

REPORT OF  
THE INDEPENDENT MONITOR  
FOR THE  
DETROIT POLICE DEPARTMENT



REPORT FOR THE QUARTER ENDING  
FEBRUARY 29, 2008  
ISSUED APRIL 15, 2008

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## **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 eighteenth quarterly report of the Independent Monitor.<sup>4</sup>

The two Consent Judgments contain a total of 205 substantive paragraphs and subparagraphs with which the City and the DPD must substantially comply, 131 from the UOF CJ and 74 from the COC CJ.<sup>5</sup> The City and the DPD have achieved compliance with the policy components of the applicable paragraphs in both Consent Judgments, a significant accomplishment.<sup>6</sup> There are a number of paragraphs that are "policy only" paragraphs with which the City and the DPD will remain in compliance unless a revision is made that does not meet the terms of the Consent Judgments.<sup>7</sup> These 15 compliant "policy only" paragraphs are: U14-17, U19, U20, U42, U44, U46-47, U52, U54, U56, C28, and C29. There are also several paragraphs that require the City and the DPD to take a specific action and, once compliant, these paragraphs will generally remain in compliance; the DPD has complied with 12 such paragraphs or subparagraphs: U82-85; U88a, b d, and e; C22; C34; C44; and C46. Significantly, the DPD is currently in overall

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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.kroll.com/detroit](http://www.kroll.com/detroit).

<sup>5</sup> There were originally 177 numbered paragraphs from the UOF CJ and COC CJ that were considered to be subject to monitoring. After adjusting for those paragraphs that are no longer being monitored on a regularly scheduled basis (for example, the monitoring of paragraphs U139 and C94) and paragraphs that the Monitor has separated out into subparagraphs for ease of analysis and/or reporting (paragraphs U62 and U67, for example), the total number of paragraphs and subparagraphs being monitored currently stands at 205. These paragraphs and subparagraphs are identified in the Report Card attached as Appendix B to this report.

<sup>6</sup> These paragraphs are identified in the comments column of the attached Report Card. Pursuant to paragraphs U133 and C88 and various other paragraphs, these paragraphs also require implementation, which must also be accomplished for the DPD to achieve overall substantial compliance.

<sup>7</sup> For these "policy only" paragraphs, implementation is separately evaluated under another substantive paragraph.

compliance for two consecutive quarters with 31 paragraphs or subparagraphs of the Consent Judgments.<sup>8</sup>

Each quarter, the Monitor examines a certain number of substantive paragraphs and subparagraphs. During the eighteenth quarter, which ended on February 29, 2008, the Monitor examined a total of 86 paragraphs or subparagraphs (47 paragraphs or subparagraphs of the UOF CJ and 39 paragraphs or subparagraphs of the COC CJ). Of these, the City and the DPD are in compliance with 18 and not yet in compliance with 39; the Monitor did not complete its evaluation<sup>9</sup> of 21 paragraphs or subparagraphs, and has withheld a determination of compliance with eight paragraphs or subparagraphs.<sup>10</sup> The Monitor commends the DPD for the marked increase in the amount of work being submitted.

As described above, overall, the Monitor is assessing the City and DPD's compliance with 205 paragraphs and subparagraphs, 131 from the UOF CJ and 74 from the COC CJ. The City and the DPD are currently in compliance with 69 of these paragraphs and subparagraphs, 46 from the UOF CJ and 23 from the COC CJ.

#### *Use of Force Paragraphs*

The Monitor assessed the Department's compliance with UOF CJ requirements regarding the use of firearms, intermediate force devices, and chemical spray. The DPD has met the policy requirements through the issuance of its Firearms Directive, but has not yet instituted its firearms training and bi-annual qualification program. The Monitor is withholding its determination of compliance in connection with the DPD's requalification program until the reformed qualification program is in place.

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<sup>8</sup> These are substantive paragraphs and subparagraphs that are on a regular and periodic review schedule; this list does not include "policy only" paragraphs and other paragraphs and subparagraphs with which the DPD will generally remain in compliance once compliance is achieved. Of these 31 paragraphs and subparagraphs, the Monitor found four in compliance for two consecutive review quarters for the first time during the current review period (U22, U103, C33, and C38).

<sup>9</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. In addition, the Monitor generally times its reviews of certain topics to coincide with its review of DPD audits that cover those topics; the Monitor will generally defer its assessment of compliance if its review of the related audit has not been completed.

<sup>10</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.

Although the DPD's policy prohibits shooting at or from moving vehicles and the DPD has issued a teletype regarding this requirement, there were eight reported occurrences that violated this prohibition during 2007. The Monitor expects that once training takes place, the number of prohibited incidents will decrease. To the DPD's credit, it appears that those whose conduct was sustained for violating the policy have been disciplined.

The Monitor evaluated the DPD's implementation of a procedure to document the inspection of ammunition carried by officers; thus far, it appears that the applicable forms are not being consistently completed by all commands; however, the evaluation is not yet complete. The Monitor found that the PR-24s, the DPD's intermediate force device, have been purchased; however, only 31.5% of the officers have been trained for usage of the device.

With regard to the use of chemical spray, the Monitor evaluated 22 incidents and found that the DPD is in compliance with the UOF CJ requirements. The DPD is commended for its accomplishments in this area.

#### *Arrest and Detention Paragraphs*

The Monitor assessed the Department's compliance with several UOF CJ requirements regarding documentation of prompt judicial review, holds, restrictions and material witnesses. The Monitor found that the DPD remains in compliance with the policy requirements of the paragraphs assessed, and with the implementation of the requirements to obtain a court order prior to taking a material witness into custody and to document each material witness on an auditable form. However, the Monitor found that the DPD's lack of compliance continued with regard to the requirements to document each instance in which a hold is not processed within twenty-four hours and to document all violations of the DPD's restriction policy by the end of the shift in which the violation occurred continued. Furthermore, as was found during the quarter ending August 31, 2007, the Commanding Officers' reviews of all violations of DPD policies in the area of holds and restrictions are essentially not yet taking place. With regard to prompt judicial review, the Monitor is withholding a determination of compliance while the parties and Monitor discuss the definition thereof and the interpretation of the applicable UOF CJ paragraphs.

#### *Risk Management Paragraphs*

According to the DPD, the beta version of the Management Awareness System was ready for testing by the Court-ordered deadline of January 24, 2008. The DOJ and the Monitor participated in a demonstration of the current version of the system in February 2007, but have not yet participated in testing of the beta version of the Management Awareness System. According to the DPD, they are on schedule to meet the Court-ordered deadline for completion and implementation of the Management Awareness System, which is July 24, 2008. With regard to the Interim Risk Management System, it is operational and 80% of supervisors have now been trained on the system. The DPD has indicated that no additional supervisors will be trained on the Interim Management Awareness System since the Management Awareness System is due to be completed in the coming months.

The Monitor also assessed compliance with Consent Judgment requirements regarding scout car video recording equipment and videotapes. Requirements assessed involved revisions of and augmentations to policy on video cameras, to include specific requirements regarding the installation and use of video cameras in patrol cars; supervisory review of videotapes; and the retention and preservation of videotapes. Also addressed were the review of scout car camera videotapes for training and integrity purposes; random surveys to review the operability of scout car video recording equipment; and the DPD's repair or replacement of non-functioning video cameras. During the previous quarter, the DPD resubmitted its Video Review Protocol documents. The Monitor provided its evaluation in a memorandum submitted at the end of this quarter. The DPD has not yet provided training on Directive 303.3, *In-Car Video*, which covers the majority of these paragraphs and subparagraphs. However, the Monitor commends the DPD for continuing to increase the number of patrol cars with operable cameras.

The Monitor found that the DPD is implementing two of the three UOF CJ paragraphs addressing the imposition of discipline: one paragraph that 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, and another paragraph that requires the DPD to create a disciplinary matrix that includes a number of specified provisions. The Monitor found that the DPD is not yet in compliance with the third paragraph addressing discipline, which requires the DPD to schedule disciplinary hearings, trials, and appeals at appropriately frequent intervals to prevent a disciplinary backlog from developing. Although notable progress was made toward achieving compliance with the requirements of the paragraph during the quarter ending August 31, 2007, the same level of progress (or greater) did not take place this quarter.

#### *Audit Paragraphs*

During this quarter, on January 31, 2008, the DPD submitted eight of the nine COC CJ audits due to be submitted by that date: the *Prisoner Injury Investigations in Holding Cells Audit*, the *Allegations of Misconduct Investigations Audit*, the *Fire Safety Programs Audit*, the *Emergency Preparedness Programs Audit*, the *Medical & Mental Health Program and Policies Audit*, the *Detainee Safety Programs Audit*, the *Environmental Health and Safety Audit*, and the *Food Services Programs Audit*. The DPD did not submit the *Use of Force Investigations in Holding Cells Audit* required by subparagraph C65a, which was also due by January 31, 2008.

The Monitor completed its evaluation of two of the above audits, the *Medical and Mental Health Program and Policies Audit* and the *Detainee Safety Programs Audit*, and is in the process of reviewing the remaining audits. The Monitor found improvements in the *Medical and Mental Health Program and Policies Audit* compared to the previous audit of this topic, such as the involvement of the DPD's Holding Cell Compliance Committee (HCCC) and fewer typographical and grammatical errors, but concluded that the DPD was not yet in compliance with paragraph C68 primarily because the audit's testing and conclusions were flawed for at least

ten of the underlying Consent Judgment requirements tested.<sup>11</sup> The Monitor found the *Detainee Safety Programs Audit* in compliance with paragraph C69 as it was a thorough and quality audit. Although the Monitor identified a number of errors in the audit's testing procedures, these errors did not negatively impact the AT's conclusions regarding the DPD's compliance with the substantive paragraphs tested, nor did they significantly impact the overall quality of the audit.

The Monitor also completed its review of *the Witness Identification and Questioning Audit*, submitted on August 31, 2007, finding that the DPD has not yet met the requirements of subparagraph U95c, primarily because it did not test certain Consent Judgment requirements and because there were inconsistencies between the audit's actual and reported findings.

With regard to the COC CJ requirement that the HCCC assure compliance with the COC CJ, the Monitor found the DPD in compliance, as the materials submitted by the DPD documented a series of regular, periodic HCCC meetings that were attended by the appropriate HCCC members, and covered topics related to implementation of the requirements of the COC CJ.

#### *Training Paragraphs*

The Monitor approved the *Supervisory Leadership and Accountability Lesson Plan* during the previous quarter, in November 2007. Near the end of the current quarter, the DPD inquired about adding investigator paragraphs to those covered by this lesson plan. The *Detention Officer Training Lesson Plan* was re-submitted by the DPD near the end of the quarter; the Monitor is still in the process of reviewing it. The Field Training Officer Protocol was resubmitted on November 30, 2007. The DPD has not yet implemented the protocol.

#### *COC CJ Holding Cell Paragraphs*

During the current quarter, the Monitor assessed the DPD's compliance with COC CJ requirements to implement policies, programs and protocols designed to screen, identify, respond, and properly house detainees in DPD holding cell facilities based on the detainees' medical health, mental health, and security issues.

In assessing compliance with requirements related to the medical and mental health policies and programs, the Monitor reviewed the DPD's *Medical and Mental Health Program and Policies Audit* submitted on January 31, 2008, and conducted supplemental onsite inspections of all DPD buildings containing holding cells and the Detroit Receiving Hospital. The Monitor and the Audit Team concluded that the DPD has met the policy components of the relevant paragraphs and is in compliance with the requirements to provide suicide clothing and remove all suicide hazards from within the holding cells, but has not yet achieved compliance with the implementation of several other requirements. Requirements that are not yet being effectively

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<sup>11</sup> The flaws were related to the Audit Team's testing of paragraphs C26, C27, C28a, C28b, C29b, C30, C31b, C31c, C32d, and C32f. Refer to the *Current Assessment of Compliance* for paragraph C68 in the main body of this report for further details.

implemented include a systematic process to communicate relevant health information between consecutive shifts, continually updating and incorporating detainee health information during detention, and documenting that detainees receive unused medications upon release. The Monitor and the audit also found that the detention staff and supervisors are not properly completing the relevant documentation. Lastly, the Monitor has withheld a determination of compliance with a number of requirements in this area, such as the requirement to properly house detainees with infectious diseases and the requirement to accommodate detainees with disabilities, due to the limited number of items tested within the DPD's audit.

In assessing compliance with requirements regarding detainee safety protocols, the Monitor reviewed the DPD's *Detainee Safety Programs and Policies Audit* and the *Prisoner Injuries in Holding Cells Audit*, which were both submitted on January 31, 2008. The Monitor also conducted supplemental onsite inspections. The Monitor and the Audit Team found that the DPD has complied with the requirement to provide continual observation of observation cells, but has not yet achieved compliance with the policy or implementation requirements of the other requirements in this area. Specifically, the DPD has not yet implemented a process for documenting and communicating relevant security screening information between consecutive shifts and the required cell checks of detainees are not being regularly performed nor are they accurately documented by detention area staff and supervisors. The DPD has developed policies and related forms and logs, and revised the forms and logs a number of times in an attempt to identify and properly house detainees who should be housed in an observation or single occupancy cell; however, the forms and logs are inadequate in some cases, and, in other cases, while they may be adequate, they are not being completed properly by detention area staff and supervisors.

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- B. “Report Card” Summarizing the Monitor’s Evaluation of Compliance with the Consent Judgments as of the Quarter Ending February 29, 2008

## 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>12</sup> as the Independent Monitor in this matter. This is the eighteenth report of the Independent Monitor.

In the first quarterly report, for the quarter ending November 30, 2003, the Monitor<sup>13</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>14</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>15</sup> the Monitor will review the paragraphs on a periodic schedule over the life of the Consent Judgments. The paragraphs that were scheduled for review during the eighteenth quarter, which ended on February 29, 2008, are assessed in this report.<sup>16</sup>

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<sup>12</sup> The primary members of the Monitoring Team are Joseph Buczek, Jerry Clayton, Penny Cookson, Charles Curlett, Hazel de Burgh, Ronald Filak, Thomas Frazier, Marshall Johnson, Denise Lewis, Jane McFarlane, Terry Penney, and Sherry Woods.

<sup>13</sup> The word "Monitor" will be used to describe both the Monitor and the Monitoring Team throughout this report.

<sup>14</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>15</sup> Non-compliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance, shall not constitute failure to maintain substantial compliance. At the same time, temporary compliance during a period of otherwise sustained noncompliance shall not constitute substantial compliance. Paragraphs U149 and C106.

<sup>16</sup> For the paragraphs under review for this quarter, the Monitor makes every effort to report on significant matters that have taken place after the end of the quarter, although this is not possible in every instance. These occurrences appear in footnotes throughout the report.

## II. MONITOR'S ROLE

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The Monitor's role is to conduct compliance assessments,<sup>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 taking measures to prevent 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 eighteenth quarter, the Monitor continued to test the DPD's implementation of the policies, to review training lesson plans and to review audits conducted by the DPD's Audit Team (AT). The Monitor commends the DPD for the timely submission of eight of the nine audits that were due on January 31, 2008. The DPD also continued to make significant efforts toward the development of the lesson plans that are required by the Consent Judgments. To that end, several of the major lesson plans have now been approved.

Of the 86 paragraphs or subparagraphs that the Monitor assessed during the current quarter, the Monitor found that the DPD achieved compliance with 18 paragraphs and subparagraphs. In addition, the Monitor concluded that the DPD made significant progress towards achieving compliance with one paragraph that the Monitor concluded was not yet in compliance. Overall, the DPD is currently in compliance with 69 of the 205 paragraphs and subparagraphs that are assessed in the combined Consent Judgments (46 of 131 paragraphs and subparagraphs from the UOF CJ and 23 of 74 paragraphs and subparagraphs from the COC CJ).

Lastly, the DPD has been in overall compliance for two quarters with 31 paragraphs or subparagraphs of both Consent Judgments.<sup>18</sup> Of these 31 paragraphs and subparagraphs, the Monitor found four in compliance for two consecutive review quarters for the first time during the current review period.<sup>19</sup>

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<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> These are substantive paragraphs and subparagraphs that are on a regular and periodic review schedule; these do not include "policy only" paragraphs and other paragraphs and subparagraphs with which the DPD will generally remain in compliance once compliance is achieved.

<sup>19</sup> Paragraphs U22, U103, C92, and C38.

The Monitor continued to implement the new finding of “partial compliance” and new terms of “notable progress” and “significant progress” for quantitative paragraphs in the Report for the Quarter Ending August 31, 2007.<sup>20</sup> As of the end of the quarter, the Monitor and the DPD were still engaged in discussions regarding the development of a methodology for applying the finding and terms to qualitative paragraphs.

#### 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 greater than 94% compliance is achieved for a statistically valid random sample<sup>21</sup> of incidents from as recent a period as is practicable. As mentioned above, the Monitor is now in the process of implementing a finding of partial compliance under certain circumstances where the overall compliance rate of the implementation component of a paragraph is greater than 80%.

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 and document reviews.

Under certain circumstances, the Monitor may elect to rely on audits submitted by the DPD in assessing compliance with substantive paragraphs of the Consent Judgments. In doing so, the Monitor evaluates the audit to determine if it is compliant with the applicable audit paragraph requirements of the Consent Judgments. If the Monitor determines that the audit is compliant, the Monitor may rely on the audit and adopt all of the audit’s findings.

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<sup>20</sup> For quantitative paragraphs, the Monitor will generally find that the DPD has achieved partial compliance where the overall compliance rate is greater than 80% to less than or equal to 94%. For quantitative paragraphs that are not yet in compliance, the Monitor now reports when the DPD has made significant progress by achieving an overall compliance rate greater than 66% to 80% for the implementation component of a paragraph or notable progress by achieving an overall compliance rate greater than 50% to 66% for the implementation component of a paragraph.

<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.

Even if the Monitor determines that an audit is not compliant with the applicable audit paragraph requirements of the Consent Judgments, the Monitor may still rely on some or all of the audit's findings if it is determined that the specific findings are reliable.<sup>22</sup> In addition, the Monitor reserves the right to adopt certain audit findings of non-compliance even in instances in which the Monitor has not determined whether the audit's findings are reliable, as long as the audit's assessment has been supplemented with additional testing by the Monitor.

Lastly, the organization of the UOF CJ and COC CJ paragraphs vary in that some paragraphs have separate but related "training" paragraphs within the Consent Judgments,<sup>23</sup> while others do not.<sup>24</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 training-related paragraph include reviews for annual and/or regular and periodic training and/or instruction to ensure appropriate DPD members have not only received the necessary policies, but have adequate information and direction and to carry out the requirements of the Consent Judgments.<sup>25</sup>

## V. REPORT CARD

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As a tool to assist the reader of this report, the Monitor is attaching as Appendix B a "Report Card," which provides a "snapshot" of the DPD's compliance with each of the substantive provisions of the Consent Judgments. It also serves as a tool to summarize the DPD's progress in complying with those provisions. Specifically, the Report Card summarizes the *overall* grade of compliance with each paragraph and subparagraph<sup>26</sup> of the Consent Judgments for the five most recent quarters, including the current quarter, in which compliance has been assessed.<sup>27</sup> The quarter in which the most recent evaluation was made is also indicated, as is the quarter in

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<sup>22</sup> As an example, if the audit report and fieldwork were considered reliable related to the substantive paragraphs under review but the audit was considered non-compliant because it failed to address a specific issue unrelated to the substantive paragraph or was submitted late, the Monitor may use all of the audit's findings regarding the substantive provisions of the paragraph(s) even though the audit was considered non-compliant.

