPD employees whose job responsibilities are affected by it within 120 days of each provision's implementation. Thereafter, the DPD must provide training on the policies contained in the UOF CJ during in-service training. As mentioned throughout this report, the Monitor has sought information regarding any training that has been provided during the DPD's implementation phase for various policies, whether it be formal classroom, roll call or otherwise. The Monitor has repeatedly been referred to formal lesson plans that have either just been resubmitted after revisions or that will be resubmitted.

### **Paragraph U24 – Intermediate Force Device Policy**

Paragraph U24 requires the DPD to select an intermediate force device, which is between chemical spray and firearms on the force continuum, that can be carried by officers at all times while on-duty. The DPD must develop a policy regarding the intermediate force device, incorporate the intermediate force device into the force continuum and train all officers in its use on an annual basis.

#### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U24 during the quarter ending August 31, 2005, finding the DPD in non-compliance. The DPD had not effectively disseminated Training Directive 04-03, *Use of Force Continuum*. Additionally, the Monitor had not yet received a final copy of the roll-out plan for the intermediate force device.

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

Since the last evaluation of this paragraph, the Monitor determined that the DPD effectively disseminated Training Directive 04-03, *Use of Force Continuum*.<sup>33</sup> Therefore, the DPD has achieved compliance with the policy component of paragraph U24.

On August 24, 2006, the DPD submitted a revised copy of a roll-out plan for the intermediate force device.<sup>34</sup> Because the roll-out plan was submitted close to the end of the quarter, the Monitor is currently in the process of reviewing the document.

Based on the foregoing, the Monitor finds the DPD in compliance with the policy requirements but has not yet evaluated the DPD's compliance with the implementation requirements of paragraph U24. As a result, the Monitor has not yet evaluated the DPD's overall compliance with paragraph U24.

## **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, 2005. The Monitor again assessed compliance with these paragraphs during the current quarter. The results of our current assessments follow.

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<sup>33</sup> The Monitor's dissemination testing was reported in a footnote in the Monitor's Report for the Quarter Ending February 28, 2006.

<sup>34</sup> The DPD had previously submitted a PR-24 roll-out plan on November 3, 2005. The plan was dated February 20, 2004. The Monitor provided comments to the DPD on November 7, 2005.

### **Paragraphs U25 and U26 – Chemical Spray Policy; Chemical Spray Prohibition**

Paragraph U25 states that the DPD shall revise its chemical spray policy to require officers to: provide a verbal warning and time to allow the subject to comply prior to the use of chemical spray, unless such warnings would present a danger to the officer or others; provide an opportunity for decontamination to a sprayed subject within twenty minutes of the application of the spray or apprehension of the subject; obtain appropriate medical assistance for sprayed subjects when they complain of continued effects after having been de-contaminated or they indicate that they have a pre-existing medical condition that may be aggravated by chemical spray and if such signs are observed the subject shall be immediately conveyed to a local hospital for professional medical treatment; and obtain the approval of a supervisor any time chemical spray is used against a crowd.

Paragraph U26 requires the DPD to prohibit officers from using chemical spray on a handcuffed individual in a police vehicle. The DPD must also prohibit officers from keeping any sprayed subject in a face down position, in order to avoid positional asphyxia.

### ***Background***

The Monitor last assessed the DPD's compliance with paragraphs U25 and U26 during the quarter ending August 31, 2005, finding the DPD in non-compliance with each due to the fact that the DPD had not yet disseminated Training Directive 04-07, *Use of Force Reporting and Investigating*, and related form, the Supervisor's Investigation Report (SIR UF-002a).

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

In the report for the quarter ending February 28, 2006, the Monitor reported that Training Directive 04-07 had been adequately disseminated. The Monitor also determined that the Supervisor's Investigation Report (SIR – UF-002A) was available for use on the DPD's Intranet. Since Directive 304.3, *Chemical Spray*, had already been disseminated, the DPD is in compliance with the policy requirements of these paragraphs.

In order to test implementation of paragraphs U25-26, the Monitor requested documentation regarding any training that has been provided since the Chemical Spray policy became effective on May 2, 2005. The DPD responded that the Chemical Spray Lesson Plan had been submitted to the Monitor in November 2005. The Monitor responded with recommendations and the lesson plan is being revised. The DPD could not provide documentation of any training held since the policy's effective date other than paperwork which reflected receipt of a copy of the policy by DPD personnel.<sup>35</sup>

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<sup>35</sup> See comments regarding paragraph U111 training required within 120 days of each provision's implementation under the Current Assessment of Compliance for paragraphs U20-23. Additionally, after the end of the quarter, the DPD provided supervisory inspection reports regarding chemical spray. The Monitor will review these reports.

During the current quarter, the Monitor reviewed auditable forms documenting uses of force that were submitted in response to a document request. The Monitor requested the production of all use of force auditable forms (UOF-002 and UOF-002A) completed during the period from May 20 through June 20, 2006. The Monitor reviewed 29 uses of force during that time period. Ten of the incidents involved the use of chemical spray; however, the required auditable forms were not fully completed for any of these incidents. In fact, one of the forms indicated that the arrestee was not provided an opportunity for decontamination within twenty minutes of the application of the spray or apprehension of the subject, in violation of paragraph U25.

Based on the foregoing, the Monitor finds the DPD in compliance with the policy requirements but in non-compliance with the implementation requirements of paragraphs U25-26. As a result, the Monitor finds the DPD in overall non-compliance with paragraphs U25-26.

## 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>36</sup> and develop an auditable form<sup>37</sup> 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 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 February 28, 2006. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

**Paragraphs U27-33 – Revision of General Investigation Policies; Investigation Procedures; Investigatory Interview Procedures; Prohibitions of Investigatory Interviews; Protocol for Garrity Statements; 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>36</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>37</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.

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 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).

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 U27-33 during the quarter ending February 28, 2006, finding the DPD in compliance with the policy requirements but in non-compliance with the implementation requirements of each paragraph. The continuing problems with the DPD's roster, which hampered the Monitor's ability to complete the testing of dissemination of policy, prevented the Monitor from commencing the testing of the implementation of the policy. Regarding paragraph U31, the Monitor did not receive the documents required to test dissemination until the last day of the quarter, which also prevented the Monitor from commencing the testing of the implementation of the policy.

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

The DPD submitted the *Use of Force in Holding Cells Investigations Audit* required by subparagraph C65a and the *Allegations of Misconduct in Holding Cells Audit* required by subparagraph C65c on the required due date of July 31, 2006. These audits cover aspects of the implementation of Training Directive 04-7, *Use of Force Reporting and Investigating*, and Directive 304.2, *Use of Force*.<sup>38</sup> The Monitor conducted evaluations of the audit reports, work plans, and audit working papers related to both audits. The Monitor identified deficiencies in the

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<sup>38</sup> The DPD was scheduled to, but did not submit the *Prisoner Injury in Holding Cells Audit* required by paragraph C65b on July 31, 2006, which would have also covered paragraphs U27-33.

*Use of Force in Holding Cells Investigations Audit*, which prevented the Monitor from being able to rely upon the audits' findings. However, based upon the reviews conducted, and in accordance with the Methodologies, where the audits concluded that the DPD was in non-compliance with a Consent Decree requirement, the Monitor has adopted those findings.<sup>39</sup>

The audits included a review for compliance with all of the specified requirements included within paragraphs U27-33 and all related DPD policies. The *Use of Force in Holding Cells Investigations Audit* included a review of nine investigations related to UOF occurring in holding cells, which was the total population identified by the DPD's AT over a six month period, from September 1, 2005 through February 28, 2006. Five of the nine investigations were conducted by the Commands and the remaining four were conducted by the Force Investigation Section (FIS). The *Allegations of Misconduct in Holding Cells Audit* included a review of one investigation related to an allegation of misconduct occurring in holding cells, which was the total population identified by the AT over a six month period, from September 1, 2005 through February 28, 2006. The one investigation was conducted by the Internal Affairs Division (IAD).

#### *Paragraph U27 – Revision of General Investigation Policies*

The DPD's audits determined that the DPD did not meet all of the requirements of paragraph U27. The following information is summarized from the audits' findings:

- The investigations were not considered full, thorough and complete as they were not conducted in compliance with the General Investigations or the Use of Force Investigations Policies, as required by paragraph U27 and contained in the related DPD policies.
- The AT identified five Official Reprimands involving allegations of misconduct that did not include an investigative report, as required by the Directive 102.4, *Discipline/Misconduct Investigations Policy* (General Investigations policies).
- Five investigations did not contain a determination of whether the officers' conduct was justified, as required by paragraph U27.
- The AT could not determine if two of the Command investigations were closed due to the subject or complainant being unavailable, unwilling or unable to cooperate, as required by paragraph U27, because the investigation files were incomplete.

#### *Paragraph U28 – Investigative Procedures*

The DPD's audits determined that the DPD did not meet all of the requirements of paragraph U28. The following information is summarized from the audit findings:

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<sup>39</sup> Please refer the Current Assessment of Compliance for subparagraphs C65a and c for further details regarding the Monitor's assessment of these audits.

- One investigation was conducted by an involved supervisor, which is prohibited by paragraph U28.
- One investigation did not document the names and badge numbers of all involved officers, as required by subparagraph U28a.
- Only five investigations conducted a canvass of the scene for witnesses, as required by subparagraph U28a.
- Two investigations did not have thorough and complete interviews, as required by subparagraph U28b, such as interviews that were not conducted with the involved detainees or with other identified Department or non-Department witnesses (to include detainees in holding cells or in processing areas).
- The investigations contained photographs when required by subparagraph U28c.
- The investigations did contain documentation of medical care when required by subparagraph U28d.

*Paragraph U29 – Investigation Interview Procedures*

The DPD's audits determined that the DPD did not meet all of the requirements of paragraph U29. The following information is summarized from the audit findings:

- Officers provided timely statements, as required by subparagraph U29a.
- The AT was not able to determine if the interviews of complainants and witnesses were conducted at sites and times convenient to the interviewees, as required by subparagraph U29b, as this information was not documented or recorded.
- One investigation contained interviews that were not taped-recorded, as required by subparagraph U29c.
- No group interviews, which are prohibited by subparagraph U29c, were identified.

*Paragraphs U30-31 – Prohibitions of Investigation Interviews and Protocol for Garrity Statements*

The DPD's audits concluded that the DPD met all of the requirements of paragraphs U30 and U31. Based upon the Monitor's review of the audits and the deficiencies identified therein, the Monitor is not able to rely upon the audits' findings, and will need to independently verify the findings of compliance for these paragraphs. As a result, the Monitor will conduct independent testing of the requirements during the next regularly scheduled review of these paragraphs.

*Paragraph U32 – Investigatory Report and Evaluations*

The DPD's audits determined that the DPD did not meet all of the requirements of paragraph U32. The following information is summarized from the audit findings:

- Three Command investigations did not include precise descriptions of the facts and circumstances of the incident or a detailed account of the officers' actions, as required by subparagraph U32a.
- Four Command investigations did not include reviews of all relevant evidence, as required by subparagraph U32b, such as evaluations of the force tactics or level of force used by officers, or reviews of the video of the UOF incidents captured by holding cell area cameras.
- The audit could not determine if investigations were discontinued or closed due to complainants' pleas or sentencing, as required by subparagraph U32c, as this information was not contained in the documentation reviewed.
- Investigations did not contain credibility statements, nor did they indicate that the statements of non-Department witnesses were dismissed. In addition, preference was not given to officers' statements, in keeping with the prohibition in subparagraph U32a.
- Three investigations did not include evaluations of whether officers complied with DPD policies, as required by subparagraph U32e.
- Four investigations did not include evaluations of officers' UOF tactics, as required by subparagraph U32f.
- Four investigations did not utilize the preponderance of evidence standard.
- One investigation was extended; however no documentation was provided outlining the basis for the extension. Another investigation was reassigned; however, no documentation was available for the AT to determine the basis for the reassignment.
- The investigations did not contain recommendations regarding corrective action.

*Paragraph U33 – Investigatory Report Reviews*

The DPD's audits determined that the DPD did not meet all of the requirements of paragraph U33. The following information is summarized from the audit findings:

- The investigations were reviewed by the appropriate chain of command, as required by subparagraph U33a.
- Based on a lack of documentation, specifically the absence of a Case Supervision Sheet within the investigations, the AT could not determine if reviewing supervisors or the final reviewing authority had identified any deficiencies and, if so, whether deficiencies were corrected within 7 days, as required by subparagraph U33b.

- None of the adjudications related to the investigations reviewed resulted in recommendations to change or referred to implications of DPD policies, training or procedures. As a result no referrals were required to be made to another DPD unit, under subparagraph U33c.
- The AT could not determine if any corrective actions were taken related to deficient investigations under subparagraph U33d.
- None of the investigations indicated that the recommendations resulting from the investigation were disagreed with by reviewing supervisors or the Chief of Police; as such, no written explanations were present, under subparagraph U33e.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements of paragraphs U27-33, in non-compliance with the implementation requirements of paragraphs U27-U29 and U32-33, and has not yet evaluated compliance with the implementation requirements of paragraphs U30-31.

As a result, the Monitor finds the DPD in overall non-compliance with paragraphs U27-29 and U32-33, and has not yet evaluated overall compliance with paragraphs U30-31.

## **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 May 31, 2006. Although the DPD is compliance with the policy requirements of paragraphs U34-36, the Monitor did not yet test implementation of the policy due to its recent effective dissemination. The Monitor is scheduled to test implementation during the quarter ending November 30, 2006.

## **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 May 31, 2006. Although the DPD is compliance with the policy requirements of paragraphs U37-41, the Monitor did not test implementation of policy, as there has not been enough time for DPD's investigative and internal review process to be fully implemented since the policy was only recently made effective. As a result, the Monitor did not evaluate the DPD's overall compliance with paragraphs U37-40. With regard to paragraph U41, the Monitor found the DPD in overall non-compliance with the requirements of the paragraph. The Monitor's requested additional information regarding the majority of the investigations listed in the Force Investigation Section 2004 Annual Critical Incident Report on November 22, 2005; information provided by the DPD pursuant to this request did not adequately detail the current status of those investigations.<sup>40</sup> In addition, the Monitor requested a

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<sup>40</sup> The Monitor indicated that these paragraphs would be evaluated during the current quarter outside of the usual schedule. The Monitor received additional information requested regarding the incidents listed in the DPD's 2004

copy of the paragraph U41 annual report for 2005 but had not received a response to this request as of the end of that quarter.

The Monitor is scheduled to assess the DPD's compliance with the implementation requirements of paragraphs U37-41 during the quarter ending November 30, 2006.

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Annual Report. The information received indicates that the DPD is not completing investigations of critical firearm discharges within the time periods outlined in paragraph U38. On May 5, 2006, the Monitor requested a copy of the DPD's paragraph U41 Annual Report for 2005. As of the end of this quarter, the Monitor has not received the report. Therefore, the Monitor will continue to evaluate these paragraphs during the quarter ending November 30, 2006, in keeping with the original review schedule.

### **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 last assessed the DPD's compliance with paragraphs U42 and U43 during the quarter ending May 31, 2006, at which time the Monitor found the DPD in compliance with paragraph U42, which is a policy only paragraph, and in non-compliance with paragraph U43. The Monitor reviewed a sample of 56 arrests in an effort to determine whether the DPD implemented its arrest policies. Although the Monitor concluded that probable cause existed for all arrests reviewed, the Monitor could not determine whether supervisory review occurred or, if it occurred, whether the review occurred within the mandated time period. Also, for two arrests the Monitor determined that an auditable form was not generated for warrants not sought and for two other arrests, although the auditable form was completed a review was not determinable. The Monitor is scheduled to next assess the DPD's compliance with paragraph U43 during the quarter ending November 30, 2006.<sup>41</sup>

#### **B. INVESTIGATORY STOP POLICIES**

This section comprises paragraphs U44-45. The Monitor last assessed the DPD's compliance with paragraphs U44-U45 during the quarter ending May 31, 2006. The Monitor found the DPD in compliance with paragraph U44, which is a "policy-only" paragraph. However, the Monitor

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<sup>41</sup> The DPD will remain in compliance with paragraph U42 until the policy directly responsive to the paragraph is revised. Revisions to policy will trigger an additional compliance assessment by the Monitor.

found the DPD in non-compliance with paragraph U45, as six of 31 stops and frisks selected for review did not articulate reasonable suspicion for the activity documented in officers' daily activity logs, and no auditable forms were completed as required by paragraph U45.

The Monitor is scheduled to next assess the DPD's compliance with paragraph U45 during the quarter ending November 30, 2006.<sup>42</sup>

### 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 May 31, 2006. The Monitor found the DPD in compliance with paragraphs U46 and U47, which are "policy-only" paragraphs. The Monitor found the DPD in non-compliance with paragraph U48. The Monitor was unable to review the minimum sample size of officers to determine compliance with paragraph U48, as the roster submitted by the DPD and used by the Monitor for random testing was outdated, did not accurately reflect officer employment status and thus did not permit an appropriate sample.

The Monitor is scheduled to assess the DPD's compliance with paragraph U48 during the quarter ending November 30, 2006.<sup>43</sup>

### D. PROMPT JUDICIAL REVIEW POLICIES

This section comprises paragraphs U49-51. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending February 28, 2006. The Monitor again assessed the DPD's compliance with these paragraphs 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.

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<sup>42</sup> The DPD will remain in compliance with paragraph U44 until the policy directly responsive to the paragraph is revised. Revisions to policy will trigger an additional compliance assessment by the Monitor.

<sup>43</sup> The DPD will remain in compliance with paragraphs U46 and U47 until the policy directly responsive to these paragraphs is revised. Revisions to policy will trigger additional compliance assessments by the Monitor.

