

REPORT OF  
THE INDEPENDENT MONITOR  
FOR THE  
DETROIT POLICE DEPARTMENT



REPORT FOR THE QUARTER ENDING  
AUGUST 31, 2008  
ISSUED OCTOBER 15, 2008

**Sheryl Robinson Wood**  
Independent Monitor of the  
Detroit Police Department

Assisted by: **KROLL**

## **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 as the Independent Monitor in this matter, with the assistance of Kroll, Inc. This is the twentieth 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 11 such paragraphs or subparagraphs: U82-85; U88a, b, d, and e; C22; 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.

substantial compliance for two consecutive review periods with 34 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 twentieth quarter, which ended on August 31, 2008, the Monitor examined a total of 92 paragraphs or subparagraphs (53 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 12, in partial compliance with two, and not yet in compliance with 53; the Monitor did not complete its evaluation<sup>9</sup> of 19 paragraphs or subparagraphs, and has withheld a determination of compliance with six paragraphs or subparagraphs.<sup>10</sup> The Monitor also determined that the DPD made notable progress towards complying with the requirements of eight paragraphs during the current quarter.<sup>11</sup>

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 70 of these paragraphs and subparagraphs (42 from the UOF CJ and 28 from the COC CJ)<sup>12</sup> and in partial compliance with three (all from the UOF CJ).

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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 34 paragraphs and subparagraphs, the Monitor found three paragraphs in substantial compliance for two consecutive review quarters for the first time during the current review period (subparagraph U78e, paragraph C54, and subparagraph C63e). Also included are three paragraphs that were previously in compliance for two consecutive quarters but for which a compliance determination was withheld or not yet completed during the current quarter (U22, C65c, and C71).

<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.

<sup>11</sup> The Monitor continued to implement the finding of "partial compliance" and the terms "notable progress" and "significant progress" for quantitative paragraphs, and began implementing the terms for qualitative paragraphs this quarter after the DPD and the Monitor agreed to the methodology for assessing qualitative paragraphs. The eight paragraphs with which the DPD made notable progress during the current quarter were paragraphs U115-122.

<sup>12</sup> Included in these 69 paragraphs and subparagraphs are eight paragraphs and subparagraphs that were in compliance prior to the current quarter but for which a compliance determination was withheld or not yet completed during the current quarter. Three of these are from the UOF CJ and five are from the COC CJ.

### *Use of Force Paragraphs*

The Monitor assessed the Department's compliance with UOF CJ requirements regarding use of force policies, use of firearms, and chemical spray. The DPD is commended for complying with the requirements of its revised Use of Force Policy with regard to the uses of force reviewed this quarter. However, the Monitor has withheld a determination of compliance in order to review more serious uses of force in conjunction with the revised policy.

Based on the documentation received by the Monitor, the DPD has successfully implemented the first half of their bi-annual firearms qualification program; however the Monitor is withholding a determination of compliance and intends to follow up on the status of the officers who missed or were unavailable to qualify during the first six months of 2008.

Although the DPD's policy prohibits shooting at or from moving vehicles and the DPD has issued a teletype regarding this requirement, there were four reported occurrences that allegedly violated this prohibition between January and July 2008. As reported during the quarter ending February 29, 2008, the Monitor expects that once training takes place, the number of prohibited incidents will decrease.

The Monitor evaluated the DPD's implementation of its Monthly Equipment Inspection Reports (DPD 709s) for the period January 1 through March 31, 2008. The DPD 709 was developed to document, among other things, the inspection of ammunition carried by officers. The Monitor reviewed the forms and determined that for the forms that documented violations of one or more of the thirteen categories inspected, there is no way to know to which category the violation relates. Furthermore, although there were 98 commands identified to be inspected each month, there were no more than 70 identifiable forms submitted for any of the three months tested.

With regard to the use of chemical spray, there were five pertinent incidents identified by the DPD within a three-month time period. The documentation received by the Monitor indicates that the DPD did not fully evaluate two of the five incidents. Therefore, the DPD is no longer in compliance with the Consent Judgment requirements related to the use of chemical spray.

### *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. With regard to implementation, significantly, the DPD achieved compliance with requirements for documenting late requests for arraignment warrants and late arraignments. The DPD achieved partial compliance with the requirements related to arraignments occurring within 48 hours. Both of these assessments represent improvements from the last time these requirements were under review by the Monitor, and the DPD is commended for these achievements. However, the DPD is no longer in compliance with 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. This is due to the fact that the documentation provided by the DPD pertaining to material witnesses was incomplete. Furthermore, the recurring issues related to failure to document holds and

restrictions caused continued non-compliance with those requirements. Also, as reported in prior quarters, the Commanding Officers' reviews of all violations of DPD policies in the area of holds and restrictions are essentially not yet taking place or, in the instances when they are completed most are not done within the 24-hour deadline.

### *General Policies Paragraphs*

The DPD has just started training on the requirements contained in the UOF CJ general policies paragraphs that were assessed by the Monitor during this quarter. The subject matter of some of the requirements in these paragraphs include off-duty officers taking police action, duty to report misconduct, prisoner policies, and foot pursuits. With regard to the requirement to develop a plan for adequate deployment of supervisors in the field, the DPD achieved partial compliance with the implementation of the plan; however, supervisory training on this requirement began recently on August 4, 2008.

### *Risk Management Paragraphs*

During the current quarter, on August 11, 2008, the DPD's Management Awareness System (MAS) became operational department-wide. The DPD is commended for this significant achievement. The Monitor will assess the implementation of the MAS during upcoming quarters. In regards to requirements to develop a comprehensive risk management plan, the Monitor found the DPD in continued compliance with provisions regarding regular and periodic reviews of all DPD policies and regular meetings of DPD management to share information and evaluate patterns of conduct by DPD that potentially increase the DPD's liability.

The Monitor also assessed compliance with Consent Judgment requirements regarding scout car video recording equipment, prisoner processing video cameras and incident videotapes.

The Monitor conducted inspections of six DPD districts to assess the DPD's use of scout car video recording equipment and found the following:

- Only two of the six districts were actively ensuring that patrol cars have working cameras.
- None of the districts demonstrated that microphones are being tested prior to the beginning of a shift.
- Pre-2007 model patrol cars do not have fans installed to cool the digital recording equipment stored in the trunks of the cars resulting in widespread and systematic failures of the recording equipment.
- There is no reliable system to ensure the proper uploading of the digital data from the patrol cars to the central repository at Communications Systems.

With regard to the prisoner processing areas, the Monitor's inspections in five districts found that the cameras were functioning in each district.

The Monitor found that the DPD continues 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. The Monitor has not yet re-evaluated compliance with the paragraph that requires the DPD to implement timelines related to the disciplinary process. The Monitor has received a population of 100 disciplinary matters that were closed in June 2008 which will be assessed in connection with this requirement.

### *Audit Paragraphs*

During the current quarter, the Monitor completed its review of the UOF CJ *Prisoner Injury Investigations Audit* that was submitted on February 29, 2008, finding it in non-compliance due to several deficiencies identified, such as the inclusion of investigations that were not prisoner injuries but were instead injuries that were sustained prior to arrest, incorrect findings related to the investigator's conclusions, and the inappropriate exclusion of certain UOF CJ requirements regarding prisoner injury investigations. The Monitor also completed its review of two additional UOF CJ audits that were submitted on May 31, 2008, the *Arrests Audit* and the *Custodial Detention Audit*, finding the *Arrests Audit* in partial compliance and the *Custodial Detention Audit* in compliance. The *Arrests Audit* was a quality audit for the most part but contained a number of qualitative performance-related deficiencies that impacted its quality, including erroneous information in connection with specifically required comparisons between the number of arrests, warrants, and judicial findings of probable cause. The *Custodial Detention Audit* included appropriate recommendations to correct systemic problems and operational deficiencies identified during the audit and, overall, was considered a quality audit.

On July 31, 2008, the Audit Team submitted seven of the nine audits required by the COC CJ. The Monitor completed its review of two of these audits: the *Emergency Preparedness Program Audit* and the *Environmental Health and Safety Audit*. The Monitor determined that the *Emergency Preparedness Program Audit* was not in compliance, mainly because the audit had inappropriately excluded the Detroit Receiving Hospital from two audits tests, one of which is specifically required by the audit paragraph and the other that is critical to supervisory oversight during an emergency. The *Environmental Health and Safety Audit* was found to be in compliance, in part because the audit contained appropriate audit objectives and met those objectives through suitable testing procedures. The Monitor is continuing its review of the remaining five COC CJ audits: the *Use of Force in Holding Cells Investigations Audit*, the *Prisoner Injury in Holding Cells Investigations Audit*, the *Allegations of Misconduct in Holding Cells Investigations Audit*, the *Detainee Safety Programs Audit*, and the *Food Service Programs Audit*. The Monitor expects to complete its review of these five audits and report its findings during the quarter ending November 30, 2008. The AT did not submit the *Fire Safety Policies Audit* or the *Medical and Mental Health Programs Audit*, both of which were required to be submitted by July 31, 2008. Accordingly, the Monitor found that the DPD was not in compliance with the paragraphs requiring their submission.

On August 31, 2008, the AT submitted four audits required by the UOF CJ: the *Use of Force Investigations Audit*, the *Allegations of Misconduct Investigations Audit*, the *Stops and Frisks Audit* and the *Witness Identification and Questioning Audit*. The Monitor expects to complete its

review of these four audits and report its findings during the quarter ending November 30, 2008. The AT did not submit the *External Complaint and Complaint Investigation Audit*, which was required to be submitted by August 31, 2008; accordingly, the Monitor finds that the DPD is not in compliance with the paragraph requiring this submission. Also on August 31, 2008, the AT submitted its 2008/2009 Audit Protocol in response to paragraph U92. The Monitor determined that the content of the Audit Protocol was adequate, and expects to complete its review of the dissemination and training processes related to the protocol during the quarter ending November 30, 2008.

### *Training Paragraphs*

The DPD's Office of Training and Professional Development began its in-service training program on August 4, 2008. According to the DPD, it is a mandatory 40-hour block of training for all officers, recruits and supervisors scheduled throughout the next 12-month period. The block of instruction is scheduled to include the delivery of Consent Judgment approved lesson plans in the following areas: Use of Force (paragraphs U112 and U115-117), PR-24 Intermediate Weapon (paragraph U112), Law of Arrest and Search and Seizure (paragraph U114), and Supervisory Leadership and Accountability (paragraphs U118-22). The commencement of the in-service training program is another significant achievement for which the DPD is to be commended. This is in addition to the *Firearms Qualification Lesson Plan*, which was implemented by the DPD Firearms Training Unit into their current bi-annual in-service qualification period during the quarter ending May 31, 2008. During this quarter, the DPD also selected and trained nine Field Training Officers. The Monitor is in the process of assessing the DPD's recently instituted training courses for compliance with the relevant paragraphs of the Consent Judgments.

### *COC CJ Holding Cell Paragraphs*

During the current quarter, the Monitor assessed the DPD's compliance with COC CJ requirements regarding fire safety policies and Life Safety Code (LSC) requirements, as well as requirements regarding emergency preparedness plans for all facilities that maintain holding cells.

The DPD is currently in the process of retrofitting its district buildings that contain holding cells in order to comply with the LSC requirements and fully implement the fire safety policies. The DPD is required by Court Order to complete the retrofitting by December 31, 2008. Therefore, the Monitor limited its assessment to requirements with which the DPD has previously complied. During inspections conducted, the Monitor found that the DPD remains in compliance with requirements regarding the enforcement of the no-smoking policy within holding cells and the proper storage of flammable liquids.

In assessing compliance with the requirements regarding emergency preparedness plans for all facilities that maintain holding cells, the Monitor relied upon the DPD's *Emergency Preparedness Program Audit* submitted on July 31, 2008. The Monitor tested the audit's findings and concurred with them. The audit found that although each building had an

Emergency Response Plan placed in a clearly marked red binder at each operations front desk, and that 92% of the detention area staff who were interviewed demonstrated knowledge of their responsibilities under the emergency preparedness plans, the DPD did not perform and maintain documentation of fire drills for all buildings containing holding cells, on all shifts, every six months as required.

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APPENDICES:

- A. Acronyms Frequently Utilized in Quarterly Reports Issued by the Independent Monitor
- B. “Report Card” Summarizing the Monitor’s Evaluation of Compliance with the Consent Judgments as of the Quarter Ending August 31, 2008

## SECTION ONE: INTRODUCTION

### I. BACKGROUND

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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). 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 as the Independent Monitor in this matter, with the assistance of Kroll, Inc.<sup>13</sup> This is the twentieth report of the Independent Monitor.

In the first quarterly report, for the quarter ending November 30, 2003, the Monitor<sup>14</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>15</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>16</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 twentieth quarter, which ended on August 31, 2008, are assessed in this report.<sup>17</sup>

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<sup>13</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>14</sup> The word "Monitor" will be used to describe both the Monitor and the Monitoring Team throughout this report.

<sup>15</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>16</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>17</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>18</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. FINDINGS FROM COMPLIANCE ASSESSMENTS

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During the twentieth quarter, the City and the DPD had several significant achievements and underwent some dramatic changes. The DPD also continued to face challenges with compliance mostly due to the lack of automated systems and resulting failure to provide adequate and complete documentation of the implementation of Consent Judgment requirements.