<sup>23</sup> See, for example, paragraph U43 – Arrest Policies and paragraph U45 – Stop and Frisk Policies and related training paragraph, paragraph U114.

<sup>24</sup> See, for example, paragraphs U73 -- Supervisory Deployment and paragraph U77 -- Foot Pursuit Policies.

<sup>25</sup> As described in the Introduction to the Methodologies, this is the Training Component of compliance.

<sup>26</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>27</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.

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.

The findings on the report card are: compliant, partial compliance, not yet evaluated, determination withheld or non-compliant. Also in the comments section of the report card, the Monitor will add a notation for each paragraph where the DPD has made notable or significant progress under the circumstances described above.

## VI. MONITOR'S PLEDGE

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

To that end, we have provided the parties with interim assessments of compliance throughout each quarter, including the quarter ending February 29, 2008. A draft copy of this report was made available to the parties at least ten days prior to final publication in order to provide the parties with an opportunity to identify any factual errors,<sup>28</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>28</sup> As required by paragraphs U142 and C97.

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

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This section contains the Monitor's compliance assessments of the UOF CJ paragraphs scheduled for review during the quarter ending February 29, 2008.

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

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

This section comprises paragraphs U14-19. The Monitor has found the DPD in compliance with paragraphs U14-17 and U19, which are "policy only" paragraphs. The DPD will remain in compliance with these paragraphs until such time as the policies directly responsive to the paragraphs are revised.<sup>29</sup> The Monitor last assessed the DPD's compliance with paragraph U18 during the quarter ending May 31, 2007, and is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending May 31, 2008.

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

This section comprises paragraphs U20-23. The Monitor found the DPD in compliance with paragraph U20, which is a "policy-only" paragraph, during the quarter ending August 31, 2006. The DPD will remain in compliance with this paragraph until such time as the policy directly responsive to the paragraph is revised.<sup>30</sup> The Monitor last assessed the DPD's compliance with paragraphs U21-23 during the quarter ending August 31, 2007. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

#### **Paragraphs U21-23 –Firearms Re-qualification; Firearms Policy Regarding Moving Vehicles; Firearms and Ammunition**

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

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<sup>29</sup> As with all "policy-only" paragraphs with which the DPD has achieved compliance, any revisions to the policy will trigger an additional assessment by the Monitor. Implementation of the policy is tested under paragraph U18.

<sup>30</sup> Revisions to policy will trigger an additional assessment by the Monitor. The implementation and training requirements associated with the paragraph will be assessed separately under paragraphs U111 and U113.

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 U21-23 during the quarter ending August 31, 2007, finding the DPD in compliance with the policy requirements of the paragraphs. The Monitor found that the DPD was not yet in compliance with the implementation requirements of paragraph U21 and was in compliance with the implementation requirements of paragraph U22; the Monitor had not yet completed its evaluation of compliance with the implementation requirements of paragraph 23.

### *Current Assessment of Compliance*

#### *Paragraph U21*

Although the DPD has met the policy requirements of paragraph U21 through the issuance of Directive 304.1, *Firearms*, for the DPD to be able to implement this paragraph it will first be necessary for the DPD to implement its qualification program under paragraph U113, which requires the development of a protocol regarding firearms training. Once this reformed qualification program is in place, remedial training pursuant to paragraph U21 will be assessed.

In its Report for the Quarter Ending November 30, 2007, the Monitor noted that it received the DPD's revised *In-Service Bi-Annual Firearms Qualification Lesson Plan* on November 13, 2007. The Monitor recognized that the DPD had incorporated many of the suggestions and recommendations contained in the Monitor's memorandum of November 8, 2006, which resulted in significant improvements in the content and the structure of the revised lesson plan. The Monitor nonetheless concluded that there continued to be several areas of the lesson plan that require additional modification in order to meet the requirements of the Consent Judgment, and provided feedback to the DPD through a written memorandum dated December 16, 2007. The DPD resubmitted its proposed *Firearms Lesson Plan* to the Monitor on February 21, 2008.<sup>31</sup>

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<sup>31</sup> The Monitor reviewed the lesson plan and communicated its evaluation by memorandum dated March 11, 2008. The Monitor subsequently approved the lesson plan on March 17, 2008.

### ***Paragraph U22***

With regard to paragraph U22, the DPD indicated in its Eighteenth Quarter Status Report that it has implemented a weekly Roll Call Training Program via an administrative message (#07-04394) to be read at every roll call for a one week period. The first roll call training subject, to be read at each roll call from September 21, 2007 to October 20, 2007, referenced the use of deadly force and prohibition against firing at or from a moving vehicle. According to the DPD Status Report, the Joint Investigative Shooting Team (JIST) continues to investigate and recommend corrective action (disciplinary and/or non-disciplinary) for members who violate the firing at a moving motor vehicle policy. In response to a document request, the DPD provided information demonstrating that there were eight such occurrences during the year 2007. In five of these occurrences, officer misconduct was sustained; in one case, the officer was exonerated; and two cases are currently pending.

Based on these circumstances, the DPD is implementing the requirements of paragraph U22 by identifying and effectively responding to incidents that fall within the conduct prohibited by this paragraph. However, the Monitor is concerned with the number of occurrences that violated the policy in 2007.<sup>32</sup>

### ***Paragraph U23***

Along with Directives 304.1, *Firearms*, and 304.2, *Use of Force*, that define the policies and procedures relative to the requirements of paragraph U23, the DPD has implemented the *Monthly Equipment Inspection Report* (DPD 709), which, according to DPD Teletype #06-00343 of January 26, 2006, is to be completed by all commands on a monthly basis. The monthly inspection and completion of DPD 709 is designed to ensure that DPD members are carrying only an authorized firearm and the correct number of rounds and authorized ammunition and to identify violations of the related policies.

In order to assess the DPD's implementation of its monthly inspection process, the Monitor requested all DPD 709 reports completed between October 2007 and December 2007. The DPD submitted a total of 55 reports for the month of October, 61 for the month of November, and 51 for the month of December. While the DPD 709 reports appear to demonstrate a systematic effort to comply with the requirements of paragraph U23, and indicate that many commands are conducting these inspections every month as required, the varying number of reports per month suggests that not all commands are conducting the required inspections on a monthly basis.<sup>33</sup>

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<sup>32</sup> The Monitor is seeking additional information to place the number of occurrences in context.

<sup>33</sup> Due to the restructuring within the DPD, the Monitor does not have current information related to the total number of DPD commands as of the date the Form 709s were submitted. However, based on a minimum variance of 17% between the highest number of commands (61) that performed the inspection in November and the lowest number of commands (51) in December, the DPD conducted inspections in December in, at best, 84% of the

The Monitor also noted that at least 191 officers of 1,418 inspected in October had a violation noted; however, the reasons for the violations (e.g., unauthorized weapon, ammunition, or number of rounds) were not identified in the reports.<sup>34</sup> According to the DPD, the inspections reports are immediately reviewed by the respective Commanding Officer (CO) in order to identify and enforce any disciplinary violations. As such, the supervisors responsible for completing the DPD 709 forms should indicate the corresponding reason for the violations.

In its Eighteenth Quarter Status Report, the DPD noted that, to date, the reports have not reflected violations for carrying excessive numbers of rounds. The DPD reported one incident, however, during Q18 involving a critical firearm discharge in which a member was found in violation of the prohibition against carrying unauthorized ammunition. The DPD reports that it continues to investigate that incident.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements of paragraphs U21-23. The DPD is in compliance with paragraph U22 and the Monitor has not yet completed its evaluation of compliance with the requirements of paragraphs U21 and U23.

### 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, 2007. The Monitor again assessed compliance with these paragraphs during the current quarter. The results of our current assessment follow.

#### *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.

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commands or specialized units. However, we would only be able to substantiate this by comparing the forms to the current list of commands. The Monitor will request this information during the quarter ending May 31, 2008.

<sup>34</sup> The reports for 484 of the 1,418 officers, which were submitted electronically, were cut off and the violation section could not be reviewed by the Monitor when printed. Therefore, the Monitor was unable to determine the exact number of violations. The Monitor will request legible copies to complete the evaluation.

## *Background*

The Monitor last assessed the DPD's compliance with paragraph U24 during the quarter ending August 31, 2007, finding the DPD in compliance with the policy requirements. The Monitor had not yet completed its evaluation of the DPD's compliance with the implementation requirements of the paragraph. The DPD effectively developed and disseminated TD 04-03, *Use of Force Continuum*; Directive 304.2, *Use of Force*; and Directive 304.4, *PR-24 Collapsible Baton*. The DPD continued Train-the-Trainer courses on the PR-24, the intermediate force device, and began training members using the approved lesson plan.

## *Current Assessment of Compliance*

Directive 304.2, *Use of Force*, requires police officers to be trained to use the PR-24 prior to its issuance to the officers. Training and re-training of all DPD members on the PR-24 continues using the approved *Monadnock PR 24 Collapsible Baton Lesson Plan*. According to the DPD, as of the end of this quarter, 944 out of approximately 3,000 members (31.5%) have received the initial training. Although still insufficient for compliance, this is up from 678 at the end of the quarter ending August 31, 2007.

In its Eighteenth Quarter Status Report, the DPD reported that the *Monthly Equipment Inspection Report* (DPD 709) includes the inspection of the PR-24. This monthly inspection report is completed at the command level and includes all DPD members who are approved to carry the PR-24. The report is reviewed by COs in order to identify any violations for the purpose of taking corrective action. All reports are forwarded to the Office of Civil Rights (OCR) Compliance Office where they are retained.

In response to the Monitor's inquiry as to whether a sufficient number of PR-24s have been purchased for the Department, the DPD notes that 4,000 have been purchased for a force of approximately 3,000 personnel, which the Monitor finds adequate.

Based on the foregoing, the Monitor finds that the DPD is in compliance with the policy requirements but not yet in compliance with the training and implementation requirements of 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, 2007. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### **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, 2007. The Monitor found the DPD in compliance with the policy requirements but withheld a determination of compliance with the implementation requirements of the paragraphs, pending the Monitor's review of the DPD's audit covering these paragraphs, which was submitted on the last day of the quarter. Training had not yet taken place on the requirements of these paragraphs.

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

In the Monitor's Report for the Quarter Ending August 31, 2007, the Monitor reported that the incidents included in the DPD's *Use of Force Investigations Audit*, which was submitted on its due date of August 31, 2007, would be evaluated in its Report for the Quarter Ending November 30, 2007. Although the audit included five incidents involving the use of chemical spray, the audit did not evaluate the actual force, only the investigation of the force. As a result, the Monitor was not able to include the findings from the five incidents in its assessment of compliance and, instead, the Monitor elected to conduct independent testing.

In order to assess the DPD's compliance with paragraphs U25-26, the Monitor reviewed auditable forms related to a sample of 22 incidents involving the use chemical spray from May 1 through July 31, 2007.<sup>35</sup> The Monitor's review revealed that the DPD adequately implemented

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<sup>35</sup> On January 14, 2008, the Monitor requested auditable forms for August 1, 2007 through October 31, 2007 in order to conduct a more recent assessment of the DPD's compliance. However, the request was outstanding as of the end of the current quarter.

Directive 304.2, *Use of Force*, with regard to the use of chemical spray for these incidents. Specifically, when possible, the officers gave a verbal warning and provided time to allow the subject to comply prior to using chemical spray, and they decontaminated within 20 minutes of the application of spray. In all incidents reviewed, officers obtained appropriate medical assistance for sprayed subjects when necessary. None of the incidents reviewed involved the use of chemical spray against a crowd.

The Monitor identified several concerns with regard to the completion of the auditable forms and the supervisory investigation of the incidents, including: officers who did not use force but were listed as involved officers, auditable forms (UF-002) that were not present for all officers who used force (according to the narrative section of the investigation), one auditable form that did not have all of the appropriate chemical spray boxes checked, and one incident that was missing the supervisory investigation altogether.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements and is in compliance the implementation requirements of paragraphs U25-26, notwithstanding the few concerns noted above regarding the completion of auditable forms.

## 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 uses of force (UOF), prisoner injury, critical firearms discharges (CFDs) 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 and develop an auditable form<sup>36</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 CFDs and in-custody deaths, and the DPD must develop a protocol for conducting investigations of CFDs. 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 CFDs), 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 CFDs and in-custody deaths.

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<sup>36</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.

#### **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 November 30, 2007. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending May 31, 2008.

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

This section comprises paragraphs U34-36. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2007. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending May 31, 2008.

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

This section comprises paragraphs U37-41. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2007. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending May 31, 2008.

### **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 found the DPD in compliance with paragraph U42, which is a "policy-only" paragraph, during the quarter ending May 31, 2006. The DPD will remain in compliance with this paragraph until such time as the policy directly responsive to the paragraph is revised.<sup>37</sup> The Monitor last assessed the DPD's compliance with paragraph U43 during the quarter ending November 30, 2007, and is scheduled to again assess the DPD's compliance with the paragraph during the quarter ending May 31, 2008.

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

This section comprises paragraphs U44-45. The Monitor found the DPD in compliance with paragraph U44, which is a "policy-only" paragraph, during the quarter ending May 31, 2005. The DPD will remain in compliance with this paragraph until such time as the policy directly responsive to the paragraph is revised.<sup>38</sup> The Monitor last assessed the DPD's compliance with

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<sup>37</sup> Revisions to policy will trigger an additional assessment by the Monitor. Implementation of policy is tested under paragraph U43.

<sup>38</sup> Revisions to policy will trigger an additional assessment by the Monitor. Implementation of policy is tested under paragraph U45.

paragraph U45 during the quarter ending November 30, 2007, and is scheduled to again assess the DPD's compliance with the paragraph during the quarter ending May 31, 2008.

### C. WITNESS IDENTIFICATION AND QUESTIONING POLICIES

This section comprises paragraphs U46-48. The Monitor found the DPD in compliance with paragraphs U46 and U47, which are "policy-only" paragraphs, during the quarter ending May 31, 2006. The DPD will remain in compliance with these paragraphs until such time as the policy directly responsive to the paragraphs is revised.<sup>39</sup> The Monitor last assessed the DPD's compliance with paragraph U48 during the quarter ending November 30, 2007, and is scheduled to again assess the DPD's compliance with the paragraph during the quarter ending May 31, 2008.

### 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 August 31, 2007. 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.

#### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U49 during the quarter ending August 31, 2007, finding the DPD in compliance with the policy requirements of the paragraph and in partial compliance with the implementation requirements of the paragraph. The Monitor reviewed a sample of 94 arrests, noting that 57 detainees were released prior to arraignment. Of the remaining 37 detainees, seven were presented for arraignment after the 48-hour period elapsed, two remained in custody nearly 50 hours before they were released, and the Monitor could not ascertain whether three detainees were released.

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<sup>39</sup> Revisions to policy will trigger an additional assessment by the Monitor. Implementation of policy is tested under paragraph U48.

### *Current Assessment of Compliance*

During the current quarter, the Monitor initiated a discussion with the parties seeking clarity regarding paragraph U49. The UOF CJ definition of prompt judicial review suggests that paragraph U49 is applicable solely to warrantless arrests. However, a literal interpretation of the language of paragraph U49 suggests that all arrests require prompt judicial review. The Monitor sought guidance from the applicable DOJ Technical Assistance Letter, noting that it did not clear up this issue.<sup>40</sup> However, the Technical Assistance Letter also referenced arrests in relation to the assignment of investigators, further suggesting that paragraph U49 is applicable solely to felony arrests and certain misdemeanor arrests.

The Monitor is withholding a determination of the DPD's compliance with paragraph U49 pending the resolution of these issues.

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

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

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U50 during the quarter ending August 31, 2007, finding that the DPD was not yet in compliance. The Monitor reviewed a sample of 94 arrests. For 16 of the 46 arrests to which the 24-hour rule was applicable, the DPD did not submit warrant requests within the requisite 24-hour period.

### *Current Assessment of Compliance*

For the reasons described in the *Current Assessment of Compliance* for paragraph U49, the Monitor is withholding a determination of compliance with paragraph U50.

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

Paragraph U51 requires the DPD to document on an auditable form all instances in which an arraignment warrant is submitted more than 24 hours after the arrest, all instances in which it is not in compliance with the prompt judicial review policy, and all instances in which

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<sup>40</sup> The DOJ wrote three technical assistance letters to the City and the DPD during their investigation (prior to the filing of the consent judgments). The letters were meant to provide guidance to the Department in a number of areas.

extraordinary circumstances delayed the arraignment. The documentation must occur by the end of the shift in which there was:

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

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U51 during the quarter ending August 31, 2007, finding that the DPD was not yet in compliance with the paragraph. The Monitor reviewed 94 arrests, noting that an auditable form was required for 18 arrests. Six of the 18 required auditable forms, although completed, were not completed within the mandated 24 hour period and three additional auditable forms, although completed, were incorrectly completed. Four of these forms did not address presentation for arraignment in excess of the mandated 48 hour period.

### *Current Assessment of Compliance*

For the reasons described in the Current Assessment of Compliance for paragraph U49, the Monitor is withholding a determination of compliance with paragraph U51.

## **E. HOLD POLICIES**

This section comprises paragraphs U52-53. 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 this paragraph until such time as the policy directly responsive to the paragraph is revised.<sup>41</sup> The Monitor last assessed the DPD's compliance with paragraph U53 during the quarter ending August 31, 2007. The Monitor again assessed the DPD's compliance with paragraph U53 during the current quarter. The results of our current assessment 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.

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<sup>41</sup> Revisions to policy will trigger an additional assessment by the Monitor. Implementation of policy is tested under paragraph U53.

## *Background*

The Monitor last assessed the DPD's compliance with paragraph U53 during the quarter ending August 31, 2007, finding that the DPD was not yet in compliance with the paragraph. The Monitor determined that of 213 holds identified during the period selected for review, the dates and times of identification of the holds were documented for only 70, and the Monitor could not determine whether those holds were cleared, as the dates and times were not documented.

## *Current Assessment of Compliance*

In order to assess the DPD's compliance with paragraph U53 during the current quarter the Monitor requested and received a listing of holds for the period from December 24 through December 31, 2007. The Monitor reviewed 19 holds, noting that, as with prior periods assessed, the Detainee Intake Sheet did not capture the times and or dates the releases were cleared. In some instances, although the date the hold was identified was documented, the time was not documented.<sup>42</sup>

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph U53.

## F. RESTRICTION POLICIES

This section comprises paragraphs U54-55. 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 this paragraph until such time as the policy directly responsive to the paragraph is revised.<sup>43</sup> The Monitor last assessed the DPD's compliance with paragraph U55 during the quarter ending August 31, 2007. The Monitor again assessed the DPD's compliance with paragraph U55 during the current quarter. The results of our current assessment 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

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<sup>42</sup> In response to the Monitor's request to provide a listing of holds, the DPD provided over one hundred Detainee Intake Sheets. In many instances, the intake sheets were not responsive to the Monitor's request in that the underlying arrest was also identified as a hold.

<sup>43</sup> Revisions to policy will trigger an additional assessment by the Monitor. Implementation of policy is tested under paragraph U55.