## *Background*

The Monitor last assessed the DPD's compliance with paragraph 49 during the quarter ending February 28, 2006. The Monitor withheld a determination of compliance with paragraph U49 pending a review of the DPD's revised *DPR* and Instruction Sheet, which the Monitor received electronically near the end of that quarter.

## *Current Assessment of Compliance*

During the current quarter, the DPD continued to work on the development of a "timely and systematic process" for all arrestees to be presented for prompt judicial review. The DPD plans on developing and integrating a "timely and systematic" process in its Live Scan detainee processing system, launched on November 15, 2005. However, the DPD has represented that, pursuant to its agreement with Live Scan, any revisions to the processing system are permitted annually; as a result, revisions will not occur until the Fall of 2006. Work continues on the development of the process so that it can be quickly integrated into Live Scan at that point in time. An interim systematic process has not been developed to address the requirements of this paragraph.

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

## *Paragraphs U50-51 – Requirement of Warrant Request, Documentation of Late Request for Arraignment Warrants, and Late Arraignments*

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.

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 paragraphs U50-51 during the quarter ending February 28, 2006, finding the DPD in non-compliance. Compliance with these paragraphs is dependent on compliance with paragraph U49, as the systematic process to ensure

prompt judicial review must also address the 24-hour warrant request requirement of this paragraph.

### *Current Assessment of Compliance*

As described in the Current Assessment of Compliance for paragraph U49, above, the DPD has not yet addressed the requirement to develop a systematic process to ensure prompt judicial review. Once the DPD achieves compliance with paragraph U49 by establishing a systematic process, the Monitor will begin testing the DPD's compliance with paragraphs U50-51, which require implementation.

Based on the foregoing, the Monitor finds DPD in non-compliance with paragraphs U50-51.

## **E. HOLD POLICIES**

This section comprises paragraphs U52-53. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending February 28, 2006. The Monitor again assessed the DPD's compliance with paragraph U53 during the current quarter.<sup>44</sup> The results of our current assessments follow.

### *Paragraph U53 – Documentation of All Holds*

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 U53 during the quarter ending February 28, 2006, finding the DPD in non-compliance with the paragraph. The Monitor requested a listing of all holds for the period November 1, 2005 through December 31, 2005. The DPD provided the requested listing on February 20, 2006, identifying a total of 490 detainees with holds. As it took nearly seven weeks for the DPD to provide this listing and it was provided toward the end of the reporting period, the Monitor was not afforded sufficient time to review it and select a sample for testing.

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<sup>44</sup> The Monitor found the DPD in compliance with paragraph U52, which is a "policy only" paragraph, during the quarter ending February 28, 2006. The DPD will remain in compliance with paragraph U52 until such time as the policy directly responsive to the paragraph is revised. Revisions to policy will trigger an additional assessment by the Monitor. Implementation of policy is tested under paragraph U53.

### *Current Assessment of Compliance*

During the current quarter, it was represented to the Monitor by the DPD's Office of Civil Rights (OCR)<sup>45</sup> that the current DPD systems do not allow for capturing the time and date a hold is cleared. This information is integral in assessing the DPD's compliance with the mandates of paragraph U53. Until the DPD can provide this information, the DPD will be in non-compliance with the requirements of U53.

Based on the foregoing, the Monitor finds DPD in non-compliance with paragraph U53.

## F. RESTRICTION POLICIES

This section comprises paragraphs U54-55. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending February 28, 2006. The Monitor again assessed the DPD's compliance with paragraph U55 during the current quarter.<sup>46</sup> The results of our current assessments follow.

### *Paragraph U55 – Documentation of Restrictions*

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 U55 during the quarter ending February 28, 2006, at which time the Monitor withheld a determination of compliance with the paragraph. Based on the DPD indicating that there were no detainees with restrictions during the period reviewed, the Monitor elected to conduct additional procedures in an attempt to identify restrictions.

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<sup>45</sup> The DPD's Civil Rights Division (CRD) is now known as the OCR.

<sup>46</sup> The Monitor found the DPD in compliance with paragraph U54, which is a "policy only" paragraph, during the quarter ending February 28, 2006. The DPD will remain in compliance with paragraph U54 until such time as the policy directly responsive to the paragraph is revised. Revisions to policy will trigger an additional assessment by the Monitor. Implementation of policy is tested under paragraph U55.

### *Current Assessment of Compliance*

In order to assess the DPD's compliance with paragraph U55 during the current quarter, on June 1, 2006, the Monitor requested a listing of all detainees with restrictions for the period April 1, 2006 through May 31, 2006. The DPD responded indicating it had identified four detainees with restrictions and provided legible photocopies of related auditable forms.<sup>47</sup> For each of the four detainees, the Monitor was unable to determine that the restriction was reviewed at the time it was placed. Also, for two of the four detainees, there was no documentation that the restriction was either lifted within 24 hours of being placed or re-evaluated if extended beyond 24 hours.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U55.

### **G. MATERIAL WITNESS POLICIES**

This section comprises paragraphs U56-57. The Monitor last assessed the DPD's compliance with paragraph U56 during the quarter ending February 28, 2006 and with paragraph U57 during the period ending November 30, 2005. The Monitor again assessed the DPD's compliance with paragraph U57 during the current quarter.<sup>48</sup> The results of our current assessment follow.

#### **Paragraph U57 – Requirement to Obtain a Court Order Prior to Taking a Material Witness into custody**

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.

#### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U57 during the quarter ending November 30, 2005, at which time the Monitor found the DPD in non-compliance. The Monitor reviewed a random sample of case files of individuals arrested and released, with no charges filed, for the period March 21, 2005 through July 31, 2005. One file contained a Material Witness court order, but no auditable form. A copy of the court order also could not be located in the case file. Based on the Monitor's findings, DPD Homicide personnel implemented a

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<sup>47</sup> Two restrictions were placed in the Eastern District and two were placed in the Southwest District.

<sup>48</sup> The Monitor found the DPD in compliance with paragraph U56, which is a "policy only" paragraph, during the quarter ending February 28, 2006. The DPD will remain in compliance with paragraph U56 until such time as the policy directly responsive to the paragraph is revised. Revisions to policy will trigger an additional assessment by the Monitor. Implementation of policy is tested under paragraph U57.

system to track Material Witness court orders via a Material Witness court order file maintained in the Staff Office.<sup>49</sup>

### *Current Assessment of Compliance*

In order to assess the DPD's compliance with paragraph U57 during the current quarter, the Monitor requested a listing of all material witnesses for the period April 1, 2006 through May 31, 2006. The DPD identified two material witnesses for the period under review. For both material witnesses, the DPD provided evidence that a court order was obtained prior to taking the material witness into DPD custody. Also, for both material witnesses, all required information responsive to paragraph U57 was documented on an auditable form and attached to the court order.

As it has done in the past, the Monitor also reviewed recently completed or closed homicide, sex crimes and robbery investigations in an attempt to identify the existence of other material witnesses. No additional material witnesses were identified.<sup>50</sup>

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

## H. DOCUMENTATION OF CUSTODIAL DETENTION

This section comprises paragraph U58. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending May 31, 2006, at which time the Monitor found the DPD in non-compliance. The DPD indicated its decision to incorporate paragraph U58 requirements into the new version of Live Scan, eliminating the need for the original software that was to be purchased as a module for the DPD's CRISNET system. Although the Live Scan system was operational, the DPD, via its contracted vendor, had not yet modified the system to include all elements of paragraph U58. The Monitor is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending November 30, 2006.

## I. COMMAND NOTIFICATION

This section comprises paragraphs U59-60. The Monitor last assessed the DPD's compliance with paragraph U59 during the quarter ending May 31, 2006, at which time the Monitor found the DPD in compliance with the policy requirements, in non-compliance with the implementation requirements, and in overall non-compliance with the paragraph. The Monitor reviewed arrest documentation and related auditable forms, noting that for two of four arrests in

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<sup>49</sup> The DPD Homicide Section has tracked Material Witness court orders since June 2005 with implementation of the Homicide Section Training Evaluation form. The Wayne County Prosecutor's Office indicated that it possibly could track material witness court orders given the recent launch of the Live Scan system.

<sup>50</sup> In total, the Monitor reviewed 31 homicide investigation files, 11 robbery investigation files and 113 sex crimes investigation files.

which a warrant was not sought, although the auditable form was completed, the reviewing Commander did not document the date and time of review. As a result, the Monitor was unable to determine whether the review occurred within the mandated seven-day period. With respect to Commander review of stops and frisks and witness identification, the DPD had not responded to the Monitor's request for auditable forms as of the end of the quarter. The Monitor is scheduled to again assess the DPD's compliance with paragraph U60 during the quarter ending November 30, 2006.

The Monitor last assessed the DPD's compliance with paragraph U60 during the quarter ending February 28, 2006. The Monitor again assessed the DPD's compliance with paragraph U60 during the current quarter. The results of our current assessment follow.

### **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 DPD's Prompt Judicial Review, Holds, Restrictions, and Material Witness Detention policies. 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 February 28, 2006, finding the DPD in compliance with the policy requirements but in non-compliance with the implementation requirements of each paragraph. The continuing problems with the DPD's roster, which hampered the Monitor's ability to complete the testing of dissemination, prevented the Monitor from commencing the testing of the implementation of policy during the quarter.

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

During the current quarter, the Monitor requested and received auditable forms for restrictions placed on detainees and material witnesses.<sup>51</sup> In total, six auditable forms were generated requiring a Commanding Officer's (CO) review and evaluation on the date generated. There was no documented CO review and evaluation of any the six auditable forms generated. Additionally, the DPD has no mechanism to track the release time and date of holds and, thus, no mechanism to ensure all auditable forms required are generated and reviewed.

Based on the foregoing, although the DPD remains in compliance with the policy requirements of paragraph U60, the Monitor finds that it is in non-compliance with the implementation

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<sup>51</sup> Please refer to the Monitor's assessment of compliance for paragraphs U55 and U57, respectively.

requirements of the paragraph. As a result, the Monitor finds the DPD in overall non-compliance with paragraph U60.

## 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>52</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 May 31, 2006. The Monitor found the DPD in compliance with the policy requirements of paragraph U61 but had not yet evaluated the DPD's compliance with the implementation requirements of the paragraph. Regarding paragraph U62, the Monitor found the DPD in compliance with subparagraphs U62c and d, regarding complaint process broadcasts and informational campaign placards. However, the Monitor found the DPD in non-compliance with subparagraph U62b, regarding distribution of complaint forms, fact sheets and informational posters. Inspections revealed that several and neighborhood city halls did not have all the materials required by the subparagraph. Although OCR did replenish the materials for some of the Libraries and Neighborhood City Halls, many of the relevant personnel were unaware of the system that is supposed to be in place for reordering or refilling depleted stock of the materials. The Monitor found the DPD is in compliance with paragraph U63.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U61-63 during the quarter ending November 30, 2006.

### 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 May 31, 2006. The Monitor found the DPD in compliance with the policy requirements of the paragraphs. However, the Monitor elected to assess the DPD's compliance with the implementation requirements of the paragraphs in conjunction with its review of the DPD AT's audit of external complaint investigations, which was scheduled to be completed by August 31, 2006. As a result, the Monitor will test implementation of the requirements of paragraphs U64-66 during the quarter ending November 30, 2006.

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<sup>52</sup> The OCI reports to the Board of Police Commissioners (BOPC) and is responsible for conducting external complaint investigations.

## 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 May 31, 2006. The Monitor found the DPD in compliance with the policy requirements of the paragraphs. However, the Monitor elected to assess the DPD's compliance with the implementation requirements of the paragraphs in conjunction with its review of the AT's audit of external complaint investigations, which was scheduled to be completed by August 31, 2006. As a result, the Monitor will test implementation of the requirements of paragraphs U67a-e, g-h, U68-69 during the quarter ending November 30, 2006. The Monitor found the DPD in non-compliance with subparagraph U67f, which requires the DPD to implement mandatory pre-service and in-service training for all IAD and OCI investigators. The only lesson plan that has been submitted on this topic was sent prior to the completion of the policy revisions, and training had not occurred as of the end of that quarter.

## 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 May 31, 2006. The Monitor found the DPD in compliance with the policy requirements but in non-compliance with the implementation requirements of paragraph U70. Although the DPD established a Policy Focus Committee whose responsibilities include reviewing newly established policy or policy revisions to ensure that all required terms are clearly and consistently defined, the protocol to be used by the committee was not finalized as of the end of that quarter. The Monitor found the DPD in non-compliance with paragraph U71, concluding that the revised protocol received from the DPD's OCR on December 1, 2005, which was approved by the BOPC on November 18, 2005, addressed many, but not all, of the concerns the Monitor had expressed in previous discussions with the DPD. These concerns were

conveyed to both OCI and OCR personnel. Additional information requested by the Monitor concerning the protocol had not been submitted by the DPD as of the end of that quarter.<sup>53</sup> The Monitor is scheduled to again assess the DPD's compliance with paragraphs U70-71 during the quarter ending November 30, 2006.

The Monitor last assessed the DPD's compliance with paragraphs U72-77 during the quarter ending February 28, 2006. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### **Paragraphs U72 and U74 – Police Action in Violation of DPD Policy; Officers to Report Misconduct**

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.

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 paragraphs U72 and U74 during the quarter ending February 28, 2006, finding the DPD in compliance with the policy requirements but in non-compliance with the implementation requirements of these paragraphs. As a result, the Monitor found the DPD in overall non-compliance with paragraphs U72 and U74.

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

During the current quarter the Monitor requested a listing of all training conducted in relation to paragraphs U72 and U74 to include any formal classroom training as well as any roll call training. On August 24, 2006 the Monitor received a memo dated August 9, 2006 from the DPD reporting that neither formal classroom training nor roll call training has occurred. On August 31, 2006, the DPD submitted its Twelfth Quarter Status Report, in which it indicated that its *Police-Citizens Interactions* curriculum addressed the training requirements of paragraphs U72 and U74 and its *Supervisory Leadership & Command Accountability* curriculum addressed the training requirements of paragraph U74. The DPD plans on submitting the *Police Citizens Interaction* curriculum to the Monitor during September 2006 for review and comment. The

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<sup>53</sup> On June 12, 2006, after the end of that quarter, the DPD provided the additional information requested. The Monitor will review and report on the information provided during its next regularly scheduled compliance assessment, which is currently slated for the quarter ending November 30, 2006.

*Supervisory Leadership & Command Accountability* curriculum was submitted to the Monitor on August, 31, 2006, the last day of the reporting quarter.

Based on the foregoing, the Monitor finds the DPD in compliance with the policy requirements but in non-compliance with the implementation requirements of paragraphs U72 and U74. As a result, the Monitor finds the DPD in overall non-compliance with paragraphs U72 and U74.

### *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>54</sup> of patrol units and specialized units that deploy in the field to implement the provisions of this agreement.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U73 during the quarter ending February 28, 2006, finding the DPD in non-compliance. The Monitor reviewed daily attendance records for all 27 District station and specialized unit platoons for the period December 28- 30, 2005 and calculated an overall compliance rate of 73.2%.<sup>55</sup>

### *Current Assessment of Compliance*

In order to assess the DPD's compliance with paragraph U73 during the current quarter, the Monitor requested daily attendance records for all 27 District station and specialized unit platoons for the period June 13-15, 2006. As of the end of the quarter, 104 attendance records were provided.

The Monitor reviewed all 104 daily attendance records, noting that nine patrol platoons and one specialized unit were deployed with a ratio of officers to a supervisor exceeding eight to one. As a result, the DPD's overall compliance rate was 90% (94 of 104). The Monitor commends the DPD for what represents a marked improvement since the last evaluation. At the Monitor's request, the DPD is providing additional information for certain District platoon's that may impact the DPD's compliance.

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<sup>54</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>55</sup> Although 71 daily attendance records (three for each District station and specialized unit platoon) should have been provided, the DPD provided only 54; no information was provided for the Eastern District and certain specialized units.

Based on the foregoing, the Monitor withholds a determination of the DPD's compliance with paragraph U73. The Monitor anticipates reporting its final compliance assessment during the quarter ending November 30, 2006.

### *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, breathalyser, 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 February 28, 2006 finding the DPD in non-compliance. The Monitor had previously determined that the DPD complied with the policy component of this paragraph by adequately disseminating Directive 202.1, *Arrests*; however, the DPD had not yet begun training officers on its content. Although the Monitor had requested documentation in an attempt to evaluate the implementation of the policy, the DPD's submission was not responsive to the Monitor's request.

### *Current Assessment of Compliance*

During the current quarter, the Monitor again requested documentation in connection with the DPD's training on the requirements of paragraph U75 and the implementation of relevant policy. On August 24, 2006 the Monitor received a memo dated August 9, 2006 from the DPD reporting that neither formal classroom training nor roll call training has occurred. On August 31, 2006, the DPD submitted its Twelfth Quarter Status Report, in which it indicated that its *Police-Citizens Interactions* and *Firearms Training* curricula addressed the training requirements of paragraph U75. The DPD submitted the latter on the last day of the quarter, August 31, 2006, for review. The DPD plans on submitting the *Police-Citizens Interactions* curriculum to the Monitor during September 2006 for review and comment.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements but in non-compliance with the implementation requirements of paragraph U75. As a result, the Monitor finds the DPD in overall 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 February 28, 2006, finding the DPD in non-compliance. The Monitor determined that Directive 305.4, *Holding Cell Areas*, was adequately disseminated to the field as of the end of that quarter. The Monitor also requested, for review, a sample of arrests that involved a use of force. The DPD provided only a partial response to the request.