The most significant achievements this quarter were the DPD's department-wide roll out of the Management Awareness System (MAS) on August 11, 2008 and the commencement of in-service training on August 4, 2008. The implementation of the MAS and the provision of training on the various Consent Judgment requirements will greatly increase the DPD's compliance levels over time. The DPD also achieved compliance or partial compliance for the first time in several areas, including documenting late requests for arraignment warrants and late arraignments; timely arraignments occurring within 48 hours; supervisor deployment; and the *Arrest Practices Audit*. The Department also remained in compliance with requirements in several areas, including the no smoking policy; storage of flammable materials; no lengthy handcuffing to benches; regular meetings of DPD management to evaluate conduct that could potentially increase liability; adequate resources to eliminate backlogs for disciplinary cases; and the *Environmental Health and Safety Audit*. However, the DPD also had several areas where compliance had previously been achieved but was not reached during this quarter. Those areas include the use of chemical spray; court orders for material witnesses; the *Fire Safety Program and Policies Audit* (skipped); and the *Emergency Preparedness Program Audit*. With the exception of the audits, the DPD's lack of compliance in these areas is due to the submission of incomplete documentation in response to the Monitor's document requests.

Of the 92 paragraphs or subparagraphs that the Monitor assessed during the current quarter, the Monitor found that the DPD achieved compliance with 12 paragraphs and subparagraphs and

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<sup>18</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.

partial compliance with two paragraphs or subparagraphs. The Monitor determined that the DPD made notable progress towards complying with the requirements of eight paragraphs during the current quarter.<sup>19</sup> Overall, the DPD is currently in compliance with 70 of the 205 paragraphs and subparagraphs that are assessed in the combined Consent Judgments (42 of 131 paragraphs and subparagraphs from the UOF CJ and 28 of 74 paragraphs and subparagraphs from the COC CJ).<sup>20</sup>

The DPD has been in overall substantial compliance for two or more quarters with 34 paragraphs or subparagraphs of both Consent Judgments.<sup>21</sup> Of these 34 paragraphs and subparagraphs, the Monitor found three paragraphs in substantial compliance for two consecutive review quarters for the first time during the current review period.<sup>22</sup>

Right after the end of the quarter, the City and the DPD underwent several changes in leadership of the departments that directly deal with compliance with the Consent Judgments. The Monitor appreciates the hard work of former Mayor Kwame M. Kilpatrick and former Police Chief Ella Bully-Cummings and looks forward to working with the new administration, including Mayor Kenneth V. Cockrel, Jr., Deputy Mayor Saul A. Green, and Chief of Police James R. Barren, Ph.D.

#### 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.

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<sup>19</sup> The Monitor continued to implement the finding of “partial compliance” and the terms “notable progress” and “significant progress” for quantitative paragraphs, and began implementing the terms for qualitative paragraphs this quarter after the DPD and the Monitor agreed to the methodology for assessing qualitative paragraphs. Refer to the Methodologies section, below, for further information. The eight paragraphs with which the DPD made notable progress during the current quarter were paragraphs U115-122.

<sup>20</sup> Included in these 69 paragraphs and subparagraphs are eight paragraphs and subparagraphs that were in compliance prior to the current quarter but for which a compliance determination was withheld or not yet completed during the current quarter. Three of these are from the UOF CJ and five are from the COC CJ.

<sup>21</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. Also included are three paragraphs that were previously in compliance for two consecutive quarters but for which a compliance determination was withheld or not yet completed during the current quarter (U22, C65c, and C71).

<sup>22</sup> Subparagraph U78e, paragraph C54, and subparagraph C63e.

Under the *Methodologies*, the DPD will generally be assessed as compliant with a Consent Judgment requirement 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>23</sup> of incidents from as recent a period as is practicable. 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.

For paragraphs that have a qualitative aspect and cannot be assessed by using quantitative measures alone, in addition to assessing any quantitative items described above, the Monitor will also assess “performance-related qualitative criteria” that can affect the compliance assessment for the paragraph. The Monitor will report whether any such deficiencies had “substantial” or “some” affect on the quality of the item being assessed. When possible, the Monitor will also report whether or not significant or notable progress was made as compared to the prior assessment of these types of paragraphs.

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.

In the course of evaluating the DPD’s audits, the Monitor reviews the audit report, work plan, matrices, and supporting documentation. The Monitor will then generally perform detailed fieldwork as part of its review, but may abridge its assessment of the detailed fieldwork and adopt the audit’s findings as reliable if all of the following conditions are present: at a minimum, two consecutive audits of the same subject areas were found to be in compliance with applicable Consent Judgment requirements; the methodology for the audit under review has not been significantly altered from the prior audits that were found to be compliant; and, the audit’s findings regarding the DPD’s compliance with the underlying substantive Consent Judgment provisions have not changed from the prior audit. If all of these conditions are present, the Monitor will also confirm the audit’s conclusions through non-audit sources of information, such as the Monitor’s independent assessments of the underlying paragraphs and the City’s Status Report. If the Monitor has specific concerns regarding any particular audit conclusions, the Monitor will conduct its usual detailed review of the audit fieldwork in that particular area.

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<sup>23</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.

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 each audit to determine if it is compliant with the applicable audit paragraph requirements of the Consent Judgments. 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>24</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>25</sup> while others do not.<sup>26</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 to carry out the requirements of the Consent Judgments.<sup>27</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>28</sup> of the Consent Judgments for the five

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<sup>24</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>25</sup> See, for example, paragraph U43 – Arrest Policies and paragraph U45 – Stop and Frisk Policies and related training paragraph U114.

<sup>26</sup> See, for example, paragraphs U73 -- Supervisory Deployment and paragraph U77 -- Foot Pursuit Policies.

<sup>27</sup> As described in the Introduction to the Methodologies, this is the Training Component of compliance.

<sup>28</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.

most recent quarters, including the current quarter, in which compliance has been assessed.<sup>29</sup> The quarter in which the most recent evaluation was made is also indicated, as is the quarter in which the Monitor anticipates conducting the next evaluation of compliance for each paragraph. The next evaluation is estimated based on available information at the date of issuance of this Quarterly Report and accompanying Report Card. These estimated dates are subject to change as information develops and circumstances change.

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. FOCUS ISSUE

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### A. DPD'S AUDIT ANALYSES AND REPORTING

As described in previous quarterly reports issued by the Monitor, the DPD's Audit Team (AT) has made significant progress in complying with the audit-related requirements during the term of the Consent Judgments. For example, the Monitor concluded that seven of the eight COC CJ audits submitted on January 31, 2008 were in compliance with Consent Judgment requirements. The Monitor considers that many of the AT's audits are thorough and reliable, and serve as valuable tools to assist the DPD in developing strategies to further its compliance with both Consent Judgments.

However, the DPD's audit function plays a crucial role in department oversight, and there remains much work to do to ensure that effective oversight is taking place. The Monitor has found that the audits submitted by the AT often lack the meaningful and insightful analysis of audit findings that is crucial to DPD management oversight. While the audits contain detailed information, few, if any, of the audits contain perceptive summaries of the overall findings nor do they attempt to uncover the potential causes of non-compliance from an operational perspective. To compound the problem, the Major Findings and Recommendations sections of the audits' Executive Summaries often contain excessive technical detail and present the findings in tabular, numeric format without any key insights, leaving the DPD executives to attempt to identify issues that should be addressed on their own. Rather than repeating the audit detail, the Executive Summaries should emphasize issues that the AT wants to bring to the attention of DPD management. The following are examples from two audits evaluated by the Monitor this quarter that are illustrative of the need for further analysis of audit findings by the AT.

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<sup>29</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.

In the *Prisoner Injury (PI) Investigations Audit* submitted by the DPD's AT on February 29, 2008, little analysis of the overall audit findings was provided in the Executive Summary or in the detail of the report.<sup>30</sup> For example, the AT did not summarize or analyze the fact that Force Investigations (FI) neglected to evaluate the use of force in four of the five incidents reviewed in the audit, or that three of the force incidents were connected to vehicle pursuit investigations, even though this information was detailed in the body of the report. In this same audit, the AT tested and reported compliance with the UOF CJ requirement to complete an auditable form for all prisoner injuries (PI) based solely on the presence of the auditable forms, but did not evaluate the accuracy or correctness of the forms. Since these forms serve as a tool for ensuring supervisory review and corrective action, their proper completion is an important part of the oversight function, and the deficiencies should have been highlighted in the Executive Summary.

The *Arrests Audit* submitted by the DPD's AT on May 31, 2008 is another example of the lack of insightful analysis and reporting. In this audit, the AT conducted comparisons required by the UOF CJ but the calculations made in connection with the comparisons were incorrect and/or improperly presented, rendering them meaningless.<sup>31</sup> While not specifically required by the UOF CJ, it is standard audit practice to analyze the results of comparisons made during an audit – this was not done. Had the AT questioned/analyzed the findings, the AT might have discovered the errors and corrected them prior to the submission of the audit report,<sup>32</sup> and the DPD's executive staff could have been provided with insightful information to determine if a pattern or problem exists. The Monitor notes that the DPD's Audit Protocol appropriately emphasizes the importance of performing such analyses within an audit.<sup>33</sup>

The Monitor has made the AT aware of the specific deficiencies described above, and has initiated discussions with the AT in an effort to improve the AT's overall analysis and the Executive Summaries included in all audit reports.

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<sup>30</sup> Refer to the *Current Assessment of Compliance* for subparagraph U94b for a description of the specific deficiencies identified in this audit.

<sup>31</sup> Refer to the *Current Assessment of Compliance* for subparagraph U95a for a description of the specific deficiencies identified in this audit.

<sup>32</sup> As suggested by the Monitor's staff, the AT submitted an "Audit Correction" notice on August 13, 2008 to address this.

<sup>33</sup> Page 20 of the DPD's Audit Protocol states "The analysis of the data and information obtained during the audit is one of the most critical components of the audit process and must be conducted by an audit team member with a high degree of DPD experience. Analysis of the data is more than simply counting and reporting on the number of deficiencies in each area of evaluation."

## VII. MONITOR'S PLEDGE

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

To that end, we have provided the parties with interim assessments of compliance throughout each quarter, including the quarter ending August 31, 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>34</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>34</sup> As required by paragraphs U142 and C97.

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

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This section contains the Monitor's compliance assessments of the UOF CJ paragraphs scheduled for review during the quarter ending August 31, 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. The Monitor last assessed the DPD's compliance with paragraph U18, which contains the related implementation requirements, during the quarter ending May 31, 2007, and again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

#### **Paragraph U18 – Revision / Implementation of UOF Policy**

Paragraph U18 requires the DPD to develop a revised UOF policy within three months of the effective date of the UOF CJ. The policy must be submitted for review and approval of the DOJ. The DPD must implement the revised UOF policy within three months of the review and approval of the DOJ.

#### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U18, which contains the implementation requirements for DPD policy issued pursuant to paragraphs U14-17 and U19, during the quarter ending May 31, 2008. The Monitor requested that all investigations of force conducted by the DPD that were closed during the period March 1-31, 2008 be made available for the Monitor's inspection. When the Monitor team members arrived at the DPD's Office of Civil Rights (OCR), they were only provided with access to six investigations and, after the end of that quarter, submitted a follow-up document request to verify that there were only six responsive investigations. The DPD provided a list of 28 investigations that were closed during the relevant time period. Since the Monitor was not provided with timely access to these

investigations and was unable to complete its review of the additional files, the Monitor withheld a determination of compliance with paragraph U18.<sup>35</sup>

### *Current Assessment of Compliance*

In order to assess the DPD's implementation of its UOF policies and its compliance with paragraph U18 during the current quarter, the Monitor reviewed the *PI Audit*<sup>36</sup> and the *Use of Force in Holding Cells (UOFHC) Audit*,<sup>37</sup> both of which included incidents involving a use of force.<sup>38</sup> A total of 15 investigations were reviewed in these two audits; of these, 11 were conducted at the command level, and four were conducted by FI.<sup>39</sup>

The types of force used by officers in these 15 incidents included hard-hands (compliance controls and physical controls) and, in one instance, the use of chemical spray. Based on the information reported in the officers' reports and supervisory investigations, the Monitor found that in all 15 incidents officers used an appropriate level and type of force in response to and commensurate with the subjects' resistance. The officers gave verbal warnings when possible and de-escalated the level of force once the situations were under control. This is an improvement from the previous assessment, during which the Monitor identified two instances in which inappropriate force techniques were employed (a carotid hold and a head strike, both of which were serious uses of force).

The Monitor noted that in at least two of the 15 incidents, officers were dealing with recalcitrant detainees and did not summon additional officers or engage in other tactics articulated in subparagraphs U15c and U76b, and in the DPD's Use of Force policy, *Directive 304.2-4*, nor did the officers indicate that additional officers or other tactics were not needed. Furthermore, in these incidents, based on the officers' explanations of the sequence of events, which may or may not be complete, it appeared that no exigent circumstances were present that would have

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<sup>35</sup> In its 20<sup>th</sup> Quarter Status Report, the DPD challenged the Monitor's decision to withhold a determination of compliance with respect to paragraph U18 for the quarter ending May 31, 2008. The DPD stated that the Monitor had requested access to the closed UOF files for that time period, which request was honored and facilitated by the OCR. The DPD then alleged that the Monitor "revised" the request on June 3, 2008, asking for a list of and copies of those UOF Reports, and that the list was furnished to the Monitor on June 27, 2008. As illustrated by the Monitor's account of that quarter's inspection, the DPD's account is misleading.