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 paragraph U55 during the quarter ending August 31, 2007, at which time the Monitor found that the DPD was not yet in compliance. The Monitor reviewed documentation for 86 detainees with restrictions. For 21 of the first 30 restrictions reviewed, the Monitor was unable to determine whether the restrictions were reviewed at the time they were placed or whether they were lifted or reevaluated within 24 hours of being placed.

### *Current Assessment of Compliance*

In order to assess the DPD's compliance with paragraph U55 during the current quarter, the Monitor requested a listing of all detainees with restrictions for the period June 1, 2007 through December 31, 2007. In response, the DPD indicated that it had identified 91 detainees with restrictions and provided legible photocopies of related auditable forms. For 17 of the first 20 restrictions reviewed, the DPD did not document the date and time the restrictions were lifted. As a result, the Monitor was unable to determine whether the restrictions exceeded the 24 hour period and required reevaluation.<sup>44</sup> For one additional restriction out of the first 20 reviewed, although the restriction was lifted in excess of 24 hours, the auditable form utilized by the DPD was not generated and completed. Based on the early determination of non-compliance (18 of the first 20 restrictions reviewed were non-compliant), the Monitor discontinued its testing of the remaining restrictions.

Based on the foregoing, the Monitor finds that the DPD is not in compliance with paragraph U55.

## **G. MATERIAL WITNESS POLICIES**

This section comprises paragraphs U56-57. 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 this paragraph until such time as the policy directly responsive to the paragraph is revised.<sup>45</sup> The Monitor last assessed the DPD's

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<sup>44</sup> Based on the results of reviewing the first 20 restrictions, the Monitor determined that the DPD was not in compliance with paragraph U55. As a result, the Monitor elected not to review the entire population of 91 restrictions.

<sup>45</sup> Revisions to policy will trigger an additional assessment by the Monitor. Implementation of policy is tested under paragraph U55.

compliance with paragraph U57 during the quarter ending August 31, 2007. The Monitor again assessed the DPD's compliance with paragraph U57 during the current quarter. 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 August 31, 2007, at which time the Monitor found the DPD in compliance. The Monitor reviewed supporting documentation for nine material witnesses identified by the DPD for the period December 1, 2006 through May 31, 2007. For all nine material witnesses, the DPD obtained the required court order prior to detaining the witness and completed the requisite auditable form.

***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 June 1, 2007 through December 31, 2007. The DPD identified two material witnesses for the period under review. For both material witnesses, the DPD provided evidence that court orders were obtained prior to taking the material witnesses into DPD custody. Also, for both material witnesses, all required information responsive to paragraph U57 was documented on auditable forms and attached to the court orders.<sup>46</sup>

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

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<sup>46</sup> As done in prior reporting periods, the Monitor requested access to review Homicide Detective daily activity logs for the period December 1, 2006 through May 31, 2007. The Monitor was unable to complete this review, as the Homicide Section was in the process of moving to a different location and related records were inaccessible. The Monitor will resume its review of daily activity logs during the next regularly scheduled assessment of paragraph U57.

## H. DOCUMENTATION OF CUSTODIAL DETENTION

This section comprises paragraph U58. The Monitor last assessed the DPD's compliance with paragraph U58 during the quarter ending November 30, 2007, and is scheduled to again assess the DPD's compliance with the paragraph during the quarter ending May 31, 2008.

## I. COMMAND NOTIFICATION

This section comprises paragraphs U59-60. The Monitor last assessed the DPD's compliance with paragraph U59 during the quarter ending November 30, 2007, and is scheduled to again assess compliance with the paragraph during the quarter ending May 31, 2008. The Monitor last assessed the DPD's compliance with paragraph U60 during the quarter ending August 31, 2007. The Monitor again assessed the DPD's compliance with the paragraph 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, 2007, finding the DPD in compliance with the policy requirements but not yet in compliance with the implementation requirements of the paragraph. The Monitor determined that there was no documented CO review and evaluation on 39 of 40 auditable forms that required such review and evaluation on the date generated. Additionally, the DPD had no mechanism to track the release time and date of holds and, thus, no mechanism to ensure all required auditable forms are generated and reviewed.

### *Current Assessment of Compliance*

In order to assess the DPD's compliance with paragraph U60 during the current quarter, the Monitor requested and received auditable forms restrictions placed on detainees and material

witnesses.<sup>47</sup> Although the DPD provided the requisite auditable forms for the two material witnesses identified, auditable forms were not provided for detainees with restrictions.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements but is not yet in compliance with the implementation requirements of paragraph U60.

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<sup>47</sup> Refer to the Monitor's *Current Assessments of Compliance* for paragraphs U49-U51, U55 and U57, respectively, for additional information regarding the populations and samples tested.

## **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>48</sup>

Section IV's introductory section comprises paragraphs U61-63. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2007. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending May 31, 2008.

### **A. INTAKE AND TRACKING**

This section comprises paragraphs U64-66. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2007. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending May 31, 2008.

### **B. EXTERNAL COMPLAINT INVESTIGATIONS**

This section comprises paragraphs U67-69. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2007, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending May 31, 2008.

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<sup>48</sup> The OCI reports to the Board of Police Commissioners (BOPC) and is responsible for conducting external complaint investigations.

## V. GENERAL POLICIES

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

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

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

The Monitor last assessed the DPD's compliance with paragraphs U70 and U71 during the quarter ending November 30, 2007. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending May 31, 2008.

The Monitor last assessed the DPD's compliance with paragraphs U72-77 during the quarter ending August 31, 2007. 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 August 31, 2007, finding that the DPD was in compliance with the policy requirements but not yet in compliance with the implementation requirements of these paragraphs.

### *Current Assessment of Compliance*

During the current quarter the DPD provided a training matrix identifying the training module responsive to the requirements of paragraphs U72 and U74. According to the matrix, the DPD's Use of Force Lesson Plan includes training that addresses the requirements of paragraphs U72 and U74.<sup>49</sup> In its Eighteenth Quarter Status Report, the DPD indicated that this training would begin in 2008; however, the Monitor has not been informed that training has commenced.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements but is not yet in compliance with the training and implementation requirements of 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>50</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 August 31, 2007, finding that the DPD was in compliance with the policy requirements but not yet in compliance with the implementation requirements of paragraph U73. The Monitor reviewed 62 daily attendance records for all district station and specialized unit platoons for May 29, 2007 and calculated an overall compliance rate of 76%.

### *Current Assessment of Compliance*

During the current reporting period, the DPD and the DOJ agreed that an acceptable field deployment of supervisors to officers in patrol units and specialized units is one to ten. Prior to this reporting period, the acceptable field deployment ratio utilized in assessing compliance with this requirement was one to eight.

In order to assess the DPD's compliance with paragraph U73 during the current quarter, the Monitor requested daily attendance records for all district station and specialized unit platoons for December 28, 2007. In response, the DPD provided 65 daily attendance records.

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<sup>49</sup> On August 14, 2007, the DPD resubmitted the *Use of Force Lesson Plan*. The Monitor provided comments on various dates during September and October 2007 and approved a revised *Use of Force Lesson Plan* on November 9, 2007.

<sup>50</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.

The Monitor reviewed all 65 daily attendance records, noting that for 57 daily attendance records, the DPD deployed in the field an adequate number of supervisors of patrol units and specialized units.<sup>51</sup> This equates to a compliance rate of 87.7%.<sup>52</sup>

During the current quarter, the DPD provided a training matrix that identified the training module responsive to the requirements of the Consent Judgment paragraphs, including paragraph U73. According to the matrix, the DPD's *Supervisory Leadership and Accountability Lesson Plan* includes training that addresses the requirements of paragraph U73. As described in the *Current Assessment of Compliance* for paragraphs U118-119, the Monitor approved the lesson plan on November 9, 2007 but the DPD has not yet conducted training using the approved lesson plan.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements and is in partial compliance with the implementation requirements of paragraph U73; however, the DPD is not yet in compliance with the training requirements of the paragraph.

### **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 August 31, 2007, finding that the DPD was in compliance with the policy requirements but not

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<sup>51</sup> For the eight instances of non-compliance the ratios ranged from 10.3 to 28 field officers for every field supervisor. The Southwestern and Northwestern districts exceeded the ratio for one platoon each and the Eastern District exceeded the ratio for all three platoons.

<sup>52</sup> For five attendance records, deployment exceeded the acceptable ratio of one field supervisor for every ten field officers. For three attendance records, either no supervisor was on duty or a supervisor was on duty for a portion of the officers' platoon.

yet in compliance with the implementation requirements of the paragraph. The Monitor had previously determined that the DPD complied with the policy requirements of this paragraph by adequately disseminating Directive 202.1, *Arrests*. However, although the DPD provided training for officers, the rosters provided were for subject matter unrelated to the requirements of paragraph U75.

### *Current Assessment of Compliance*

During the current quarter, the Monitor requested documentation in connection with the DPD's training on the requirements of paragraph U75 and the implementation of relevant policy. In response, the DPD provided an Administrative Message dated November 16, 2007 entitled *Roll Call Training: [07-08] – Off Duty Police Action* to be read at all roll calls for the period November 17, 2007 through November 23, 2007. The Administrative Message addressed the following:

- Law Enforcement Authority
- Off Duty Police Action

The Administrative Message was clear and concise and sufficiently addressed the requirements of paragraph U75.<sup>53</sup>

During the current quarter, the DPD provided a training matrix identifying the training module responsive to the requirements of paragraph U75. According to the matrix, the DPD's *Use of Force Lesson Plan* includes training that addresses the requirements of paragraph U75.<sup>54</sup> In its Eighteenth Quarter Status Report, the DPD indicated that this training would begin in early 2008; however, the Monitor has not been informed that training has commenced.

The DPD also conducted an inspection of compliance with paragraph U75. The inspection queried the COs of all districts as well as OCI and the Detroit Law Department for any off-duty incidents that occurred during the period September 1, 2007 through November 28, 2007. One incident was identified and the inspections appropriately addressed the officer's actions.

During the current quarter, the Monitor initiated a discussion with the parties seeking clarification regarding how implementation of the requirements can be assessed. The Parties

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<sup>53</sup> The DPD confirmed that the roll call training is not intended to fulfill or partially fulfill Consent Judgment requirements; however, "it is a supplement to training and reinforces the DPD's policies and procedures to its members for the purpose of ensuring compliance with the Consent Judgment requirements, as well as any other training, legal or other high risk issues that exist."

<sup>54</sup> As described above, the Monitor approved a revised *Use of Force Lesson Plan* on November 9, 2007.

discussed this matter during their February 2008 monthly meeting; a final resolution was not reached as of the end of the current quarter.<sup>55</sup>

Based on the foregoing, the Monitor finds the DPD in compliance with the policy requirements of paragraph U75 but is withholding an overall determination of compliance pending the resolution of the discussions.

### *Paragraph U76 – Handling of Prisoners*

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

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

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U76 during the quarter ending August 31, 2007, finding the DPD in compliance with the policy requirements but not yet in compliance with the implementation requirements of the paragraph. In response to a document request, the DPD provided training rosters; however, the rosters were for a limited number of personnel, many of the rosters were for subject matter unrelated to the requirements of paragraph U76, and copies of relevant materials used or disseminated during the training were not fully provided as requested.

### *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 U76 and the implementation of relevant policy. The DPD provided a training matrix identifying the training module responsive to the requirements of paragraph U76. According to the matrix, the DPD's *Use of Force Lesson Plan* includes training that addresses the requirements of paragraph U76.<sup>56</sup> In its Eighteenth Quarter

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<sup>55</sup> The DOJ provided the City with a draft proposal on March 13, 2008.

<sup>56</sup> As described above, the Monitor approved a revised Use of Force Lesson Plan on November 9, 2007.

Status Report, the DPD indicated that this training would begin in 2008; however, the Monitor has not been informed that training has commenced.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements but is not yet in compliance with the training and implementation requirements of paragraph U76.

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

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

- a. Requires officers to consider particular factors in determining whether a foot pursuit is appropriate, including the offense committed by the subject, whether the subject is armed, the 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 August 31, 2007, finding the DPD in compliance with the policy requirements but not yet in compliance with the implementation requirements of the paragraph. In response to the document request, the DPD provided training rosters; however, the rosters were for a limited number of personnel, many of the rosters were for subject matter unrelated to the requirements of paragraph 77, and copies of relevant materials used or disseminated during the training were not fully provided as requested.

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

During the current quarter, the Monitor requested a listing of any and all training conducted in relation to paragraph U77. In response, the DPD provided an Administrative Message dated November 2, 2007 entitled *Roll Call Training: [07-06] – Foot Pursuits* to be read at all roll calls for the period November 3, 2007 through November 9, 2007. The Administrative Message addressed the following:

- when it was permissible to engage in a foot pursuit;
- alternatives to foot pursuits;

- carrying a weapon while in a foot pursuit; and
- Required reporting.

The Administrative Message was clear and concise and sufficiently addressed the requirements of paragraph U77.<sup>57</sup>

The DPD also provided a training matrix identifying the training module responsive to the requirements of paragraph U77. According to the matrix, the DPD's *Use of Force Lesson Plan* includes training that addresses the requirements of U77.<sup>58</sup> In its Eighteenth Quarter Status Report, the City indicated that this training would begin in 2008; however, the Monitor has not been informed that training has commenced.

In response to the Monitor's request, the DPD also provided 25 Use of Force and/or Detainee Injury Reports for the period December 1, 2007 through December 31, 2007. The Monitor reviewed all 25 reports and noted that eight referenced a foot pursuit.<sup>59</sup> For four of these eight foot pursuits, the DPD provided a Foot Pursuit Evaluation form.<sup>60</sup> For four pursuits, the involved officers initiated and acted alone in the foot pursuit. Although not a compliance issue, initiating a foot pursuit alone is a violation of DPD policy; however, the officers' actions were adequately addressed by their supervisors in only one incident.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements but is not yet in compliance with the training and implementation requirements of paragraph U77.

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<sup>57</sup> As noted above, the DPD has confirmed that the roll call training is not intended to fulfill or partially fulfill Consent Judgment requirements.

<sup>58</sup> As described above, the Monitor approved a revised *Use of Force Lesson Plan* on November 9, 2007.

<sup>59</sup> Although the form contains a checkbox to indicate a "foot pursuit," the box was not checked for all eight.

<sup>60</sup> The DPD also provided a fifth evaluation form; however, it was unrelated to any Use of Force reports and the evaluation did not appropriately address the officers' foot pursuit.

## 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 August 31, 2007. The Monitor again assessed the DPD's compliance with this 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. 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 August 31, 2007.

The Monitor found that the DPD was not yet in compliance with subparagraph U78a, as the DPD's risk management database, the Management Awareness System (MAS), was not yet fully developed or operational. However, the parties were meeting monthly to discuss the DPD's progress toward implementation of the MAS. The DPD also provided monthly status reports and supporting documentation to the DOJ and the Monitor. As of the end of that quarter, the DPD was on schedule to meet the timeline agreed upon by the parties that was submitted to the Court on February 23, 2007.

The Monitor did not complete its evaluation of compliance with subparagraph U78b, as the Monitor had not yet re-evaluated the requirements of paragraph U91.

The Monitor found that the DPD was not yet in compliance with subparagraph U78c, as it was not yet in compliance with the majority of the paragraphs related to the auditing protocol.

The Monitor found that the DPD was in compliance with subparagraph U78d, as the DPD's Policy Focus Committee was continuing to meet in order to conduct regular and periodic reviews of all DPD policies. The Monitor reviewed the minutes from the August 15, 2007 meeting and found that the committee was fulfilling the requirements of this subparagraph.

The Monitor found that the DPD was not yet in compliance with subparagraph U78e, as the DPD was in the process of developing regular meetings of DPD management to share information and evaluate patterns of conduct by DPD that potentially increase the DPD's liability.

### *Current Assessment of Compliance*

Regarding subparagraph U78a, the MAS database is not yet fully developed or operational. The DPD continues, however, to adhere to the timeline outlined in the Court's November 9, 2007 Stipulated Order, which was issued pursuant to the parties' joint letter to the Court of February 23, 2007.

Regarding subparagraph U78b, the Monitor has not yet re-evaluated the requirements of paragraph U91.

Regarding subparagraph U78c, the DPD is not yet in compliance with the majority of the paragraphs relating to the auditing protocol.

Regarding subparagraph U78d, the DPD's Policy Focus Committee has not held a meeting to conduct regular and periodic reviews of all DPD policies pursuant to subparagraph U78d since the August 15, 2007 meeting described in the Monitor's Report for the Quarter Ending August 31, 2007. On January 18, 2008, the DPD informed the Monitor that it intended to hold such a meeting prior to the end of the current quarter, and would forward minutes and a list of attendees once the meeting occurred. The DPD has not indicated that this meeting has taken place. Nonetheless, the prior meetings of DPD were sufficient to fulfill the requirements of this paragraph, and the DPD has stated its intent to continue this practice. The Monitor reminds the DPD that advance notice of the next meeting is requested so that the Monitor can make an effort to attend.

Regarding subparagraph U78e, the DPD has provided the Monitor with "recaps" of Senior Management Team meetings held on November 19, 2007, December 10, 2007, January 7, 2008, January 14, 2008, January 28, 2008, and February 18, 2008. For certain of these meetings, either

an agenda or a list of attendees was provided with the summary of matters.<sup>61</sup> Although the DPD has stated that there is no written procedure requiring that these meetings take place or outlining the general purpose of the meeting, the Monitor notes that the DPD has been meeting regularly and in apparent good faith to address issues of liability as required by subparagraph U78e.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with subparagraphs U78a and c and is in compliance with subparagraphs U78d and e. The Monitor has not yet re-evaluated the DPD's compliance with subparagraph U78b.

### *Recommendation*

As noted above, the DPD has stated that there is no written procedure requiring that meetings pursuant to subparagraph U78e take place or outlining the general purpose of the meeting. The Monitor recommends that the DPD create such written procedures.

## **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 has previously concluded that the DPD is in compliance with paragraphs U82-84 and subparagraphs U88a, b d, and e, as the DOJ provided the DPD with verbal conditional approval of the Data Input Plan and approved the Review Protocol and the Report Protocol. The DPD will remain in compliance with these provisions unless these documents are revised. In addition, the Monitor has discontinued monitoring compliance with subparagraph U88c, which requires the issuance of a Request for Proposal (RFP), as a result of the DOJ's agreement to allow the DPD to convert the Interim Management Awareness System (IMAS) into the MAS without the use of an outside vendor, thereby obviating the need for a RFP.

The Monitor last assessed the DPD's compliance with paragraphs U79-81 and U86-87 during the quarter ending November 30, 2007, and is scheduled to again assess the DPD's compliance with them during the quarter ending May 31, 2007.

The Monitor last assessed the DPD's compliance with paragraph U85, subparagraphs U88f and g, and paragraph U89 during the quarter ending August 31, 2007. The Monitor again assessed

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<sup>61</sup> After the end of the quarter, the DPD provided agendas, attendee lists and minutes for meetings held on the following dates: December 10 and 17, 2007; January 7, 14 and 28, 2008; and February 4 and 18, 2008. Although received after the quarter-end, the Monitor considered these materials in its current assessment of compliance.

the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### **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 August 31, 2007, finding that the DPD had developed the required modules and was in compliance.

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

As described in the *Current Assessment of Compliance* for subparagraph U78a, the MAS database is not yet fully developed or operational. The DPD continues, however, to adhere to the timeline outlined in the Court's November 9, 2007 Stipulated Order, which was issued pursuant to the parties' joint letter to the Court of February 23, 2007. The MAS has been organized into modules as required by paragraph U85.