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

On August 24, 2006 the Monitor received a memo dated August 9, 2006 from the DPD reporting that training responsive to paragraph U76 was covered in a formal classroom setting at various times during the period April 2006 through July 2006. On August 31, 2006, the DPD submitted its Twelfth Quarter Status Report, in which it indicated that its *Police-Citizens Interactions*, *Detention Officer Training* and *Use of Force* curricula addressed the training requirements of paragraph U76. The DPD submitted the *Use of Force* curriculum on the last day of the quarter, August 31, 2006, for review and comment. The DPD plans on submitting the *Police-Citizens Interactions* and the *Detention Officer Training* curricula to the Monitor during September 2006 for review and comment.<sup>56</sup>

Based on the foregoing, the Monitor finds the DPD in compliance with the policy requirements but in non-compliance with the implementation requirements of paragraph U76. As a result, the Monitor finds the DPD in overall non-compliance with paragraph U76.

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<sup>56</sup> The Monitor had not received the lesson plans as of September 29, 2006. Also, after the end of the quarter, the DPD provided access to a sample of arrests that involved a use of force. The Monitor is reviewing this information; however, the DPD remains in non-compliance due to the failure to provide training.

### **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 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, such as the UOF report.

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U77 during the quarter ending February 28, 2006, finding the DPD in non-compliance. The Monitor requested documentation supporting the DPD's compliance with the implementation and training requirements of this paragraph. Although some documentation was provided, the Monitor was not afforded sufficient time to complete its implementation testing. In addition, the DPD had not yet designed or delivered some type of instruction or training to its members on this topic.

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

In order to assess the DPD's compliance with the implementation requirements of paragraph U77 during the current quarter, the Monitor requested documentation supporting the DPD's compliance with the implementation and training requirements of this paragraph.<sup>57</sup> The DPD submitted auditable forms (UF-002) for 33 UOF incidents, five of which involved a foot pursuit. The Monitor reviewed the five auditable forms, noting that two of the five were incomplete and did not report the reason for contact.<sup>58</sup>

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<sup>57</sup> The Monitor requested that the DPD provide copies of all UOF auditable forms (UF-002 and UF-002A) dated from May 20, 2006 through June 20, 2006. The Monitor also requested that the DPD provide a listing of any and all training conducted in relation to paragraph U77, including the date(s), topic(s), and forum (e.g. roll call training or formal classroom training).

<sup>58</sup> The Monitor noted material inconsistencies and omissions for 16 of the 33 UOF auditable forms completed, including improper classification of the types of force used, incomplete documentation of the use of Chemical Spray and incomplete documentation as to the applicability of the use of Chemical Spray and/or the use of a firearm.

On August 24, 2006 the Monitor received a memo dated August 9, 2006 from the DPD reporting that neither formal classroom training nor roll call training has occurred. On August 31, 2006, the DPD submitted its Twelfth Quarter Status Report, in which it indicated that its *Use of Force* curriculum addressed the training requirements of paragraph U77. The DPD submitted this curriculum on the last day of the quarter, August 31, 2006, for review and comment.

Based on the foregoing, the Monitor finds the DPD in compliance with the policy requirements but in non-compliance with the implementation requirements of paragraph U77. As a result, the Monitor finds the DPD in overall non-compliance with paragraph U77.

## **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 February 28, 2006. The Monitor again assessed the DPD's compliance with the paragraph during the current quarter. The results of our current assessment follow.

### **Paragraph U78 – Development of Risk Management Plan**

Paragraph U78 requires the DPD to devise a comprehensive risk management plan, including:

- a. a Risk Management Database (discussed in paragraphs 79-90);
- b. a performance evaluation system (discussed in paragraph 91);
- c. an auditing protocol (discussed in paragraphs 92-99);
- 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 U78 during the quarter ending February 28, 2006, finding the DPD non-compliance. The DPD remained in non-compliance with subparagraphs a and c. With regard to subparagraph b, the Monitor had not yet tested for implementation. With regard to subparagraphs d and e, the Monitor had requested information in regards to DPD compliance efforts. This information was not received by the end of that quarter.

### *Current Assessment of Compliance*

Regarding subparagraph U78a, during the current quarter, the DPD and the DOJ continued conversations regarding converting the Interim Management Awareness System (IMAS) into the Management Awareness System (MAS) without the use of an outside vendor, thereby obviating the need for a request for proposal (RFP). The parties have been asked by the Court to file a Stipulation outlining their intent to use the DPD's Information Technology Services (ITS) instead of an outside vendor to convert the IMAS to MAS. However, the DPD remains in non-compliance with a majority of the paragraphs related to the Risk Management Database.<sup>59</sup>

Regarding subparagraph U78b, as described in the Monitor's Report for the Quarter Ending November 30, 2005, the DPD has met the policy requirements of paragraph U91. In order to test implementation, the Monitor submitted a document request on August 1, 2006 requesting recent annual evaluations of randomly selected personnel. The DPD submitted a partial response on August 29, 2006.<sup>60</sup>

Regarding subparagraph U78c, the DPD remains in non-compliance with the majority of the paragraphs related to the auditing protocol.<sup>61</sup>

Regarding subparagraphs U78d and e, the Monitor requested documentation to assist in assessing DPD's compliance with the subparagraphs on August 31, 2006.<sup>62</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U78.

### **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 paragraphs U79-82 and U86-87 and subparagraphs U88a. and c. during the quarter ending May 31, 2006. The Monitor found the

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<sup>59</sup> Of the pertinent paragraphs (U79-90), the DPD remains in non-compliance with paragraphs U79-82, U86-87, and U88a and c (as described in the Report for the Quarter Ending May 31, 2006) and paragraphs U85, U88d-g, and U89 (as described in this report, below).

<sup>60</sup> See Current Assessment of Compliance under paragraph U91 below for more information.

<sup>61</sup> Of the related audit paragraphs, the DPD remains non-compliant with paragraphs: U93, U94, U95, and U96.

<sup>62</sup> On September 20, 2006, the DPD responded to the Monitor's request but did not supply sufficient information in order for the Monitor to determine compliance.

DPD in non-compliance with paragraphs U79-82 and U86-87 and subparagraph U88a, as the Data Input Plan was not approved and the MAS was not yet fully developed and operational as of the end of that quarter.<sup>63</sup> The Monitor withheld a determination of the DPD's compliance with subparagraph U88c, as the parties were in discussions regarding whether the DPD will issue an RFP or whether the DPD will use their internal resources to develop the MAS. The DOJ outlined its concerns regarding this issue in the letter dated February 17, 2006. After the end of that quarter, the DOJ provided conditional approval of the DPD's proposal to use internal resources to conduct the IMAS to MAS conversion.

The Monitor last assessed the DPD's compliance with paragraph U85, subparagraphs U88e, f and g, and paragraph U89 during the quarter ending February 28, 2006. The Monitor again assessed the DPD's compliance with these paragraphs and subparagraphs during the current quarter. The results of our current assessments follow.<sup>64</sup>

### **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 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 February 28, 2006, finding the DPD in non-compliance. As of the end of that quarter, the DOJ and the DPD were still in discussions regarding the use of internal ITS to transition the IMAS to MAS. In addition, the DPD had not received final approval from the DOJ on the Data Input Plan.

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<sup>63</sup> As reported in the Monitor's Report for the Quarter Ending November 30, 2005, the DPD submitted the Data Input Plan on November 22, 2005. The DOJ provided the DPD with a letter, dated February 17, 2006, outlining the DOJ's concerns with the Data Input Plan. These concerns were not resolved and the Data Input Plan was not approved as of the end of that quarter.

<sup>64</sup> During the quarter ending November 30, 2005 the Monitor concluded that the DPD was in compliance with paragraph U84 and subparagraph U88d, as the DOJ had approved the Review Protocol. During the quarter ending November 30, 2005 the Monitor concluded that the DPD was in compliance with paragraph U83 and subparagraph U88b, as the DOJ had approved the Report Protocol. The DPD will remain in compliance with these provisions until the Review and Report Protocols are revised. Revisions to the documents will require additional review and approval by the DOJ and trigger additional compliance assessments by the Monitor.

### *Current Assessment of Compliance*

As described in the Monitor's Report for the Quarter Ending February 28, 2006, the DOJ submitted a letter on February 17, 2006 outlining their concerns regarding the Data Input Plan and the use of DPD internal personnel to convert the IMAS to MAS. During the current quarter, the DOJ provided the DPD with verbal conditional approval of the Data Input Plan. The DOJ has indicated that a formal letter will follow. In addition, the Court has requested that the parties file a Stipulation with the Court outlining their agreement to use DPD internal personal for the IMAS to MAS conversion. As of the end of the quarter, this document had not been filed with the Court.

The Monitor has received no further information regarding the development of Risk Management Database Modules by the DPD. In addition, the Risk Management Database is not yet fully developed.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U85.

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

Subparagraph 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 subparagraph U88e during the quarter ending February 28, 2006, finding the DPD in non-compliance. The DPD and the DOJ were still in discussions regarding the use of internal personnel for the IMAS to MAS conversion.

### *Current Assessment of Compliance*

As described in the Current Assessment of Compliance for paragraph U85, above, the Court has requested that the parties file a Stipulation outlining their agreement to use DPD internal personal in lieu of an outside contractor for the IMAS to MAS conversion.<sup>65</sup> This document had not been filed with the Court as of the end of the quarter.

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

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<sup>65</sup> The DPD and the DOJ have agreed that the requirement that an RFP be issued will not be removed from the UOF CJ. If an outside contractor is needed in the future, an RFP will be issued.

### **Subparagraph U88f – Beta Version of Risk Management Database**

Subparagraph U88f requires the DPD to have ready for testing a beta version of the risk management database by June 30, 2005. The DOJ and the Monitor shall have the opportunity to participate in testing the beta version using new and historical data and test data created specifically for purposes of checking the risk management database.

#### ***Background***

The Monitor last assessed the DPD's compliance with the subparagraph U88f during the quarter ending February 28, 2006, finding the DPD in non-compliance. As of the end of that quarter, the DOJ had not given final approval of the Data Input Plan and the DPD and the DOJ were still in discussions regarding the use of internal personnel for the IMAS to MAS conversion.

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

As described in the Current Assessment of Compliance for paragraph U85, during the current quarter, the DOJ provided the DPD with verbal conditional approval of the Data Input Plan and the Court requested that the parties file a Stipulation with the Court outlining their agreement to use DPD internal personal for the IMAS to MAS conversion. This document had not been filed with the Court as of the end of the quarter. In addition, the MAS is not ready for beta testing, as it has not been fully developed.

Based on the foregoing, the Monitor finds the DPD in non-compliance with subparagraph U88f.

### **Subparagraph U88g –Risk Management Database Operational**

Subparagraph U88g requires the risk management database to be operational and fully implemented by December 31, 2005.

#### ***Background***

The Monitor last assessed the DPD's compliance with the subparagraph U88g during the quarter ending February 28, 2006, finding the DPD in non-compliance. As of the end of that quarter, the DOJ and the DPD were still in discussions regarding the use of internal ITS to transition the IMAS to MAS. In addition, the DPD had not received final approval from the DOJ on the Data Input Plan

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

The MAS was not operational or implemented as of the end of the current quarter, as it has not been fully developed.

Based on the foregoing, the Monitor finds the DPD in non-compliance with subparagraph U88g.

**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.

***Background***

The Monitor last assessed the DPD's compliance with paragraph U89 during the quarter ending February 28, 2006, finding the DPD in non-compliance. Not all relevant personnel had received training.

***Current Assessment of Compliance***

Although the IMAS has been developed and is operational not all relevant personnel had been trained on the system as of the end of the quarter.

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, 2005. The Monitor again assessed the DPD's compliance with paragraph U91 during the current quarter. The results of our current assessment follow.

**Paragraph U91 – Performance Evaluation System**

Paragraph U91 requires the DPD to ensure that performance evaluations for all DPD employees<sup>66</sup> occur at least annually and include, but are not limited to, consideration of the following: civil rights integrity; adherence to law, including performing duties in a manner consistent with the requirements of the Fourth and Fifth Amendments to the Constitution and the

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<sup>66</sup> The parties proposed a modification to the language of this paragraph stating that it is applicable to all DPD employees below the rank of Deputy Chief. The Court issued an order on October 4, 2004 adopting the proposed modification.

Civil Rights laws of the United States; and supervisor's performance in identifying and addressing at-risk behavior in subordinates, including their supervision and review of use of force, arrests, care of prisoners, prisoner processing, and performance bearing upon honesty and integrity.

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U91 during the quarter ending August 31, 2005, finding the DPD in non-compliance due to the fact that the DPD had not effectively disseminated Directive 401.1, *Performance Evaluation Ratings*, the policy that addresses the requirements of paragraph U91.

Although paragraph U91 was not scheduled for assessment during the Quarter Ending November 30, 2005, the Monitor re-tested the DPD's dissemination of Directive 404.1, together with the related forms, during that quarter and determined that it had been adequately disseminated. As a result, the DPD had achieved compliance with the policy requirements of paragraph U91.

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

In order to assess the DPD's compliance with the implementation requirements of paragraph U91 during the current quarter, the Monitor submitted a document request on August 1, 2006, requesting recent annual evaluations of randomly selected personnel. The DPD submitted a partial response on August 29, 2006, providing photocopies of the most recent performance evaluations for a sample of 102 officers and supervisors.

The Monitor reviewed all 102 evaluations received, noting that all performance evaluations were insufficient in addressing the requirements of paragraph U91. The Monitor also noted that 18 performance evaluations were in excess of 15 months old. For one officer, the most recent evaluation was for the period ended April 30, 2001.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U91.

## **C. OVERSIGHT**

This subsection of the UOF CJ (paragraphs U92-99) requires the DPD to establish an internal audit process, to perform annual<sup>67</sup> audits of all precincts and specialized units on eight areas of

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<sup>67</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.

policing,<sup>68</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 paragraph U93 during the quarter ending November 30, 2005, finding the DPD in non-compliance. The Monitor had not received documentation evidencing the transmittal of the audit reports to the Chief of Police and appropriate COs and any action that they have taken in connection with the audits during the current quarter. The Monitor last assessed the DPD's compliance with paragraph U99 during the quarter ending May 31, 2006, finding the DPD in compliance, as the DPD and the Wayne County Prosecutor's Office (WCPO) continued to meet quarterly to identify issues in officer, shift or unit performance. The Monitor is scheduled to again assess the DPD's compliance with paragraphs U93 and U99 during the quarter ending November 30, 2006.

During the current quarter, the Monitor assessed the DPD's compliance with paragraphs U92 and U94-98. The results of our current assessments follow.

### **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>69</sup> to ensure the audits occur with sufficient frequency and cover all DPD units and commands.

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U92 during the quarter ending August 31, 2005. The Monitor evaluated the 2005/2006 Audit Protocol submitted by the DPD and found it in compliance with the requirements of paragraph U92. The Monitor determined that the protocol adequately addressed the UOF CJ's and COC CJ's audit schedules, adequate standards for conducting and reviewing such audits, sufficient instruction on the content and review process for the DPD's audit reports, and adequate articulation of the competencies and training requirements for the DPD's auditors.

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<sup>68</sup> Including UOF investigations; prisoner injuries; allegations of misconduct; arrests; stops and frisks; witness identification and questioning; custodial detention practices, and complaint investigations.

<sup>69</sup> This Audit Protocol must also address the audits required by the COC CJ (paragraphs C65-72).

The Monitor also reviewed documentation supporting the dissemination of and associated training on the Audit Protocol to its audit personnel, and the receipt of signed annual confidentiality declarations from all audit personnel.

### *Current Assessment of Compliance*

During the current quarter, the Monitor completed its review of the 2006/2007 Audit Protocol submitted by the DPD on July 29, 2006. The Monitor evaluated the Audit Protocol and found that it addressed the requisite audit schedule, the standards for conducting and reviewing such audits,<sup>70</sup> sufficient instruction on the content and review process for the DPD's audit reports, and adequate articulation of the competencies and training requirements for the DPD's auditors.<sup>71</sup>

On July 31, 2006, the Monitor requested documentation supporting the dissemination and implementation of the 2006/07 Audit Protocol, including the current listing of all DPD personnel who are currently involved in conducting DPD audits, documentation supporting the receipt and signatures of Annual Confidentiality Declarations for all listed personnel; and, documentation supporting training in connection with the 2006/07 Audit Protocol. This documentation was not received as of the end of the current quarter. The Monitor understands that the DPD is currently completing the dissemination and training processes, and will submit the requested documentation prior to the end of the quarter ending November 30, 2006.

Based on the foregoing, the Monitor is withholding a determination of the DPD's compliance with paragraph U92.

### *Paragraph U94 – Audits of UOF; Prisoner Injuries and Misconduct Investigations*

Paragraph U94 requires the DPD to conduct regularly scheduled annual audits of a) UOF investigations, b) prisoner injury investigations, and c) 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.

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<sup>70</sup> In a departure from the prior audit protocols, the 2006/2007 Audit Protocol originally eliminated the requirement for the HCCC to formally review and approve the HCCC audit work plans prior to the commencement of the audit fieldwork. The Monitor expressed concern over this change with the DPD/OCR. The DPD revised and resubmitted the Audit Protocol to again include this requirement.

<sup>71</sup> As described in previous Monitor's quarterly reports, the Audit Protocol does not contain specific direction regarding the reporting of findings in a quantitative manner to allow for a comparison throughout the DPD, nor does it identify all of the DPD commands to be evaluated in the audits. These exclusions, however, do not affect the overall compliance of the Audit Protocol but, rather, will be evaluated within each audit report submitted by the DPD.

## *Background*

The Monitor last assessed the DPD's compliance with subparagraphs U94a and b during the quarter ending May 31, 2006, finding the DPD in non-compliance with each. The audits required by these subparagraphs were not submitted as of the end of that quarter, nor had they been submitted since the inception of the UOF CJ.