<sup>36</sup> The *PI Audit*, which was submitted by the DPD on February 29, 2008, is separately evaluated under subparagraph U94b. Refer to the *Current Assessment of Compliance* for subparagraph U94b, below.

<sup>37</sup> The *UOFHC Audit*, which was submitted by the DPD on May 31, 2008, is separately evaluated under subparagraph C65a. Refer to the *Current Assessment of Compliance* for subparagraph C65a, below.

<sup>38</sup> The DPD AT is not required to audit the force incident, only the "investigation" of the force. As such, the Monitor conducted an independent assessment of the force using the 15 incidents included in these two audits.

<sup>39</sup> Seven investigations were reviewed in the *PI Audit* and eight investigations were reviewed in the *UOFHC Audit*.

prevented the officers from requesting assistance.<sup>40</sup> Consequently, it is important that DPD members include in their reports sufficient information regarding the circumstances and decision-making leading up to the force incident. The DPD investigators of UOF incidents must also specifically include an evaluation of the officers' tactics as part of the investigation (as required by subparagraph U32f). The Monitor further suggests that officers be reminded that they should request assistance whenever possible as required by subparagraphs C53b and U76b.

Overall, it appears that DPD officers used appropriate levels of force based on the 15 incidents contained in the two audits; however, all of these incidents involved relatively low levels of force. Given that the Monitor's prior assessment, which included a review of more serious uses of force, found that officers violated the force policies, the Monitor will complete its review of the investigations contained in the DPD AT's next *Use of Force Investigations Audit (UOF Audit)* before concluding on paragraph U18. The *UOF Audit*, submitted on August 31, 2008, includes department-wide force incidents, including some serious uses of force. The Monitor anticipates completing its assessment of the audit and reporting its findings during the quarter ending November 30, 2008.

Based on the foregoing, the Monitor has not yet completed its evaluation of the DPD's compliance with paragraph U18.

## 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. The Monitor last assessed the DPD's compliance with paragraphs U21 and U22 during the quarter ending February 29, 2008 and with paragraph U23 during the quarter ending May 31, 2008. 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 remedial training within a reasonable time shall be subject to disciplinary action, up to and including a recommendation for termination of employment.

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<sup>40</sup> In these two incidents, the force occurred in the processing area; the subjects were intoxicated and had already been passively and verbally resisting the officers just prior to the need to use force. In one incident, the detainee was verbally threatening to harm the detention officer just prior to the officer removing handcuffs.

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 and U22 during the quarter ending February 29, 2008, finding that the DPD remained in compliance with the policy requirements of both paragraphs U21 and U23 and in compliance with the implementation requirements of paragraph U22; the Monitor did not complete its assessment of compliance with the implementation requirements of paragraph U21. The Monitor last assessed the DPD's compliance with paragraph U23 during the quarter ending May 31, 2008, finding that the DPD remained in compliance with the policy requirements but was not yet in compliance with the implementation requirements of the paragraph. The Monitor requested legible copies of all completed monthly DPD 709 reports for the months of January, February and March 2008. The DPD noted in its *19th Quarter Status Report* that it was in the process of obtaining the reports from each of the commands to provide for the Monitor's review; however, the Monitor had not received the report as of the end of that quarter.

### *Current Assessment of Compliance*

#### *Paragraph U21*

The DPD has met the policy requirements of paragraph U21 through the issuance of Directive 304.1, *Firearms*. The Monitor previously noted that to implement this paragraph, DPD would have to implement its qualification program under paragraph U113, which requires the development of a protocol regarding firearms training. To that end, on February 21, 2008 the DPD provided the Monitor with the its revised *In-Service Bi-Annual Firearms Qualification Lesson Plan*, which the Monitor approved on March 17, 2008. The DPD commenced firearms training in February 2008. In response to a document request this quarter, the DPD provided the Monitor with a 65-page list containing 2,654 members of the DPD who have undergone the firearms training in 2008. The DPD indicated that none of these members failed to qualify during the training. The DPD separately provided a list of 98 DPD members who missed firearms training between January 2008 and July 2008. The DPD reports that as of August 2008, the DPD is comprised of 3,002 officers. All officers who undertook firearms training met the passing score of 185. The DPD further reports that the approximately 343 officers (11% of the Department) who were not scheduled to take firearms training were on an extended sick, disabled, restricted duty (no-gun), or suspended status during the qualification period.

According to the August 15, 2008 DPD Administrative Message (Teletype #08-03897) relating to Firearms Training and Qualification Program in the second half of 2008, all DPD members who fail to meet their obligations will be placed on a “no-gun” status and off duty pending the next remedial training program. However, the DPD has informed the Monitor that the 98 officers who failed to attend the firearms training will not be placed on no-gun status, but will instead be required to attend the firearms training in the second half of 2008. The DPD’s current policy holds that only those who attend and fail to meet the passing score have “failed to meet their obligations” such that they are placed on no-gun status. The Monitor finds that this is not an unreasonable requirement as long as members are monitored to ensure that they do not continue to miss their firearms qualifications. The DPD also informed the Monitor that the 343 officers who were not scheduled for various reasons will be assigned to qualify when their restricted status ends.

In order to complete the assessment of the DPD's implementation of this paragraph, the Monitor will follow up on the status of the 98 officers who missed their qualification and the 343 who were "unavailable" for qualification during the first six months of 2008.

***Paragraph U22***

In response to a document request for reported incidents from January to July 2008 involving officers shooting at or from a moving vehicle or placing themselves in front of a moving vehicle, the DPD provided, after the close of the current quarter, a list of four such incidents, three involving an officer firing at a vehicle, and one involving an officer firing from a vehicle. All four investigations are still open. The Monitor will follow up on the disposition of these investigations during the next reporting period.

***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 is to be completed by all commands on a monthly basis. The monthly inspection and completion of DPD 709 is designed to ensure, among other things, that DPD members are carrying only authorized firearms and the correct number of rounds and authorized ammunition and to identify violations of the related policies.

In response to a request to identify the total number of commands required to complete the DPD 709 reports, the DPD provided a list of 98 commands. In order to assess the DPD’s implementation of its monthly inspection process, the Monitor requested all DPD 709 reports completed between January 1, 2008 and March 31, 2008. The DPD submitted a total of 66

identifiable reports for the month of January, 70 identifiable reports for the month of February, and 66 identifiable reports for the month of March.<sup>41</sup>

The DPD 709 report identifies 13 categories for inspection, some of which are related to Consent Judgment requirements other than those contained in paragraph U23.<sup>42</sup> Of the reports provided, for the 13 categories across all commands submitting forms, the DPD identified 587 violations in January, 542 violations in February, and 516 violations in March. The overwhelming majority of reports, however, do not identify the corresponding category of the violations cited. As a result, there is simply no way to determine from the reports whether the violations relate to an unauthorized weapon, unauthorized ammunition, an officer carrying an unauthorized number of rounds, or something else entirely. The Monitor therefore recommends that the DPD amend the 709 form to require those responsible for completing the form to state with particularity the reason for any violations.

Based on the foregoing, the Monitor finds the DPD in compliance with the policy requirements of paragraphs U21-23, but withholds a determination of the DPD's compliance with the implementation requirements of paragraphs U21 and U22 and finds that the DPD is not yet in compliance with the implementation requirements of paragraph 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 February 29, 2008. The Monitor again assessed compliance with this paragraph 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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<sup>41</sup> Some additional reports were provided in each month, but the Monitor was not able to ascertain from the documents which command(s) had completed them. Nevertheless, the addition of the unidentifiable reports to those identified above would not bring the total number to 98 commands, nor close enough to come into compliance in any given month.

<sup>42</sup> These are: M.I.T.N. Number, Firearm Serial Number, F + P Canister Serial Number, 800 MHZ Serial Number, PR-24 Serial Number, Driver License Expiration Date, Gas Mask Expiration Date, Vest Expiration Date, 90 Day Inspection Date, Last Qualification Date, Authorized Ammo, Number of Rounds Carried, and Contact Brochure.

## *Background*

The Monitor last assessed the DPD's compliance with paragraph U24 during the quarter ending February 29, 2008, finding that the DPD was not yet in compliance with the training or implementation requirements. According to the DPD, as of the end of that quarter, 944 out of approximately 3,000 members (31.5%) had received the initial training on the PR-24. Although still insufficient for compliance, this was up from 678 at the end of the quarter ending August 31, 2007.

## *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*. In its 20th Quarter Status Report, the DPD reported that on August 4, 2008, the DPD commenced annual in-service use of force/PR-24 training to its members. Also on August 4, 2008, the Monitor requested attendance rosters for all officers trained on the PR-24 between January 1, 2008 and July 1, 2008, as well as the total number of officers who have received PR-24 training (since the DPD has previously indicated that PR-24 training had started some time ago). The DPD had not provided this information as of the end of the current quarter.

Based on the foregoing, the Monitor finds that the DPD is in compliance with the policy requirements but not yet in compliance with the 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 February 29, 2008. 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 February 29, 2008, finding the DPD in compliance with the paragraphs. The Monitor's review of auditable forms revealed that the DPD adequately implemented 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.

### *Current Assessment of Compliance*

In order to assess the DPD's compliance with paragraphs U25-26 during the current quarter, the Monitor requested copies of all UF-002 and UF-002A forms related to a use of chemical spray between January 1, 2008 and March 31, 2008.<sup>43</sup> On September 5, 2008, the DPD produced the UF-002 forms related to five uses of chemical spray during the relevant time period.<sup>44</sup> The UF-002A was only provided for three of the five incidents. The Monitor evaluated the three incidents for which both forms were provided. A warning was provided prior to the use of the chemical spray in one incident; a warning would have jeopardized officer safety in a second incident; and a warning does not appear to have been given in a third. In all three incidents, the subject was given an opportunity to wash his eyes with cold water, although there is no reference as to whether this was accomplished within 20 minutes, as required by paragraph U25. In one instance, the subject was treated at the hospital; hospital treatment was not warranted in the other two incidents.

In response to a request for a listing of all external complaints relating to the use of chemical spray during the relevant time period, the DPD provided copies of two citizen complaint reports which contained allegations about incidents that occurred in March 2008. One report was

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<sup>43</sup> The UF-002 form is used to report all uses of force by officers. The UF-002A is used for supervisory investigations and is required for all uses of force.

<sup>44</sup> The five incidents during this reporting period stand in contrast to 22 reported incidents between May 1 and July 31, 2007. Also in 2006, the DPD provided reports of ten incidents of the use of chemical spray within a one-month time period. The Monitor is concerned that the five incidents may not represent the entire population of uses of chemical spray for this time period, but has not conducted any completeness testing.

illegible.<sup>45</sup> The other report involved a citizen complaint that alleged that police officers used chemical spray to subdue a woman while inside her home. Based on the allegations of the complaint, it appears that the officers may have failed to provide adequate verbal warning prior to using the chemical spray. It is also not clear without additional documentation relating to the incident whether the officers followed proper procedures after the use of the chemical spray, including removing her from a face-down position and providing an opportunity for decontamination within twenty minutes of the incident. The forms provided to the Monitor for chemical spray incidents that were discussed above did not include forms for these two external complaints. This is either due to the fact that the officer did not use chemical spray or the DPD failed to include these incidents in the population of five that were submitted.

Since adequate documentation of the chemical spray investigations was provided for only three of the five incidents, the Monitor finds that the DPD remains in compliance with the policy requirements but is no longer in compliance with the implementation requirements of paragraphs U25-26.

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<sup>45</sup> The Monitor contacted the Office of the Chief Investigator (OCI) and learned that this matter has been closed and the disposition was that the allegations were unfounded.

## **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), PIs, 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>46</sup> to document any PI, 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.

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

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<sup>46</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.

### **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 has found the DPD in compliance with paragraph U42, which is a "policy only" paragraph. The DPD will remain in compliance with this paragraph until such time as the policy directly responsive to the paragraph is revised.<sup>47</sup> The Monitor last assessed the DPD's compliance with paragraph U43 during the quarter ending May 31, 2008, and is scheduled to again assess compliance with this paragraph during the quarter ending November 30, 2008.

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

This section comprises paragraphs U44-45. The Monitor has found the DPD in compliance with paragraph U44, which is a "policy only" paragraph. The DPD will remain in compliance with the paragraph until such time as the policy directly responsive to the paragraph is revised.<sup>48</sup> The Monitor last assessed the DPD's compliance with paragraph U45 during the quarter ending May 31, 2008, and is scheduled to again assess compliance with this paragraph during the quarter ending November 30, 2008.

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<sup>47</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 U43.

<sup>48</sup> Implementation of the policy is tested under paragraph U45.

### C. WITNESS IDENTIFICATION AND QUESTIONING POLICIES

This section comprises paragraphs U46-48. The Monitor has found the DPD in compliance with paragraphs U46 and U47, which are “policy-only” paragraphs. The DPD will remain in compliance with paragraphs U46 and U47 until such time as the policy directly responsive to these paragraphs is revised. The Monitor last assessed the DPD’s compliance with paragraph U48 during the quarter ending May 31, 2008, and is scheduled to again assess compliance with this paragraph during the quarter ending November 30, 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 May 31, 2008. 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 May 31, 2008, finding the DPD in compliance with the policy requirements of the paragraph and not yet in compliance with the implementation requirements of the paragraph. During the prior quarter, the parties and the Monitor reached a consensus that paragraph U49 was intended to apply to warrantless arrests.