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

### **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.<sup>62</sup> 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.

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<sup>62</sup> The Court's November 9, 2007 Stipulated Order requires the City to comply with subparagraph U88f, relating to the availability of a beta version of the MAS, by January 24, 2008. This Court-ordered deadline supersedes the deadline originally provided in the UOF CJ.

### *Background*

The Monitor last assessed the DPD's compliance with subparagraph U88f during the quarter ending August 31, 2007, finding that the DPD was not yet in compliance. The Monitor recognized that the DPD was on schedule to meet the agreed upon deadline of January 24, 2008, but for the purpose of assessing compliance, the deadline set forth in paragraph U88f remained in effect.

### *Current Assessment of Compliance*

During this quarter, the deadlines that were previously agreed upon by the parties and set forth in a letter to the Court on February 23, 2007, were affirmed by the Court in a Stipulated Order dated November 9, 2007. According to the DPD, the beta version of the MAS was ready for testing by the court-ordered deadline. The DOJ and the Monitor viewed a demonstration of the current version of the MAS on February 27, 2008 but have not yet participated in testing of the beta version. The testing will take place during the Quarter Ending August 31, 2008.

Based on the foregoing, the Monitor withholds a determination of the DPD's 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.<sup>63</sup>

### *Background*

The Monitor last assessed the DPD's compliance with subparagraph U88g during the quarter ending August 31, 2007, finding that the DPD was not yet in compliance. The Monitor recognized that the DPD was on schedule to meet the agreed upon deadline of July 24, 2008, but for the purpose of assessing compliance, the deadline set forth in paragraph U88g of the original UOF CJ remained in effect.

### *Current Assessment of Compliance*

During this quarter, the deadlines that were previously agreed upon by the parties and set forth in a letter to the Court on February 23, 2007, were affirmed by the Court in a Stipulated Order dated November 9, 2007. The Monitor will evaluate this paragraph after the court-ordered

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<sup>63</sup> The Court's November 9, 2007 Stipulated Order requires the City to comply with subparagraph U88g, relating to the implementation of the MAS, by July 24, 2008. This Court-ordered deadline supersedes the deadline originally provided in the UOF CJ.

deadline for the MAS to be operational and fully implemented (July 24, 2008). The DPD has indicated that it is currently on schedule to meet this court-ordered deadline.

Based on the foregoing, the Monitor has not yet evaluated the DPD's 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 August 31, 2007, finding that the DPD was not yet in compliance, as only 72% of all relevant personnel had received training on the IMAS as of the end of that quarter.

#### *Current Assessment of Compliance*

The IMAS has been developed and is operational. According to the DPD, a total of 621 of 776 (80%) DPD supervisory members have been trained on IMAS. In the DPD's Eighteenth Quarter Status Report, the DPD stated that it continues to utilize IMAS in its current state; however, since the MAS is nearly fully developed, any additional IMAS training has been suspended.

Based on the foregoing, the Monitor finds that the DPD is not in compliance with paragraph U89; however, the Monitor notes that the DPD has made significant progress towards complying with the requirements of the paragraph.

## **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, 2007. The Monitor again assessed the DPD's compliance with this paragraph 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 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 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, 2007, finding that the DPD was in compliance with the policy requirements of this paragraph, but the Monitor had not yet re-evaluated the implementation requirements of the paragraph.

### *Current Assessment of Compliance*

The Monitor has not yet evaluated the DPD's compliance with the implementation component of this paragraph. The Monitor and the DPD will engage in discussions to discuss the intent and the assessment of the implementation requirements of this paragraph going forward.

Based on the foregoing, the DPD remains in compliance with the policy requirements of paragraph U91; the Monitor has not yet re-evaluated the implementation requirements of the paragraph.

## C. OVERSIGHT

This subsection of the UOF CJ (paragraphs U92-99) requires the DPD to establish an internal audit process, to perform annual audits of all precincts and specialized units on eight areas of policing,<sup>64</sup> to perform periodic random reviews of scout car camera videotapes and video recording equipment, and to meet regularly with local prosecutors to identify any issues in officer, shift or unit performance. Each of these oversight provisions requires the DPD to examine a number of issues, but a common theme among them all is the requirement to assess and report on the appropriateness of the police activity being examined.

The Monitor last assessed the DPD's compliance with paragraphs U92, U93, U97 and U99, and subparagraphs U94a, U94c, U95b, and U95c during the quarter ending November 30, 2007. The

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<sup>64</sup> Including UOF investigations; prisoner injuries; allegations of misconduct; arrests; stops and frisks; witness identification and questioning; custodial detention practices, and complaint investigations.

Monitor last assessed the DPD's compliance with subparagraph U94b during the quarter ending May 31, 2007, and with subparagraph U95a and paragraphs U96 and U98 during the quarter ending August 31, 2007.

The Monitor is scheduled to again assess compliance with subparagraphs U94b and U95a and paragraphs U96 and U99 during the quarter ending May 31, 2008. The Monitor is scheduled to again assess compliance with paragraphs U92 and U97 and subparagraphs U94a, U94c, and U95b during the quarter ending August 31, 2008 and paragraph U93 during the quarter ending November 30, 2008. The Monitor again assessed the DPD's compliance with subparagraph U95c and paragraph U98 during the current quarter. The results of our current assessments follow.

### **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.

#### ***Background***

The Monitor last assessed the DPD's compliance with subparagraphs U94a and U94c during the quarter ending November 30, 2007. The Monitor found that the DPD was not yet in compliance with subparagraph U94a as the AT failed to identify at least five force investigations that were critical to the review and did not test all of the areas required by the UOF CJ in its first *UOF Investigations Audit* which was submitted on August 31, 2007. The Monitor found the DPD in compliance with subparagraph U94c because the *Combined UOF and COC Allegations of Misconduct (AOM) Audit* submitted by the DPD on July 31, 2007 as it was determined to be a thorough and quality audit.

The Monitor last assessed the DPD's compliance with subparagraph U94b during the quarter ending May 31, 2007, finding that the DPD was not yet in compliance, as the AT incorrectly assessed the DPD's compliance with a number of UOF CJ requirements in the *Prisoner Injury (PI) Investigations Audit* report submitted by the DPD's AT on January 31, 2007.

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

##### ***Subparagraph U94a – Use of Force Investigations Audit***

The Monitor is scheduled to re-assess the DPD's compliance with subparagraph U94a during the quarter ending August 31, 2008.

##### ***Subparagraph U94b – Prisoner Injuries Investigations Audits***

On February 29, 2008, the last day of the current quarter, the DPD submitted the *Prisoner Injury Investigations Audit*, which is required by subparagraph U94b. The audit found the DPD in compliance with paragraphs U30 and U37, but in non-compliance with paragraphs U27-29, U31-36, and U39-41. Due to the timing of submission, the Monitor has not yet completed its evaluation of this audit or the DPD's compliance with this subparagraph.

#### ***Subparagraph U94c – Allegations of Misconduct Investigations Audits***

The Monitor is scheduled to re-assess the DPD's compliance with subparagraph U94c during the quarter ending August 31, 2008.

#### ***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 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 subparagraph U95a during the quarter ending August 31, 2007 finding that the *Arrests Audit* submitted on April 14, 2007 was not in compliance, mainly because the AT did not conduct testing for all of the UOF CJ requirements and incorrectly assessed certain arrests.

The Monitor last assessed the DPD's compliance with subparagraph U95b during the quarter ending November 30, 2007 finding that the *Stop and Frisk Audit* submitted on August 31, 2007 was not in compliance, mainly because a significant number of stops and frisks had either not been identified or were incorrectly identified by the AT.

On August 31, 2007, the DPD submitted the *Witness Identification and Questioning Audit* required by subparagraph U95c. The Monitor completed its review of this audit during the quarter ending November 30, 2007 and concluded on a number of issues, as documented in the Monitor's quarterly report for the same period. In summary, the Monitor found that the audit was submitted on a timely basis, included the relevant paragraphs of the UOF CJ, and correctly concluded that the DPD was in non-compliance with the relevant paragraphs; however, the Monitor also identified several problems related to the audit's testing process, as well as a number of reporting issues.

The Monitor met with the AT during the previous quarter to discuss its findings; however, the Monitor's work on several issues was incomplete by the time of that meeting, and the Monitor

and the AT were not able to meet to address these outstanding issues as of the end of that quarter. Consequently, the Monitor withheld a determination of compliance with subparagraph U95c pending the completion of its discussions with the AT.

The previous audit conducted by the AT of this topic, which was the first such audit conducted, was submitted on April 1, 2005 and was found to be non-compliant primarily because of incorrect or non-existent compliance rate calculations, inadequate analysis, and no comparison for consistency among the precincts and specialized units. The audits due on August 31, 2005 and August 31, 2006 were skipped.

### *Current Assessments of Compliance*

#### *Subparagraph U95a – Arrest Audit*

The Monitor is scheduled to re-assess the DPD's compliance with subparagraph U95a during the quarter ending May 31, 2008.

#### *Subparagraph U95b – Investigatory Stop and Frisk Practices Audit*

The Monitor is scheduled to re-assess the DPD's compliance with subparagraph U95b during the quarter ending August 31, 2008.

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

During the current quarter, the Monitor again met with the DPD's AT to complete the discussions regarding the *Witness Identification and Questioning Audit Report* submitted by the DPD's AT on August 31, 2007. The outstanding issues discussed during the most recent meeting that further impacted the Monitor's assessment of this audit are as follows:<sup>65</sup>

#### *Assessment of Audit Objectives/Questions and Corresponding Findings/Conclusions*

This audit is required to evaluate the scope, content, duration and voluntariness, where appropriate, of several differing areas of police activity: witness interviews, interrogations, conveyances and material witnesses (herein referred to as "police activities"). The Monitor's comments below address the issues that resulted in inadequate testing, inaccuracies in the results as reported by the AT and difficulties in understanding and interpreting the AT's reported findings and conclusions.

- a. The matrix questions related to assessing the content of the police activities did not evaluate the content of the activities as they were documented; rather, the questions generally assessed the legitimacy of the activity and whether the activity was conducted in adherence to certain

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<sup>65</sup> In the Monitor's Report for the Quarter Ending November 30, 2007, the Monitor reported that the audit contained problems with the testing process, as well as a number of reporting issues.

DPD policy requirements. This meant that the reported conclusions did not match the actual findings. In addition, although the AT evaluated the timing of whether the activities were documented by the end of the shift and whether they were reviewed by supervisors within 12 hours, as required by paragraph U48, the AT did not evaluate whether the “content” of the activity was, in fact, documented, which is also required by paragraph U48. The Monitor has suggested to the AT that the criteria used to evaluate the “content” include, at a minimum, who was involved in the activity, when the activity occurred, where the activity occurred, and what occurred during the activity, such as the types of questions that were asked during the interview and/or interrogation.<sup>66</sup>

- b. The AT separately tested the legal basis, content, voluntariness and scope of the activities, all of which included similar testing criteria; however, the reported compliance rates for several of these areas were inconsistent.<sup>67</sup> Furthermore, the reported findings stated that the scope of certain activities was compliant, but the legal basis of the same activities was non-compliant, which is inconsistent. Similarly, the audit reported that activities were considered non-compliant based on a lack of voluntariness and yet found to be legally sound, which is also inconsistent.<sup>68</sup>
- c. The audit working papers (matrices) contained questions that were confusing, difficult to answer, and/or too general which may have caused some inconsistencies and an overall lack of clarity. The working papers do not explain, nor was the AT able to provide further insight or explanation in regards to certain aspects of its working papers during meetings with the Monitor.
- d. The AT appropriately identified and reported the Homicide Section as a high risk population with respect to witness detention practices based on the DOJ letters of technical assistance. The AT also appropriately held homicide out of compliance. However, the AT reported that Homicide did not provide any documentation and was therefore non-compliant, rather than reporting that the documentation submitted by Homicide was inadequate.

### *Monitor's Conclusion*

The issues described above, along with those previously reported by the Monitor, significantly impacted the reliability and accuracy of the reported findings and the overall quality of the audit.

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<sup>66</sup> The Monitor notes that DPD's Directive 203.9, 7-1 No. 3, *Custodial Questioning*, specifically requires its members to document the “who, what, when, and where” within each of the police activities.

<sup>67</sup> As an example, the AT found 11 of 15 or 73% compliance for the legal basis of interviews, and 12 of 15 (80%) for the content of interviews; the content testing evaluated whether the citizen contact was for legitimate police business.

<sup>68</sup> For example, the AT found that 11 of 15 (73%) interviews had an appropriate legal basis, yet 12 of the same 15 interviews (80%) did not comply with the AT's objective titled “content.” The objective was titled content but really assessed the legal basis of the activity, such as the legitimacy of the citizen contact involved in the interview.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with the requirements of subparagraph U95c.

Although the UOF CJ defines conveyances as any instance when the DPD transports a non-DPD employee for any purpose, the Monitor understands that it may not have been the intention of the UOF CJ to include courtesy conveyances within the audit testing of paragraph U46 requirements, as was done in this audit. This was not evaluated as a compliance issue for this audit; however, the Monitor discussed this issue with the OCR. The Monitor understands that the parties have since commenced discussions to clarify this and these discussions were ongoing as of the end of the quarter.

### **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 August 31, 2007, finding that the DPD was in compliance with the policy requirements but not yet in compliance with the implementation requirements of the paragraph. Training on the requirements of paragraph U98 had not taken place, cameras were not yet installed in the requisite number of patrol cars, and the DPD did not submit documentation of internal inspections that would evaluate whether the DPD is implementing the requirements of the paragraph.

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

During the last quarter, the DPD submitted for the Monitor's review the DPD Training Directive for In-Car Camera and Detention Processing Area Camera Videos – Random Reviews/Functionality Checks (collectively referred to as the "Video Review Protocol"), which is designed to address the requirements of paragraph U98 and subparagraph C64d. At the end of the current quarter, the Monitor provided to the DPD, via written memorandum, an analysis of the directive, inclusive of DPD Form 713, the Video Review Log, and related guidance documents. In the memorandum, the Monitor noted a few issues that must be corrected prior to dissemination, training and implementation of the Video Review Protocol.<sup>69</sup>

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<sup>69</sup> The Monitor recommended that the DPD make revisions to Directives 305.4 and 303.3, the Video Review training directive, and related documents to provide consistency among all documents and ensure that they all refer to the correct versions, titles and form numbers; to ensure that supervisors have clear direction and understanding

The Monitor commends the DPD for the significant progress made since the last set of Video Review Documents was submitted two years ago. The Monitor notes that once the issues have been addressed, the documents will meet the policy requirements of subparagraph C64d and paragraph U98.

Based on the foregoing, the Monitor withholds a determination of the DPD's compliance with the requirements of paragraph U98.

#### D. USE OF VIDEO CAMERAS

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

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

The Monitor last assessed the DPD's compliance with paragraphs U100-102 during the quarter ending August 31, 2007. 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.

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regarding what is expected of them; and to clarify a number of issues, including how the documents will be utilized at the Command level. The Monitor also recommended monthly random in-car video reviews in each command.

## *Background*

The Monitor last assessed the DPD's compliance with paragraphs U100-102 during the quarter ending August 31, 2007, finding that the DPD remained in compliance with the policy requirements but was not yet in compliance with the implementation requirements of the paragraphs.

## *Current Assessment of Compliance*

During the current quarter, in response to a document request from the Monitor, the DPD indicated that no formal training has yet taken place regarding Directive 303.3, *In-Car Video*. Therefore training has not commenced for paragraphs U101 and 102.

In the meantime, the DPD indicated that on February 1, 2008, it issued Teletype #08-0399, a roll call training administrative message that addresses the issues of paragraphs U100-U102. The teletype was read to officers at all roll calls from Platoon One, February 2, 2008, through Platoon Three, February 8, 2008. In particular, the teletype is designed to ensure, *inter alia*, that officers are recording all motor vehicle stops, consents to search a vehicle, deployments of drug-detection canine, or vehicle searches. In addition, police officers are prohibited from commencing or continuing a shift without functioning video equipment. Officers' responsibilities are clearly spelled out.<sup>70</sup>

The DPD further reports that in March 2007, the DPD placed into service 133 new fully equipped patrol vehicles, including an updated digital video camera system, thus increasing the percentage of vehicles with operable video equipment from 15% in February 2007 to 56%. In response to a document request this quarter, the DPD noted that of 533 total patrol cars, 413 have camera equipment (77.5%), but only 238 patrol cars had operable cameras (45%). Therefore, the paragraph U100 requirement that all non-functioning cameras are repaired or replaced has not yet been met.

Based on the foregoing, the Monitor concludes that the DPD is in compliance with the policy requirements but is not yet in compliance with the training and implementation requirements of 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

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<sup>70</sup> As noted above, the DPD confirmed that the roll call training is not intended to fulfill or partially fulfill Consent Judgment requirements.

discipline, the DPD must create a matrix that establishes a presumptive range of discipline for each type of rule violation.

The Monitor last assessed the DPD's compliance with paragraphs U103-105 during the quarter ending August 31, 2007. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

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

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

#### *Background*

The Monitor last assessed the DPD's compliance with paragraph U103 during the quarter ending August 31, 2007, finding that the DPD was in compliance with the paragraph.

#### *Current Assessment of Compliance*

In response to a document request from the Monitor, the DPD's Disciplinary Administration (DA) provided to the Monitor a list of three discipline cases that were backlogged and had not proceeded to a trial board within 12 months of being logged into discipline. All three cases had extenuating circumstances, as subject members were currently out on extended leaves of absence.<sup>71</sup>

Based on the foregoing, the Monitor finds the DPD in 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.

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<sup>71</sup> These three matters appear to be the same matters that were provided by the DPD and reported on during the quarter ending August 31, 2007. From this submission, the Monitor assumes that no additional matters are backlogged.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U104 during the quarter ending August 31, 2007, finding that the DPD was not yet in compliance with the paragraph. The Monitor requested access to all disciplinary files that were closed in June 2007. In response, the DPD provided the Monitor with a list of 13 disciplinary files. The Monitor reviewed each individual file and determined that the DPD adhered to the Disciplinary Timeline Process in seven of 13 files (53.8%).

### *Current Assessment of Compliance*

During the current quarter, the Monitor requested access to the disciplinary files in which discipline was imposed during the month of December 2007. In response, DA provided the Monitor with a list of 12 disciplinary files. The referred actions for eight of the files were Commander's Disciplinary Action, three files were handled at the command level and one file went to a police trial board. The Monitor reviewed each individual file and determined that the DPD adhered to the Disciplinary Timeline Process for five of 12 files (42%). In addition, the Monitor requested a copy of the DA's six month review as required by the disciplinary timelines, which DA provided. The six month review indicated that two matters were awaiting findings by the trial board, one matter was awaiting approval from "legal" pending administrative closure, two matters were pending Chief approvals, and five matters were awaiting arbitration decision.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with 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 August 31, 2007, finding the DPD in compliance with the policy and implementation requirements of the paragraph.

### *Current Assessment of Compliance*

Pursuant to the document request described in paragraph U104 above, the Monitor reviewed the 12 disciplinary files that were closed in December 2007 and determined that the discipline imposed in all files fell within the appropriate presumptive range on the disciplinary matrix.