The Monitor last assessed the DPD's compliance with subparagraph U94c during the quarter ending November 30, 2005, finding the DPD in non-compliance. The Monitor reviewed the *Allegations of Misconduct Investigations Audit* report, submitted on August 31, 2005, and noted that all aspects of this audit, from planning through reporting, had improved compared to audits previously submitted by the DPD AT; however the Monitor identified several deficiencies that caused the audit to be non-compliant.

## *Current Assessment of Compliance*

As of the end of the current quarter, the DPD had not submitted a *Use of Force Investigations Audit* (required by subparagraph U94a) or a *Prisoner Injury Investigations Audit* (required by subparagraph U94b).<sup>72</sup> The DPD has indicated that these audits will be submitted for the annual period ending August 31, 2007.

On August 31, 2006, the last day of the current quarter, the DPD submitted the *Allegations of Misconduct Investigations Audit*, which is required by subparagraph U94c. Due to the timing of submission, the Monitor has not yet completed its evaluation of this audit.

Based on the foregoing, the Monitor finds the DPD in non-compliance with subparagraphs U94a and U94b,<sup>73</sup> and has not yet evaluated the DPD's compliance with subparagraph U94c.

## **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 a) arrest practices, b) stops and frisks, and c) 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

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<sup>72</sup> According to the DPD, the *Use of Force Investigations Audit* report was still in the review process and not ready for submission as of August 31, 2006. Because the audit would be considered late, it is not a candidate for compliance when received; however, the DPD AT has indicated that this audit will be submitted to the Monitor for purposes of receiving feedback.

<sup>73</sup> The DPD has yet to submit an audit of either of these topics since the inception of the UOF CJ. The Monitor will continue to find the DPD in non-compliance with the requirement to conduct these audits until such time as the required audits have been submitted. When these audits are submitted, the Monitor will evaluate their quality.

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.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U95 during the quarter ending November 30, 2005, finding the DPD in non-compliance with each subparagraph due to non-submission.

### *Current Assessment of Compliance*

As of the end of the current quarter, the DPD had not submitted an *Arrest Practices Audit* (required by subparagraph U95a)<sup>74</sup> or a *Witness Identification and Questioning Documentation Audit* (required by subparagraph U95c). According to the DPD, these audits will be submitted for the annual period ending August 31, 2007.

On August 31, 2006, the last day of the current quarter, the DPD submitted the *Stops and Frisks Audit*, which is required by subparagraph U95b. Due to the timing of submission, the Monitor has not yet completed its evaluation of this audit.

Based on the foregoing, the Monitor finds the DPD in non-compliance with subparagraphs U95a and U95c,<sup>75</sup> and has not yet evaluated the DPD's compliance with subparagraph U95b.

### *Paragraph U96 – Audit of Custodial Detention Practices*

Paragraph U96 requires the DPD to conduct regularly scheduled annual audits of the DPD's custodial detention practices, including evaluating the length of detention between the time of arrest and the time of arraignment and the time to adjudicate holds. Such audits must cover all precincts and specialized units.

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<sup>74</sup> The DPD AT staff had exhausted months of considerable effort to conduct and submit the *Arrests Audit* required by subparagraph U95a; however, shortly before its submission, the AT discovered that the audit had substantial errors related to the methodology. As a result, AT management made the decision to scrap the audit work and not submit the report. The Monitor advised AT management that although the audit report would not be submitted, the AT has a responsibility to provide the DPD with the significant findings to improve Department operations, and the AT should at a minimum, publish an internal memo related thereto. This is an example of inadequate supervision, as these problems should have been identified much earlier in the audit process.

<sup>75</sup> The Monitor will continue to find the DPD in non-compliance with the requirement to conduct these audits until such time as the required audits have been submitted. When these audits are submitted, the Monitor will evaluate their quality.

## ***Background***

The Monitor last assessed the DPD's compliance with paragraph U96 during the quarter ending November 30, 2005, finding the DPD in non-compliance due to non-submission.

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

As of the end of the current quarter, the DPD had not submitted an audit required by paragraph U96 for the period ending August 31, 2006. According to the DPD, no audit of this subject was planned to be conducted for this annual period due to a lack of AT personnel resources. The DPD has indicated that an audit of this topic will be conducted and submitted during the annual period ending August 31, 2007.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U96.<sup>76</sup>

## ***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, 2005, finding the DPD in non-compliance. The Monitor determined that the *External Complaint and Complaint Investigation Audit* report submitted by the DPD on August 31, 2005 was non-compliant primarily due to deficiencies in the AT's reporting of its sampling processes, testing, and compliance calculations, as well as its interpretation of the related results.

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

On August 31, 2006, the last day of the current quarter, the DPD submitted the *OCI Investigations Audit* required by paragraph U97. Due to the timing of submission, the Monitor has not yet completed its evaluation of this audit.

Based on the foregoing, the Monitor has not yet evaluated the DPD's compliance with paragraph U97.

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<sup>76</sup> The Monitor will continue to find the DPD in non-compliance with paragraph U96 until an audit is submitted. When this audit is submitted, the quality of the audit will be evaluated.

### **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 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 February 28, 2006, finding the DPD in compliance with the policy requirements but in non-compliance with the implementation requirements of the paragraph. As of the end of that quarter, the DPD had not submitted the necessary lesson plan to train officers on Directive 303.3, *In-Car Video*, and related forms. Additionally, the DPD had not yet implemented a systematic review process for videotapes.

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

The Monitor has been informed by the DPD that it has not yet implemented a systematic review process for video tapes. Although a Video Review Protocol has been developed, not all DPD supervisors have been trained. Significantly, the DPD has indicated that they have a total of 543 scout cars, 290 of which have cameras.

In its Twelfth Quarter Status Report, the DPD indicated that the requirements of this paragraph have been included in the *Supervisory Leadership and Command Accountability Lesson Plan* which was submitted to the Monitor on the last day of the quarter, August 31, 2006. In its status report, the DPD also indicated that an OCR inspection conducted on August 3, 2006, determined that only 15% of marked patrol vehicles are equipped with working in-car video cameras.

On August 1, 2006, the Monitor requested OCR's most recent internal inspections in order to evaluate DPD's compliance with paragraph U98. This information was not received as of the end of the quarter.<sup>77</sup>

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements but in non-compliance with the implementation requirements of paragraph U98. As a result, the Monitor finds the DPD in overall non-compliance with paragraph U98.

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<sup>77</sup> The DPD submitted a response to this request on September 11, 2006, after the end of the quarter. The OCR's inspection found the DPD in non-compliance with the requirements of paragraph U98. OCR concluded that 61 out of 164 supervisors (37%) are capable of assessing the In-sight system to conduct random periodic reviews of scout car camera recordings. The inspection also determined that there is a lack of documentation indicating that the reviews are being conducted. The inspection appropriately recommended that additional training classes on the use of the In-sight system be conducted for patrol supervisors.

## 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 February 28, 2006. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### *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 February 28, 2006, finding the DPD in compliance with the policy requirements but in non-compliance with the implementation requirements of each paragraph. The Monitor determined that the DPD adequately disseminated Directive 303.3. Although the DPD completed its protocol for implementing the requirements of paragraphs U100-102, it was in the process of incorporating the protocol into its related training as of the end of that quarter.

In addition to the above, on February 27 and 28, 2006, members of the Monitor's team conducted ride-alongs in two separate Districts. In both instances, the Monitor noted that the

patrol units being utilized by DPD officers contained either no video recording equipment or inoperable video recording equipment. Conversations with various sworn personnel at both districts confirmed that maintenance backlogs often result in officers being assigned to patrol units with either inoperable equipment or no equipment at all.

### *Current Assessment of Compliance*

On August 1, 2006, the Monitor requested information as to whether or not training on Directive 303.3 had taken place in order to implement the requirements of the directive. This information was not received by the Monitor as of the end of the current quarter.<sup>78</sup>

Significantly, the DPD has indicated that they have a total of 543 scout cars, 290 of which have cameras. There are scout cars being used that do not have cameras. As a result, the DPD cannot meet the requirements of these paragraphs.

In its Twelfth Quarter Status Report, the DPD indicated that the requirements of these paragraphs have been included in the *Supervisory Leadership and Command Accountability Lesson Plan* which was submitted to the Monitor on the last day of the quarter, August 31, 2006. In its status report, the DPD also indicated that an OCR inspection conducted on August 3, 2006, determined that only 15% of marked patrol vehicles are equipped with working in-car video cameras.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements but in non-compliance with the implementation requirements of paragraphs U100-102. As a result, the Monitor finds the DPD in overall non-compliance with paragraphs U100-102.

## **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 February 28, 2006. 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>78</sup> The DPD submitted a response to this request on September 11, 2006, after the end of the quarter, indicating that no training had taken place on Directive 303.3. The DPD stated that no training had been scheduled because the lesson plan is incomplete.

### **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 February 28, 2006, finding the DPD in compliance due to the fact that the backlog of cases had been eliminated.

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

On August 31, 2006, the last day of the current quarter, the Monitor requested documentation showing if currently there is a backlog of disciplinary cases. Additionally, the Monitor asked the DPD to define "backlog" for the purposes of evaluating paragraph U103.

Since this request was made at the end of the quarter, the Monitor has not yet reevaluated the DPD's 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 February 28, 2006, at which time the Monitor found the DPD in non-compliance with the paragraph. The Monitor concluded its review of Disciplinary Process Timeline and the DAS paperwork requirements and provided comments to the DPD; the Monitor had not received a response from the DPD as of the end of that quarter.

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

During the current reporting period, the Monitor and the DPD exchanged correspondence regarding the disciplinary timeline. On August 29, 2006, the DPD resubmitted a revised Disciplinary Process Timeline to the Monitor. Because the document was submitted at the end of the quarter, the Monitor is currently in the process of reviewing this submission.

Based on the foregoing, the Monitor withholds a determination of compliance with paragraph U104.

### **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 February 28, 2006, at which time the Monitor found the DPD in compliance with the policy requirements of the paragraph and in non-compliance with the implementation requirements of the paragraph. The Monitor determined that the DPD adequately disseminated policy and the disciplinary matrix that addressed the requirements of the paragraph. However, because the documentation required to test the dissemination of the directive and matrix was not received until February 28, 2006, the last day of the quarter, the Monitor was unable to commence the testing of the implementation of policy during that quarter.

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

At the end of the current quarter, the Monitor requested that the DPD provide the Monitor with access to the disciplinary files in which discipline was imposed during the month of June 2006.<sup>79</sup>

Based on the foregoing, the Monitor has not yet evaluated the DPD's compliance with paragraph U105.

## **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

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<sup>79</sup> On September 8, 2006, the DPD requested clarification of the Monitor's request, which the Monitor provided. The Monitor intends to review the files during the quarter ending November 30, 2006 and will provide a compliance assessment at the end of that quarter.

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.

## 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 May 31, 2006, finding the DPD in compliance with paragraph U110 and in non-compliance with the remaining paragraphs.

- Regarding paragraph U106, the DPD described various processes, including the establishment of a Training Committee, that, once implemented, will assist the DPD in effectively implementing the requirements of this paragraph. However, the Monitor did not receive any reports of reviews required by this paragraph, and lesson plans that had been previously submitted by the DPD did not include any documentation evidencing the review and approval required by the paragraph.
- Regarding paragraph U107, the DPD indicated that the review and approval process designed to address paragraph U106 requirement is sufficient to address the requirements of this paragraph. However, the DPD's response did not adequately document or demonstrate its compliance with the type of management approach that is required by paragraph U107.
- Regarding paragraph U108, because the MAS was not yet fully developed or operational, the DPD was not yet maintaining individual training records for all officers, documenting the date and topic of all pre-service and in-service training.
- Regarding paragraph U109, the Monitor provided TA to the DPD related to adequate lesson plan development during the quarter ending May 31, 2006. However, the DPD had neither submitted revised lesson plans nor had it notified the Monitor of specific training dates that would enable the Monitor to further assess compliance with the requirements of the paragraph.
- Regarding paragraph U110, the DPD held its quarterly meeting with the City Law Department in which information regarding civil lawsuits concerning the DPD and its officers was discussed at the meeting. The DPD also distributed the information to risk management and training staff in accordance with the requirements of paragraph U110.
- Regarding paragraph U111, as of the end of the quarter ending May 31, 2006, the Monitor had not received information regarding the training of certain non-DPD City employees. In addition, although numerous policies had been in effect in excess of 120 days, the DPD had not conducted the training on these paragraphs that is required under paragraph U111.

The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending November 30, 2006.

## 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 May 31, 2006, finding the DPD in non-compliance. The Monitor reviewed various lesson plans submitted by the DPD in response to this paragraph and submitted memoranda detailing various deficiencies identified during its review of certain lesson plans.<sup>80</sup> The lesson plans contained various qualitative shortfalls, which were described in the memoranda, and the majority of the lesson plans did not address all of the requirements of the paragraphs for which they were submitted.

The Monitor is scheduled to again assess the DPD's compliance with paragraph U112 during the quarter ending November 30, 2006.

## C. FIREARMS TRAINING

This section comprises paragraph U113 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending May 31, 2006, finding the DPD in non-compliance. The Monitor reviewed lesson plans entitled *Marksmanship Training and Qualification* and *Tactical Training and Qualification* and attended firearms training and qualification process and identified a number of deficiencies that were communicated to the DPD via a formal memorandum, which also included additional comments that were noted during the review related to best practices for lesson plan and course development.

The Monitor is scheduled to again assess the DPD's compliance with paragraph U113 during the quarter ending November 30, 2006.

## 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 May 31, 2006, finding the DPD in non-compliance. The DPD had not re-submitted revised lesson plans in response to this paragraph as of the end of that quarter.

The Monitor is scheduled to again assess the DPD's compliance with paragraph U114 during the quarter ending November 30, 2006.

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<sup>80</sup> The memoranda covered the following lesson plans: *Chemical Spray, Confinement of Material Witness, Firearms Marksmanship Training and Qualification, Firearms Tactical Training and Qualification Supervisor Report Writing, and Prisoner Detention Officer Training, and Foot Pursuit.*

## 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 February 28, 2006. 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 February 28, 2006, finding the DPD in non-compliance. DPD training staff indicated that the requirements of this paragraph would be included in the paragraph U114 lesson plans, which were being revised. As of the end of that quarter, the Monitor had not received revised lesson plans for paragraph U114 or a lesson plan specifically addressing paragraph U115 requirements.

#### *Current Assessment of Compliance*

As described in the Monitor's Report for the Quarter Ending February 28, 2006, on March 20-23, 2006, after the end of that quarter, the DPD held training related to detention officer responsibilities, as required by the COC CJ. The Monitor attended this training; however the lesson plan that was being used along with the instructor notes were not provided to the Monitor. The training was intended to address paragraphs C73, C76-78 and U115; however, the materials delivered did not address all requirements. The Monitor understands that the lesson plan is currently being rewritten, and will be available for review in the near future.

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 arraignment shall not be delayed because of the assignment of the investigation to a specialized unit, the arrest charge(s), the unavailability 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 February 28, 2006, finding the DPD in non-compliance. As of the end of that quarter, the DPD

had not submitted a revised lesson plan or any other documentation to address all of the requirements of this paragraph.<sup>81</sup>

### *Current Assessment of Compliance*

As of the end of the current quarter, the Monitor has not received an updated lesson plan that addressed the requirements of paragraph U116.

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 February 28, 2006, finding the DPD in non-compliance. The Monitor completed its review of the *Confinement of Material Witness-In Service* lesson plan and accompanying materials submitted by DPD in response to this paragraph. The Monitor determined that although the lesson plan contains the advisement required by paragraph U117, it contained a number of qualitative shortcomings.

### *Current Assessment of Compliance*

As described in the Monitor's Report for the Quarter Ending February 28, 2006, on March 21, 2006, after the end of that quarter, the Monitor forwarded to the DPD a detailed memorandum describing various deficiencies identified during the Monitor's review of the *Confinement of Material Witness-In Service* lesson plan and accompanying materials. As of the end of the current quarter, the Monitor had not received an updated lesson plan.

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

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<sup>81</sup> Although the DPD's Tenth Quarter Status Report states that Directive 202.1, *Arrests*, and the Prompt Judicial Review Lesson Plan Booklet address the requirements of this paragraph, as previously reported by the Monitor, these documents do not address all of the specific requirements of the paragraph.

## F. SUPERVISORY TRAINING

This section comprises paragraphs U118-120. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending February 28, 2006. 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 paragraphs U118 during the quarter ending February 28, 2006, finding the DPD in non-compliance. The Monitor completed its review of the *Supervisors Report Writing Guidelines and Report Evaluation* lesson plan and accompanying materials submitted by the DPD in response to this paragraph. The Monitor determined that the lesson plan did not adequately meet the requirements of the paragraph, as it contained a number of deficiencies.

#### *Current Assessment of Compliance*

As described in the Monitor's Report for the Quarter Ending February 28, 2006, on March 14, 2006, after the end of that quarter, the Monitor forwarded to the DPD a detailed memorandum describing various deficiencies identified during the Monitor's review of the *Supervisors Report Writing Guidelines and Report Evaluation* lesson plan and accompanying materials.

On August 31, 2006, the last day of the current quarter, the DPD submitted to the Monitor a lesson plan entitled *Supervisory Leadership and Accountability*, which is intended to address the requirements of paragraph U118, among others. Due to the timing of submission, the Monitor has not yet completed its review of this lesson plan, and no training has been conducted based upon it.

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

### *Paragraph U119 – Training on 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 last assessed the DPD's compliance with paragraph U119 during the quarter ending February 28, 2006, finding the DPD in non-compliance. As of the end of that quarter, the DPD had not submitted a lesson plan that addresses the requirements of this paragraph.