The Monitor reviewed a sample of 89 arrests, noting that 45 detainees were released prior to arraignment. Of the remaining 44 detainees, 13 were presented for arraignment after the 48-hour period elapsed. For one detainee, the Monitor could not assess compliance as the DPD was not responsive to repeated requests for additional information. For another arrest the Monitor could not ascertain whether the detainee was released within 48 hours from the documentation that was submitted. This translated into a compliance rate of 65.9% (29/44).

### *Current Assessment of Compliance*

In order to assess the DPD's compliance with paragraph U49, among others, during the current quarter, the Monitor selected a sample<sup>49</sup> of 87 arrests and requested and received from the DPD access to the applicable warrant requests and arraignments, including Case Reports and related auditable forms.

The Monitor reviewed documentation for all 87 arrests selected for review. Of the 87 arrests, 42 detainees were released prior to arraignment, released to another law enforcement agency, or arrested pursuant to an existing felony arrest warrant. The remaining 45 detainees were presented for arraignment. For eight of these 45 arrests, the detainees were presented for arraignment after 48 hours had elapsed with no exigent circumstances documented.<sup>50</sup> This translates into a compliance rate of 82.2% (37 of 45).

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 U49.

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

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

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U50 during the quarter ending May 31, 2008, finding that the DPD was not yet in compliance. The Monitor reviewed a sample of 89 arrests noting that the 24-hour rule of paragraph U50 was not applicable to 37 arrests. For the remaining 52 arrests to which the requirements of paragraph U50 were applicable, the Monitor determined that warrant requests were not submitted within 24 hours for 19 arrests. For one arrest, the Monitor was unable to make a determination whether the warrant request was submitted within 24 hours from the documentation that was provided. This translated into a compliance rate of 61.5% (32 of 52).

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<sup>49</sup> As required, a random, statistical sample of 87 arrests was selected out of a population of approximately 914 arrests that occurred during the period March 1 through March 8, 2008, utilizing a confidence level of 95% with an acceptable error rate of +/- 4.

<sup>50</sup> For the eight detainees, the amount of time that elapsed before arraignment ranged from approximately 54 hours to approximately 73 hours.

### *Current Assessment of Compliance*

In order to assess the DPD's compliance with paragraph U50 during the current quarter, the Monitor reviewed the sample of 87 arrests selected to assess compliance with paragraph U49, among others. The Monitor determined that the 24-hour rule of paragraph U50 was not applicable to 39 of the 87 arrests selected for review, as either the DPD effected the arrest pursuant to an existing warrant or the DPD released the detainee without seeking a warrant request.<sup>51</sup> For the remaining 48 arrests to which the requirements of paragraph U50 were applicable, the Monitor determined that warrant requests were not submitted within 24 hours for 22 arrests. This translates into a compliance rate of 54.2% (26 of 48).

The Monitor also noted that for one arrest reviewed, although the DPD did not seek a warrant request, the detainee was nonetheless held in custody in excess of 48 hours pending the results of a drug test. Once the decision was made not to seek a warrant, the DPD was obligated under the requirements and the spirit of the Consent Judgment to release the detainee.

Based on the foregoing, the Monitor finds that the DPD is not yet in 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 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 May 31, 2008, finding that the DPD was in partial compliance with the paragraph. The Monitor reviewed a sample of 89 arrests noting that 25 arrests required an auditable form because either a warrant request was not submitted within 24 hours or the detainee was not presented for arraignment within 48 hours, or both. The Monitor determined that the required auditable form

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<sup>51</sup> In some instances, the underlying charges were minor, not requiring the warrant request.

was not completed in three instances when a warrant request was not submitted within 24 hours. This translated into a compliance rate of 88% (22 of 25).

### *Current Assessment of Compliance*

In order to assess the DPD's compliance with paragraph U51 during the current quarter, the Monitor reviewed the sample of 87 arrests selected to assess compliance with paragraphs U49 and U50, among others. Of the 87 arrests selected for review, 24 arrests required an auditable form because either a warrant request was not submitted within 24 hours or the detainee were not presented for arraignment within 48 hours, or both. The Monitor determined that the required auditable form was not completed when required in one instance when a warrant request was not submitted within 24 hours. This translates into an overall compliance rate of 95.8% (23 of 24).

Based on the foregoing, the Monitor finds that the DPD is in 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>52</sup> The Monitor last assessed the DPD's compliance with paragraph U53 during the quarter ending February 29, 2008. The Monitor again assessed the DPD's compliance with this paragraph 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.

#### *Background*

The Monitor last assessed the DPD's compliance with paragraph U53 during the quarter ending February 29, 2008, finding that the DPD was not yet in compliance with the paragraph. The Monitor reviewed 19 holds and determined that the DIS did not capture the times and or dates the holds were cleared.

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<sup>52</sup> Implementation of the policy is tested under paragraph U53.

### *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 March 24 through March 31, 2008. The Monitor reviewed 22 holds, noting that, as with prior periods assessed, 21 DISs did not capture the times and or dates the holds were cleared. For one DIS, the individual completing the form appropriately identified the hold and documented the date and time cleared. The Monitor noted that this hold was documented as cleared within the mandated twenty-four hour period.<sup>53</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>54</sup> The Monitor last assessed the DPD's compliance with paragraph U55 during the quarter ending February 29, 2008. 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 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 February 29, 2008, at which time the Monitor found that the DPD was not yet in compliance. The Monitor reviewed documentation for 20 detainees with restrictions. For 17 of the first 20

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<sup>53</sup> In response to the Monitor's request to provide a listing of holds, the DPD provided approximately 119 DIS forms. 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>54</sup> Revisions to policy will trigger an additional assessment by the Monitor. Implementation of policy is tested under paragraph U55.

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>55</sup> For one additional restriction out of the first 20 reviewed, although the restriction was lifted in excess of 24 hours, the required auditable form was not generated and completed.

### *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 January 1 through May 31, 2008. In response, the DPD indicated that it had identified 138 detainees with restrictions and provided legible photocopies of related *Privileged Restriction Logs* and *Detainee Telephone and/or Visitor Restriction Exceptions Forms*.<sup>56</sup> For 120 of the 138 (87%) logs and forms reviewed, the dates and times that the restrictions were lifted were not documented; as a result, the Monitor was unable to determine whether the restrictions exceeded the 24-hour period requiring reevaluation. For 13 logs and forms reviewed, the DPD documented all required information and the restrictions were in place for one 24-hour period not requiring re-evaluation. For five logs reviewed, although the dates and times the restrictions were lifted were documented on the requisite auditable form, they exceeded the 24-hour re-evaluation period.<sup>57</sup>

Based on the foregoing, the Monitor finds that the DPD is not yet 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>58</sup> The Monitor last assessed the DPD's compliance with paragraph U57 during the quarter ending February 29, 2008. The Monitor again assessed the DPD's compliance with paragraph U57 during the current quarter. The results of our current assessment follow.

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<sup>55</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>56</sup> The Privilege Restriction Log was effective April of 2006. The Detainee Telephone and/or Visitor Restriction Exceptions Form was effective February 2007.

<sup>57</sup> The time in excess of 24 hours ranged from 30 minutes to 17 hours 50 minutes.

<sup>58</sup> Revisions to policy will trigger an additional assessment by the Monitor. Implementation of policy is tested under paragraph U55.

**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 February 29, 2008, at which time the Monitor found the DPD in compliance. The Monitor reviewed supporting documentation for two material witnesses identified by the DPD for the period June 1, 2007 through December 31, 2007. For both 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 January 1, 2008 through May 31, 2008. The DPD identified three material witnesses for the period under review. For all three material witnesses, the DPD provided evidence that court orders were obtained prior to taking the material witnesses into DPD custody. Also, for all three material witnesses, all required information responsive to paragraph U57 was documented on auditable forms and attached to the court orders.<sup>59</sup>

During the current quarter, the Monitor also received the DPD AT's *Witness Identification and Questioning Audit Report*, dated August 31, 2008.<sup>60</sup> The audit, among other things, assessed the DPD's compliance with paragraph U57. The AT reviewed files at the OCR for the period November 1, 2007 through April 30, 2008. The AT also contacted the Wayne County Prosecutor's Office and requested a listing of all material witnesses entered by court order for this time period. According to the DPD, a prosecutor sent an email to all prosecutors requesting

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<sup>59</sup> As done in prior reporting periods, the Monitor requested access to review Homicide Detective Daily Activity Logs for the period January 1, 2008 through May 31, 2008.

<sup>60</sup> The *Witness Identification and Questioning Audit* is separately evaluated under subparagraph U95c. Refer to the *Current Assessment of Compliance* for subparagraph U95c, below.

that information; the AT included the responses in its audit report.<sup>61</sup> In total the AT identified a population of 14 material witnesses.<sup>62</sup> The following summarizes the AT's findings:

- For one material witness, the AT was unable to determine whether the court order was obtained prior to detaining the material witness.
- For seven material witnesses, the detention of the material witness was not documented on the requisite auditable form thereby not allowing for the matching of the court order with the auditable form.

In summary, in response to a document response, the Monitor received information supporting compliance for three material witnesses; however, AT's *Witness Identification and Questioning Audit Report* identified at least seven additional witnesses, for substantially the same period, for whom there were court orders but the DPD failed to comply with the paragraph U57 requirement that auditable forms be completed. The Monitor requested and is awaiting an explanation and reconciliation of this discrepancy.

Based on the foregoing, the Monitor finds that the DPD is no longer in compliance with paragraph U57.

## H. DOCUMENTATION OF CUSTODIAL DETENTION

This section comprises paragraph U58. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending May 31, 2008. The Monitor is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending November 30, 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 May 31, 2008, and is scheduled to again assess compliance with the paragraph during the quarter ending November 30, 2008. The Monitor last assessed the DPD's compliance with paragraph U60 during the quarter ending February 29, 2008 and again assessed the DPD's compliance with the paragraph during the current quarter. The results of our current assessment follow.

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<sup>61</sup> During quarterly meetings with the prosecutor's office, the DPD has asked if this information could be made available in a database; the prosecutor's IT section indicated that this was not possible.

<sup>62</sup> During its assessment of material witnesses, the Monitor requested and received documentation for three material witnesses.

### **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.<sup>63</sup> 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 29, 2008, finding the DPD in compliance with the policy requirements but not yet in compliance with the implementation requirements of the paragraph. The DPD did not provide the requisite auditable forms for detainees with restrictions.

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

In order to assess the DPD's compliance with paragraph U60 during the current quarter, the Monitor requested auditable forms for reported violations of prompt judicial review. The Monitor also requested auditable forms for material witnesses.<sup>64</sup>

Although the DPD provided the requisite auditable forms for the three material witnesses identified, as described in the *Current Assessment of Compliance* for paragraph U57, above, the Monitor noted that seven additional material witnesses were identified in the DPD AT's *Witness Identification and Questioning Audit* for whom the required auditable forms were not completed. The Monitor also noted that for three of the 13 required Commander reviews for violation of prompt judicial review, there was no evidence that the Commander review occurred, as the Commander failed to complete the applicable section on the forms. For four of the 13 required Commander reviews, although the reviews occurred, they were completed in excess of 24 hours of receipt.<sup>65</sup>

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>63</sup> The Monitor has interpreted this paragraph to require Commanding Officer review within 24 hours of receipt of the violation.

<sup>64</sup> Refer to the *Current Assessments of Compliance* for paragraphs U49-51, U53, U55 and U57 for information regarding the populations and samples tested.

<sup>65</sup> Documentation of the reviews ranged from 24.5 hours after receipt to in excess of two months of receipt.

## **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 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>66</sup>

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

## **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

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<sup>66</sup> The OCI reports to the Board of Police Commissioners (BOPC) and is responsible for conducting external complaint investigations.

prisoners and develop a foot pursuit policy. Finally, the DPD and the City are required to develop a plan for adequate deployment of supervisors in the field.

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

The Monitor last assessed the DPD's compliance with paragraphs U72-74 and U76-77 during the quarter ending February 29, 2008 and with U75 during the quarter ending May 31, 2008. The Monitor again assessed compliance with these paragraphs during the current quarter. The results of our current assessments follow.

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

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

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

### *Background*

The Monitor last assessed the DPD's compliance with paragraphs U72 and U74 during the quarter ending February 29, 2008, finding that the DPD was in compliance with the policy requirements but not yet in compliance with the training and implementation requirements of these paragraphs.

### *Current Assessment of Compliance*

During the current quarter the Monitor requested the DPD produce any and all training conducted in relation to paragraphs U72 and U74. The DPD provided an Administrative Message, *Roll Call Training [08-24]-Compliance with DPD Policies and Responsibilities for Reporting Misconduct*, dated June 12, 2008, to be read at all roll calls for all platoons for the period June 14, 2008 through June 20, 2008. The content of the Administrative Message addressed the requirements of paragraphs U72 and U74. On August 4, 2008, the DPD commenced its weeklong training of officers that includes *Use of Force* training, utilizing the lesson plan previously reviewed and approved by the Monitor. This training is also responsive to the requirements of paragraphs U72 and U74. Training sessions are expected to continue for approximately 43 weeks, at which time the DPD will have trained substantially all officers.