During the current quarter, the DPD provided a training matrix that identified the training module responsive to the requirements of the Consent Judgment paragraphs, including paragraph U105. According to the matrix, the DPD's *Supervisory Leadership and Accountability Lesson Plan* includes training that addresses the requirements of paragraph U105. As described in the *Current Assessment of Compliance* for paragraphs U118-119, the Monitor approved the lesson plan on November 9, 2007 but the DPD has not yet conducted training using the approved lesson plan.

Based on the foregoing, the Monitor finds that the DPD is in compliance with the policy and implementation requirements of paragraph U105, but is not yet in compliance with the training requirements of the paragraph.<sup>72</sup>

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

### A. OVERSIGHT AND DEVELOPMENT

This section comprises paragraphs U106 -111. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2007, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending May 31, 2008.

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<sup>72</sup> As noted in the *Background* section, the Monitor found the DPD in compliance with the policy and implementation requirements of paragraph U105 in its Report for the Quarter Ending August 31, 2007. In that report, the Monitor erroneously concluded on the DPD's overall compliance with paragraph U105 without assessing the DPD's compliance with the training requirements of the paragraph.

## B. USE OF FORCE TRAINING

This section comprises paragraph U112 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending November 30, 2007, and is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending May 31, 2008.

## C. FIREARMS TRAINING

This section comprises paragraph U113 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending November 30, 2007, and is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending May 31, 2008.

## D. ARREST AND POLICE-CITIZEN INTERACTION TRAINING

This section comprises paragraph U114 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending November 30, 2007, and is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending May 31, 2008.

## E. CUSTODIAL DETENTION TRAINING

This section comprises paragraphs U115-117. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending August 31, 2007. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### *Paragraphs U115-117 – Custodial Detention Training; Custodial Detention Training – Advise Relative to Arraignment Delay; Custodial Detention Training – Advise that Materiality of Witness is Judicial Determination*

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

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

Paragraph U117 requires the DPD shall 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 paragraphs U115-117 during the quarter ending August 31, 2007, finding that the DPD was not yet in compliance. The DPD continued to conduct custodial detention training on an ongoing basis despite the fact that the lesson plan for that training had not been approved by the Monitor. According to the DPD's Sixteenth Quarter Status Report, the *Law of Arrest/Search and Seizure/Police-Citizen Interaction (Legal) Lesson Plan*, which incorporates these paragraphs, was being revised to correct deficiencies identified by the Monitor.

## *Current Assessment of Compliance*

According to the DPD's Eighteenth Quarter Status Report, the DPD's Curriculum Design and Development Team (CDDT) is in the process of developing a lesson plan that covers the requirements of these paragraphs, and the lesson plan will be submitted during the quarter ending May 31, 2008.

However, the Monitor notes that these paragraphs are covered in the *Detention Officer Training Lesson Plan* which was submitted on November 17, 2007. The Monitor provided comments in a memorandum dated January 8, 2008. The lesson plan was resubmitted on February 18, 2008. As of the end of the quarter, the Monitor continued to evaluate the resubmission.

Based on the foregoing, the Monitor has not yet completed its evaluation of the DPD's compliance with the requirements of paragraphs U115-117.

## F. SUPERVISORY TRAINING

This section comprises paragraphs U118-120. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending August 31, 2007. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### *Paragraphs U118 and U119 – Supervisory Training; Leadership and Command Accountability Training*

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.

Paragraph U119 directs the DPD supervisors to receive leadership and command accountability training and learn techniques designed to promote proper police practices. This training shall be

provided to all DPD supervisors within 30 days of assuming supervisory responsibilities and shall be made part of annual in-service training.

### *Background*

The Monitor last assessed the DPD's compliance with paragraphs U118-119 during the quarter ending August 31, 2007, finding that the DPD was not yet in compliance. According to the DPD, the CDDT was revising the *Supervisory Leadership and Accountability Lesson Plan*, which will address the requirements of paragraphs U118-119, among others.

### *Current Assessment of Compliance*

On September 1, 2007, the DPD submitted a revised *Supervisory Leadership and Accountability Lesson Plan*, which included actual scenarios to address deficiencies previously identified. On September 30, 2007, the Monitor provided written feedback to the DPD, identifying deficiencies pertaining to the case studies. The DPD submitted a revised copy of the case studies and made additional modifications recommended by the Monitor, and submitted another version. The Monitor approved the lesson plan on November 9, 2007. The DPD has not yet conducted training using the approved lesson plan. According to its Eighteenth Quarter Status report, the DPD is currently devising a roll out plan in order to begin the implementation of the lesson plan.

After the lesson plan had been approved, near the end of the current quarter on February 20, 2008, the DPD indicated that it meant for the lesson plan to address the requirements of paragraphs U121 and 122 although these paragraphs were not listed on the cover page of the plan. The Monitor re-reviewed the lesson plan and after the end of the quarter asked the DPD to provide the subsections where the requirements of these paragraphs were covered.<sup>73</sup>

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with the requirements of paragraphs U118-119.

### *Paragraph U120 – Supervisory Training - Risk Assessment Training Requirement*

Paragraph U120 directs the DPD to provide training on risk management to all DPD supervisors, including the operation of risk management database.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U120 during the quarter ending August 31, 2007, finding that the DPD was not yet in compliance. According to the DPD, the

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<sup>73</sup> Also after the end of the quarter on March 25, 2008, the Monitor met with the DPD concerning this issue. The DPD then resubmitted the lesson plan on March 29, 2008.

CDDT was revising the *Supervisory Leadership and Accountability Lesson Plan* to correct the deficiencies identified by the Monitor. Furthermore, the risk management database, specifically the DPD's MAS, had not yet been fully developed or implemented as of the end of that quarter.

### *Current Assessment of Compliance*

As described in the *Current Assessment of Compliance* for paragraphs U118-119, after several rounds of review by the Monitor and revisions by the DPD, the Monitor approved the *Supervisory Leadership and Accountability Lesson Plan* on November 9, 2007. The DPD has not yet conducted training using the approved lesson plan. According to its Eighteenth Quarter Status report, the DPD is currently devising a roll out plan in order to begin the implementation of the lesson plan.<sup>74</sup> In addition, the risk management database, specifically the DPD's MAS, was not fully developed as of the end of the current quarter.<sup>75</sup>

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with the requirements of paragraph U120.

## G. INVESTIGATOR TRAINING

This section comprises paragraphs U121-122. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending August 31, 2007. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### *Paragraphs U121-122 – Investigator Training – Required Training; Handling External Complaints*

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

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

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<sup>74</sup> See *Current Assessment of Compliance* for paragraphs U118-119 for additional information regarding the status of this lesson plan.

<sup>75</sup> Pursuant to a court order, the DPD is now required to fully develop the MAS by July 24, 2008.

## *Background*

The Monitor last assessed the DPD's compliance with paragraph U121 during the quarter ending August 31, 2007, finding that the DPD was not yet compliance. Regarding paragraph U121, the DPD was conducting training relevant to this paragraph without an approved lesson plan.<sup>76</sup> According to the DPD, the *Detective School Lesson Plan*, which addressed the requirements of this paragraph, was under development by the DPD's CDDT. Regarding paragraph U122, the DPD had not submitted appropriate documentation addressing the requirements of this paragraph. On April 14, 2007, the DPD submitted to the Monitor a revised *Supervisory Leadership and Accountability Lesson Plan* to address the requirements of paragraph U122, among others. On June 29, 2007, the Monitor provided a written memorandum to the DPD that identified additional deficiencies in the lesson plan.

## *Current Assessment of Compliance*

Near the end of the current quarter, the DPD advised the Monitor that the *Supervisory Leadership and Accountability Lesson Plan*, which had previously been approved in November 2007, was also meant to address the requirements of paragraphs U121-122. The DPD stated that all of the requirements of paragraph U122 were already in the lesson plan and asked the Monitor for an opinion regarding the same. The DPD also stated that the lesson plan covered nearly all of the requirements of paragraph U121, and that it would like to submit an addendum to the lesson plan to cover the remaining requirements.<sup>77</sup>

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with the requirements of 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 August 31, 2007. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

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<sup>76</sup> According to the DPD's Sixteenth Quarter Status Report, the DPD's Criminal Investigations Bureau conducted an 80-hour Detective School training session on March 19 through March 30, 2007. Thirty-six members of the DPD attended this training.

<sup>77</sup> See *Current Assessment of Compliance* for paragraphs U118-119 for additional information regarding the status of this lesson plan.

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

Paragraph U123 directs the DPD to develop, subject to DOJ approval, a protocol to enhance the Field Training Officer (FTO) program within 120 days of effective date of this Agreement. The protocol shall 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 August 31, 2007. On April 11, 2006, the DOJ sent the DPD a letter granting the DPD conditional approval for the DPD's FTO Protocol. The DPD subsequently revised the protocol in an attempt to meet the concerns that the DOJ outlined in granting conditional approval. This revised protocol was forwarded to the DOJ on April 26, 2007. The DPD had not received a response from the DOJ as of the end of the current quarter. As a result, the Monitor withheld a determination of the DPD's compliance with the requirements of paragraph U123, pending the DOJ's response to the revised protocol submitted by the DPD.

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

During the prior quarter, the DOJ responded to the DPD's revised FTO Protocol on October 16, 2007, providing an approval with additional recommendations. According to the DPD, these recommendations have been incorporated into the protocol. The FTO protocol was resubmitted on November 30, 2007. According to the DPD's Eighteenth Quarter Status Report, implementation of the FTO protocol will commence once the revised selection process is complete.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with the requirements of paragraph U123.

## VIII. MONITORING, REPORTING, AND IMPLEMENTATION

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Paragraph U139 requires the DPD to reopen for further investigation any investigation the Monitor determines to be incomplete, subject to certain restrictions. The paragraph requires that any directive to reopen an investigation by the Monitor be given within a reasonable period following the investigation's conclusion and be given prior to the time when the disposition is officially communicated to the subject officer. Although the Monitor has requested various investigative files for review, as the DPD pointed out in its Fifteenth Quarter Status Report, the files reviewed usually closed several months prior to the review. The Monitor did not take into account whether it was a reasonable period since closing and did not have knowledge as to whether the disposition had been communicated to the subject officer. The Monitor has not yet requested that a mechanism be developed for meeting the restrictions of this paragraph regarding when an investigation can be reopened. However, a mechanism for taking these matters into account must be developed before the requirements of this paragraph can be carried out properly.

As reported previously, the Monitor will no longer make a compliance finding with regard to this paragraph but, rather, will report instances in which the Monitor directs the DPD to reopen an investigation and the results thereafter. As reported previously, the requirements of paragraph U139 will become more pertinent when the DPD begins to achieve compliance with the investigative requirements in the UOF CJ.

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

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This section of the report contains the Monitor's compliance assessments of the COC CJ paragraphs scheduled for review during the quarter ending February 29, 2008.

### **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 (FSP) in all DPD facilities that maintain holding cells.

The Monitor found the DPD in compliance with paragraph C22 during the quarter ending August 31, 2005, as the Monitor confirmed that all Kane Fiber Ceiling Tiles had been removed from DPD buildings containing holding cells.<sup>78</sup> The Monitor last assessed the DPD's compliance with paragraphs C14-21 during the quarter ending November 30, 2007, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2008.

### **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 November 30, 2007, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2008.

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<sup>78</sup> The DPD will remain in compliance with paragraph C22 unless it begins using buildings that contain Kane Fiber Ceiling Tiles to detain prisoners.

### 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 detainees. 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.

#### *Paragraph C26 – Identification and Response to Medical Mental Health Needs*

Paragraph C26 requires the DPD to ensure the appropriate identification of and response to detainees' medical and/or mental health conditions. The DPD's compliance with paragraph C26 is dependent on the annual review of the CMMHSP by qualified medical and mental health professional at least once a year and prior to any revisions to the program as required by paragraphs C27-29 and achieving implementation requirements of paragraphs C27-C33.

#### *Background*

The Monitor last assessed the DPD's compliance with paragraph C26 during the quarter ending May 31 2007, finding that the DPD was not yet in compliance with paragraphs C26, as it was not yet in compliance with the implementation requirements of paragraphs C27-32.

#### *Current Assessment of Compliance*

As described below, the DPD is not yet in compliance with the implementation requirements of paragraphs C27-32. As a result, the Monitor finds the DPD is not yet in compliance with paragraph C26.

#### *Paragraphs C27-29 – Screening Program Development; Minimum Standards for Screening Program; Minimum Standards for Medical Protocols*

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 and mental health 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. Prior to this quarter the DPD's compliance with paragraph C27 was dependent on the

annual review of the CMMHSP by qualified medical and mental health professional at least once a year and prior to any revisions to the program as required by paragraphs C27-29 and achieving implementation requirements of paragraphs C28-C33.

Paragraph C28 requires that the DPD have a Detainee Screening Program that minimally enables DPD staff to identify individuals with medical or mental health conditions or who are at risk of committing suicide, have been on heightened observation for suicide risk during prior incarcerations and persons who have contraindications to chemical spray. Furthermore, the process must require the DPD staff to follow standard intake procedures 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 detainee. Finally the process must incorporate all health information pertaining to a detainee acquired by the arresting or transporting officer.

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 detainee 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.

At the request of the City, the Monitor has modified its methodologies relative to paragraphs C27-29; paragraphs C28-29 are now considered “policy-only” paragraphs, and the implementation requirements for these paragraphs are assessed under paragraph U27.

### *Background*

The Monitor last assessed the DPD’s compliance with paragraphs C27-29 during the quarter ending May 31, 2007, finding that the DPD was not yet in compliance with these paragraphs. The Monitor reviewed the DPD’s implementation of the policies, forms and logs that make up the CMMHSP and identified significant inconsistencies. The Monitor recommended that the DPD make the necessary revisions to the CMMHSP policies and training to ensure that DPD directives and operational practices are aligned. Among the findings that contributed to the findings of non-compliance were detainees who were not screened within two hours of intake and no process was in place for identifying detainees who are at risk of committing suicide, persons who have been on heightened observation for suicide risk at any time during a past incarceration, and persons who have any medical contraindications for the use of chemical sprays. In addition, the DPD did not take appropriate actions in response to acquired detainee medical/mental health information and documentation of prior supervisory review and approval of all decisions in response to acquired medical information was lacking.

### *Current Assessment of Compliance*

Under the Monitor's revised methodology for assessing compliance with these paragraphs, in order to assess the DPD's compliance with paragraph C27, the Monitor evaluated the implementation of the requirements of paragraphs C28-29 by reviewing the *Medical and Mental Health Program and Policies Audit* submitted by the AT on January 31, 2008, and conducting onsite inspections of all DPD buildings containing holding cells and the Detroit Receiving Hospital (DRH).<sup>79</sup> The following represents the audit and Monitor's findings:

#### DPD's Compliance with Policy Requirements

The CMMHSP -- inclusive of Directive 305.1, *Detainee Intake/Assessment*; Directive 305.5, *Detainee Health Care*; Directive 403.2, *Infectious Disease Control Policy*; and all applicable forms -- was reviewed and approved by a qualified medical/mental health professional within the last year (May 24 and 31, 2007). As a result, the Monitor finds that the DPD is in compliance with the policy requirements of paragraphs C28-29. The DPD will remain in compliance with these paragraphs until such time as the policy directly responsive to them is revised or is not annually approved by qualified medical/mental health professionals.<sup>80</sup>

#### DPD's Implementation of Paragraph C28 Requirements

- The DPD does not have a process for identifying/confirming if a detainee has been on heightened observation for suicide risk at any time during a past incarceration.
- The DPD did not meet the requirement for identifying detainees with contraindications to chemical spray, identifying 8 of 11 applicable detainees.
- The DPD did not meet the requirement to follow standard intake procedures, as 12 of 15 evaluated detainees entering DPD holding facilities were properly processed.
- The DPD did not meet the requirement to screen detainees within two hours of intake, as 20 of 24 evaluated detainees were screened within two hours of intake.
- The DPD did meet the requirement to conduct intake screening through verbal exchange, as 88 of the 90 evaluated intake screening incidents were conducted through verbal exchange. During on-site inspections, the Monitor observed four intake screenings of recently admitted detainees. Each observed intake screening was conducted through verbal exchange.

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<sup>79</sup> The Monitor conducted on-site inspections of the Southwestern, Northwestern, Western, Eastern, and Northeastern Districts, and the DRH on February 13, 25, and 29, 2008.

<sup>80</sup> As with all "policy only" paragraphs with which the DPD has achieved compliance, any revisions to the policy will trigger an additional assessment by the Monitor. Implementation of the policy is tested under paragraph C27.

### DPD's Implementation of Paragraph C29 Requirements

- The DPD does not consistently identify the actions taken based on a detainee's identified medical and or mental health condition. Specifically, the following sections on the Detainee Intake Form (DIF) are not being completed as required: Action Taken- Detainee Referred for Medical/Mental Health; Emergency/Non-emergency; Medical/Mental Health; Additional Medications Section; Dose and Frequency, Reason.
- DPD supervisors are not consistently signing the DIF and indicating their review and approval of the decisions made in response to identified detainee medical or mental health conditions.
- All five DPD district facilities with holding cells complied with the requirement to visibly post a placard with guidelines for detainee screening either within the admissions area of the holding cell or at the front desk in each of the five District facilities containing holding cells.
- The DPD has implemented Form 659a, Platoon Daily Detainee Summary (PDDS), for the purpose of documenting changes in a detainee's medical/mental health conditions during their detention and to serve as the instrument that staff use to communicate detainee health related information between consecutive shifts. During the on-site inspections, the Monitor noted missing forms at one of five districts. Additionally, during staff interviews, descriptions of how the form should be utilized were not consistent with the instructions detailed in Directives 305.1 and 305.4., and staff who were interviewed provided various responses regarding the procedures used to document a change in a detainees medical/mental condition after the initial intake process.<sup>81</sup>

Based on the foregoing, the Monitor finds the DPD in compliance with paragraphs C28 and C29, which are policy only paragraphs; the DPD will remain in compliance with these paragraphs until such time as the policy directly responsive to them is revised.<sup>82</sup> The Monitor finds that the DPD is not yet in compliance with paragraph C27 because it has not fully implemented the policy required under paragraphs C28 and C29.

### *Recommendations*

Currently, the Medical Intake Form (the DIF) does not contain a section to document the arrival of a detainee in a DPD holding facility. As a result, it is difficult to determine when a detainee has arrived at a holding facility in comparison to the time the security/medical screening procedures were initiated. This is critical in evaluating DPD compliance with the requirement for intake screening to occur within two hours of intake. The Monitor recommends that the DPD

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<sup>81</sup> The varying procedures mentioned included documenting changes using the grease board maintained in the holding cell area, or handwritten notes on the detainee's medical intake form, typing changes into the Electronic Blotter maintained by the supervisors, and utilizing the newly introduced Platoon Daily Detainee Summary (659a)

<sup>82</sup> Revisions to policy will trigger an additional assessment by the Monitor.

modify the DIF to include a section that allows documentation of the specific time a detainee enters a DPD holding facility and require staff through written directive to include this documentation as part of the detainee intake screening process.

### *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 detainees 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 May 31, 2007, at which time the Monitor withheld its determination of compliance with this paragraph due to the limited number of detainees identified with an infectious disease within the sample selected for review.