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

On August 31, 2006, the last day of the current quarter, the DPD submitted to the Monitor a lesson plan entitled *Supervisory Leadership and Accountability*, which is intended to address the requirements of paragraph U119, among others. Due to the timing of submission, the Monitor has not yet completed its review of this lesson plan, and no training has been conducted based upon it.

In its Twelfth Quarter Status Report, the DPD indicated that a lesson plan entitled *Police-Citizens Interaction (Legal)* is also intended to address the requirements of paragraph U119. The status report indicated that the lesson plan would be submitted in September 2006.<sup>82</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs 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 February 28, 2006, finding the DPD in non-compliance. As of the end of that quarter, the DPD had not submitted a lesson plan to the Monitor in response to paragraph U120. The DPD also indicated that it began training supervisors on the IMAS in November 2005. The Monitor reiterated its recommendation that the DPD submit this lesson plan to the Monitor before conducting the training, so that any issues can be identified prior to delivery.

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<sup>82</sup> The Monitor had not received the lesson plan as of September 29, 2006.

### *Current Assessment of Compliance*

On August 31, 2006, the last day of the current quarter, the DPD submitted to the Monitor a lesson plan entitled *Supervisory Leadership and Accountability*, which is intended to address the requirements of paragraph U120, among others. Due to the timing of submission, the Monitor has not yet completed its review of this lesson plan.

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 February 28, 2006. 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 to all officers who conduct investigations to ensure that their recommendations regarding dispositions are unbiased, uniform and legally appropriate. The lesson must instruct on appropriate burdens of proof, interview techniques and the factors to consider when evaluating officer, complainant or witness credibility.

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 February 28, 2006, finding the DPD in non-compliance with each. The Monitor determined that the DPD's *External Complaints Process* and *The Office of the Chief Investigator In-Service* lesson plans did not address all of the specific requirements of the paragraphs. In addition, as of the end of that quarter, the DPD had not submitted a revised lesson plan or any other documentation to address all of the requirements of the paragraphs.

### *Current Assessment of Compliance*

August 31, 2006, the last day of the current quarter, the DPD submitted to the Monitor a lesson plan entitled *Supervisory Leadership and Accountability*. The DPD's Twelfth Quarter Status

report indicates that this lesson plan is intended to address the requirements of paragraph U122; however, the *Instructor's Guide* for this lesson plan, which lists the paragraphs addressed by the lesson plan under *Stated Objectives*, does not include paragraph U122. In any event, due to the timing of its submission, the Monitor has not yet completed its review of this lesson plan.

Also in its Twelfth Quarter Status Report, the DPD indicated that its *Detective School Lesson Plan* is intended to address the requirements of paragraph U121 and U122, and will be submitted in September 2006.<sup>83</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs U121-122.

## H. FIELD TRAINING

This section comprises paragraph U123 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending February 28, 2006. 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 assessed the DPD's compliance with paragraph U123 during the quarter ending February 28, 2006, finding the DPD in non-compliance. In response to this paragraph, the DPD submitted its 40-hour basic certification course for FTOs (FTO Protocol) to the DOJ for review and approval.<sup>84</sup> On January 3, 2006, the DOJ requested copies of additional documents that were mentioned in the protocol but not submitted with it. According to DOJ personnel, the DOJ received the requested forms on January 6, 2006. However, the Monitor noted that until such time that the FTO Protocol is approved by DOJ and delivered to appropriate DPD personnel, the DPD will be unable to achieve compliance with this paragraph.

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<sup>83</sup> The Monitor had not received this lesson plan as of September 29, 2006.

<sup>84</sup> The DPD submitted the FTO Protocol to the DOJ on February 12, 2004 for review and approval. The DOJ provided the DPD with a letter on April 20, 2004 with comments and recommendations. The DPD re-submitted the FTO protocol to the DOJ on October 3, 2005.

### *Current Assessment of Compliance*

The DOJ approved the FTO protocol on April 11, 2006. The Monitor will evaluate the DPD's implementation of the Protocol during the next period for which this paragraph is scheduled for review.

Based on the foregoing, the Monitor has not yet evaluated the DPD's 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. Due to the fact that most of the UOF CJ policies have not yet been effectively implemented and training has not occurred, the Monitor has not yet considered investigations at a stage where they could be subject to reopening. The Monitor will do so at an appropriate time during a future quarter.

## **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 August 31, 2006.

As described in previous quarterly reports, the organization of the COC CJ paragraphs vary, in that some paragraphs have separate but related "policy"-required paragraphs within the COC CJ,<sup>85</sup> while others do not.<sup>86</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 reviews for written guidance or instruction<sup>87</sup> in order 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.

### **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 C14-21<sup>88</sup> during the quarter ending February 28, 2006, finding the DPD in compliance with paragraph C20 (smoking policy) but in non-compliance with the remaining paragraphs. There were no changes to DPD buildings, nor were there changes in the status of the DPD's compliance with the Life Safety Code since the Monitor's previous assessment of non-compliance. The City was considering whether to retrofit the existing buildings, wait until the construction of a new regional detention facility, or and/utilize the Wayne County Sheriff's jail facilities to house felony detainees. In addition, as of the end of that quarter, the DPD had not submitted a comprehensive FSP for all buildings that maintain holding cells, not had the DPD submitted a policy or protocol containing the requirements regarding and/or procedures for the proper storage of flammable liquids or

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<sup>85</sup> See, for example, paragraph C39 – Cleanliness of Cells and paragraph C40 – Cleaning Policy.

<sup>86</sup> See, for example, paragraph C45 - Access to Toilets and Potable Water.

<sup>87</sup> As described in the Introduction to the Methodologies, this is the Policy Component of compliance.

<sup>88</sup> During the quarter ending August 31, 2005, the Monitor found the DPD in compliance with paragraph C22, as the Monitor confirmed that all Kane Fiber Ceiling Tiles had been removed from DPD buildings containing holding cells. The DPD will remain in compliance with paragraph C22 unless it begins using buildings that contain Kane Fiber Ceiling Tiles to detain prisoners.

combustible materials and no training or instruction been provided giving appropriate DPD employees guidance related to the proper storage of combustible materials.<sup>89</sup> The DPD's Holding Cell Compliance Committee (HCCC) also indicated that the paragraph C19 requirement to routinely inspect, test and maintain the fire safety equipment had not yet been addressed by the DPD. Finally, during random unannounced onsite inspections of DPD buildings containing holding cells, the Monitor ascertained that the storage lockers are being utilized to store flammable liquids; however, in several Districts, the Desk OIC was unable to locate the key to the storage cabinets.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs C14-21 during the quarter ending November 30, 2006.

## **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. These procedures and policies are to 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 February 28, 2006. The Monitor found the DPD in non-compliance with paragraph C23 and withheld a determination of compliance with paragraphs C24-25. The DPD re-submitted its draft Comprehensive EPP to the DOJ for review and approval and was awaiting feedback as of the end of the quarter.<sup>90</sup>

The Monitor is scheduled to again assess the DPD's compliance with paragraphs C23-25 during the quarter ending November 30, 2006.

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<sup>89</sup> On March 16, 2006, after the end of that quarter (i.e. the quarter ending February 28, 2006), the DPD resubmitted a FSP to the DOJ for review and approval. On May 23, 2006, the DOJ granted approval of the DPD's FSP.

<sup>90</sup> On May 23, 2006, the DOJ granted approval of the DPD's EPPs.

### 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 (CMMHSP) must include specific intake screening procedures and medical protocols 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, 2005. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

#### ***Paragraph C26 – Identification and Response for Special Needs***

Paragraph C26 requires the DPD to ensure the appropriate identification of and response to prisoners' medical and/or mental health conditions. The DPD's compliance with paragraph C26 is dependent on the development of the CMMHSP required by paragraphs C27-29. This screening program, including the Detainee Intake Form, must be submitted to the DOJ for review and approval.

#### ***Background***

The Monitor last assessed the DPD's compliance with paragraph C26 during the quarter ending November 30, 2005, finding the DPD in non-compliance due to the fact that the DPD was in non-compliance with paragraphs C27-29.

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

As described below, the DPD is currently in non-compliance with the implementation requirements of paragraphs C27-29. As a result, the Monitor finds the DPD in non-compliance with paragraph C26.

### **Paragraph C27 – Screening Program Development**

Paragraph C27 requires the DPD to develop and implement a comprehensive medical and mental health screening program that must be approved in writing by a qualified medical<sup>91</sup> and mental health<sup>92</sup> professional. Upon their review and approval, the screening program (as part of the CMMHSP) must be submitted to the DOJ for review and approval prior to being implemented. Thereafter, the program must be reviewed and approved in writing by a qualified medical and mental health care professional at least once every year, and prior to any revisions to the program.

#### ***Background***

Compliance with paragraph C27 is dependent on the development and implementation of the CMMHSP. Due to the DPD's inclusion of all of the requirements contained within paragraphs C28-34 within the CCMHSP policies; compliance with paragraph C27 is dependant upon the implementation of paragraphs C28-34.

The Monitor last assessed the DPD's compliance with paragraph C27 during the quarter ending November 30, 2005, finding the DPD in non-compliance. Although the DOJ had approved the documents submitted by the DPD in response to these paragraphs,<sup>93</sup> not all of the policies, forms and logs that make up the DPD's CMMHSP had been effectively disseminated as of the end of that quarter.

As reported in the Monitor's Report for the Quarter Ending November 30, 2005, after the end of that quarter, the Monitor retested the dissemination of the pertinent directives and determined that the DPD adequately disseminated all of the policies that address the CMMHSP to its personnel and posted the forms and logs on the DPD intranet.

As a result, the DPD had achieved compliance with the policy requirements of paragraph C27, among others.

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<sup>91</sup> The term 'qualified medical professional' is defined in the COC CJ (paragraph C1u) as an individual who is currently licensed by the State of Michigan to deliver the health care services they have undertaken to provide.

<sup>92</sup> The term 'qualified mental health professional' is defined in the COC CJ (paragraph C1v) as an individual who is currently licensed by the State of Michigan to deliver the mental health services they have undertaken to provide.

<sup>93</sup> The DPD has appropriately included all of the requirements and related directives, logs and forms for paragraphs C26-33 within its CMMHSP.

## *Current Assessment of Compliance*

During the current quarter, the Monitor began its testing of the DPD's implementation of the policies, forms and logs<sup>94</sup> that make up the CMMHSP. The Monitor conducted onsite inspections of all building containing holding cells,<sup>95</sup> which included reviews of the CMMHSP documentation, observations of intake procedures and facilities, and interviews of holding cell area personnel.<sup>96</sup> The Monitor noted the following, during these inspections:

- Directive 305.1, *Detainee Intake and Assessment* refers to the *Platoon Daily Detainee Summary*, which is no longer in use.
- Directive 305.1, *Detainee Intake and Assessment*, also requires that the intake screening of detainees occur within two hours of arrest; however, the terminology in the COC CJ requires that the intake screening occur within two hours of "intake." Although the DPD could require that intake screening occur within two hours of arrest, rather than intake, this standard may be difficult to achieve in many instances, such as when a prisoner is conveyed directly to a hospital for medical reasons or when delays associated with a tactical situation or crime scene investigation delay the intake screening. Conversely, the DPD should ensure that unnecessary delays, such as conveyance to an offsite location for purposes of interrogation, do not delay the intake screening. Therefore, the Monitor recommends that the DPD define the term "intake" within the policy as the time a prisoner arrives at any DPD building.
- The Monitor noted that revisions should be made to the *Detainee Intake Form* (DPD 651), which has been incorporated into the electronic Live Scan system. The form within the Live Scan system is titled *Medical Intake Form*, which is not consistent with the terminology in the directive, and the form does not contain a signature block for supervisors to indicate their approval of actions being taken in response to prisoner medical conditions.
- Some districts are using a "Prisoner Info Sheet" to record prisoner information, which is filled out by the arresting officer(s), and given to the Detention Facility Officer (DFO) /

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<sup>94</sup> The DPD's policies, forms and logs that make up the CMMHSP are Directive 305.1, *Detainee Intake and Assessment*; Directive 305.5, *Detainee Health Care*; Directive 305.7, *Transportation of Detainees*; Directive 403.2, *Infectious Disease Control Policy*; Training Directive 04-05, *Detainee Suicide Prevention – Managing the Risk; Placard (flowchart) with Guidelines for Prisoner Screening*; DPD 651, *Detainee Intake Form*; *Detainee Medical Care/Referral Form*; DPD 661a, *Mental Health High Risk Monitoring Log*; DPD 661, *Medical Health High Risk Monitoring Log*; DPD 664, *Detainee Medical Treatment/Medication Disbursement Log*; and, DPD 662, *Detainee Custodial Care Transfer Log*.

<sup>95</sup> These inspections were conducted on August 8-10, 2006. The Monitor inspected the five DPD buildings that process and house prisoners (Southwestern, Northeastern, Western, Eastern, and Northwestern). The Monitor confirmed that the Central District no longer processes or houses detainees and the DRH holds but does not process detainees.

<sup>96</sup> The detailed findings resulting from the Monitor's inspections are described below under the Current Assessment of Compliance for paragraphs C28-34.

Police Detention Office (PDO) prior to the processing of the detainee. This sheet contains the arrest time, along with other preliminary info. However this sheet is not referred to within the DPD's CMMHSP, has not been submitted to the Monitor in response to any particular COC CJ requirements, and is formatted and designed differently in each of the districts that are using it. Although this sheet may be useful to document and incorporate the prisoner health information acquired by the arresting and/or transporting officers (as required by subparagraph C28e), if the DPD chooses to use this form, it should be incorporated into the CMMHSP and used consistently throughout the DPD.

It is recommended that these revisions to the CMMHSP be made as soon as possible in order to ensure that DPD personnel have access to the most current policies and to ensure that the upcoming training refers to most current procedures.

On August 2, 2006, the Monitor requested that the DPD provide documentation demonstrating the annual review and approval of the CMMHSP by qualified medical and mental health care professionals. The DPD submitted such documentation on August 17, 2006 and indicated the requisite review occurred on May 26, 2006. It is noted that the qualified medical and mental health care professionals must also review and approve any revisions; this includes the revisions recommended above.

As described below, the DPD is currently in non-compliance with the implementation requirements of paragraphs C28-29 and C31-33. Additionally, the policy requirements of paragraph C27 are no longer in compliance. As a result, the Monitor finds the DPD in overall non-compliance with paragraph C27.

### **Paragraph C28 – Minimum Standards for Screening Program**

Paragraph C28 stipulates the minimum required standards that must be implemented in the new DPD detainee screening program. The program must provide a mechanism to enable DPD officers to identify individuals with medical or mental health conditions or who are at risk of committing suicide, have been designated as a suicide risk during prior incarcerations and persons who have contraindications to chemical spray. Furthermore, the process must require that the DPD follow a standard intake procedure for each individual entering into DPD custody and require that intake screening be conducted within two hours of intake and through a verbal exchange between the DPD and prisoner. Finally the process must incorporate all health information pertaining to a prisoner acquired by the arresting or transporting officer.

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph C28 during the quarter ending November 30, 2005, finding the DPD in non-compliance. Although the DOJ had approved the CMMHSP and related forms and logs submitted by the DPD in response to this paragraph, they had not been effectively disseminated as of the end of that quarter. As described in the Background to paragraph C27, above, after the end of that quarter, the Monitor determined that

the DPD adequately disseminated all of the policies that address the CMMHSP to its personnel and posted the forms and logs on the DPD intranet. As a result, the DPD had achieved compliance with the policy requirements of paragraph C28.

### *Current Assessment of Compliance*

As described in the Current Assessment of Compliance for paragraph U27, above, during the current quarter, the Monitor began testing the implementation of the CMMHSP, including the requirements of this paragraph, by conducting onsite inspections of all building containing holding cells.<sup>97</sup> These inspections included a review of the CMMHSP documentation, observations of intake procedures and facilities, and interviews of holding cell area personnel. The Monitor's findings in relation to paragraph U28 are as follows:

#### *Documentation Review*

The Monitor reviewed the documentation contained within the Detainee File Folders (DFF) and if present, the Confidential Medical Envelopes (CME) for a total of 95 detainees.<sup>98</sup> All of the DFFs contained a completed Medical Intake Form (MIF), 29 of the 95 identified a medical condition, and 1 also identified a risk of suicide. Although the time that the intake screening was completed is indicated on each form, none of the documents reviewed within the DFF or CME indicated the time of intake. The DPD has indicated that the time of intake, be it the time of arrival or the time of arrest, is noted within the desk blotter. The COC CJ does not require that the DPD record the time of intake in an auditable form; however, the desk blotter is specifically excluded by COC CJ definition as an appropriate auditable log. The Monitor and the AT have previously experienced difficulties when attempting to glean information from the desk blotter to determine compliance. Specifically, the penmanship within the desk blotter is often unreadable, is inconsistently recorded, and does not always contain the time the detainee was arrested or arrived at the District. These issues have been communicated to the DPD by the Monitor and by the AT within related audit reports.

For the above reasons, the Monitor did not review the desk blotter and consequently did not make a determination of whether the screening of prisoners occurred within 2 hours of intake as

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<sup>97</sup> These inspections were conducted on August 8-10, 2006. The Monitor inspected the five DPD buildings which process and house prisoners (Southwestern, Northeastern, Western, Eastern, and Northwestern). The Monitor confirmed that the Central District no longer processes or houses detainees and the DRH holds but does not process detainees.