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>67</sup> of patrol units and specialized units that deploy in the field to implement the provisions of this agreement.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U73 during the quarter ending February 29, 2008, finding that the DPD was in compliance with the policy requirements, not yet in compliance with the training requirements and in partial compliance with the implementation requirements of the paragraph. The Monitor reviewed 65 daily attendance records for all district station and specialized unit platoons for December 28, 2007 and calculated an overall compliance rate of 87.7%.

The parties and the Monitor 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.

### *Current Assessment of Compliance*

In order to assess the DPD's compliance with paragraph U73 during the current quarter, the Monitor requested daily attendance records for all district station and specialized unit platoons for May 30, 2008. In response, the DPD provided 72 daily attendance records.

The Monitor reviewed all 72 daily attendance records, noting that for 61 of them, the DPD deployed in the field an adequate number of supervisors of patrol units and specialized units.<sup>68</sup> This equates to a compliance rate of 84.7%.<sup>69</sup>

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<sup>67</sup> Paragraph "pp" of the UOF CJ defines a supervisor as a sworn DPD employee at the rank of sergeant or above and non-sworn employees with oversight responsibility for DPD employees.

<sup>68</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>69</sup> For five attendance records, deployment exceeded the acceptable ratio of one field supervisor for every ten field officers. For six attendance records, either no supervisor was on duty or a supervisor was on duty for a portion of the officers' platoon.

The Monitor also requested any and all training conducted responsive to paragraph U73. On August 4, 2008, the DPD commenced its weeklong training of officers that includes *Supervisory and Leadership* training, utilizing the lesson plan previously reviewed and approved by the Monitor. This training is also responsive to the requirements of paragraph U73. Training sessions are expected to continue for approximately 43 weeks, at which time the DPD will have trained substantially all officers.

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

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

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

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

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U75 during the quarter ending May 31, 2008, finding the DPD in compliance with the policy requirements but not yet in compliance with the training and implementation requirements of the paragraph. 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 the paragraph. After the end of that quarter, the Monitor was informed that training was scheduled to commence in August 2008.

### *Current Assessment of Compliance*

In our Report for the Quarter May 31, 2008, the Monitor noted that the parties were in discussions regarding the intent of paragraph U75. The parties issued a joint communication, dated April 24, 2008, discussing the interpretation of paragraph U75. The letter concluded that the DPD had effectively developed policy to comply with the paragraph and that the Monitor should assess the DPD's implementation of the paragraph by reviewing an annual letter issued

by the Chief of Police and reviewing investigative files. Nevertheless, the City and the DPD maintained that they have complied with the requirements of the paragraph by revising their policy, and although they intend to train and implement it, they are not required to do so under this paragraph. In any event, the Monitor intends to assess training and implementation of this paragraph.

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. The DPD indicated that it had commenced *Use of Force* training for officers and supervisors, which includes the requirements of paragraph U75 among others, on August 4, 2008. The DPD anticipates that substantially all officers will have completed this training within 43 weeks.

The DPD also provided an Administrative Message dated July 2, 2008 entitled *Roll Call Training: [08-27] – Off Duty Police Action* to be read at all roll calls for the period July 5 through July 11, 2008. The Administrative Message addressed the following:

- Law Enforcement Jurisdictional Authority
- Off Duty Police Action

The Administrative Message was clear and concise and sufficiently addressed the requirements of paragraph U75.<sup>70</sup>

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 U75.

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

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

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

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<sup>70</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."

## *Background*

The Monitor last assessed the DPD's compliance with paragraph U76 during the quarter ending February 28, 2008, finding the DPD in compliance with the policy requirements but not yet in compliance with the training and implementation requirements of the paragraph. The Monitor 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 indicating that the DPD's *Use of Force Lesson Plan* includes training that addresses the requirements of paragraph U76.<sup>71</sup> In its Eighteenth Quarter Status Report, the DPD indicated that this training would begin in 2008; however, the Monitor was not informed that training had commenced.

## *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. According to the DPD, the *Use of Force Lesson Plan* training commenced on August 4, 2008 and will continue for approximately 43 weeks, after which time substantially all officers will be trained.

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.

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<sup>71</sup> As described above, the Monitor approved a revised *Use of Force Lesson Plan* on November 9, 2007.

## *Background*

The Monitor last assessed the DPD's compliance with paragraph U77 during the quarter ending March 31, 2008, finding the DPD in compliance with the policy requirements but not yet in compliance with the training and implementation requirements of the paragraph. 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 was clear and concise and sufficiently addressed the requirements of paragraph U77. The DPD also provided a training matrix indicating that the DPD's *Use of Force Lesson Plan* includes training that addresses the requirements of paragraph U77. In its Eighteenth Quarter Status Report, the City indicated that this training would begin in 2008; however, the Monitor was not informed that training had commenced. Lastly, the Monitor reviewed 25 Use of Force and/or Detainee Injury Reports for the period December 1, 2007 through December 31, 2007 and noted that eight referenced a foot pursuit. For four of these eight foot pursuits, the DPD provided a Foot Pursuit Evaluation form. 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.

## *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 July 10, 2008 entitled *Roll Call Training: [08-28] – Foot Pursuits* to be read at all roll calls for the period July 12 through July 18, 2008. 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>72</sup> According to the DPD, the *Use of Force Lesson Plan* training commenced on August 4, 2008 and will continue for approximately 43 weeks after which time substantially all officers will be trained.

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<sup>72</sup> As noted above, the DPD has confirmed that the roll call training is not intended to fulfill or partially fulfill Consent Judgment requirements.

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.

## **VI. MANAGEMENT AND SUPERVISION**

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

The Monitor last assessed the DPD's compliance with paragraph U78, the introductory paragraph to section VI, during the quarter ending February 29, 2008. The Monitor again assessed 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 February 29, 2008. The Monitor found that the DPD was not yet in compliance with subparagraphs U78a and U78c, but was in compliance with subparagraphs U78d and e; the Monitor had not yet re-evaluated the DPD's compliance with subparagraph U78b pending it

assessment of compliance with the requirements of paragraph U91. Regarding subparagraphs a and c, the MAS database was not yet fully developed or operational and the DPD was not yet in compliance with the majority of the paragraphs relating to the auditing protocol. Regarding subparagraph d, while the DPD's Policy Focus Committee had not held a meeting to review DPD policies pursuant to the subparagraph since August 15, 2007, the prior meetings of DPD were sufficient to fulfill the requirements of this paragraph. Regarding subparagraph e, the DPD had provided the Monitor with "recaps" of Senior Management Team regular meetings to address issues of liability as required by the subparagraph. While the DPD had 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 recommended that the DPD create such written procedures.

### *Current Assessment of Compliance*

Regarding subparagraph U78a, the MAS database has not yet been tested to verify that it is fully developed or operational.<sup>73</sup>

Regarding subparagraph U78b, the Monitor has not yet re-evaluated the requirements of paragraph U91. The Monitor notes that the City is required by Directive 401.1, *Performance Evaluation Ratings*, to conduct performance evaluations of all personnel. All members of the rank of police officer through lieutenant are to be evaluated twice a year, and the rank of inspector and commander are to be evaluated yearly. Civilian personnel are to be evaluated yearly as well. The Monitor will evaluate after the next cycle of performance evaluations are complete.

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 did not meet during this quarter. The Committee last met on April 7, 2008. In keeping with the requirements of this subparagraph, the meeting focused on the plan to update the DPD manual, and identified 123 directives to be reviewed for updates. A plan was outlined to accomplish the goals. The Monitor is awaiting confirmation of the next scheduled meeting.

Regarding subparagraph U78e, the DPD provided the Monitor with the minutes and agendas of the latest Senior Management Team meetings held on June 9, 16, 30; July 28; and August 11, 18 and 25, 2008. The DPD is continuing to meet to address issues of liability as required by subparagraph U78e.

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<sup>73</sup> Refer to the *Current Assessment of Compliance* for subparagraph U88g for further information regarding the MAS database.

Based on the foregoing, the Monitor finds that the DPD is in compliance with subparagraphs U78d and e, but not yet in compliance with subparagraph U78c. The Monitor has not yet evaluated the DPD's compliance with subparagraph U78a and withholds a determination of compliance with subparagraph U78b.

## 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 U82-85 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 May 31, 2008, and is scheduled to again assess compliance during the quarter ending November 30, 2008.

The Monitor last assessed the DPD's compliance with paragraph subparagraphs U88f and g and paragraph U89 during the quarter ending February 29, 2008. The Monitor again assessed compliance with these paragraphs during the current quarter. The results of our current assessments follow.

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

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

### *Background*

The Monitor last assessed the DPD's compliance with subparagraph U88f during the quarter ending February 29, 2008. The Monitor withheld a determination of compliance at that time, as the DOJ and the Monitor viewed a demonstration of the current version of the MAS on February

27, 2008 but had not participated in testing of the beta version. The testing was scheduled to take place during the current quarter.

### *Current Assessment of Compliance*

During this quarter, the deadlines that were previously affirmed by the Court in a Stipulated Order dated November 9, 2007 were extended by Order of the Court on July 22, 2008 to August 11, 2008. The DOJ and the Monitor viewed demonstrations of the MAS on February 27 and May 29, 2008. A DOJ expert engaged by DOJ attended the second demonstration. As noted by the DOJ in its July 17, 2008 letter to the City, the expert determined that the MAS was not a true “beta” version because it was not suitable for rollout to a subset of end users to operate live for purposes of evaluation.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with subparagraph U88f. Given that the DPD has now implemented the MAS system, which will be tested in connection with subparagraph U88g, the beta version of MAS is now obsolete and testing is moot. Accordingly, the Monitor will not be assessing compliance with this subparagraph going forward.

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

Subparagraph U88g requires the risk management database to be operational and fully implemented by December 31, 2005.<sup>74</sup>

### *Background*

The Monitor last assessed the DPD’s compliance with subparagraph U88g during the quarter ending February 29, 2008. During that 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 stated that it would evaluate this paragraph after the court-ordered deadline for the MAS to be operational and fully implemented. The DPD indicated that it was currently on schedule to meet this court-ordered deadline. The Monitor had therefore not yet evaluated the DPD’s compliance with subparagraph U88g.

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<sup>74</sup> As described above, the Court’s July 22, 2008 Order requires the City to comply with subparagraph U88g, relating to the implementation of the MAS, by August 11, 2008. This Court-ordered deadline supersedes the deadline originally provided in the UOF CJ.

### *Current Assessment of Compliance*

On November 9, 2007, the Court entered an Order in which it directed the City to have the MAS operational and fully implemented on or before July 24, 2008. In an emergency motion filed on July 17, 2008, the City asked the Court to amend its Order and set a new deadline of August 11, 2008. The City based its request on the recent rupture of a water pipe in, and a severe lightening strike upon, the Coleman A. Young Municipal Building in Detroit which adversely affected the work of its team members who are charged with implementation of the MAS project. The Court granted the City's motion subject to the following conditions: (1) The City must dedicate an appropriate number of personnel whose exclusive responsibility is to finalize the implementation of the MAS on or before August 11, 2008; (2) The City shall provide the Court, the Government, and the Monitor with a detailed plan of its implementation of the MAS within a period of four days from the date of the entry of this order; (3) Within a period of not greater than seven days from the entry of this order, the City must provide the Government and the Monitor with a sampling of the reports and data from its user experiences with the MAS that have been captured by the system since it was initially implemented at selected units within the Detroit Police Department on July 8, 2008; and (4) Within a period of two days of this order, the City shall provide the Government and the Monitor with a listing of all MAS training events that are scheduled to take place between July 24, 2008 and August 11, 2008 so that they will be able to attend and observe these critical implementations of the consent judgment.

The City complied with all of the above conditions of the Court. In a letter to the Court on July 28, 2008, the City represented that on July 24, 2008, MAS was implemented in the OCR. Implementation was planned in the Northwestern and Western Districts during the week of July 28, 2008, and in the Northeastern, Eastern and Southwestern Districts and the Criminal Investigations Bureau during the week of August 4, 2008. The City intended to complete implementation in all remaining commands (mainly administrative) on August 11, 2008. On August 12, 2008, in an email to DOJ, DPD reported that the roll-out of the MAS department-wide was "proceeding smoothly."

The Monitor commends the DPD for having arrived at the stage of implementation of the MAS. The Monitor will assess the DPD's implementation of the MAS in the upcoming quarters. Based on the foregoing, the Monitor has not yet completed its evaluation of 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 February 29, 2008, finding that although the DPD was not yet in compliance with the paragraph, it had made significant progress towards complying with its requirements. According to the DPD, a total of 621 of 776 (80%) DPD supervisory members had been trained on IMAS. In its Eighteenth Quarter Status Report, the DPD also reported 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.

### *Current Assessment of Compliance*

For the reasons set forth in the *Current Assessments of Compliance* for subparagraphs U88f and g, the IMAS is now obsolete. As a result, the Monitor did not conduct further testing of this paragraph during the current quarter, and the paragraph will no longer be Monitored.

## **B. PERFORMANCE EVALUATION SYSTEM**

This section comprises one paragraph, paragraph U91.