### *Current Assessment of Compliance*

In order to assess the DPD's compliance with paragraph C30, among others, the Monitor evaluated the implementation of the CMMHSP, including the requirements of this paragraph, by reviewing the *Medical and Mental Health Program and Policies Audit* submitted by the AT on January 31, 2008, and conducting onsite inspections of all DPD buildings containing holding cells and the DRH.<sup>83</sup> The following reflects the findings of the audit and the Monitor:

- DPD Directive 403.2, *Infectious Disease Control Policy*, was reviewed and approved by a qualified medical/mental health professional, as part of the CMMHSP, within the last year (May 24 and 31, 2007).
- The *Medical and Mental Health Program and Policies Audit* found that the DPD was not yet in compliance with subparagraph C30a, which requires the DPD to establish appropriate housing (segregation) for detainees believed to have infectious diseases and in compliance with subparagraph C30b, which requires the DPD to take measures to prevent the spread of infectious disease, including proper handling and disposal of bio-hazardous material.
- The Monitor determined that the audit's findings were based on a limited number of applicable incidents found in the sample selected (three incidents). As described in the

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<sup>83</sup> The Monitor conducted on-site inspections of the Southwestern, Northwestern, Western, Eastern, and Northeastern Districts, and the DRH on February 13, 25, and 29, 2008.

*Current Assessment of Compliance and Recommendations* for paragraph C68, below, the Monitor has suggested that in future audits, the AT should either consider extending the population to capture a statistically sufficient number of incidents or make strong recommendations to the DPD to develop and implement checks so that a separate population of applicable incidents can be readily identified and tested.

- During the inspection of each DPD district facilities with holding cells, the Monitor did not observe any situations requiring the holding cell staff to respond to a detainee identified as having an infectious disease. The Monitor did observe and document that the appropriate bio-hazard containers and an adequate number of bio-hazard bags for the storage of contaminated clothing were present at all five district facilities with holding cells.
- All five staff members assigned to holding cells who were interviewed during onsite inspections correctly stated that they are required to immediately notify their supervisor when a detainee is identified as having an infectious disease, and that detainees identified as having infectious disease should be immediately segregated.

Based in the foregoing, the Monitor finds the DPD in compliance with the policy requirements of paragraph C30; however, based on the limited population identified for testing compliance with this paragraph, the Monitor is withholding a determination of the DPD's compliance with the implementation requirements of the paragraph.

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

Paragraph C31 requires the DPD to develop and implement procedures for updating and exchanging detainee health information. These procedures must ensure that detainee 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 detainees' 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 detainees' 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 May 31, 2007, finding that the DPD was not yet in compliance, primarily due to the fact that the DPD did not appropriately document the communication of relevant detainee information between shifts and that detainee health information was not continually updated to incorporate any additional relevant information acquired during detention. The DPD was credited with ensuring that detainee health information traveled with the detainee when transferred to another facility.

### *Current Assessment of Compliance*

In order to assess the DPD's compliance with paragraph C31, the Monitor evaluated the implementation of the CMMHSP, including the requirements of this paragraph, by reviewing the *Medical and Mental Health Program and Policies Audit* submitted by the DPD on January 31, 2008 and conducting onsite inspections of all DPD buildings containing holding cells and the DRH.<sup>84</sup>

The following reflects the findings of the audit and the Monitor:

- The DPD's policies and practices comply with the requirement to record detainee health information upon intake and make readily and immediately available to relevant medical and transporting staff.
- The audit report indicated that, during the time of the audit, the DPD had neither implemented a practice requiring that detainee health information be continually updated to incorporate any additional relevant information during the detention nor a practice requiring relevant detainee health information to be documented and communicated between consecutive shifts. The audit report noted that after the AT's evaluation of this paragraph, the DPD implemented the Monitor's and AT's previous recommendation to address these issues by disseminating Teletype (#08-0127) on January 11, 2008, instructing staff to begin using the PDDS (DPD 659a) at all districts.
- The audit report indicated that the DPD was in compliance with the requirement that detainee health information travel with detainees who are transferred to another facility.
- During the on-site inspection of the five districts, the Monitor observed staff using the PDDS, although at one district, the staff could not account for several forms. Additionally, the five cell block supervisory staff provided inconsistent responses to inquiries regarding the process for using the form, and none of the staff interviewed indicated that they used this form as their primary instrument for documenting and communicating relevant detainee information between consecutive shifts.
- The five holding cell staff members who were interviewed during the on-site inspections provided various responses regarding the procedures for updating detainee health information. The responses included: verbal notification to the Cell block supervisor or officer in charge of the front desk, documenting information on the grease board, recording information on the detainee information form, using the PDDS form and filling out a Hospital Referral Form. All five staff members interviewed indicated that detainee health information should travel with each detainee when they are transferred to another facility.

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<sup>84</sup> The Monitor conducted on-site inspections of the Southwestern, Northwestern, Western, Eastern, and Northeastern Districts, and the DRH on February 13, 25, 29, 2008.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph C31.

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

Paragraph C32 requires the DPD to develop a Detainee Prescription Medication Policy, in consultation with qualified medical and mental health professionals, that ensures detainees 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 C32 during the quarter ending May 31 2007, finding the DPD in non-compliance, as the DPD had not effectively implemented all of the requirements of the paragraph, including the recording of relevant information regarding the administration of prescription medication on an auditable form. Additionally, DPD staff failed to assure that all unused medications prescribed at DRH or other treating hospitals are provided to detainees upon their release from DPD custody.

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

In order to assess the DPD's compliance with paragraph C32, the Monitor evaluated the implementation of the CMMHSP, including the requirements of this paragraph, by reviewing the *Medical and Mental Health Program and Policies Audit* submitted by the DPD on January 31, 2008 and conducting onsite inspections of all DPD buildings containing holding cells.<sup>85</sup>

The following reflects the findings of the audit and the Monitor:

- The Monitor has determined that the DPD has failed to assure that all unused medications prescribed at DRH or other treating hospitals are provided to detainees upon their release from DPD custody. Staff are not documenting detainee receipt of the unused medications by having the detainees sign that they have received the medication.
- DPD does not consistently maintain a copy of the hospital discharge instructions, therefore a determination of compliance cannot be made regarding the requirement to distribute only medications prescribed at the DRH or other treating hospital.

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<sup>85</sup> The Monitor conducted on-site inspections of the Southwestern, Northwestern, Western, Eastern, and Northeastern Districts, and the DRH on February 13, 2008, February 25, 2008, February 29, 2008

- The lock on the medication cabinet at the Southwest District was broken and therefore not in compliance with the requirement that all detainee medication be stored in a secured location.
- DPD staff does not accurately record relevant information on the Medication Disbursement Log (MDL) (DPD 664). This is critical because the holding cell staff is required to provide medication to the detainees based on the instructions detailed on the MDL. For example, staff failed to document the information from the Prescription Medication Instruction indicating the requirement to serve food with the medication; as another example, discharge instructions stated 1-2 tablets every 4-6 hours if needed for pain, whereas instructions on the MDL stated 2 tablets every 4 hours.
- DPD does not properly maintain all documents related to a detainee's medical/mental health conditions. There are missing Discharge Instructions, MDLs, Prescription Medication Instructions from the detainees' Confidential Medical Envelopes (CMEs) and / or Detainee File Folders (DFFs). During the on-site inspections, the Monitor observed an example of a district consistently retaining medical information/documentation in a manner consistent with DPD directives. The Western District ensures that either the original or a copy of the Discharge Instructions, MDL and Prescription Medication Instructions (not specifically covered by DPD directives) are all placed in the CME after the detainee is released. This is helpful in terms of having all the documents needed to assure that the DPD responded appropriately to the medical/mental health needs of detainees while held in its holding facilities.

Based on the foregoing, the Monitor finds that the DPD is not yet in 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 C33 during the quarter ending May 31, 2007, finding the DPD in compliance.

### *Current Assessment of Compliance*

In order to assess the DPD's compliance with paragraph C33, among others, the Monitor evaluated the implementation of the CMMHSP, including the requirements of this paragraph, by reviewing the *Medical and Mental Health Program and Policies Audit* submitted by the DPD on

January 31, 2008, and conducting onsite inspections of all DPD buildings containing holding cells.<sup>86</sup>

The following reflects the findings of the audit and the Monitor:

- The audit report and the on-site inspections conducted by the Monitor revealed no incidents of detainees on suicide watch, nor were there observed situations where any detainees should have been placed under suicide observation but were not.
- An adequate supply of suicide clothing was identified at each of the five districts with holding cells.
- All five staff members interviewed by the Monitor during the inspections properly articulated their responsibilities regarding responding to a detainee identified as a suicide risk.

Based on the foregoing, the Monitor finds that the DPD continues to be in 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 May 31, 2007, 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.

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

In order to assess the DPD's compliance with paragraph C34 during the current quarter, the Monitor conducted onsite inspections of all DPD district facilities 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 that the DPD continues to be in compliance with paragraph C34.

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<sup>86</sup> The Monitor conducted on-site inspections of the Southwestern, Northwestern, Western, Eastern, and Northeastern Districts, and the DRH on February 13, 25, and 29, 2008.

#### IV. PRISONER SAFETY POLICIES

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This section of the COC CJ comprises paragraphs C35-38. It requires the DPD to develop and implement prisoner safety policies for all facilities that maintain holding cells. 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 August 31, 2007. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

##### *Paragraph C35-38 – Ensure Safety Level; Security Screening of Prisoners; Cell Check Policies; and, Observation Cell Policy*

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

Paragraph C36 requires the DPD to develop and implement a prisoner security screening program for all buildings containing holding cells. At a minimum, this program must:

- a. establish protocols based upon objective, behavior-based criteria for identifying suspected crime partners, vulnerable, assaultive or special management prisoners who should be housed in observation cells or single-occupancy cells; and
- b. require that security screening information is documented and communicated between consecutive shifts.

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

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

##### *Background*

The Monitor last assessed the DPD's compliance with paragraph C35-38 during the quarter ending August 31, 2007. At that time, the Monitor determined that the DPD was not yet in compliance with paragraph C35 due to its lack of compliance with subparagraph C36b and

paragraph C37. The Monitor withheld a determination of compliance with subparagraph C36a, pending the outcome of ongoing discussions with the DPD and DOJ regarding the development of objective behavior-based criteria for screening and housing of detainees. The Monitor found that the DPD was not yet in compliance with subparagraph C36b because procedures for documenting and communicating security screening between shifts were not in place. The Monitor found that the DPD was not yet in compliance with paragraph C37 due to a failure to consistently perform and document cell checks on the general population and detainees in observation cells. The Monitor determined that the DPD was in compliance with C38.

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

In order to assess the DPD's compliance with paragraphs C35-38, the Monitor reviewed the *Detainee Safety Programs and Policies Audit* submitted by the DPD's AT on January 31, 2008, which was required by subparagraph C69. The Monitor also conducted supplemental onsite inspections<sup>87</sup> of all DPD buildings containing holding cells and reviewed investigations in connection with its review of the *Prisoner Injury in Holding Cell Investigations Audit* required by subparagraph C65b and submitted by the DPD on January 31, 2008.

The *Prisoner Injury in Holding Cell Investigations Audit* did not specifically assess compliance with requirements of paragraphs C35-38; however, the investigations included in the audit relate to injured prisoners and therefore were relative to the review of security within the holding cells.<sup>88</sup>

### ***Paragraph C35- Assurance of Safety***

The audit and the Monitor's supplemental on-site inspections and review of investigations determined that the DPD is not in compliance with the requirements of paragraph C35 based on its failure to comply with the requirements of paragraphs C36-37.

### ***Subparagraph C36a – Security Screening of Prisoners***

As described above, during the quarter ending August 31 2007, the Monitor withheld a determination of compliance with the requirements of subparagraph C36a pending the outcome of discussions between the parties and the Monitor regarding the development of objective behavior-based criteria for screening and housing of detainees. The Monitor noted that after the end of that quarter, the DOJ provided TA via a September 27, 2007 letter to the City indicating that although the language of subparagraphs C36a and b do not specifically require that the City

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<sup>87</sup> The Monitor conducted on-site inspections of the Southwestern, Northwestern, Western, Eastern, and Northeastern Districts and the DRH on February 13, 25, and 29, 2008.

<sup>88</sup> Refer to the *Current Assessment of Compliance* for paragraph C65b for information regarding the Monitor's assessment of the audit.

obtain criminal history checks on detainees as part of the intake process to determine proper housing, the DOJ and its consultant support this best practice, as it is necessary to ensure detainee safety. Nevertheless, the DOJ also made it clear that they cannot mandate that the DPD obtain criminal histories on detainees. The DOJ went on to point out that paragraph C35 requires the DPD to ensure a reasonable level of safety of staff and prisoners through the use of appropriate security administration procedures, and the DOJ made recommendations for revisions to the DPD's security screening form.

The Monitor had previously recommended that the DPD make revisions to the form revise the policy to reflect these changes, as the current policy was no longer applicable in certain areas. The Monitor also recommended that the DPD either run criminal history checks on detainees as part of the intake process, or ensure that detention staff access behavioral information when detainees were previously incarcerated in a DPD facility. Again, while not specifically required by the Consent Judgments, this is a common method used to assess detainees' past behavior to prevent potential future safety risks. However, the DPD declined to implement such procedures and stated that it has no plans to track previous behavior of detainees that have previously been incarcerated in DPD facilities. The DPD also stated that they believe that detainee-on-detainee assault is so rare that it is practically unheard of. The DPD had also not yet revised its Directive 305.1, *Detainee Intake and Assessment*.

As described in the DPD's Eighteenth Quarter Status Report, the DPD revised its Cell Assignment Detainee Security Screening (DPD 651A) in response to the discussions and correspondence described above. The Monitor provided a written memorandum detailing its review of the form on October 22, 2007. The Monitor's memorandum noted that DPD 651A did not direct the screening officer to consider additional risk factors, such as, the detainee's current charge (e.g. violent felonies or sexual offenses), the age and gender of the detainee, the detainee's prior arrests or indications of prior assaultive behavior. The Monitor noted that some of the above information is captured within the LiveScan system and understands that the screening officers do not always have access to the detainee's arrest history during the initial intake process. The Monitor therefore recommended that the supervisor responsible for making the housing decision should use all of the initial intake information in totality when making housing decisions, and conduct that assessment immediately following the initial intake and prior to the detainee being placed in any cell other than a continuously monitored cell. The Monitor further suggested that if the above processes were adequately implemented, it would not be vital to obtain the detainee's prior arrest information during the initial intake process; however, supervisors should have access to and obtain a detainee's arrest history and a more detailed risk assessment should be performed prior to placing the detainee into a cell with other prisoners that is not constantly monitored (either visually or remotely) by DPD staff.

In response to the issues identified in the Monitor's memorandum, the DPD revised and resubmitted DPD 651A on November 7, 2007.<sup>89</sup> This version appeared to address some, but not all, of the Monitor's concerns. Rather than resubmitting another memorandum containing similar issues, the Monitor evaluated the content and implementation of the most recent version of DPD 651A during the current quarter by assessing the DPD's utilization of the revised form along with the related policies and all of its established protocols for identifying detainees who should be housed in observation cells or single-occupancy cells, as required by subparagraph C36a. The Monitor's assessment included onsite inspections of all DPD buildings containing holding cells<sup>90</sup> and the review of the *Detainee Safety Programs and Policies* and the *Prisoner Injury in Holding Cell Investigations*<sup>91</sup> audits, which were submitted by the DPD's AT on January 31, 2008 in response to paragraph C69 and subparagraph C65b, respectively.<sup>92</sup>

The Monitor's findings are as follows:

#### Security Screening Form DPD 651A

DPD 651A refers to specific criteria<sup>93</sup> for requiring that detainees be placed in a single occupancy cell and includes a box to mark the cell number that the detainee is placed in at the time of intake. The Form also contains a large box for narrative and instructs the person completing the intake to include a detailed explanation when specific screening concerns arise during the intake process.

During the Monitor's review of the screening documentation for the 89 detainees included in the *Detainee Safety Programs and Policies* audit sample, the Monitor noted that at least 19 of the 89 detainees should have been designated as requiring a single occupancy cell based on the criteria established by the DPD's policy.<sup>94</sup> Although it appeared that the detainees may have been

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<sup>89</sup> The form DPD 651A submitted to the Monitor on November 7, 2007 appears to be dated May 2006; the Monitor noted that the form number "651A" is duplicative, as the DPD's Medical/Mental Health Screening Placard has the same number.

<sup>90</sup> The Monitor conducted on-site inspections of the Southwestern, Northwestern, Western, Eastern, and Northeastern Districts and the DRH on February 13, 25, and 29, 2008.

<sup>91</sup> The *Prisoner Injury in Holding Cell Investigations Audit* did not specifically assess compliance with requirements of paragraphs C35-38; however, the investigations included in the audit relate to injured prisoners and therefore were relative to the review of security within the holding cells.

<sup>92</sup> Refer to the *Current Assessments of Compliance* for subparagraph C65b and paragraph C69 for information regarding the Monitor's assessment of these audits.

<sup>93</sup> The criteria for single cell assignment within the DPD's policy and forms include the detainee indicating he/she is in fear of being harmed by another detainee, the current charge being assaultive in nature, the detainee identifies with being homosexual, or has a physical or mental disability.

<sup>94</sup> The Monitor could not determine if some of the 89 detainees were required to be placed in a single-occupancy cell as a full description or the exact nature of the current charge was not always indicated.

placed in a single-cell (based on the specific cell number indicated), neither the DPD 651A nor the other intake documentation, such as the DIF or the Cell Check Log, were completed properly or in a manner that would specifically indicate that the detainee was required to remain in a single-cell based on the intake information.<sup>95</sup>

The Monitor noted that there were two different versions of DPD 651A within the audit working papers that appear to be dated May 2006 and June 2006, and the DPD has not submitted the June 2006 version to the Monitor. The Monitor also noted that the June 2006 version excludes two significant components from the May 2006 version of the form, the first being the requirement for the detention staff to provide a description for all "Yes" answers and the second being the requirement that all refusals by detainees to answer questions require assignment to a single-occupancy cell. These are both critical components of the intake screening process and must be added back to the final version of the form.

### Security Screening Protocols

One of the components of the DPD's security screening protocols, which is contained in the DPD's Directive 305.1, *Detainee Intake and Assessment*, requires that all detainees charged with a felony be placed into single-occupancy cells in order to segregate detainees charged with felonies from detainees charged with misdemeanors. Although the Monitor continues to feel strongly that consideration of a detainee's prior criminal record is also pertinent to the screening process, the Monitor recognizes that the level of the current charge is also important, as felony crimes are often more serious and the detainee is potentially more violent than those charged with misdemeanor offenses.

### ***Subparagraph C36b – Security Screening of Prisoners***

On November 8, 2007, the DPD resubmitted the PDDS, stating its intention to reinstitute the form as a method of documentation the communication of security screening information between consecutive shifts as required by subparagraph C36b. The *Detainee Safety Programs and Policies Audit* found that the DPD has not implemented a procedure for staff members to document and communicate security screening information between consecutive shifts and was therefore non-compliant.<sup>96</sup> The Monitor's subsequent on-site inspections determined that the procedure for using the PDDS is inconsistent between districts and not in accordance with Directive 305.1, *Detainee Intake and Assessment*.

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

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<sup>95</sup> Form 651A did not include sufficient and conclusive information and the DIF checkbox that specified single-cell assignment was not checked for 16 of the 19 detainees (for the remaining three, the Monitor could not make a determination as the single-cell assignment box had been cut-off in the photocopying process).