<sup>98</sup> The Monitor originally requested copies of all detainee intake forms from May 1, 2006 through June 10, 2006 with the intention of selecting a random sample of detainees for review to assess the implementation of the CMMHSP. However, the DPD subsequently indicated that providing the Monitor with photocopies of such a high volume of documentation would create a strain on personnel resources. As a result, the Monitor revised its request for the DPD to provide the Monitor "access only" to this documentation, eliminating the need for copies. As a result of not acquiring a definite population from which to randomly sample, the Monitor employed alternate random sampling methods onsite.

required. The Monitor recommends that the DPD record the time of intake on a form or log other than the desk blotter because the lack of standards in relation to manual entries into the desk blotter is inherently unreliable.<sup>99</sup>

Additionally, the Monitor noted that the level of supervision/classification section was not completed on 34 of the 95 MIFs reviewed. The inclusion of the documented decision regarding the level of supervision/classification for detainees (i.e., general population, high risk or constant supervision) is a critical aspect of the detainee screening process and should not be omitted.

### *Interviews*

The Monitor queried both detention officers and holding cell area supervisors (at least one in each District) regarding their responsibilities and the appropriate response/procedures. In most cases, the personnel interviewed were able to articulate the proper procedures and their responsibilities with regard to the CMMHSP and the specific requirements of this paragraph.

### *Observations*

During its inspections, the Monitor observed the intake of two detainees.<sup>100</sup> During one of the intakes observed the detention officer followed the standard intake procedure through a verbal exchange; the officer did an outstanding job of screening the detainee and was able to identify that the detainee was depressed and at risk. The detainee was constantly supervised until transported to DRH for assessment. During the other intake observed, the Monitor heard the detention officer and the detainee have a brief verbal exchange regarding detainee contact information; however, the detention officer did not ask the detainee all of the requisite questions on the DIF.<sup>101</sup>

The DPD has not yet effectively implemented all of the requirements of paragraph C28, primarily because the level of supervision/classification is not being documented and the time of intake is not contained within the CME. The Monitor recommends that once the CMMHSP documentation is revised to reflect current procedures and the training of the holding cell area

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<sup>99</sup> The DPD has recently indicated that an electronic desk blotter is currently under consideration. The Monitor notes that the implementation of an electronic desk blotter could alleviate many of the difficulties surrounding a review of the blotter for compliance determinations.

<sup>100</sup> Throughout several COC CJ assessments, the Monitor will refer to observations made of the intake of these two detainees as relevant to the requirements of the paragraph being assessed. It should be noted that the Monitor's final assessments are not based solely on these observations.

<sup>101</sup> The Monitor noted that all of the boxes on the DIF had been marked; when asked about the DIF, the detention officer responded by stating that all of the questions had been asked when escorting the detainee from the holding cell to the processing area. The practice of asking the detainee about pertinent health information within an approximate 30 second time period, while walking down a hall, is not consistent with appropriate screening procedures. This was immediately brought to the attention of the holding cell area supervisor and the District CO.

supervisors and detention officers is accomplished, the DPD will be in a better position to implement the entire CMMHSP.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C28.

### **Paragraph C29 – Minimum Standards for Medical Protocols**

Paragraph C29 provides the minimum standards for the medical protocols required under the comprehensive medical and mental health screening program. The protocols must identify the specific actions the DPD must take in response to the medical information acquired during the prisoner screening or detention. They must also require prior supervisory review and written approval, absent exigent circumstances, of all decisions made in response to acquired medical information.

#### ***Background***

The Monitor last assessed the DPD's compliance with paragraph C29 during the quarter ending November 30, 2005, finding the DPD in non-compliance. Although the DOJ had approved the CMMHSP and related forms and logs submitted by the DPD in response to this paragraph, they had not been effectively disseminated as of the end of that quarter. As described in the Background to paragraph C27, above, after the end of that quarter, the Monitor determined that the DPD adequately disseminated all of the policies that address the CMMHSP to its personnel and posted the forms and logs on the DPD intranet. As a result, the DPD had achieved compliance with the policy requirements of paragraph C29.

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

As described in the Current Assessment of Compliance for paragraph C27, above, during the current quarter, the Monitor began testing the implementation of the CMMHSP, including the requirements of this paragraph, by conducting onsite inspections of all building containing holding cells. The Monitor's findings in relation to paragraph C29 are as follows:

#### ***Documentation Review***

As described in the Current Assessment of Compliance for paragraph C28, documentation for the 95 detainees selected for review by the Monitor identified that 29 of the 95 detainees had medical conditions. For these detainees, only one of the 29 DFFs contained documentation demonstrating that prior supervisory approval was obtained for actions taken in response to medical conditions. The DPD has indicated that this information is located on the *Detainee Medical Care Referral Form*, and that the implementation of this form has not yet been accomplished.<sup>102</sup>

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<sup>102</sup> The Monitor noted that the form was not present within the DFF or CME for 28 of the 29 detainees.

### *Interviews*

The Monitor queried both detention officers and holding cell area supervisors (at least one in each District) regarding their responsibilities and the appropriate response/procedures. All but one detention officer were able to articulate the proper procedures and their responsibilities with regard to the specific requirements of this paragraph.<sup>103</sup>

### *Observations*

During its inspections, the Monitor noted that the *Placard with Guidelines for Detainee Screening* was posted either within the processing area or near the front desk area. The Monitor also observed the intake of two detainees. During one of the intakes observed the detention officer identified that the detainee was depressed and at risk. The detention officer immediately notified the supervisor who, in turn, made the decision to transport the DRH for assessment; the detainee was constantly supervised until transported.

The DPD has not yet effectively implemented all of the requirements of paragraph C29, primarily because the prior supervisory approval is not being documented. Once the CMMHSP documentation is revised to reflect current procedures and the training of the holding cell area supervisors and detention officers is accomplished, the DPD will be in a better position to implement the entire CMMHSP.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C29.

### **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 Monitor last assessed the DPD's compliance with paragraph C30 during the quarter ending November 30, 2005. Although the DPD was found to be in compliance with the policy requirements of paragraph C30, due to the interrelatedness of the requirements of this paragraph with the Medical and Mental Health Care Policies (paragraphs C26-33), and the DPD's inclusion

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<sup>103</sup> The one detention officer was not aware that supervisory approval is required prior to taking action in response to medical conditions. This officer believed that supervisory approval is only required when the detention officer was not able to "handle" the situation.

of Directive 403.2, *Infectious Disease Control*, within its CMMHSP, the Monitor opted to complete its evaluation of the implementation of Directive 403.2, *Infectious Disease Control*, in conjunction with its evaluation of the entire CMMHSP. As a result, the Monitor had not evaluated the DPD's implementation of the policy as of the end of that quarter.

### *Current Assessment of Compliance*

As described in the Current Assessment of Compliance for paragraph C27, above, during the current quarter, the Monitor began testing the implementation of the CMMHSP, including the requirements of this paragraph, by conducting onsite inspections of all building containing holding cells. The Monitor's findings in relation to paragraph C30 are as follows:

#### *Documentation Review*

As described in the Current Assessment of Compliance for paragraph C28, the Monitor reviewed the documentation contained within the DFFs and CMEs for a total of 95 detainees. Two of the 95 DFFs indicated that the detainee had an infectious disease (HIV and Hepatitis C). The documentation associated with these particular detainees did not indicate whether the detainees were segregated as required by the policy. In addition the level of supervision (classification) section on each form was not completed.

#### *Interviews*

The Monitor queried holding cell area supervisors (at least one in each District) regarding their responsibilities and the appropriate response/procedures when a detainee has been identified as having an infectious disease. Only four of the six supervisors articulated that the detainee must be separately housed. Only one of the six supervisors stated that the information should be communicated with oncoming shift personnel. All of the supervisors stated they would convey the detainee to DRH for an evaluation and indicated the appropriate use of personal protective equipment.

#### *Observations*

During its inspections, the Monitor noted that each of the buildings containing holding cells had appropriate bio-hazard containers present. The Monitor noted that two of the districts did not have a supply of bio-hazard bags for storage of contaminated clothing.

Based upon the results of the Monitor's interviews, it appears that the requirements of paragraph C30 are generally known by supervisory personnel. However, the documentation indicating that the detainees with infectious diseases were properly housed was not being completed by the holding cell area personnel.

Based on the fact that the documentation reviewed resulted in only two detainees out of 95 as having an identified infectious disease; the Monitor is withholding a determination of

compliance with the requirements of paragraph C30. During the next scheduled review of this paragraph, the Monitor will conduct testing specific to a population of prisoners with infectious diseases, rather than all prisoners, in order evaluate more than two incidents.

### **Paragraph C31 – Prisoner Health Information Protocol**

Paragraph C31 requires the DPD to develop and implement procedures for updating and exchanging prisoner health information. These procedures must ensure that prisoner health information is properly recorded at intake, and that it is readily available to all relevant medical and transporting personnel in a manner consistent with relevant federal and state confidentiality statutes. The procedures must also ensure that prisoners' health information is continually updated to include any additional relevant information acquired during their detention. Furthermore, these procedures must ensure that the information is documented and communicated between consecutive shifts. Finally, they must ensure that prisoners' health information travels with them when they are transferred to another facility.

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph C31 during the quarter ending November 30, 2005. Although the DOJ had approved the CMMHSP and related forms and logs submitted by the DPD in response to this paragraph, they had not been effectively disseminated as of the end of that quarter. As described in the Background to paragraph C27, above, after the end of that quarter, the Monitor determined that the DPD adequately disseminated all of the policies that address the CMMHSP to its personnel and posted the forms and logs on the DPD intranet. As a result, the DPD had achieved compliance with the policy requirements of paragraph C31.

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

As described in the Current Assessment of Compliance for paragraph C27, above, during the current quarter, the Monitor began testing the implementation of the CMMHSP, including the requirements of this paragraph by conducting onsite inspections of all building containing holding cells. The Monitor's findings in relation to paragraph C31 are as follows:

### *Documentation Review*

As described in the Current Assessment of Compliance for paragraph C28, documentation for the 95 detainees selected for review by the Monitor identified that 29 of the 95 detainees had medical conditions. None of the DFFs for these 29 detainees contained the *Detainee Medical Care Referral Form*, which contains relevant information regarding the status and response of the detainee's medical conditions. Although these forms may have been present available to holding cell area personnel during the detainee's incarceration, they were not present in the DFFs reviewed by the Monitor. The Monitor also noted many of the confidential medical forms are not filed within the CMEs as required. According to DPD District personnel, the forms are often located in "to be filed" boxes on members' desks or are sent to other DPD entities and not returned to the CME for filing. Additionally, the CME was either not present or was completely empty (not being used to hold confidential documentation) for 11 of the 95 DFFs reviewed. The Monitor notes that this practice is inconsistent with federal and state confidentiality statutes and should be addressed immediately.

### *Interviews*

The Monitor queried both detention officers and holding cell area supervisors (at least one in each District) regarding their responsibilities and the appropriate response/procedures related to the requirements of this paragraph. Only one of the five detention officers interviewed stated that the DFFs are supposed to be reviewed by the oncoming shift. The remaining four detention officers described various methods of communication, such as verbal, grease board, logbook, etc. One of the six supervisors stated that the information should be communicated with oncoming shifts personnel.

### *Observations*

The Monitor also observed the intake of two detainees. The detention officer recorded the prisoner health information during one of the intakes; however, during the other intake observed, the Monitor heard the detention officer and the detainee have a brief verbal exchange regarding detainee contact information; but the detention officer did not ask the detainee all of the requisite questions on the DIF.<sup>104</sup>

The DPD has not yet effectively implemented all of the requirements of paragraph C31, primarily because the DIF and CME are not being consistently used. Once the CMMHSP documentation is revised to reflect current procedures and the training of the holding cell area

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<sup>104</sup> The Monitor noted that all of the boxes on the DIF had been marked and when asked about it the detention officer responded by stating that all of the questions had been asked when escorting the detainee from the holding cell to the processing area. The practice of asking the detainee about such pertinent health information during the moments while walking down a hall, is inconsistent with appropriate screening procedures. This was brought to the attention of the holding cell area supervisor and the District CO at the time of the observation.

supervisors and detention officers is accomplished, the DPD will be in a better position to implement the entire CMMHSP.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C31.

### **Paragraph C32 – Prescription Medication Policy**

Paragraph C32 requires the DPD to develop a Prisoner Prescription Medication Policy in consultation with qualified medical and mental health professionals that ensures prisoners are provided with prescription medications as directed. The policy must be approved in writing by medical and mental health professionals and submitted to the DOJ for review and approval within three months of the effective date of the UOF CJ. The DPD must implement the policy within three months of the DOJ's approval. Thereafter, the policy must be reviewed and approved, in writing, by qualified medical and mental health professionals on an annual basis and prior to any revisions to the policy.

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph C31 during the quarter ending November 30, 2005. Although the DOJ had approved the CMMHSP and related forms and logs submitted by the DPD in response to this paragraph, they had not been effectively disseminated as of the end of that quarter. As described in the Background to paragraph C27, above, the Monitor determined that the DPD adequately disseminated all of the policies that address the CMMHSP to its personnel and posted the forms and logs on the DPD intranet. As a result, the DPD had achieved compliance with the policy requirements of paragraph C32.

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

As described in the Current Assessment of Compliance for paragraph C27, above, during the current quarter, the Monitor began testing the implementation of the CMMHSP, including the requirements of this paragraph by conducting onsite inspections of all building containing holding cells. The Monitor's findings in relation to paragraph C32 are as follows:

### ***Documentation Review***

As described in the Current Assessment of Compliance for paragraph C28, the Monitor reviewed the documentation contained within the DFFs and CMEs for a total of 95 detainees. The documentation indicated that medications were prescribed for 27 of the 95 detainees. A *Detainee Medication Distribution Log* was completed properly 11 of these 27 detainees; for the remaining 16 detainees, the Monitor was unable to determine if medications were distributed properly because no *Detainee Medication Distribution Logs* were contained within the DFFs.

### *Interviews*

During the inspections of medication cabinets, logs, etc. the Monitor queried detention officers (at least one in each District) regarding procedures related to prisoner medications. Overall, the detention officers were able to articulate the proper procedures and their responsibilities which is commendable considering the formal training related to these procedures has not yet been accomplished.

### *Observations*

During the inspections, the Monitor noted that in each of the five Districts, the medication cabinet was secured. In three of the five Districts, no medication was contained in the cabinet. In one District, the medication had recently been placed into the cabinet and no log had yet been initiated. In another District, the cabinet contained medication for two detainees, and the associated logs were current and demonstrated that the medication had been disbursed as prescribed. The Monitor observed no non-prescribed medications in the cabinets or otherwise, in keeping with subparagraph C32b's prohibition on distributing non-prescribed medications. Additionally, the Monitor did not observe any unused medications that were prescribed to prisoners who were no longer being held in the holding cells, in keeping with subparagraph C32g's requirement that medications are provided to prisoners upon their release.

The DPD has not yet effectively implemented all of the requirements of paragraph C31, primarily because the medication distribution log is not being completed. . The Monitor recommends that once the CMMHSP documentation is revised to reflect current procedures and the training of the holding cell area supervisors and detention officers is accomplished, the DPD will be in a better position to implement the entire CMMHSP.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C32.

### **Paragraph C33 – Suicide Precaution Clothing**

Paragraph C33 requires the DPD to provide appropriate clothing to all individuals placed under suicide watch while in detention.

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph C31 during the quarter ending November 30, 2005. Although the DOJ had approved the CMMHSP and related forms and logs submitted by the DPD in response to this paragraph, they had not been effectively disseminated as of the end of that quarter. As described in the Background to paragraph C27, above, the Monitor determined that the DPD adequately disseminated all of the policies that address the CMMHSP to its personnel and posted the forms and logs on the DPD intranet. As a result, the DPD had achieved compliance with the policy requirements of paragraph C33.

### *Current Assessment of Compliance*

As described in the Current Assessment of Compliance for paragraph C27, above, during the current quarter, the Monitor conducted on-site inspections of all building containing holding cells. During the inspections, the Monitor attempted to determine if the clothing identified for use with prisoners who may be suicidal was in adequate supply. The inspections revealed that all but one District had an adequate supply of suicide clothing.<sup>105</sup> Although this particular District could acquire suicide gowns from other Districts if necessary; considering that situations could arise that necessitate a more urgent need and that DPD policy (*Directive 305.1, Detainee Intake and Assessment*) requires that all detainees under suicide precautions be provided suicide gowns, this District should have ordered an adequate supply.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C33.

### *Paragraph C34 – Suicide Hazard Removal*

Paragraph C34 requires the DPD to remove or make inaccessible all suicide hazards in holding cells, including exposed pipes, radiators and overhead bars.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph C34 during the quarter ending November 30, 2005 finding the DPD in compliance. The Monitor determined that there were no suicide hazards in any holding cells being utilized by the DPD to hold detainees.<sup>106</sup>

### *Current Assessment of Compliance*

As described in the Current Assessment of Compliance for paragraph C27, above, during the current quarter, the Monitor conducted onsite inspections of all building containing holding cells. During these inspections, the Monitor determined that there were no suicide hazards in any holding cells currently being utilized by the DPD.

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph C34.

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<sup>105</sup> The Northwestern District was out of suicide gowns. The supervisor present at the time of the inspection was not aware of the lack of supply and advised that suicide gowns would be ordered. On September 29, 2006, after the end of the quarter, the Monitor conducted a follow up onsite inspection at the Northwestern District to check on the status of the supply of suicide gowns. At first once again, holding cell area staff were unable to locate any suicide gowns at the time of the Monitor's inspection; however, the Compliance Liaison Officer was able to locate 15 gowns in an office within the building.

<sup>106</sup> For those holding cells that the Monitor identified during previous inspections as containing suicide hazards, the DPD had either removed the suicide hazards or was no longer using the holding cells to hold prisoners.

## V. 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. Each precinct, and the entire Department, must have clear and concise policies, procedures and forms that will ensure the safety and well-being of prisoners.