### *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 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. 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.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U91 during the quarter ending February 29, 2008. The Monitor found 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. The Monitor and the DPD agreed to engage in discussions to discuss the intent and the assessment of the implementation requirements of this paragraph going forward.

### *Current Assessment of Compliance*

Performance evaluation ratings are supposed to be completed twice per year on all DPD members from the rank of police officer to lieutenant. The current ratings period began on May 1, 2008 and ends on October 31, 2008. According to Directive 401.1, *Performance Evaluation Ratings*, ratings are to be completed during the month of November and finalized by December 20, 2008. After discussions with the DPD, the Monitor has agreed to assess the implementation requirements of this paragraph after the assessment period.

Based on the foregoing, the DPD remains in compliance with the policy requirements of paragraph U91; the Monitor has not yet re-evaluated the training or 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 commands, including specialized units on eight areas of policing,<sup>75</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 subparagraph U94b during the quarter ending May 31, 2007; with subparagraph U95a and paragraph U96 during the quarter ending August 31, 2007; with paragraphs U92, U93, U94 (subparagraphs a and c), U95 (subparagraph b), and U97 during the quarter ending November 30, 2007; with subparagraph U95c and paragraph U98 during the quarter ending February 29, 2008; and with paragraph U99 during the quarter ending May 31, 2008.

The Monitor again assessed the DPD's compliance with subparagraphs U94b and U95a and paragraphs U92, U96, U97 and U98 during the current quarter. The results of our current assessments follow.

#### *Paragraph U92 – Audit Protocol*

Paragraph U92 requires the DPD to develop an Audit Protocol to be used by all personnel when conducting audits. The Audit Protocol must establish a regular and fixed schedule for all audits

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<sup>75</sup> Including investigations into uses of force, prisoner injuries, and allegations of misconduct; arrests; stops and frisks; witness identification and questioning; custodial detention practices; and complaint investigations.

required by both the UOF CJ and COC CJ to ensure the audits occur with sufficient frequency and cover all DPD units and commands.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U92 during the quarter ending November 30, 2007, finding the DPD in compliance with the requirements of the paragraph. The Monitor evaluated the 2007/2008 Audit Protocol submitted by the DPD and determined that audits were scheduled with sufficient frequency and the protocol included appropriate standards for conducting and reviewing such audits. In addition, the DPD provided adequate training on the Audit Protocol to its audit personnel, and maintained signed annual confidentiality declarations from all audit personnel.

### *Current Assessment of Compliance*

On August 31, 2008, the DPD submitted its 2008/09 Audit Protocol. The Monitor conducted a review of the content of the protocol and determined that the UOF and COC CJ audits were scheduled with sufficient frequency therein. Similar to the previous Audit Protocols submitted, the 2008/09 AP contains acceptable standards for conducting and reviewing such audits in accordance with *Generally Accepted Government Auditing Standards*.

In response to a related document request,<sup>76</sup> the DPD indicated that the dissemination of the protocol and related training processes are currently underway, and the DPD will submit the requested documentation prior to the end of the quarter ending November 30, 2008.

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

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

Paragraph U94 requires the DPD to conduct regularly scheduled annual audits covering all DPD units and commands that investigate uses of force, PIs, and allegations of misconduct (AOM). These audits were due by August 31, 2004, and annually thereafter.

In order to address the requirements of paragraph U94, the DPD's AT has historically conducted three separate audits of a) UOF investigations, b) PI investigations, and c) AOM investigations. The Monitor has similarly split its evaluation of this paragraph into three separate evaluations (subparagraphs U94a, U94b and U94c).

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<sup>76</sup> On September 5, 2008, the Monitor requested documentation supporting the dissemination and implementation of the 2008/09 Audit Protocol.

## ***Background***

The Monitor last assessed the DPD's compliance with subparagraph U94a during the quarter ending November 30, 2007, finding that the DPD was not yet in compliance. 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 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. The AT incorrectly assessed the DPD's compliance with a number of UOF CJ requirements in the *PI Investigations Audit* submitted by the DPD's AT on January 31, 2007.

The Monitor last assessed the DPD's compliance with subparagraph U94c during the quarter ending November 30, 2007, finding the DPD in compliance. The Monitor concluded that the *Combined AOM Audit* submitted by the DPD on July 31, 2007 was a thorough and quality audit.

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

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

The AT submitted the *Use of Force Investigations Audit* on its due date of August 31, 2008. The Monitor has requested the audit working papers, and will assess the audit and report its findings and the DPD's compliance with subparagraph U94a upon completion of its review.

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

In order to assess the DPD's compliance with subparagraph U94b, the Monitor reviewed the *PI Investigations Audit Report* submitted by the AT on February 29, 2008, and the related audit work plan. The Monitor also conducted an assessment of 100% of the population and related working papers.

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

The *PI Investigations Audit* was submitted on a timely basis and included a review of all closed PI investigations from April 1 through October 31, 2007,<sup>77</sup> covering all DPD units and commands that investigate PIs, i.e. the commands, FI, and the Joint Incident Shooting Team (JIST).

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<sup>77</sup> The AT originally selected a time period from August 1-October 31, 2007 but extended its time period to begin April 1, 2007 due to the low number of investigations.

To identify the population, the AT requested all investigations that had closed during the audit time period, from each command and FI. The commands forwarded six investigations and FI identified one investigation. The AT subsequently performed completeness testing and identified two additional command and four additional FI/JIST investigations, resulting in a total audit population of 13 PI investigations.<sup>78</sup> Two of the FI investigations involved fatalities, and seven of the 13 investigations describe PI incidents that also involved a use of force by DPD officers (herein referred to as “connected UOF”).

The following table illustrates the above population information:

	Command	FI	JIST	Total
PI investigations originally forwarded to the AT and included in the population	6 <sup>79</sup>	1	0	7
Additional PI investigations appropriately identified by the AT	2	1	3	6
Total number of investigations included in the audit population	8	2	3	13

While the audit correctly identified systemic problems with regard to identifying a complete population, the AT improperly included three investigations that were not PIs<sup>80</sup> (herein referred to as “non-PI incidents”). These three investigations involved injuries that arrestees sustained prior to police contact for which the DPD supervisor had incorrectly completed an auditable form and conducted an investigation. The AT should have excluded these three non-PI investigations from this audit, which would have reduced the total population from 13 to ten. As a result, each of the AT’s mathematical computations of compliance were incorrect; however, the AT’s overall findings of non-compliance remained valid.

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<sup>78</sup> FI had not originally identified the four additional investigations because the subject was injured as a result of a pursuit, and FI did not consider these to be PI incidents. However, the AT used a more expansive definition that included such incidents. After several discussions, the OCR staff agreed that the audit correctly included these incidents as PIs in the audit population.

<sup>79</sup> Included three investigations of injuries sustained by arrestees prior to police contact.

<sup>80</sup> UOF CJ section I, paragraph 1. gg, states that “ The term Prisoner Injury means an injury, or complaint of injury that occurs in the course of taking or after an individual is taken into DPD custody that is not attributable to a use of force by a DPD employee.”

The AT covered the scope requirements of paragraph U94 and included the related substantive paragraphs U27-40; however, the Monitor identified the following concerns:

- For one JIST investigation, the AT incorrectly reported that the investigator's conclusion was not appropriate because the investigator had not evaluated the connected UOF. Based on the Monitor's review, the investigator did, in fact, consider and evaluate the connected UOF. This resulted in an incorrect rate of compliance for subparagraph U32f (requirement that the investigator evaluate the UOF).
- For all 13 investigations reviewed, the AT tested and reported compliance with paragraph U34 (the requirement to complete an auditable form for all PIs) based solely on the presence of the auditable forms, but did not evaluate the accuracy or correctness of such forms. In its review of the auditable forms, the Monitor found that six of the seven forms that had a connected UOF were not properly completed to indicate that a force had occurred (i.e. the force checkbox was not marked on the form). Additionally, for one JIST investigation, the AT incorrectly concluded that the incident did not require an auditable form because the individual was "not in custody" when the injury occurred. However, the auditable form was required since the incident occurred in the course of taking the person into custody (via a vehicle pursuit).<sup>81</sup> The completion of auditable forms is important to ensure identification and tracking of PI and UOF incidents, and serves as a method for ensuring that these incidents are investigated and receive appropriate supervisory review and corrective action.
- In three FI investigations, the AT reported that the investigators' conclusions were not appropriate because the investigators did not evaluate the connected UOF. Although the investigators failed to evaluate the connected UOF, the Monitor noted that the investigators' conclusions in connection with other events (e.g., the injury, the pursuit, and/or policy violations) were appropriate. Since investigations will often contain multiple "conclusions," the AT should separately assess and report on each conclusion.
- In its assessment of compliance with subparagraph U32f (the requirement for investigators to evaluate all force, including tactics, and AOM), the AT incorrectly included an investigation of an incident in which no force was used. Subparagraph U32f is only applicable to incidents that have a connected use of force.
- Paragraph U35 specifies, in part, that the DPD policies regarding PI notifications require officers to notify a supervisor following the PI incident, and specifies certain actions by the supervisor upon such notice. In contrast to previous audits of PI investigations, the AT revised this audit's methodology to exclude these requirements from its evaluation of PI incidents based on the premise that subparagraph U35b is only applicable to UOF incidents.

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<sup>81</sup> This incident resulted in the death of a person being pursued by DPD members. As such, the AT applied the standards contained in paragraphs applicable to in-custody deaths and critical firearm discharges (paragraphs U37-40) to this incident. While these standards are not technically required, the Monitor understands that it is the DPD's practice to review all incidents involving a death consistent with the requirements in paragraphs U37-40.

The Monitor does not agree with this change in approach and plans to discuss it with the parties.

- Paragraph U36 specifies, in part, that the DPD policies be revised regarding UOF and PI investigations and its subparagraphs further specify the timelines for completing such investigations. Similar to the AT's interpretation of subparagraph U35b above, and again in contrast to previous audits, the AT excluded paragraph U36 based on the premise that this paragraph is only applicable to UOF incidents.
- The AT provided little analysis of the overall audit findings and did not emphasize areas of importance in the executive summary. For example, the AT did not identify that seven of the 13 investigations in the audit population had a connected UOF incident in addition to the PI. Also, the executive summary did not highlight that the investigators failed to evaluate the connected UOF in four of the five investigations conducted by FI/JIST, and that three of these incidents involved vehicle pursuits. This information is necessary in the executive summary so that DPD management can easily recognize, evaluate and address the problems from an operational perspective. In this case, the audit findings indicate that FI investigators are not investigating all elements of each incident, (e.g., injuries, force, misconduct), which could result in a failure to identify improper uses of force.
- The Monitor also identified several administrative and/or technically incorrect issues related to the AT's internal communication of audit findings and working paper documentation. These issues were communicated to the AT.

In summary, the Monitor determined that the audit contained both qualitative performance-related deficiencies and quantitative errors that significantly affected the overall quality of the audit. Of the 13 investigations reviewed by the AT, ten contained one or more of the above deficiencies identified by the Monitor.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with subparagraph U94b.

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

The AT submitted the *AOM Investigations Audit* on its due date of August 31, 2008. The Monitor has requested the audit working papers, and will assess the audit and report its findings and the DPD's compliance with subparagraph U94c upon completion of its review.

#### **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 DPD was not yet in compliance mainly because the *Arrest Practices Audit* submitted on April 14, 2007 did not include testing of 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 DPD was not yet in compliance because the *Stop and Frisk Audit* submitted on August 31, 2007 either did not identify or incorrectly identified a significant number of stops and frisks.

The Monitor last assessed the DPD's compliance with subparagraph U95c during the quarter ending February 29, 2008, finding that the DPD was not yet in compliance primarily because the *Witness Identification and Questioning Audit* submitted on August 31, 2007 did not test certain Consent Judgment requirements and because there were inconsistencies between the audit's actual and reported findings.

### ***Current Assessments of Compliance***

#### ***Subparagraph U95a – Arrest Practices Audit***

In order to assess the DPD's compliance with subparagraph U95a, the Monitor reviewed the *Arrests Audit Report* submitted by the DPD's AT on May 31, 2008 and the related audit work plan. The Monitor also conducted an assessment of a statistically valid random sample<sup>82</sup> of the audit population of arrests and related audit matrices and other working papers.

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

The AT submitted the *Arrests Audit* in a timely manner within the same quarter that the audit was submitted in 2007. The AT identified 901 arrestees from October 7-13, 2007 and subsequently identified a subpopulation of 540 "new" arrests, being arrests that were not made on the basis of an existing warrant. The AT then appropriately stratified the population of 540 arrests over the districts and units and randomly selected a sample of 88 arrests, applying valid sampling techniques and testing to the appropriate error rate depending on the level of

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<sup>82</sup> The Monitor's sample of 44 arrests was randomly selected from the AT's sample of 88 arrests, using a confidence interval of 95%, an error interval of +/-4%, and an expected proportion of success rate of 94%. The Monitor reviewed all 44 arrests in its sample.

compliance in each audit objective. While the AT performed these procedures appropriately, the entire population of arrests reviewed was more than seven months old at the time of submission of the audit. Consequently, the audit findings were stale. The AT should have reviewed more recent data in order to provide more up-to-date findings.<sup>83</sup>

The audit properly included all of the substantive paragraphs related to this topic. The AT correctly found that three of the arrests in its sample of 88 did not have sufficient probable cause and reported 97% compliance with the pertinent objective and requirement of paragraph U43.<sup>84</sup> The AT determined that the DPD was non-compliant with all paragraphs tested (paragraphs U43, U46, U48, U59 and U114). Based on the Monitor's testing of the audit fieldwork, the Monitor concurs with the above reported conclusions for the sample selected.