<sup>96</sup> The Monitor recognizes that the audit population was for a week in August 2007, which preceded the November 2007 introduction of the PDDS.

The DPD's audit and Monitor's supplemental on-site inspections determined that the DPD is in non-compliance with paragraph C37, as Detention Cell Check Logs revealed that cell checks were regularly performed and accurately documented in 3 of 15 documents reviewed; supervisory review and approval of the cell check logs were observed in 2 of 15 documents reviewed; and, staff performed and documented cell checks on detainees in observation cells, which require 15 minute checks, in 6 of 9 documents reviewed. All of the aforementioned findings revealed that the DPD has not met the greater than 94% standard. Additionally, cell checks on detainees held at DRH were performed based on 30-minute intervals, rather than the required 15 minute intervals.<sup>97</sup>

### ***Paragraph C38 – Observation Cell Policy***

The audit and the Monitor's supplemental on-site inspections determined that the DPD is in compliance with the paragraph C38 requirement to implement a policy and enact a procedure for providing continual direct on-site remote observation of all observation cells that are occupied.

Based on the foregoing, the Monitor finds that the DPD is in compliance with paragraph C38, but is not yet in compliance with the requirements of paragraph C35, subparagraphs C36a and b and paragraph C37.

### ***Recommendations***

The Monitor recommends that the DPD revise DPD 651A to add a checkbox indicating that based on the intake information, the detainee should be housed in and remain in a single-occupancy cell. The DPD should also ensure that all of the criteria for making housing decisions are consistent with the DIF.

The Monitor further recommends that prior to performing the revisions as described above, the DPD should assess the practicality and efficiency of the current intake processes as a whole, including the current design of the forms, logs, and directives related to the detainee intake process. The DPD should consider combining some of these processes to eliminate repetitive tasks and the possibility of an incorrect housing decision or level of supervision resulting from a conflict between the DIF housing assignment and the DPD 651A housing assignment.<sup>98</sup>

Once revised and distributed to the districts, the DPD should remove all other versions of the forms and logs to prevent confusion and ensure proper completion by detention staff. The DPD should ensure that all revised directives, form and logs related to the intake process are included

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<sup>97</sup> The DPD audit tested DPD's compliance of various consent judgment paragraphs utilizing varying error rates. Refer to the *Current Assessment of Compliance* for paragraph C69 for information regarding the Monitor's assessment of the audit.

<sup>98</sup> Currently, the DIF, Form 651A, and the PDDS all contain housing designations and other duplicative information.

in the detention officer training required by paragraph C77. This will ensure that detention staff are familiar with the protocols established within the DPD's policies and the requirements contained in the COC CJ.

The Monitor recognizes that the DPD has implemented the PDDS and encourages the DPD to provide specific direction to staff regarding the intention that the form be used by both line staff and supervisors as the instrument to document and communicate security screening and medical/mental health information between consecutive shifts, consistent with Directives 305.1 and 305.4. Additionally, the Monitor recommends that the Detention Cell Check Log be modified to include a section that gives the supervisor reviewing the log the option to sign off on the log to evidence that it was reviewed and approved or reviewed but not approved (based on areas of the log that do not meet established standards) the entries made by staff.

The DPD should reinforce to staff assigned to the DRH that cell checks on detainees are to occur every 15 minutes.

## **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 has concluded that the DPD is in compliance with paragraphs C44 and C46, which respectively require 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 and that all Hepa-Aire purifiers comply with the Michigan Occupational Safety and Health Agency standards.<sup>99</sup>

The Monitor last assessed the DPD's compliance with paragraphs C39-45 during the quarter ending August 31, 2007, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending May 31, 2008.

## **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

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<sup>99</sup> The Monitor will not assess compliance with paragraph C44 again unless alterations are made to the lighting fixtures or other conditions arise that affect the sufficiency of the lighting in the cell block areas. The Monitor will not assess compliance with paragraph C46 again unless Hepa-Aire purifiers are re-installed in buildings containing holding cells.

cells. These procedures and policies are to be designed to ensure the detainees with disabilities are provided with appropriate facilities and care.

**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 C47-48 during the quarter ending May 31, 2007, finding that the DPD was not yet in compliance with the requirements of the paragraphs. Although the Monitor agreed with the AT that the DPD provided documentation that the CMMHSP policies inclusive of Directive 305.1, *Detainee Intake/Assessment*, met the requirement for written annual review and approval by qualified medical/mental health professional, the Monitor found the DPD in non-compliance with paragraph C47-48 due to the fact that Directive 305.1 contains outdated information regarding accommodations for its disabled detainees.

***Current Assessment of Compliance***

In order to assess the DPD's compliance with paragraphs C47-48, among others, the Monitor reviewed the *Medical and Mental Health Program and Policies Audit* submitted by the DPD on January 31, 2008, and conducted onsite inspections of all DPD buildings containing holding cells.<sup>100</sup>

The following reflects the audit report and Monitor's findings:

- As described in the *Current Assessment of Compliance* for paragraph C68, the Monitor considers the findings of the audit unreliable in relation to paragraph C47 due to the limited number of applicable incidents within the audit sample used by the AT to assess compliance.

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<sup>100</sup> The Monitor conducted on-site inspections of the Southwestern, Northwestern, Western, Eastern, and Northeastern Districts, and the DRH on February 13, 25, and 29, 2008.

- The AT found that the DPD met paragraph C48's requirement for written annual review and approval of relevant policy by qualified medical/mental health professional; however, the AT did not specifically address or conclude on the implementation requirements of paragraph C48.
- During inspections of the five DPD districts containing holding cells, the Monitor did not observe any detainees with disabilities that required accommodations. The Monitor observed TDD equipment available at each inspected district.
- The DPD has fitted one district (Northeastern District) with handicapped toilets and designated it as the facility to accommodate detainees with disabilities. The DPD has issued Teletype 67-02505 to update the written direction regarding the housing of detainees requiring handicapped commodes. Directive 305.1 *Detainee Intake/Assessment*, (Section 305.1-7.3-Handicapped Detainees) has not been changed to reflect the new process for accommodating detainees with disabilities, nor have the changes been reviewed and approved by a medical professional prior to making them as required by paragraph C48.<sup>101</sup>

Based on the forgoing, the Monitor is withholding a determination of compliance with paragraph C47 and finds the DPD is not yet in compliance with paragraph C48.

### *Recommendations*

The Monitor reiterates its recommendation from its Report for the Quarter Ending May 31, 2007 that the DPD put a procedure in place to identify all detainees with disabilities needing accommodations. This will assist with evaluation of compliance with the Consent Judgment requirements. Additionally, the Monitor recommends that the DPD make the necessary revisions to the CMMHSP (which includes all references to providing accommodations to detainees with disabilities) policies and/or training to ensure that DPD directives and operational practices regarding this paragraph are aligned.

## **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

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<sup>101</sup> The Monitor recognizes that the DPD has issued a teletype instructing the staff of the procedures for accommodating detainees with disabilities, but the DPD must revise Directive 305.1 and any additional applicable directives to reflect the new procedures.

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 August 31, 2007, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending May 31, 2008.

## 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 paragraph C51 during the quarter ending August 31, 2007, and is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending May 31, 2008.

## 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 August 31, 2007. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### *Paragraphs C52-53 – Use of Force on Prisoners in Holding Cells Policies; Prisoner Policies*

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.

### *Background*

The Monitor last assessed the DPD's compliance with paragraphs C52-53 during the quarter ending August 31, 2007, finding that the DPD remained in compliance with the policy requirements but was not yet in compliance with the implementation requirements of the paragraphs. The Monitor reviewed the incidents tested in the *Use of Force in Holding Cells (UOFHC) Investigations Audit*, which was submitted by the DPD on July 31, 2007 to address the requirements of subparagraph C65a, among others. This audit identified and evaluated a total of eight UOF incidents that occurred from February through June 2007. The Monitor's review of

these eight UOF incidents revealed that the DPD was not adequately implementing policies with regard to uses of force in holding cells.

### *Current Assessment of Compliance*

The DPD is next scheduled to submit the *UOFHC Investigations Audit*, which covers paragraphs C52-53, among others, on July 31, 2008. The Monitor has elected to defer its assessment of the DPD's compliance with paragraphs C52-53 so that the assessment can be made in conjunction with the review of the audit. As a result, the Monitor has not yet completed its evaluation of the DPD's compliance with paragraphs C52-53.

### *Paragraph C54 – Prisoners in Handcuffs*

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 paragraph C54 during the quarter ending August 31, 2007, finding that the DPD was in compliance with the policy requirements but not yet in compliance with the implementation requirements of the paragraph.

### *Current Assessment of Compliance*

In its Eighteenth Quarter Status Report, the DPD noted that the provisions of paragraph C54 are addressed in Directive 304.2, *Use of Force*. The DPD utilizes the *Handcuff to Object (H2O) Form* (DPD 670), which captures the exact time that a detainee is handcuffed to a fixed object and the exact time that the detainee is un-handcuffed from this fixed object. The form also reiterates the importance of not handcuffing a detainee to a fixed object for longer than three hours.

During the current quarter, the DPD provided a training matrix identifying the training module responsive to the requirements of paragraph C54. According to the matrix, the DPD's *Detention Officer Training Lesson Plan* includes training that addresses the requirements of paragraph U54. As described in the *Current Assessment of Compliance* for paragraphs U115-117, the DPD submitted this lesson plan to the Monitor on November 17, 2007, and the Monitor provided comments in a memorandum dated January 8, 2008. The lesson plan was resubmitted on February 18, 2008. As of the end of the quarter, the Monitor continued to evaluate the resubmission. However, as described in the *Current Assessment of Compliance* for paragraph C64, the DPD has indicated that training has not begun under the *Detention Officer Training Lesson Plan*. In addition, the DPD issued Roll Call Training Administrative Message (08-03

Holding Cell Areas-Security and Control), teletype #08-0219, on January 18, 2008, to address the requirements of this paragraph.<sup>102</sup>

The DPD further reports that the HCCC conducted inspections of all holding cell facilities on January 29 and 31, 2008 relative to handcuffing prisoners to fixed objects. At the time of inspection, there were no detainees observed who were handcuffed to fixed objects. Similarly, the DPD provided the Monitor with OCR inspection reports for inspections conducted on October 11, 2007 of the Eastern, Western, Northeastern, Northwestern, and Southwestern Districts, in which no detainees were observed handcuffed to objects.

During several on-site inspections, a member of the Monitor did not observe any handcuffed detainees, but did observe a posting at each district, instructing staff as to the procedures for handcuffing a detainee to a fixed object. The Monitor interviewed staff at each district and in five of five interviews, the holding cell staff was able to articulate the circumstances involving the handcuffing of a detainee to a fixed object and the procedures that must be followed. The Monitor was also informed that handcuffing to objects has now become a rare occurrence within the DPD.

In response to a document request for “all DPD 670 Handcuff to Object Forms received by OCR since the inception of the form,” the DPD provided only two H2O forms from the Southwest District dating back to June 21 and 22, 2006. Both forms indicated that the detainees at issue had been handcuffed for less than three hours. According to the Executive Patrol Detail Report for the Eastern District on October 6, 2007, one detainee was observed handcuffed to a bar near the processing area. A Sergeant confirmed that a DPD 670 was not prepared.

The *UOFHC Investigations Audit*, submitted on July 31, 2006, as well as the Monitor’s review of tapes from the holding cells areas in previous quarters, found that although arrestees were not observed being handcuffed to objects for periods longer than three hours, there were arrestees who were in fact handcuffed to fixed objects for a period of time. The more recent *UOFHC Investigations Audits* of January 31, 2007 and July 31, 2007 did not include an evaluation of C54.

Based on the foregoing, the Monitor finds that the DPD is in compliance with the policy and implementation requirements of paragraph C54; as a result, the Monitor is in overall compliance with paragraph C54.<sup>103</sup>

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<sup>102</sup> As described previously in this report, the DPD confirmed that the roll call training is not intended to fulfill or partially fulfill Consent Judgment requirements.

<sup>103</sup> The training requirements of this paragraph are separately assessed under paragraph C73.

## **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 August 31, 2007. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### **Paragraph C55-56 – Prisoners Use of Force Investigations; Use of Force on Prisoners in Holding Cells 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.

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***

In order to assess the DPD's compliance with paragraphs C55-56, the Monitor evaluated the *UOFHC Investigations Audit* submitted by the DPD on July 31, 2007. This audit evaluated eight investigations of UOF incidents that occurred in holding cells to determine whether the DPD was complying with various policies and procedures when the use of force occurs in a holding cell. The Monitor concluded that the audit was compliant with the requirements of subparagraph C65a, and the Monitor was able to rely upon the audit's findings.

The audit found that the DPD is not adequately implementing the above policies with regard to investigations of uses of force in holding cells. The audit's findings indicate that although Directives 04-7 and 305.4 have been disseminated, the DPD had not yet implemented the policies contained therein. Furthermore, training on this policy and training directive had not yet taken place. The Monitor found that the DPD remained in compliance with the policy requirements but was not yet in compliance with the implementation requirements of paragraphs C55-56.

### *Current Assessment of Compliance*

The DPD is next scheduled to submit the *UOFHC Investigations Audit*, which covers paragraphs C55-56, among others, on July 31, 2008. The Monitor has elected to defer its assessment of the DPD's compliance with paragraphs C55-56 so that the assessment can be made in conjunction with the review of the audit. As a result, the Monitor is has not yet completed its evaluation of the DPD's compliance with paragraphs C55-56.

### *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 August 31, 2007, finding that the DPD remained in compliance with the policy requirements but was not yet in compliance with the implementation requirements of the paragraphs. The Monitor reviewed the *Prisoner Investigations Audit (PIHC)* submitted by the DPD on January 31, 2007. This audit identified five PIHC investigations of incidents that occurred from August 1, 2006 through September 30, 2006, finding that the DPD was not adequately implementing policies with regard to investigations of prisoner injuries in holding cells.

### *Current Assessment of Compliance*

The DPD submitted its *PIHC Audit* as required on January 31, 2008. This audit identified three Command investigations of incidents and evaluated whether the DPD is complying with various policies and procedures when uses of force occur in holding cells. The audit included compliance assessments of the requirements of paragraph C57 and the related DPD policies. The Monitor has reviewed the audit report and has completed its review of the three Command investigations. Based on the timing of submissions and the number of audits submitted on January 31, 2008, the Monitor plans to complete its analysis and report its findings in the Monitor's Report for the Quarter ending May 31, 2008. As a result, the Monitor finds that the DPD remains in compliance with the policy requirements of paragraph C57, but the Monitor has not yet completed its evaluation of the DPD's compliance with the implementation requirements of the paragraph.

## **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 November 30, 2007, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending May 31, 2008.

## **XII. GENERAL POLICIES**

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

The Monitor last assessed the DPD's compliance with paragraphs C60-61 during the quarter ending November 30, 2007, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending May 31, 2008.

## **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>104</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>105</sup>

The Monitor last assessed the DPD's compliance with subparagraph C65c and paragraphs C66, C67 and C72 during the quarter ending November 30, 2007, paragraphs C62-64, C68-71 and subparagraphs C65a and C65b during the quarter ending August 31, 2007. The Monitor is scheduled to again assess the DPD's compliance with paragraph C72 during the quarter ending

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<sup>104</sup> On October 4, 2004, at the request of the parties, 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>105</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.

May 31, 2008. 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 August 31, 2007, finding that the DPD was not yet in compliance. The Monitor did not receive copies of any inspections conducted by OCR relevant to this paragraph. The DPD indicated that it was revising its inspection forms and process to achieve additional consistency throughout the Department.

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

DPD 715 is a checklist designed to facilitate compliance with paragraph C62. During the previous quarter, the DPD sought input from the Monitor concerning the development of its holding cell inspection form (DPD 715). The Monitor provided feedback on October 17, 2007. The DPD has informed the Monitor that guidelines and instruction will be prepared for the use of the checklist, and it will be utilized at each District once per month.

The DPD further reports that a draft version of the form was utilized on October 11, 2007, at each of the five District holding facilities. During this quarter, on January 29 and 31, 2008, the DPD commenced conducting inspections of the District holding cells and documenting the inspections with the revised form. The DPD reports that the HCCC Inspection Teams continue to perform unannounced District holding cell inspections.

The Monitor notes that this is a positive development, but that the procedures concerning the use of the form have not yet been developed and disseminated.

Based on the foregoing, the Monitor finds that the DPD is not yet in 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 requirements of paragraph C63 mirror those of paragraph U78. The Monitor last assessed the DPD's compliance with paragraph C63 during the quarter ending August 31, 2007 finding that the DPD was not yet in compliance with subparagraphs U78a, c and e and was in compliance with subparagraph U78d. The Monitor had not yet re-evaluated the DPD's compliance with subparagraph U78b. As a result, the Monitor found that the DPD was not yet in compliance with subparagraphs C63a, c and e and was in compliance with subparagraph C63d. The Monitor had not yet re-evaluated the DPD's compliance with subparagraph C63b.

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

As described in the *Current Assessment of Compliance* for paragraph U78, above, the Monitor found that that the DPD is not yet in compliance with subparagraphs U78a and c and is in compliance with subparagraphs U78d and e. The Monitor has not yet re-evaluated the DPD's compliance with subparagraph U78b. As a result, the Monitor finds that the DPD is not yet in compliance with subparagraphs C63a and c and is in compliance with subparagraphs C63d and e. The Monitor has not yet re-evaluated the DPD's compliance with subparagraph C63b.

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

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

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

## *Background*

The Monitor last assessed the DPD's compliance with paragraph C64 during the quarter ending August 31, 2007, finding that the DPD was in compliance with the policy requirements but not yet in compliance with the implementation requirements of the paragraph. The DPD had not yet initiated training or implementation of the Video Review Protocol.

## *Current Assessment of Compliance*

In response to a document request from the Monitor with regard to C64a, the DPD reported that video cameras have been installed in prisoner processing areas of DPD holding cells, and are programmed to run continuously. According to DPD, the OCR conducts frequent checks to ensure that they are operational. If the cameras are found to not be operating, notifications are immediately made to diagnose and repair the problem with the system. In addition, members of the DPD's Technical Support, which maintains the system, performs frequent checks to ensure that the system is operational and repairs the system when needed. Responding to the Monitor's question, however, as to whether officers have been instructed that cameras are to be continuously operational, the DPD notes that training has not begun under the *Detention Officer Training Lesson Plan*, which explains the requirement. The DPD also has not provided training on the requirements of subparagraphs C64b and c.

During the previous quarter, the DPD submitted for the Monitor's review the DPD's Video Review Protocol, which is designed to address the requirements of paragraph U98 and subparagraph C64d. At the end of the current quarter, the Monitor provided to the DPD, via written memorandum, an analysis of the Directive, inclusive of DPD Form 713, the Video Review Log, and related guidance documents. In the memorandum, the Monitor noted a few issues that must be corrected prior to dissemination, training and implementation of the Video Review Protocol.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with subparagraphs C64a-c and withholds a determination of the DPD's compliance with the requirements of subparagraph C64d. As a result, the Monitor finds that the DPD is not yet in overall 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 a) uses of force, b) prisoner injuries, and c) allegations of misconduct in holding cells.