The Monitor last assessed the DPD's compliance with paragraphs C35-38 during the quarter ending February 28, 2006, finding the DPD in overall non-compliance with each, although the Monitor did find the DPD in compliance with the policy requirements of paragraphs C36-38. The Monitor began testing the implementation of Directive 305.1, *Detainee Intake/Assessment*, and the Detainee Intake Form (DIF), DPD Form 651 and identified deficiencies in the prisoner screening process. In addition, the Monitor determined that while the required cell checks may be occurring, the documentation of these cell checks was not sufficient. Finally, while the DPD appeared to be complying with most requirements regarding observation cells, it was not conducting continual direct or onsite remote observation of all "observation cells" while they were occupied because there were times when they were only conducting 15 minute cell checks.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs C35-38 during the quarter ending November 30, 2006.

## 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 C39-45<sup>107</sup> during the quarter ending May 31, 2006. The Monitor found the DPD in compliance with paragraphs C39, which requires the DPD to ensure that all holding cells are maintained in a clean and sanitary manner; C42, which requires the DPD to provide adequate ventilation for all buildings containing holding cells;<sup>108</sup> C43, which requires the DPD to repair all broken or malfunctioning lighting, toilets, sinks and windows in holding cells and observation cells; and C45, which requires the DPD to provide all prisoners with reasonable access to toilets and potable water 24 hours-a-day.. The Monitor found the DPD in non-compliance with paragraph C44, which 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. The Monitor found the DPD in compliance with the policy requirements of paragraphs C40 and C41 but did not complete its evaluation of the DPD's overall compliance with the paragraphs, as further evaluations of the documentation requirements of the paragraphs were pending.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs C39-45 during the quarter ending February 28, 2007.

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<sup>107</sup> Paragraph C46 requires the DPD to ensure that all Hepa-Aire purifiers comply with the Michigan Occupational Safety and Health Agency standards. The Monitor concluded that the DPD was in compliance with this paragraph during the quarter ending August 31, 2005 (and during prior assessments), as all Hepa-Aire purifiers had been removed from DPD buildings containing holding cells. The Monitor will not assess compliance with paragraph C46 again unless Hepa-Aire purifiers are re-installed in buildings containing holding cells.

<sup>108</sup> The Monitor did not assess the DPD's compliance with the paragraph 42 requirement that the DPD provide adequate heating for all buildings containing holding cells. The Monitor will conduct an assessment of adequate heating during the winter months and report those findings during the next regularly scheduled review of this paragraph (the DPD is in compliance with the policy requirements of the paragraph).

## 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 C48 during the quarter ending November 30, 2005. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### *Paragraphs C47-48 – Accommodations for Persons with Disabilities and Policy Concerning the Detention of Persons with Disabilities*

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

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 paragraphs C47 and C48 during the quarter ending November 30, 2005. The Monitor did not complete its assessment of compliance with paragraph C47 and found the DPD in non-compliance with paragraph C48. The Monitor conducted onsite inspections, interviewed DPD personnel, and requested documentation regarding the housing and/or conveyance of prisoners who had disabilities. As described within the Monitor's report for that quarter, the DPD could not demonstrate its compliance with the requirements of paragraph U47 and had not yet disseminated its related policies as of the end of that quarter. After the end of that quarter, however, the Monitor determined that the DPD effectively disseminated Directive 305.1, *Detainee Intake and Assessment*. As a result, the DPD has achieved compliance with the policy requirements of paragraphs C47-48.

### *Current Assessment of Compliance*

Throughout the current quarter and since the last assessment of this paragraph, the Monitor has had ongoing discussions with the DPD and HCCC regarding their intended response to these

paragraphs. During these discussions, the DPD has stated that the installation of handicap accessible toilets in specific holding cells within the Northwestern District and the installation of TDD machines within each of the Districts will effectively accommodate prisoners with disabilities.<sup>109</sup>

As of the end of the quarter these installations had not yet been accomplished. As noted in previous Monitor's report, the change in the designated facilities affects the content of Directive 305.1, *Detainee Intake/Assessment*, as that directive articulates the use of facilities that have since been closed or will no longer be used to house disabled prisoners.<sup>110</sup>

Based on the foregoing, the Monitor finds the DPD in compliance with the policy requirements, but in non-compliance with the implementation requirements of paragraphs C47-48. As a result, the Monitor finds the DPD in overall non-compliance with paragraphs C47-48.

## 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 May 31, 2006, finding the DPD in compliance with the policy requirements but in non-compliance with the implementation requirements of the paragraphs. During onsite inspections at all DPD buildings containing holding cells, the Monitor found that the specified schedule of food service to prisoners, as described within the Food Service policy, was not being followed. However, prisoners who were held more than six hours had been provided with meals, and the Monitor did not identify any food that had exceeded the expiration date and determined that the internal temperatures of the refrigerators were within the range required by the policy.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs C49-50 during the quarter ending February 28, 2007.

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<sup>109</sup> The DPD has recently indicated that the toilets will be delivered by the manufacturer on September 13, 2006, and will be installed within approximately two weeks after delivery.

<sup>110</sup> On December 20, 2005, the DPD provided the Monitor with a notice that was emailed to all operations executives on October 29, 2005, advising that the Western and Northwestern Districts are the primary facilities to be used for holding prisoners with disabilities and that they were to advise all personnel; however, the DPD has now decided that only the Northwestern District will be used to house prisoners requiring accommodations for disabilities.

## 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 May 31, 2006, finding the DPD in compliance with the policy requirements but in non-compliance with the implementation requirements of the paragraph. During onsite inspections of all DPD building containing holding cells, the Monitor found that in one District, the members assigned to the holding cell areas could not locate the personal hygiene items, including the feminine hygiene products, and were not aware of the requirement to provide these items to prisoners.

The Monitor is scheduled to again assess the DPD's compliance with paragraph C51 during the quarter ending February 28, 2007.

## 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 obtain DOJ's approval.

The Monitor last assessed the DPD's compliance with paragraphs C52-54 during the quarter ending February 28, 2006. 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 February 28, 2006, finding the in compliance with the policy requirements but in non-compliance with the implementation requirements of the paragraphs.

## *Current Assessment of Compliance*

As described in the Current Assessment of Compliance for paragraphs U27-33, above, during the current quarter, the DPD submitted the HCCC's *Use of Force in Holding Cells Investigations Audit*, required by subparagraph C65a, on the required due date of July 31, 2006. The audit included a review for compliance with all of the specified requirements included within paragraphs C52-54 and all related DPD policies.

The Monitor conducted an evaluation of the audit report, audit work plan, and audit working papers. The Monitor identified deficiencies in the audit, which prevented the Monitor from being able to rely upon its findings. However, based upon the review conducted, and in accordance with the Methodologies, where the audit concluded that the DPD was in non-compliance with a Consent Decree requirement, the Monitor has adopted those findings.<sup>111</sup>

### *Paragraphs C52-53 – Compliance with Use of Force Policies*

Based on the investigations reviewed, the *Use of Force in Holding Cells Investigations Audit* concluded that the DPD did not meet all of the requirements of paragraphs C52-53. For example, the force used did not comply with the use of force policies, and officers did not use appropriate precautions when dealing with prisoners.

### *Paragraph C54 – Handcuffing of Prisoners to Fixed Objects*

The *Use of Force in Holding Cells Investigations Audit* concluded that the DPD met all of the requirements of paragraph C54. Based upon the Monitor's review of the audit and the deficiencies identified therein, the Monitor is not able to rely upon the audit's findings, and will need to independently verify the finding of compliance for this paragraph. As such, the Monitor will conduct independent testing of the requirements during the next regularly scheduled review of this paragraph.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements of paragraphs C52-54, in non-compliance with the implementation requirements of paragraphs C52-53, and has not yet evaluated compliance with the implementation requirements

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<sup>111</sup> Please refer the Current Assessment of Compliance for subparagraph C65a for further details regarding the Monitor's assessment of this audit.

of paragraphs C54. As a result, the Monitor finds the DPD in overall non-compliance with paragraphs C52-53, and has not yet evaluated overall compliance with paragraph C54.

## 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 to obtain DOJ's approval.

The Monitor last assessed the DPD's compliance with paragraphs C55-57 during the quarter ending February 28, 2006. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### *Paragraph C55 – Prisoners Use of Force Investigations*

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.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph C55 during the quarter ending February 28, 2006, finding the DPD in compliance with the policy requirements but in non-compliance with the implementation requirements of the paragraph. The Monitor determined that Directive 304.2 and Training Directive 04-7 were adequately disseminated and the corresponding forms were present on the DPD Intranet. However, the continuing problems with the DPD's roster, which hampered the Monitor's ability to complete the testing of dissemination, prevented the Monitor from commencing the testing of the implementation of policy during that quarter.

### *Current Assessment of Compliance*

The DPD submitted the *Use of Force in Holding Cells Investigations Audit* as required by subparagraph C65a and the *Allegations of Misconduct in Holding Cells Audit* required by subparagraph C65c on the required due date of July 31, 2006. In these audits, the DPD was found to be in non-compliance with the majority of the requirements under the general investigation policy paragraphs (U27-33).<sup>112</sup>

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<sup>112</sup> Refer to the Current Assessment of Compliance for paragraphs U27-33 for additional information regarding the audits' findings.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements but in non-compliance with the implementation requirements of paragraph C55. As a result, the DPD is in overall non-compliance with paragraph C55.

### **Paragraph C56 – Use of Force on Prisoners in Holding Cells Investigations**

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.

#### ***Background***

The Monitor last assessed the DPD's compliance with paragraphs C56 during the quarter ending February 28, 2006, finding the DPD in compliance with the policy requirements but in non-compliance with the implementation requirements of the paragraph. The Monitor determined that Directive 304.2 and Training Directive 04-7 were adequately disseminated and the corresponding forms were present on the DPD Intranet. However, the continuing problems with the DPD's roster, which hampered the Monitor's ability to complete the testing of dissemination, prevented the Monitor from commencing the testing of the implementation of policy during that quarter.

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

As described above, the DPD submitted the *Use of Force in Holding Cells Investigations Audit* as required by subparagraph C65a on the required due date of July 31, 2006.<sup>113</sup> This audit found that officers are properly reporting uses of force to a supervisor and the appropriate unit is conducting the investigations; however, the investigations are not complying with many of the requirements for use of force investigations, as required by paragraph C56. For example, investigations were identified that did not include the required auditable form (UF-002), did not contain thorough and complete interviews, or did not always evaluate the officers' actions regarding the level of force used.<sup>114</sup>

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<sup>113</sup> Please refer the Current Assessment of Compliance for subparagraphs C65a for further details regarding the Monitor's assessment of this audit.

<sup>114</sup> Please refer the Current Assessment of Compliance for paragraphs C27-33 for further details regarding the investigations.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements but in non-compliance with the implementation requirements of paragraph C55. As a result, the DPD is in overall non-compliance with paragraph C55.

### *Paragraph C57 – Prisoner Injuries*

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 C57 during the quarter ending February 28, 2006, finding the DPD in compliance with the policy requirements but in non-compliance with the implementation requirements of the paragraph. The Monitor determined that Directive 304.2 and Training Directive 04-7 were adequately disseminated and the corresponding forms were present on the DPD Intranet. However, the continuing problems with the DPD's roster, which hampered the Monitor's ability to complete the testing of dissemination, prevented the Monitor from commencing the testing of the implementation of policy during that quarter.

### *Current Assessment of Compliance*

As described in the Current Assessment of Compliance for C65b, below, the DPD HCCC did not submit a semi-annual audit of prisoner injuries in holding cells. This audit was due by July 31, 2006. According to the DPD, no audit of this subject was planned to be conducted for this semi-annual period.

In the absence of an audit, the Monitor is required to conduct independent testing of the requirements of the paragraph. This testing will occur during the next regularly scheduled review of this paragraph.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements but has not yet evaluated the DPD's compliance with the implementation requirements of paragraph C57. As a result, the Monitor has not yet evaluated the DPD's overall compliance with paragraph C57.

## 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, 2005, finding the DPD in non-compliance with each. Although the Monitor found that Directive 102.6, *Citizen Complaints*, and Directive 305.4, *Holding Cell Areas* address the policy requirements of these paragraphs, among others, they had not been adequately disseminated as of the end of that quarter. The Monitor retested the DPD's dissemination of Directives 102.6 and 305.4 during the quarter ending November 30, 2005 and determined that they had been adequately disseminated based upon information provided by the DPD after the end of that quarter. As a result, the DPD is now in compliance with the policy requirements of paragraphs C58-59.

The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending November 30, 2006.

## **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 May 31, 2006. The Monitor found the DPD in compliance with the policy requirements but in non-compliance with the implementation requirements of paragraph C60. In order to comply with the implementation requirement of paragraph C60, the DPD must establish procedures to identify terms requiring clear definitions and institute a process to prepare definitions for review and inclusion in manuals and other documents. Although the DPD established a Policy Focus Committee whose responsibilities include reviewing newly established policy or policy revisions to ensure that all required terms are clearly and consistently defined, the protocol to be used by the committee was not yet finalized. The Monitor found the DPD in non-compliance with paragraph C61. The Monitor previously determined that a revised written protocol that was meant to address the requirements of paragraph C61 addressed many but not all of the concerns previously expressed by the Monitor. Additional information requested by the Monitor concerning the protocol had not been submitted by the DPD as of the end of that quarter.<sup>115</sup>

The Monitor is scheduled to again assess the DPD's compliance with paragraphs C60-61 during the quarter ending November 30, 2006.

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<sup>115</sup> On June 12, 2006, after the end of the quarter, the DPD provided the additional information requested. The Monitor will review and report on the information provided during its next regularly scheduled compliance assessment, which is currently slated for the quarter ending November 30, 2006.

### **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 holding 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>116</sup> audits that assess and report on issues affecting the safety and well-being of DPD personnel and prisoners in the DPD's holding cells.<sup>117</sup>

The Monitor last assessed the DPD's compliance with paragraphs C62- C71 during the quarter ending February 28, 2006; the Monitor last assessed the DPD's compliance with paragraph C72 during the quarter ending May 31, 2006. The Monitor is scheduled to again assess compliance with paragraph C72 during the quarter ending November 30,2006; the Monitor again assessed the DPD's compliance with paragraphs C62-71 during the current quarter.

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 February 28, 2006, finding the DPD in non-compliance. The Monitor had requested a sample of DPD daily inspection reports to determine whether the DPD was in compliance with this paragraph. The Monitor had not received the requested inspection reports as of the end of that quarter.

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

The DPD's Twelfth Quarter Status Report states that the HCCC (including members of the Detroit Fire Department, Detroit Health and Wellness Promotion Program and various members

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<sup>116</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>117</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.

of the DPD) meets on a bi-weekly basis. The DPD also states that the DPD, along with members of the HCCC, conducts regularly scheduled audits to evaluate the operation of the DPD holding cells, and the HCCC also conducts independent inspections to ensure that policies are consistently enforced throughout the DPD.

The Monitor has attended at least one HCCC meeting per month and contends that the HCCC meetings do not meet the requirements of paragraph C62, which specifically requires the routine evaluation of the operation of holding cells to minimize the risk of harm to staff and prisoners. The HCCC's function is defined under paragraph C66, and it does not incorporate the routine evaluations that are called for under paragraph C62 into its meetings or operations. As of the end of the quarter, the Monitor had not received the DPD inspection reports that are designed to meet the requirements of this paragraph. The Monitor will continue to seek documentation of the DPD's efforts under 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 paragraph U92);
- 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 February 28, 2006, finding the DPD in non-compliance as described in the background section of U78.

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

The requirements of paragraph C63 mirror those of paragraph U78. As described in the Current Assessment of Compliance for paragraph U78, above, the DPD is non-compliance with that paragraph.

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 February 28, 2006, finding the DPD in non-compliance. The DPD had not yet finalized the necessary lesson plan to train officers on Directive 303.3, *In-Car Video Policy*, and the corresponding forms. Additionally, the DPD had not yet implemented a systematic review process of videotapes.

### *Current Assessment of Compliance*

As described in the Current Assessment of Compliance section for paragraph U98, the DPD has not yet implemented a systematic review process for video tapes. Although a Video Review Protocol has been developed, not all DPD supervisors have been trained.

In order to assess compliance with subparagraph C64a, the Monitor conducted inspections of five DPD districts in order to ascertain the presence and operability of the cameras in processing areas and to determine whether supervisors were knowledgeable regarding their operation (in order to conduct their duties as required by subparagraphs b and d). The Monitor determined that at the time of the inspection the active monitoring<sup>118</sup> of the processing areas via cameras was taking place in two of the five districts. The Monitor also determined that in three of the five

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<sup>118</sup> In one district, the monitor was focused on the holding cell area; in another district, the monitor was not on; and in a third, the supervisor was unable to bring up the prisoner processing area on the monitor.

districts, the supervisors interviewed at the time of the inspection were knowledgeable regarding how to operate the In-sight recording system.<sup>119</sup>

On August 1, 2006, the Monitor requested OCR's most recent internal inspections in order to evaluate DPD's compliance with paragraph U64. This information was not received as of the end of the quarter.<sup>120</sup>

In its Twelfth Quarter Status Report, the DPD indicated that the requirements of this paragraph have been included in the *Supervisory Leadership and Command Accountability Lesson Plan* which was submitted to the Monitor on the last day of the quarter, August 31, 2006.

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 subparagraphs:

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 subparagraphs C65a-c during the quarter ending February 28, 2006, finding the DPD in non-compliance with subparagraphs C65a-b and

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<sup>119</sup> See Current Assessment of Compliance for paragraph U98, above, for additional information regarding supervisor knowledge of the In-sight system.