While it is clear to the Monitor that the audit fieldwork in regards to the substantive paragraphs was accurate and performed with few deficiencies, the audit's required comparisons of the number of arrests to the number of requests for warrants, and the number of warrants requested to the number of judicial findings of probable cause were flawed. Paragraph U95 specifically requires the audit to include such comparisons and while the AT included both comparisons in its audit report, the AT incorrectly calculated the first comparison using all 88 arrests in the audit sample, rather than using only the 52 arrests that were applicable.<sup>85</sup> In regards to both of the above comparisons, the AT also reported the figures in each comparison as ratios, rather than expressing this statistic as a percentage in a manner that would portray the extent to which warrants were requested and granted for the arrests reviewed, as follows.

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<sup>83</sup> The AT found the DPD in non-compliance with paragraph U43 (implementation of the arrest policies), based on the data assessed in this audit; in its more recent assessment of paragraph U43, during the quarter ending May 31, 2008, the Monitor determined that the DPD is in compliance with paragraph U43; accordingly, the staleness of the audit resulted in stale findings.

<sup>84</sup> The audit report contained a typographical error reporting 94% rather than 97% compliance in the Executive Summary section of the audit report.

<sup>85</sup> Applicable arrests were those arrests where a warrant would normally have been requested. For most juvenile arrests, misdemeanor arrests, and arrests that bond-out, the DPD would not typically request a warrant, so these types of arrests should have been excluded from the computations required by this audit. While the Monitor's last assessment of this audit did not identify this deficiency because the audit working papers had not specifically identified the non-applicable arrests, such arrests should also have been excluded from a similar computation for the prior audit.

	<i>REPORTED BY AT</i>	<i>HOW IT SHOULD HAVE BEEN REPORTED</i>
# arrests compared to # of warrants	{ 88/37 2.38	37/52 71%
# warrants requested compared to # of warrants granted	{ 37/31 1.19	31/37 83%

Additionally, the AT did not conduct an analysis of the above comparisons. While paragraph U95 does not specifically require the AT to analyze the results of the comparisons, it is standard audit practice to do so. Had the AT examined and questioned the cause of the disparity between the number of arrests and the number of warrants sought, the AT might have discovered the above errors and corrected them prior to the submission of the audit report.<sup>86</sup> By analyzing the results of the testing, the AT could also have established a baseline for the number of arrests for which warrants were not sought and the number of warrant requests that were denied in order to facilitate future reviews for patterns or problems and provide recommendations regarding corrective action, if appropriate. The lack of such analysis and incorrect information significantly affected the quality of this audit.

Based on the lack of auditable forms completed for all three of the arrests without sufficient probable cause, the AT correctly found the DPD in 0% compliance with the paragraph U43 requirement to complete an auditable form for all arrests with no probable cause. However, the AT also conducted completeness testing of auditable forms and discovered that in the Southwestern District the arrest log book contained three additional instances in which an auditable form should have been completed but was not.<sup>87</sup> While the AT’s findings of 0% compliance would not have changed, the AT should have included these additional instances in its calculation and reported its compliance rate based on 0/6 rather than 0/3. The completion of auditable forms is important to ensure proper identification of violations of the arrests policies and serve as a method for ensuring correction action to prevent repeated violations.

The Monitor concurred with the AT’s findings in connection with all 44 of the named arrestees included in the AT’s sample that were reviewed by the Monitor. However, for an arrestee who was not specifically selected by name but was involved in a multiple-arrestee incident in the AT’s sample of arrests, the Monitor concluded that probable cause was not adequately

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<sup>86</sup> As suggested by the Monitor’s staff, the AT submitted an “Audit Correction” notice on August 13, 2008 to address this.

<sup>87</sup> The logbook identified one arrestee on October 7, 2007 and two arrestees on October 13, 2007 who were released by the Desk OIC due to the lack of probable cause; however, no auditable forms were completed.

established in the CRISnet report completed by the officer. Although the AT agreed that the officer's CRISnet report could have been more thorough when describing the probable cause, the AT disagreed with the Monitor's assessment and therefore did not, but should have, reported this particular finding as an Other Related Matter.<sup>88</sup>

Overall, the AT's matrix questions and other working papers were well-formatted and organized and the Monitor was able to reconcile the findings reported to the supporting work papers. The audit report continues to improve from prior reports on this topic submitted by the AT and included an appendix that illustrated compliance by Consent Judgment paragraph in sequential order, as previously recommended by the Monitor. Except as noted above, the AT made appropriate recommendations within the audit where the DPD was non-compliant.

Although there were a number of aspects of this audit that were well done, based on the number and nature of materially important qualitative performance-related deficiencies that had some affect on the quality of this audit, primarily relating to the comparisons specifically required for this audit and the staleness of the data, the Monitor finds the DPD in partial compliance with subparagraph U95a.

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

The DPD's AT submitted the *Investigatory Stop and Frisk Practices Audit* on its due date of August 31, 2008. The Monitor has requested the audit working papers, and will assess the audit and report its findings and the DPD's compliance with subparagraph U95b upon completion of its review.

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

The DPD's AT submitted the *Witness Identification and Questioning Audit* on its due date of August 31, 2008. The Monitor has requested the audit working papers, and will assess the audit and report its findings and the DPD's compliance with subparagraph U95c upon completion of its review.

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

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

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<sup>88</sup> However, the Monitor did not expect the AT to add this particular finding to the compliance calculations for the related paragraph. The Monitor notes that the AT did appropriately report the lack of articulation under objective 2 in connection with the other specific arrestees sampled and reviewed.

## *Background*

The Monitor last assessed the DPD's compliance with paragraph U96 during the quarter ending August 31, 2007, finding the DPD in compliance. The Monitor concluded that the *Custodial Detention Practices Audit* submitted on April 14, 2007 was timely, appropriately assessed the DPD's compliance, and made insightful recommendations.

## *Current Assessment of Compliance*

In order to assess the DPD's compliance with paragraph U96, the Monitor reviewed the *Custodial Detention Audit* submitted by the DPD's AT on May 31, 2008. The Monitor also conducted an assessment of a statistically valid random sample<sup>89</sup> of the audit population of arrests and holds, and reviewed the audit matrices and other related audit working papers.

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

The AT submitted the *Custodial Detention Practices Audit* in a timely manner within the same quarter that the audit was submitted in 2007. The AT identified 638 arrestees from October 7 to 13, 2007 and conducted thorough completeness tests, identifying 192 additional arrestees who were added to the population, bringing the total population to 830 arrestees. The AT then appropriately excluded from this population all non-applicable arrests, such as those with existing warrants and those that were released on bonds. The resulting population consisted of 223 arrests from which a sample of 88 was randomly selected to review holds, warrants and arrest documentation. The AT also reviewed restriction documentation from October 1 through December 31, 2007.

While the AT correctly assessed the above populations, the incidents reviewed were more than seven months old at the time of submission of the audit. The Monitor advised the AT that going forward, the AT should review more recent data in order to ensure the findings and compliance conclusions are not stale.<sup>90</sup>

- The AT properly included all of the substantive paragraphs related to this topic and determined that the DPD did not meet the requirements of any of the paragraphs tested (U49-55, U58, U60 and U115). The AT also properly defined and assessed the "time between arrest and arraignment" and the "time to adjudicate holds," as required by paragraph U96, and made appropriate recommendations to address the problems identified during the course of the audit. Based on the Monitor's testing of the audit fieldwork, the Monitor concurred with the AT's conclusions.

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<sup>89</sup> The Monitor reviewed a sample selected using a confidence interval of 95%, an error interval of +/-4%, and an expected proportion of success rate of 94%.

<sup>90</sup> The Monitor notes that although the data in this audit was stale, the Monitor's more recent assessment of the substantive paragraphs resulted in findings that were similar to the findings in this audit.

- The AT's matrix questions and working papers were well-formatted and organized, and the audit report continues to improve with each report submitted. As recommended previously by the Monitor, the AT included an appendix illustrating the DPD's compliance by Consent Judgment paragraph.
- The Monitor identified a number of areas where the audit report could be improved, and communicated this information to the AT in order to improve future audit reports. However, the issues identified did not significantly impact the overall quality of the audit report.
- Based on the foregoing, the Monitor finds the DPD in compliance with paragraph U96.

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

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

#### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U97 during the quarter ending November 30, 2007, finding that the DPD was not yet in compliance. The Monitor determined that the *External Complaint and Complaint Investigation Audit* submitted by the DPD on August 31, 2007 was not in compliance due to the number and nature of substantial performance-related errors which had a significant impact on the quality of the audit.

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

The DPD did not submit the *External Complaint and Complaint Investigation Audit* required by paragraph U97, which was due by August 31, 2008.<sup>91</sup>

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with the requirements of paragraph U97.

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<sup>91</sup> The DPD advised the Monitor that the reason this audit was not submitted was due to computer problems. The electronic folder, which included the audit work plan, matrices, and other working papers, were deleted from the hard drive during system maintenance in July 2008. The DPD's IT personnel were not able to restore the files from prior system backups or otherwise recover the files and it was too late to redo all of the work in order to complete the audit.

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

Paragraph U98 requires the DPD to conduct and document periodic random reviews of scout car camera videotapes for training and integrity purposes. In addition, the DPD must require periodic random surveys of scout car video recording equipment to confirm that it is in proper working order.

#### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U98 during the quarter ending February 29, 2008. The Monitor provided to the DPD, via written memorandum, an analysis of 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), inclusive of DPD Form 713, the Video Review Log, and related guidance documents. In the memorandum, the Monitor noted a few issues that required correction prior to dissemination, training and implementation of the Video Review Protocol.<sup>92</sup> The Monitor withheld a determination of compliance, noting that once the issues had been addressed, the documents would meet the policy requirements of subparagraph C64d and paragraph U98.

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

Since the Monitor's last report, the Monitor has reviewed and approved the Video Review Protocol, as well as Directives 303.3, *In-Car Video Equipment*, and 305.4, *Holding Cell Areas*. As a result, the DPD has complied with the policy requirements of paragraph U98. For the reasons set forth more fully below in the Monitor's evaluation of U100-102; however, it is apparent that the DPD has not effectively trained its personnel on or implemented this policy to conduct reviews of the patrol car videos.

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

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<sup>92</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.

all non-functioning video equipment. Other paragraphs in the UOF CJ and COC CJ that require periodic random reviews of videotapes and periodic random surveys of recording equipment are U98 and C64, which are also discussed in this report.

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

The Monitor last assessed the DPD's compliance with paragraphs U100-102 during the quarter ending February 29, 2008. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

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

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

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

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

### *Background*

The Monitor last assessed the DPD's compliance with paragraphs U100-102 during the quarter ending February 29, 2008, 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 DPD indicated that no formal training had yet taken place regarding Directive 303.3, *In-Car Video*. The DPD further reported that in March 2007, it 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%. The DPD noted that of 533 total patrol cars, 413 have camera equipment (77.5%), but only 238 patrol cars had operable cameras (45%).

### *Current Assessment of Compliance*

During the current quarter, the Monitor requested an update as to what steps the DPD has taken to ensure that officers are recording all motor vehicle stops, consents to search a vehicle,

deployments of drug-detection canine, or vehicle searches. While the DPD provided the Monitor during the last quarter with teletype #08-0399, which was read at roll-calls in February 2008 to instruct officers on their responsibilities regarding in-car video equipment,<sup>93</sup> the DPD failed to provide any updated information this quarter.

On September 11, 2008 members of the Monitoring Team conducted inspections at six DPD districts: Northwestern, Central, Northeastern, Eastern, Central and Southwestern. The Monitoring team members interviewed shift sergeants and officers and inspected the daily detail sheets, and found the following:

- Only two districts were actively ensuring that the patrol cars operating during the shift in fact had operable video cameras installed: Six of seven cars (86%) out on patrol in the Central District and fifteen out of sixteen cars (94%) out on patrol in the Southwestern District had operable cameras.
- Only the Southwestern District appeared to have a Vehicle Maintenance Officer (VMO) actively ensuring that video cameras were in working order in the patrol cars.
- None of the remaining districts appeared to be ensuring with any regularity, if at all, at the beginning or end of the shifts that patrol cars were leaving or returning with operable cameras:
- Five of 11 cars (46%) out on patrol in the Northwestern District had operable cameras. The Monitor team members observed the departure of the 8:00 a.m. patrol in the Northwestern District, but it in no way appeared that checking the video equipment was routine at the inception of the shift.
- Six of 14 cars (43%) out on patrol in the Eastern District had operable cameras.
- The Monitor was unable to determine anything with respect to the cars on shift in the Western District, but a spot check of 12 of the 18 cars on the parking lot revealed only eight working video cameras (67%).
- In the Northeastern District, the daily sheet showed 12 cars out on patrol, five of which had cameras, but it was not documented whether they were in fact working. A spot check in that district revealed that only three of the 12 cars on the parking lot had working cameras (25%). An interview with a police officer at the Northeastern District revealed that the video equipment was not even turned on at the beginning of the shift, and checks are not performed with any regularity.
- Other problems observed by the Monitoring Team included a complete failure to test the microphones of the video recording equipment at the beginning of shifts. Most of the

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<sup>93</sup> As noted above, the DPD confirmed that the roll call training is not intended to fulfill or partially fulfill Consent Judgment requirements.

officers interviewed stated that there simply was no way to test whether they were working. Technicians at DPD Communications Systems, who are responsible for maintaining the digital recording equipment in the patrol cars, as well as serving as a central repository for all video recordings, however, demonstrated that testing could in fact be accomplished. It appears that officers are unaware of how to accomplish this relatively simple task, indicating a need for training. The Monitor had also been informed that many of the patrol cars did not have fans installed to cool the digital recording equipment stored in the trunks of the cars. Communications Systems confirmed that this had been the case, resulting in widespread and systematic failures of the recording equipment. It appears that the problem is being remedied with respect to 2007 patrol cars, but earlier models are not, nor have they ever been, equipped with this necessary equipment.