## ***Background***

The Monitor last assessed the DPD's compliance with subparagraph C65a during the quarter ending August 31, 2007 and with subparagraph C65c during the quarter ending November 30, 2007, finding that both the *UOFHC Audit* and the *Allegations of Misconduct in Holding Cells (AOM HC) Audit* submitted on July 31, 2007 were in compliance with the requirements of the respective subparagraphs. The Monitor last assessed the DPD's compliance with subparagraph C65b during the quarter ending August 31, 2007, finding the DPD in non-compliance due to the lack of submission of the *PIHC Audit* by July 31, 2007.

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

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

As of the end of the current quarter, the DPD had not submitted a *Holding Cells Use of Force Investigations Audit Report* required by subparagraph C65a.

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

### ***Subparagraph C65b – Prisoner Injuries in Holding Cells Audit***

On January 31, 2008, the DPD submitted a *PIHC Audit*, which found that the Department was not yet in compliance with all paragraphs tested (U14-16, U25-37, C52-53 and C55-57). During the current quarter, the Monitor began its review of the audit report and audit working papers for this audit and, on February 13, 2008, met with the AT to discuss its preliminary considerations of the audit. However, the Monitor has not yet completed its evaluation of this audit or the DPD's compliance with subparagraph C65b as of the end of the current quarter. The Monitor expects to report its findings in the Monitor's Report for the Quarter Ending May 31, 2008.

### ***Subparagraph C65c – Allegations of Misconduct in Holding Cells Audit***

On January 31, 2008, the DPD submitted an *AOM HC Audit*, which found the Department in compliance with paragraphs U27, U31, U61, U65, and U69, and in non-compliance with paragraphs U28-30, U32-33, U66 and U67. During the current quarter, the Monitor began its review of the audit report and audit working papers for this audit and, on February 13, 2008, met with the AT for preliminary discussions regarding the audit. However, the Monitor has not yet completed its evaluation of this audit or the DPD's compliance with subparagraph C65c as of the end of the current quarter. The Monitor expects to report its findings in the Monitor's Report for the Quarter Ending May 31, 2008.

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

Paragraph C66 requires the DPD to form a Holding Cell Compliance Committee (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>106</sup>

### ***Background***

The Monitor last assessed the DPD's compliance with the HCCC requirement of paragraph C66 during the quarter ending November 30, 2007. During that quarter, the Monitor revised its methodologies for this paragraph and requested documentation regarding HCCC meetings, including any minutes taken. Although the Monitor determined that the documentation submitted by the DPD was sufficient in relation to the HCCC members and agendas, the DPD indicated that the HCCC does not take minutes for these meetings but, instead, tape-records the meetings. However the DPD did not submit any tape-recordings as of the end of the previous quarter. As a result, the Monitor withheld a determination of the DPD's compliance with the HCCC requirement of paragraph C66 until the Monitor could listen to such tape-recordings.

The Monitor last assessed the DPD's compliance with the Fire Safety Program audit requirement of paragraph C66 during the quarter ending November 30, 2007, finding the DPD in compliance. The Monitor determined that the *Fire Safety Audit* submitted by the DPD on the required due date of July 31, 2007 was appropriately conducted by the HCCC and was a quality and thorough audit.

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

#### ***HCCC Requirement of Paragraph C66***

On February 27, 2008, the DPD submitted electronic files of the tape-recorded HCCC meetings along with the Agendas for the HCCC meetings held in December 2007 and January 2008, and the most recent HCCC roster of its members. The Monitor reviewed these materials and determined that the HCCC met at least once per month and the meetings were attended by members with appropriate expertise in the topic areas discussed. The tape-recordings of the meetings validated that the content of the meetings were related to areas where the DPD was not yet in compliance and remedies were discussed to further the DPD towards implementation of the COC CJ required policies, programs and procedures.

Based on the foregoing, the Monitor finds the DPD in compliance with the HCCC Requirement of paragraph C66.

#### ***FSP Audit Requirement of Paragraph C66***

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<sup>106</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.

The DPD submitted the *Fire Safety Practices and Policies Audit Report* to the Monitor on the due date of January 31, 2008. The audit found that the DPD is not yet in compliance with paragraphs C14-19 and is compliant with paragraphs C20 and C21. During the current quarter, the Monitor began its review of the audit report and the audit planning documents for this audit; however, given the number of audits submitted on this due date, the Monitor has not yet completed its evaluation of this audit or the DPD's compliance with the FSP Audit requirement of paragraph C66. The Monitor expects to report its findings in the Monitor's Report for the Quarter Ending May 31, 2008.

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

Paragraph C67 requires the HCCC to conduct regularly scheduled semi-annual audits of the DPD's Emergency Preparedness Program (EPP) for all DPD buildings that contain holding cells.

#### ***Background***

The Monitor last assessed the DPD's compliance with paragraph C67 during the quarter ending November 30, 2007, finding the DPD in compliance. The Monitor determined that the *Emergency Preparedness Program Audit* submitted by the DPD on July 31, 2007 was appropriately conducted by the HCCC and was a quality and thorough audit.

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

The DPD submitted the *Emergency Preparedness Program Audit Report* to the Monitor on the due date of January 31, 2008. The audit found that the Department was not yet in compliance with all paragraphs tested (paragraphs C23-25 and the training requirements of paragraph C75). During the current quarter, the Monitor began its review of the audit report and the audit working papers for this audit; however, given the number of audits submitted on this due date, the Monitor has not yet completed its evaluation of this audit or the DPD's compliance with paragraph C67. The Monitor expects to report its findings in the Monitor's Report for the Quarter Ending May 31, 2008.

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

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

#### ***Background***

The Monitor last assessed the DPD's compliance with the requirements of paragraph C68 during the quarter ending August 31, 2007, finding that the DPD was not yet in compliance as they had not submitted the audit due by July 31, 2007. Previously, the Monitor determined that the

*Medical and Mental Health Care Programs and Policies Audit Report* submitted by the DPD on January 31, 2007 was not conducted by the HCCC, as specifically required by paragraph C68 and the DPD's Audit Protocol.

### *Current Assessment of Compliance*

During the current quarter, the Monitor completed its review of the *Medical and Mental Health Program and Policies Audit Report*, submitted by the DPD's AT on the required due date of January 31, 2008. The Monitor also reviewed the associated audit workplan, working papers and a statistically valid sample of fieldwork documents. The Monitor's findings, which have been discussed with the DPD's AT, are as follows:

- The audit report appropriately covered medical and/or mental health screening documentation and prescription medication logs from a seven-day time period in August 2007 and included onsite observations of the intake process in October and November 2007. The scope of the audit addressed all relevant sections of the COC CJ and appropriately included the involvement of an HCCC member as required by paragraph C68.
- A considerable amount of work was performed by the AT to ensure that the audit population was as complete as possible. The AT's audit fieldwork, including the onsite observations of intake screening was well-organized.
- The AT's approach to testing the DPD's handling of detainees related to numerous COC CJ paragraph requirements resulted in a high number of incidents that were identified by the AT as not applicable (N/A) to the testing performed. As a result, the Monitor determined that certain audit results were unreliable or incorrect for each of the following areas:
  - *Identification of detainees with medical or mental conditions that occur on a rare or infrequent basis:* A number of COC CJ paragraphs require the audit to assess the implementation of policies related to detainees with rare or very specific medical or mental conditions.<sup>107</sup> The AT's use of a sample from a population of all detainees rather than a population of detainees with the specific condition resulted in a very limited number of detainees that were applicable to the testing. Rather than realizing that the approach to the population may have been flawed, the AT assessed and reported compliance based on the limited numbers which may not reflect the DPD's actual compliance in these areas.<sup>108</sup>

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<sup>107</sup> Examples are detainees at risk of committing suicide or who have contraindications to chemical spray (C28b), detainees with infectious diseases (C30), detainees who require medication to travel with them (C32d), detainees who require the injection of medications (C32f), and disabled persons who require specific accommodations (C47).

<sup>108</sup> For example, for these specific COC CJ requirements, the AT reviewed a sample of 89 detainees from a population of 784 in seven tests to measure the DPD's compliance with specific COC CJ requirements. For three of the seven tests, the AT's sample of 89 contained only two applicable incidents, in three other tests, only three

- *Assessment of intake screening procedures and associated questions:* In assessing the medical and mental health intake screening procedures, the AT appropriately employed a sample from the population of all detainees; however, for certain subparagraphs, such as C28a and C28e, the AT considered those who did not have a medical or mental condition to be N/A even if the specific screening procedures had been properly performed. This resulted in incorrect compliance calculations in connection with the pertinent subparagraphs.
- *Assessment of DPD's response to detainees identified with medical or mental conditions:* In assessing the DPD's handling of detainees identified with medical or mental conditions at intake and/or during detention, the AT included all detainees in its testing, which resulted in a large number of N/A test results. The appropriate population for CJ requirements that assess the DPD's response to detainees with medical or mental conditions, such as paragraph C26 and subparagraph C32a, is the population of detainees with such conditions.
- The Monitor disagreed with the AT's finding of compliance with subparagraph C32g (requirement that unused medications be provided to detainees upon their release). The AT inspected the medication cabinets in the holding cell facilities to determine if medication was present for detainees who were not currently being detained. As none could be located, the AT determined that the DPD was in compliance with subparagraph C32g. However, in its supplemental testing of the *Medication Logs* for a sample of detainees in relation to the documentation of subparagraph C32g, the AT found that it could not be determined if the medication had been released to the detainees.<sup>109</sup> Based on the results of both tests, the Monitor considers and the AT should have reported, that the DPD is in non-compliance with subparagraph C32g.<sup>110</sup>
- The audit report was well organized, logical and comprehensive; however, the detailed findings in the body of the report contained a number of errors when compared to the underlying audit working papers, particularly the report tables which summarized the audit findings. In some instances, the titles were inaccurate or the detail had been omitted so that the summarized results at the foot of the tables made no sense; in other instances, the results did not agree with the underlying working papers.

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incidents were applicable, and in one test, only one incident was applicable. In six of these seven tests, the AT held the DPD out of compliance.

<sup>109</sup> The AT reviewed 45 medication logs to establish if the detainees had signed for their medication. The results were all either "No" or "UTD" (unable to determine), as there is no section of the *Medication Log* that requires detainees to sign to confirm receipt of unused medication. The section entitled "prescriptions turned over to" refers to the actual prescription itself. In its audit report, AT appropriately recommended that the *Medication Log* should be amended, and the detainee be asked to sign for unused medication.

<sup>110</sup> This is consistent with the previous audit findings, in which the AT included testing to determine whether detainees signed for their medication as the primary audit test and held the DPD out of compliance with this subparagraph.

Based on the above findings, the Monitor finds that the DPD is not yet in compliance with the requirements of paragraph C68.

### *Monitor's Recommendations*

The Monitor recommends that the AT reassess the population identification strategies to ensure the appropriate populations are being assessed and the associated audit results can be relied upon.

The Monitor understands that due to the lack of automated systems in place within the DPD, it may not be possible to identify all of the appropriate populations and/or sufficient samples of detainees to test for compliance with certain COC CJ requirements. Until either electronic or manual data capture systems are implemented (such as the Live Scan System), the Monitor recommends that the DPD's AT withhold a determination of compliance for the applicable underlying paragraphs in its audits, rather than reporting a determination that is not reliable.

### *Paragraph C69 – Audit of Detainee Safety Programs and Policies*

Paragraph C69 requires the HCCC to conduct regularly scheduled semi-annual audits of the DPD's detainee safety programs and policies for all DPD buildings containing holding cells.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph C69 during the quarter ending August 31, 2007, finding that the DPD was not yet in compliance, as the *Detainee Safety Program and Policies Audit Report* submitted on January 31, 2007 had not been conducted by the HCCC as required and the audit contained a number of qualitative deficiencies.

### *Current Assessment of Compliance*

During the current quarter, the Monitor completed its review of the *Detainee Safety Program and Policies Audit Report* submitted by the DPD's AT on January 31, 2008 as required. The Monitor also reviewed the associated audit workplan, working papers and a statistically valid random sample of the audit fieldwork documents. The Monitor's findings, which have been discussed with the DPD's AT, are as follows:

- The audit report appropriately covered intake screening documentation from a seven-day audit time period in August and appropriately extended this to November for *Medical and Mental High Risk Monitoring Logs*. On-site inspections were performed in November 2007.
- The scope of the audit addressed all relevant sections of the COC CJ and appropriately included the involvement of an HCCC member, as specifically required by paragraph C69. Overall the AT found that the DPD is in compliance with paragraph C38, but is not yet in

compliance with paragraphs C35-37 or the training requirements of paragraph C77. The Monitor concurs with the AT's findings.

- The AT's work in gathering and ensuring the completeness of its source documents was well performed. The audit and sampling methodology was also performed well.<sup>111</sup>
- For four of the 15 detainees reviewed, the AT incorrectly assessed the *Cell Assignment Detainee Security Screening Form* with regard to one of the requirements of subparagraph C36b, to document security screening information.<sup>112</sup> In two cases, the DPD staff members did not document answers to four of the eight behavioral assessment questions, and in two other cases, the detainees did not initial their answers to four of the behavioral assessment questions and the DPD members did not document that they refused to do so. Although the AT correctly concluded that the DPD is in overall non-compliance with paragraph C36 based on sufficient testing of other paragraph C36 requirements, the above testing errors resulted in the AT excluding from the audit report the fact that cell assignment forms were not being correctly completed by DPD staff.
- The AT's working papers were well organized and the audit testing matrices were clear and concise; however, there were a number of inconsistencies between the matrices and the audit report, and between the audit report summary and detailed sections. Most of these were related to the AT's observation and verification fieldwork in connection with paragraph C38.<sup>113</sup> The Monitor understands that this was the result of a late adjustment to the audit findings and report for paragraph C38.
- The Monitor agreed with the AT's recommendation that cell checks at the DRH should be performed every 15 minutes, as required by paragraph C37; however, in its testing, the AT incorrectly noted that these cell checks were being correctly performed every 30 minutes.
- Although the audit report made a number of solid recommendations to the DPD, the Monitor made additional recommendations with respect to the *Detainee Intake Form*.<sup>114</sup>

Based on the above findings, the Monitor finds this audit in compliance with the requirements of paragraph C69.<sup>115</sup>

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<sup>111</sup> The Monitor identified and communicated to the AT one problem regarding its sampling; however, this problem did not adversely affect the amount or quality of the work performed.

<sup>112</sup> During discussions with the Monitor, the AT agreed with the Monitor's assessment in these four instances.

<sup>113</sup> Paragraph C38 requires the continual direct or on-site remote observation of all observation cells while they are occupied.

<sup>114</sup> Please see the *Current Assessment of Compliance* for paragraphs C35-38 below for further recommendations.

<sup>115</sup> The errors made by the AT as described above did not significantly impact the overall quality of the audit.

### ***Monitor's Recommendations***

To ensure that this audit (and all other audits) remains in compliance in the future, the Monitor recommends that the AT performs thorough reviews of its testing work to eliminate errors that could result in the AT's findings being incorrect, or otherwise cause the AT's audit to be held out of compliance. These reviews should include all related aspects of the audit report and working papers and are particularly critical when significant edits are made to the audit report shortly before submission.

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

Paragraph 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 August 31, 2007, finding the DPD in compliance. The Monitor determined that the *Environmental Health and Safety (EH&S) Audit* submitted by DPD on July 31, 2007 was appropriately conducted by the HCCC and was a quality and thorough audit.

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

The DPD submitted the *EH&S Audit Report* to the Monitor on the due date of January 31, 2008. The audit found that the Department was in compliance with paragraphs C34, C39, and C42-45, but not yet in compliance with paragraphs C40-41 and the training requirements of paragraph C78. During the current quarter, the Monitor began its review of the audit report and the audit working papers; however, given the number of audits submitted on this due date, the Monitor has not yet completed its evaluation of this audit or the DPD's compliance with paragraph C70. The Monitor expects to report its findings in the Monitor's Report for the Quarter Ending May 31, 2008.

### **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 August 31, 2007, finding that the DPD in compliance as the *Food Service Program Audit*

submitted on July 31, 2007 was appropriately conducted by the HCCC and was a quality and thorough audit.

### *Current Assessment of Compliance*

The DPD submitted the *Food Service Program Audit Report* to the Monitor on the due date of January 31, 2008. The audit found that the Department was not yet in compliance with all paragraphs tested (paragraphs C49-51, and the training requirements of paragraph C78). During the current quarter, the Monitor began its review of the audit report and the audit working papers; however, due to the number of audits submitted on this due date, the Monitor has not yet completed its evaluation of this audit or the DPD's compliance with paragraph C71. The Monitor expects to report its findings in the Monitor's Report for the Quarter Ending May 31, 2008.

## **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>116</sup>

The Monitor last assessed the DPD's compliance with paragraphs C73, 75-78 during the quarter ending August 31, 2007. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2008.

The Monitor last assessed the DPD's compliance with paragraph C74 during the quarter ending November 30, 2007, and is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending May 31, 2008.

## **XV. MONITORING AND REPORTING**

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Paragraph C94 requires the DPD to reopen for further investigation any investigation the Monitor determines to be incomplete, subject to certain restrictions. See paragraph U139, which is the corresponding paragraph in the UOF CJ, for information regarding the requirements of this paragraph.

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<sup>116</sup> Refer to the UOF CJ training section in this report for additional information regarding DPD training-related issues.

## CONCLUSION

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The DPD continues to comply with several areas of the Consent Judgments, such as the requirements related to material witnesses, the removal of suicide hazards, and the provision of suicide garb. Significantly, the Monitor determined that the DPD is in compliance with the requirements pertaining to the use of chemical spray. Furthermore, the MAS system is on schedule to comply with the modified court-ordered deadlines. However, the DPD has not effectively implemented the requirements in a number of other areas, as described throughout this report.

The Monitor commends the DPD for aggressively moving forward to complete its lesson plans so that the vast majority of the training required under the Consent Judgments can begin. As noted previously, the implementation of the training paragraphs are a key element towards achieving compliance in other areas.

Sheryl Robinson Wood  
Independent Monitor

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**APPENDIX A:**

**Acronyms Frequently Utilized in Quarterly Reports Issued by the Independent Monitor for the DPD**

Following is a listing of acronyms utilized in the Independent Monitor's Quarterly Reports.

<b>ACRONYM</b>	<b>DEFINITION</b>
A&D	Arrest and Detention
AT	Audit Team
BOPC	Board of Police Commissioners
BOR	Board of Review
BRT	Board Review Team
CALEA	Commission on Accreditation for Law Enforcement Agencies
CAN report	Corrective Action Needed report
CCR	Citizen Complaint Report
CDDT	Curriculum Design and Development Team
CEPP	Comprehensive Emergency Preparedness Program
CFD	Critical Firearm Discharge
CI	Chief Investigator
City	City of Detroit
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
DA	Disciplinary Administration
DAS	Disciplinary Administration Section
DCCL	Detention Cell Check Log
DDHWP	Detroit Department of Health and Wellness Promotion
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
FI	Force Investigation
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
IA	Internal Affairs
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
MSP	Michigan State Police
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
PDDS	Platoon Daily Detainee Summary
PDO	Police Detention Officer
PEERS	Performance Evaluation and Enhancement Review Session
PSA	Public Service Announcement
RFP	Request for Proposals
RMB	Risk Management Bureau
RMG	Risk Management Group
SCAN	Security Communications Alert Network, Inc.
SCBA	Self-Contained Breathing Apparatus
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
WCSD	Wayne County Sheriff's Office
WIQD	Witness Identification and Questioning Documentation