<sup>120</sup> The DPD submitted a response to this request on September 11, 2006, after the end of the quarter. The DPD's inspection revealed that all cameras in the prisoner processing area were operational. The current activity in the processing area as well as the archived video could be viewed on the computer at the Operations Desk using the Insight system. DPD's inspection indicated that some of the cellblock cameras were not functioning. Additionally, in one district, it was observed that there was a problem with the computer at the Operations Desk that prevented the supervisors from logging on. The inspection did not indicate that supervisors were questioned about their knowledge of or access to the In-sight system.

in compliance with subparagraph C65c. The Monitor reviewed the *Use of Force in Holding Cells Investigations Audit* submitted in January 2006 in response to subparagraph C65a and identified deficiencies related to the timing, completeness, and accuracy of the audit. Regarding subparagraph C65b, the DPD had not submitted an audit of prisoner injuries in holding cells for the semi-annual period ending January 31, 2006. The Monitor reviewed the *Allegations of Misconduct in Holding Cells Audit* submitted in January 2006 in response to subparagraph C65c and found the audit to be in compliance, as it was thorough, objective, and accurate.

### *Current Assessment of Compliance*

#### *C65a – Holding Cells Use of Force Investigations Audit*

The DPD submitted the *Use of Force in Holding Cells Investigations Audit Report* to the Monitor on the required due date of July 31, 2006. In order to assess compliance with subparagraph C65a, the Monitor reviewed the audit report. In addition, although an early determination of non-compliance was made due to deficiencies in the audit report, the Monitor reviewed supporting documents and related working papers from this audit in order to provide the AT with constructive feedback specific to the fieldwork.

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

- The audit report was submitted by AT on a timely basis.
- The audit report was long, 127 pages, and could have made better use of tables and charts. The report did not include any Recommendations.
- The Audit Work Plan was a thorough and well-developed document.
- The Monitor noted many errors and inaccuracies in the Audit Report. The Monitor discovered and the AT confirmed during our discussions that much of information in the report was either carried forward from or mixed in with the previous audit report of the same topic, which was submitted on January 31, 2006. As a result, the current audit report contains incorrect references to the audit time period, the total population, the number of investigations sampled, the number of objectives, the number of auditable forms, and certain findings from the prior audit.
- The Monitor noted that AT staff did not answer certain matrix questions consistently or correctly when evaluating the investigations. The Monitor reiterated to the AT that this can occur when the auditors do not have a thorough understanding of the audit objectives, and it may affect the AT's compliance determinations when interpreting and analyzing the audit results.
- Although the audit work plan appropriately described the correct audit procedures for evaluating Critical Firearm Discharges and In-Custody Deaths, the AT did not complete the associated matrix questions regarding these types of investigations. This caused the working

papers to appear incomplete; however, in actuality, the audit sample did not include these types of investigations. The Monitor recommends that in future audits AT staff complete the working papers in a manner that clearly indicates the absence of these investigations in the audit sample, rather than not answering the associated questions.

Based on the foregoing, the Monitor finds the DPD in non-compliance with subparagraph C65a.

*C65b – Holding Cells Prisoner Injuries Investigations Audit*

The DPD HCCC did not submit an audit of prisoner injuries in holding cells, required by subparagraph C65b, for the semi-annual period ending July 31, 2006. According to the DPD, no audit of this subject was planned to be conducted for this semi-annual period due to a lack of AT personnel resources. The DPD intends to submit its next audit of this topic during the semi-annual period ending January 31, 2007.

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

*C65c – Holding Cells Misconduct Investigations Audit*

The DPD submitted the *Allegations of Misconduct in Holding Cells Audit Report* to the Monitor on the required due date of July 31, 2006. In order to assess compliance with subparagraph C65c, the Monitor reviewed the audit report, as well as AT's detailed work plan, copies of matrices and other related working papers.

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

- The audit time period was intended to cover all investigations that closed from September 1, 2005 through February 28, 2006. Similar to the previous audit of this topic, submitted on January 31, 2006, the current audit again identified and reported on the risk exposure regarding the inability to track allegations of misconduct investigations within the Commands. The AT correctly articulated that the absence of an automated system or tracking process made the task of identifying and confirming a complete population of Command Misconduct Investigations impossible. The Monitor agrees with the AT's assessment.
- The AT correctly identified two populations, IAS investigations and Command investigations. However, no Command investigations were located and only one IAS investigation was located during the time period selected.<sup>121</sup> The AT correctly concluded that

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<sup>121</sup> The OCI investigates all non-criminal allegations made against DPD personnel by citizens. Based on the AT's experience with the external complaint audit report for paragraph U97 and the paragraph C65 audit, the AT decided to group all non-criminal external complaints, occurring both inside and outside of holding cells, in the paragraph U97 audit. The detailed findings and recommendations for OCI investigations will be addressed in that audit report. This strategy was discussed with and agreed to by the Monitor.

the evaluation of one investigation is not sufficient to assess whether the DPD complied with the COC CJ requirements.

- The Monitor's review of the audit working papers associated with the AT's evaluation of the one investigation revealed that aside from a few minor errors related to the interpretation of COC CJ requirements, the AT's assessment of the investigation was correct.
- The Monitor provided specific feedback to the AT regarding a number of concerns related to reporting and population identification in an effort to improve the reporting in future audits of misconduct investigations. However, those concerns did not affect the overall compliance of the audit.

Based on the foregoing, the Monitor finds the DPD in compliance with subparagraph C65c.<sup>122</sup>

### **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 semi-annual 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.<sup>123</sup>

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

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 February 28, 2006, finding the DPD in non-compliance. The HCCC had finalized and continued developing the remaining policies required by the COC CJ, and had resubmitted those related to Emergency Preparedness to the DOJ for review and approval. However, the Fire Safety policies had yet to be re-submitted to the DOJ for review and approval. In addition, although the DPD submitted the *Fire Safety Audit Report* on the required due date of January 31,

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<sup>122</sup> The fact that the DPD AT was unable to assess whether the DPD complied with the requirements of the COC CJ does not prohibit the audit and its method of reporting from having been conducted properly and therefore be deemed in compliance.

<sup>123</sup> 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.

2006, the Monitor determined that the audit was non-compliant with subparagraph C66b based on deficiencies that were communicated to the DPD.

### *Current Assessment of Compliance*

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

On May 23, 2006, the DOJ approved both the Fire Safety and Emergency Preparedness Programs submitted by the DPD HCCC. This represents a significant accomplishment related to the HCCC's mandate to assure compliance with the COC CJ, as all of the required policies have now been developed, approved, and disseminated.<sup>124</sup>

On July 31, 2006, the HCCC submitted five of the nine audits required to be conducted by the COC CJ. Three of the audits not submitted were required to be conducted by the HCCC.<sup>125</sup>

Although the HCCC's progress continues, until such time as the HCCC has assured compliance with the COC CJ through the implementation of all relevant policies, procedures and forms, as well as the timely completion of the 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*

The DPD OCR and HCCC AT submitted the *Fire Safety Audit Report* on the required due date of July 31, 2006. Due to the number of audits submitted on this due date and on the August 31, 2006 due date, the Monitor has not yet completed its evaluation of this audit.

Based on the foregoing, the Monitor has not yet evaluated the DPD's compliance with subparagraph C66b.

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

Paragraphs C67 requires the HCCC to conduct regularly scheduled semi-annual audits covering all DPD buildings that contain holding cells of emergency preparedness programs.

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<sup>124</sup> As described throughout this report, the implementation of these policies has not yet been accomplished.

<sup>125</sup> Refer to the Current Assessment of Compliance of each respective audit paragraph for further details.

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph C67 during the quarter ending February 28, 2006, finding the DPD in compliance. The Monitor reviewed the *Emergency Preparedness Program Audit* submitted by the DPD for the semi-annual period ending January 31, 2006 and determined that it was timely, accurate and contained appropriate recommendations.

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

The DPD HCCC did not submit an emergency preparedness audit required by paragraph C67 for the semi-annual period ending July 31, 2006. According to the DPD, no audit of this subject was planned to be conducted for this semi-annual period due to a lack of AT personnel resources. The DPD intends to submit its next audit of this topic during the semi-annual period ending January 31, 2007.

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

### ***Paragraph C68 – Audit of Medical/Mental Health Program and Policies***

Paragraph C68 requires the HCCC to conduct regularly scheduled semi-annual audits covering all DPD buildings that contain holding cells of medical/mental health care programs and policies.

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph C68 during the quarter ending February 28, 2006, finding the DPD in non-compliance. Although the DPD submitted the *Medical and Mental Health Care Practices Audit* on the required due date of January 31, 2006, the Monitor determined that the audit was non-compliant with paragraph C68 based on a number of deficiencies that were communicated to the DPD.

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

The DPD HCCC did not submit an audit of medical and mental health care programs and practices required by subparagraph C68 for the semi-annual period ending July 31, 2006. According to the DPD, no audit of this subject was planned to be conducted for this semi-annual period due to a lack of AT personnel resources. The DPD intends to submit its next audit of this topic during the semi-annual period ending January 31, 2007.

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

### **Paragraph C69 – Audit of Detainee Safety Program**

Paragraph C69 requires the HCCC to conduct regularly scheduled semi-annual audits covering all DPD buildings that contain holding cells of detainee safety programs and policies.

#### ***Background***

The Monitor last assessed the DPD's compliance with paragraph C69 during the quarter ending February 28, 2006, finding the DPD in non-compliance. Although the DPD submitted the *Detainee Safety Programs and Policies Audit Report* on the required due date of January 31, 2006, the Monitor determined that the audit was non-compliant based upon a number of deficiencies that were communicated to the DPD.

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

The DPD OCR and HCCC AT submitted its *Detainee Safety Programs and Policies Audit Report* on the required due date of July 31, 2006. In order to assess compliance with paragraph C69, the Monitor reviewed the audit report, the audit work plan and other supporting documents regarding the fieldwork of this audit.

The Monitor's findings, which were discussed in detail with the DPD AT, are highlighted below:

- The audit report was submitted on a timely basis, covered the appropriate buildings containing holding cells, and covered an adequate time period for the various populations related to detainee safety.
- Although all of the COC CJ requirements related to detainee safety were included within the objectives of the audit; the organization of the requirements within the audit objectives was poorly constructed and repetitive. This caused the audit report to be unnecessarily lengthy and information within the audit report to be difficult to follow. The audit conclusions and recommendations were, for the most part, appropriate, although they were difficult to comprehend.
- The audit report contained voluminous background information related to procedures and policies, which added to the length of the report. The policies and procedures used in measuring the DPD's performance should be referenced, rather than including the detailed text of the policies and procedures in the audit report.
- The audit report was not complete at the time of submission, in that it had not received proper or adequate review prior to submission. Along with the reporting problems described above, the report had no page numbers, no table of contents, typographical and grammatical errors, vague wording related to major findings, misstated information related to a lack of feedback provided by the Monitor on security screening forms, and conflicting findings related to the documentation and verbal communication of security screening information.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C69.

### **Paragraph C70 – Audits of Environmental Health and Safety Program**

Paragraphs C70 requires the HCCC to conduct regularly scheduled semi-annual audits covering all DPD buildings that contain holding cells of environmental health and safety program.

#### ***Background***

The Monitor last assessed the DPD's compliance with paragraph C70 during the quarter ending February 28, 2006, finding the DPD in compliance. The Monitor determined that the *Environmental Health and Safety Audit* submitted by DPD for the semi-annual period ending July 31, 2005 was timely, accurate and contained valid recommendations.

Although the Monitor determined that the audit was in compliance, the Monitor recommended that due to the seriousness of the risk associated with suicide hazards, future audits of this topic utilize calculations of compliance based on the total number of buildings that have a holding cell with a potential suicide hazard present, rather than based on the number of holding cells with suicide hazards present within all buildings.

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

The DPD HCCC did not submit an audit of environmental health and safety programs required by paragraph C70 for the semi-annual period ending July 31, 2006. According to the DPD, no audit of this subject was planned to be conducted for this semi-annual period due to a lack of AT personnel resources. The DPD intends to submit its next audit of this topic during the semi-annual period ending January 31, 2007.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C70.

### **Paragraph C71 – Audits Food Service Program and Policies**

Paragraph C71 requires the HCCC to conduct regularly scheduled semi-annual audits covering all DPD buildings that contain holding cells of the food service program.

#### ***Background***

The Monitor last assessed the DPD's compliance with paragraph C71 during the quarter ending February 28, 2006, finding the DPD in non-compliance. Although the DPD submitted the *Food Service Program Audit* on the required due date of January 31, 2006, the Monitor determined that the audit was non-compliant with paragraph C71 based on a number of deficiencies that were communicated to the DPD.

### *Current Assessment of Compliance*

The DPD OCR and HCCC AT submitted the *Food Service Program Audit Report* on the required due date of July 31, 2006. In order to assess compliance with paragraph C71, the Monitor reviewed the audit report and selected audit working papers, including the audit work plan, matrices and other related documents such as detainee hygiene and meal logs.

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

- The *Food Service Program Audit* was completed by members of the DPD AT and a member of the HCCC and was submitted on a timely basis.
- The Monitor commends the AT for the summary of the results of the inspections conducted in evaluating whether food is stored and served in a sanitary manner, and if refrigerators are clean and maintained at the correct temperature. For these objectives, the work papers supported the AT's reported conclusions.
- Based on its review of the audit report, work plan and working papers, and the discussion with the DPD AT staff; the Monitor determined that the AT failed to identify significant findings related to the DPD's compliance with the Food Service Program.<sup>126</sup> This negatively impacted their conclusions associated with certain audit objectives. Additionally the Monitor identified instances in which information in the work papers was not correctly or consistently included in the report.
- The AT reported the findings to +/- 10% error rate, which the Monitor commends, as it is clear at that level that the Department is out of compliance. However the work papers indicate that testing was performed beyond the findings +/- 10%. This unnecessary review of documents resulted in a waste of valuable audit staffing resources, which could have been used to assist with other audits that were required to be submitted.
- In addition, the audit report was lengthy and repetitious.

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

### *Recommendations*

The Monitor commends the AT for including in their work papers a test regarding whether the OIC reviewed the meal and hygiene logs; however, the AT did not include this information in the audit report. The Monitor recommends that in future audits AT should provide a summary in "Other Related Matters" of any findings from additional tests conducted.

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<sup>126</sup> Examples of this include assessing whether or not detainees were held over six hours and whether or not they received regular meals, as required by the Food Service Policy's Meal Plan. .

#### **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>127</sup>

The Monitor last assessed the DPD's compliance with paragraphs C73-78 during the quarter ending May 31, 2006, finding the DPD in non-compliance with each. Although revisions to lesson plans designed to cover these paragraphs were pending as of the end of that quarter, the DPD began delivering training to holding cell personnel in an effort to expedite the implementation of the many procedures included within these lesson plans and related paragraphs. The Monitor attended the training and provided the DPD with both verbal and written feedback, including observations on the training and recommendations to address qualitative deficiencies identified in the training and related lesson plans. Regarding paragraph C74, because the MAS was not yet fully developed or operational, the DPD was not yet maintaining individual training records for all officers, documenting the date and topic of all pre-service and in-service training.

The Monitor is scheduled to again assess the DPD's compliance with paragraph C74 during the quarter ending November 30, 2006 and with paragraphs C73 and C75-78 during the quarter ending February 28, 2007.

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<sup>127</sup> Refer to the UOF CJ training section in this report for additional information regarding DPD training-related issues.

## **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. Due to the fact that most of the UOF CJ policies have not yet been effectively implemented and training has not occurred, the Monitor has not yet considered investigations at a stage where they could be subject to reopening. The Monitor will do so at an appropriate time during a future quarter.

## CONCLUSION

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The City and the DPD are actively engaged in implementation of and training on the various requirements of the Consent Judgments. In some areas, the DPD has been able to achieve compliance with implementation or come close to it. In others, effective implementation is being hindered by a lack of initial training on the new or revised policies and forms. This is applicable to both Consent Judgments.

Sheryl Robinson Wood  
Independent Monitor

October 16, 2006

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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
AT	Audit Team
BOPC	Board of Police Commissioners
BRT	Board Review Team
CALEA	Commission on Accreditation for Law Enforcement Agencies
CAN report	Corrective Action Needed report
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
CME	Confidential Medical Envelopes

CMMHSP	Comprehensive Medical and Mental Health Screening Program
CO	Commanding Officer
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
DFE	Detainee File Folders
DFO	Detention Facility Officer
DHWP	Detroit Health and Wellness Promotion
DIF	Detainee Intake Form
DOJ	Department of Justice
DPD	Detroit Police Department
DPR	Daily Prisoner Report
DRH	Detroit Receiving Hospital
ECD	Emergency Communications Division
EPP	Emergency Preparedness Program
FIS	Force Investigation Section

FIU	Force Investigation Unit
FRT	Force Review Team
FSP	Fire Safety Program
GAS	Government Auditing Standards
HCCC	Holding Cell Compliance Committee
IACP	International Association of Chiefs of Police
IAD	Internal Affairs Division
IAS	Internal Affairs Section
ICD	Internal Controls Division
IM	Independent Monitor
IMAS	Interim Management Awareness System
ITS	Information Technology Services
JIST	Joint Incident Shooting Team
LP	Lesson Plan
MAS	Management Awareness System
MCOLES	Michigan Commission on Law Enforcement Standards
MIF	Medical Intake Form
MIOSHA	Michigan Occupational Safety and Health Administration
MITN	MCOLES Information and Tracking System
OCI	Office of the Chief Investigator

OIC	Officer in Charge
OCR	Office of Civil Rights
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
SIR	Supervisor's Investigation Report
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
WCPO	Wayne County Prosecutor's Office
WIQD	Witness Identification and Questioning Documentation