Perhaps the greatest bar to effective implementation of the video recording equipment in patrol cars is the lack of any system to ensure the proper uploading of the digital data from the patrol cars to the central repository at Communications Systems. Technicians at Communications Systems indicated that it could take upwards of an hour to download one eight hour shift worth of video per patrol car.<sup>94</sup> Every district indicated that there is no procedure in place to ensure that once cars return from patrol, they are stationed by the towers long enough to allow the video to download. More significantly, the time that it would take to do this for an entire fleet of cars coming in from patrol would make it impossible to use the same cars from one shift immediately on the next shift because shift changeovers take only about ten to fifteen minutes. Solutions to this problem would likely have to include a greater number of cars at the districts, the staggered turnover of shifts, or, more plausibly, a new digital system. As matters presently stand, however, the video that is recorded during shifts is not being properly downloaded and stored in the central repository. Review of the video is therefore impossible. It appears to the Monitor that the video recording system in patrol cars, in its present state, is useless.

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

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<sup>94</sup> Video is downloaded remotely from the computers in the cars to towers mounted on the sides of the districts overlooking the parking lots. For this to work, however, the cars must be parked in the lot.

The Monitor last assessed the DPD's compliance with paragraphs U103-105 during the quarter ending February 29, 2008. The Monitor again assessed 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 February 29, 2008. The Monitor determined that any backlogged cases were due to extenuating circumstances. Accordingly, the Monitor found that the DPD was in compliance with the paragraph.

#### *Current Assessment of Compliance*

The DPD identified 11 cases (six of which relate to a single officer) in response to the Monitor's request to indicate the current backlog of cases for which the timelines established under paragraph U104 are not being met. All of those cases demonstrated extenuating circumstances for the delays, as the officers have been out on extended leaves of absence. In four cases, officers were out for medical reasons. In a fifth case, an officer was returned to active duty in September 2008 following a prolonged absence after he was disabled. The remaining six cases all pertain to an officer whose trial board was cancelled due to his military commitment.

The DPD states in its 20th Quarter Status Report that the Disciplinary Authority now provides monthly reminders to DPD executives informing them of any Commander's Actions pending in their commands. In addition, reminders are sent to Trial Board members who have past due trial board findings with notification to the appropriate Assistant Chief(s).

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.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U104 during the quarter ending February 29, 2008, finding that the DPD was not yet in compliance with the paragraph. The Monitor reviewed disciplinary files in which discipline was imposed during the month of December 2007 and determined that the DPD adhered to the Disciplinary Timeline Process for five of 12 files (42%). In addition, the DA's 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.

### *Current Assessment of Compliance*

On September 18, 2008, in response to a document request submitted after the end of the quarter, the DPD provided a list of the 100 disciplinary files for which discipline was imposed in June 2008 (this compares with 12 files that the DPD indicated were closed in December 2007, and 13 files for June 2007). The Monitor has not yet completed its review of a statistical sample of these files for compliance with the timelines developed under paragraph U104. The DPD also provided the Monitor with the DA's six-month review, which indicates that five matters are awaiting trial board findings, two matters are awaiting approval from the legal department for administrative closure, three matters are pending approval from the Chief of Police, and ten matters are awaiting arbitration decisions.

Based on the foregoing, the Monitor has not yet evaluated the DPD's compliance with paragraph U104.

### *Paragraph U105 – Disciplinary Matrix*

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

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U105 during the quarter ending February 29, 2008, finding the DPD in compliance with the policy and implementation requirements but not yet in compliance with the training requirements of the paragraph. The Monitor's review of disciplinary files determined that the discipline imposed fell within the

appropriate presumptive range on the disciplinary matrix. In addition, the DPD's training matrix identified the training module responsive to the requirements of the Consent Judgment paragraphs, including paragraph U105, but training had not yet begun.

### *Current Assessment of Compliance*

The DPD's *Supervisory Leadership and Accountability Lesson Plan* addresses the requirements of paragraph U105, among others. The DPD indicated that it had commenced its annual in-service training program, which incorporates the *Supervisory Leadership and Accountability Lesson Plan*, on August 4, 2008. The DPD anticipates that substantially all officers will have completed this training within 43 weeks.

On September 18, 2008, the DPD provided a list of the 100 disciplinary files in which discipline was imposed in June 2008. The Monitor has not yet completed its review of a statistical sample of these files to determine whether the discipline imposed was within the range identified in the disciplinary matrix. As a result, the Monitor finds the DPD in compliance with the policy requirements but has not yet evaluated compliance with the implementation requirements of paragraph U105. The Monitor finds that the DPD is not yet in compliance with the training requirements of paragraph U105.

## VII. TRAINING

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This section of the UOF CJ (paragraphs U106-123) directs the DPD to coordinate and review all UOF and 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 May 31, 2008, and is scheduled to again assess compliance with these paragraphs during the quarter ending November 30, 2008.

## B. USE OF FORCE TRAINING

This section comprises paragraph U112 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending May 31, 2008, and is scheduled to again assess compliance with this paragraph during the quarter ending November 30, 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 May 31, 2008, and is scheduled to again assess compliance with this paragraph during the quarter ending November 30, 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 May 31, 2008, and is scheduled to again assess compliance with this paragraph during the quarter ending November 30, 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 February 29, 2008. 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 February 29, 2008. The DPD indicated that its Curriculum Design and Development Team (CDDT) was in the process of developing a lesson plan that covers the requirements of these paragraphs, which was to be submitted during the quarter ending May 31, 2008. However, these paragraphs were covered in the *Detention Officer Training Lesson Plan* which was submitted on November 17, 2007 and upon which the Monitor provided comments in a memorandum dated January 8, 2008. The lesson plan was resubmitted on February 18, 2008, and the Monitor was in the process of evaluating the resubmitted lesson plan as of the end of that quarter. During the quarter ending August 31, 2007, the Monitor found that the DPD was not yet in compliance with paragraphs U115-117, as 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.

## *Current Assessment of Compliance*

During the previous quarter, the Monitor informed the DPD that it was insufficient to cover paragraphs U115-117 in the *Detention Officer Training Lesson Plan* only, because unlike paragraphs C73 and C75-78 these paragraphs are applicable to all officers.<sup>95</sup> The DPD indicated that minor changes would be made to the *Use of Force Lesson Plan* to meet all of the requirements of paragraphs U115-117.

The DPD's Office of Training and Professional Development began its in-service training program on August 4, 2008. According to the DPD, it is a mandatory 40-hour block of training for all officers, recruits and supervisors scheduled throughout the next 12-month period. The block of instruction is scheduled to include the delivery of Consent Judgment approved lesson plans in the following areas:

- Use of Force (paragraphs U112 and U115-117);
- PR-24 Intermediate Weapon (paragraph U112);
- Law of Arrest and Search and Seizure (paragraph U114); and
- Supervisory Leadership and Accountability (paragraphs U118-22).<sup>96</sup>

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<sup>95</sup> Paragraphs C73 and C75-78, which cover training in the COC CJ, are applicable to detention officers, detention officers, supervisors and members of the Holding Cell Compliance Committee (HCCC).

<sup>96</sup> The DPD has also included instruction on customer service, discrimination awareness, sexual harassment and realistic patrol tactics in the in-service training. The Monitor has requested copies of the lesson plans covering these subjects for review; however, the DPD has refused to provide them stating that these subject matters are not applicable to training on Consent Judgment paragraphs. The Monitor expressed a particular interest in the lesson

Although the Monitor has attended select in-service training classes, the Monitor's assessment of the delivery of the training course has not been completed. Nevertheless, greater than 94% of the DPD members required to attend this training must be trained before the DPD can achieve compliance.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraphs U115-117. However, the Monitor commends the DPD for the notable progress made in complying with Consent Judgment requirements by initiating in-service training during the current quarter.

## F. SUPERVISORY TRAINING

This section comprises paragraphs U118-120. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending February 29, 2008. 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 February 29, 2008, finding that the DPD was not yet in compliance. The Monitor approved the revised *Supervisory Leadership and Accountability Lesson Plan* on November 9, 2007. However, as of the end of the quarter ending February 29, 2008, the DPD had not conducted training using the approved lesson plan. The DPD indicated that it was devising a roll out plan in order to begin the implementation of the lesson plan. On February 20, 2008, the DPD

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plans on customer service and realistic patrol tactics since those subjects are covered by the Consent Judgment; however, the DPD has not provided the lesson plans.

indicated that it meant for the revised 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 again 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. On March 25, 2008, the Monitor met with the DPD concerning this issue. The DPD then resubmitted a revised lesson plan on March 29, 2008.

### *Current Assessment of Compliance*

As reported in the *Current Assessment of Compliance* of paragraphs U115-117, the DPD began its annual in-service training program, which incorporates the *Supervisory Leadership and Accountability Lesson Plan*, on August 4, 2008. Although the Monitor has attended select in-service training classes, the Monitor has not yet completed its evaluation of the classroom presentation of this specific training material. Nevertheless, according to the training schedule, the DPD has not yet trained greater than 94% of the officers required to attend the training for these paragraphs.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraphs U118-119. However, the Monitor commends the DPD for the notable progress made in complying with Consent Judgment requirements by initiating in-service training during the current quarter.

### *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 February 29, 2008, finding that the DPD was not yet in compliance. Although the Monitor approved the *Supervisory Leadership and Accountability Lesson Plan* on November 9, 2007, the DPD had not conducted training using the approved lesson plan as of the end of that quarter. Furthermore, the risk management database, specifically the DPD's MAS, was not fully developed or implemented as of the end of that quarter.

### *Current Assessment of Compliance*

As reported in the *Current Assessment of Compliance* under paragraphs U118-119, the DPD began its annual in-service training program on August 4, 2008 which incorporates the *Supervisory Leadership and Accountability Lesson Plan*. Although the Monitor has attended select in-service training classes, the Monitor has not yet completed its evaluation of the classroom presentation of this specific training material. Nevertheless, according to the training

schedule, the DPD has not yet trained greater than 94% of the officers required to attend the training for these paragraphs.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph U120. However, the Monitor commends the DPD for the notable progress made in complying with Consent Judgment requirements by initiating in-service training during the current quarter.

## G. INVESTIGATOR TRAINING

This section comprises paragraphs U121-122. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending February 29, 2008. 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 IAD in the process, to all new recruits and as part of annual in-service training.

### *Background*

The Monitor last assessed the DPD's compliance with paragraphs U121-122 during the quarter ending February 29, 2008, finding that the DPD was not yet in compliance. Near the end of that 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 submit an addendum to the lesson plan to cover the remaining requirements. On March 25, 2008, the Monitor met with the DPD concerning this issue. The DPD then resubmitted a revised lesson plan on March 29, 2008.

### *Current Assessment of Compliance*

As reported in the *Current Assessment of Compliance* of paragraphs U118-119, the DPD began its annual in-service training program, which incorporates the *Supervisory Leadership and Accountability Lesson Plan*, on August 4, 2008. Although the Monitor has attended select in-service training classes, the Monitor has not yet completed its evaluation of the classroom presentation of this specific training material. Nevertheless, according to the training schedule, the DPD has not yet trained greater than 94% of the officers required to attend the training for these paragraphs.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraphs U121-122. However, the Monitor commends the DPD for the notable progress made in complying with Consent Judgment requirements by initiating in-service training during the current quarter.

## H. FIELD TRAINING

This section comprises paragraph U123 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending February 29, 2008. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

### *Paragraph U123 - Field Training – Enhancement of FTO 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 paragraphs U123 during the quarter ending February 29, 2008, finding that the DPD was not yet in compliance, as implementation of the FTO protocol had not commenced. On October 16, 2007, the DOJ approved the revised FTO Protocol, with additional recommendations. According to the DPD, these recommendations were incorporated into the protocol and the protocol was resubmitted to DOJ on November 30, 2007. According to the DPD's Eighteenth Quarter Status Report, implementation of the FTO protocol was scheduled to commence once the revised selection process was completed.

### *Current Assessment of Compliance*

According to the DPD, training was conducted on the revised FTO Program Standard Operating Procedures Manual (SOP) to 40 current FTOs in April 2008.<sup>97</sup> However, the Monitor was not informed about this training in advance and was, therefore, unable to assess it. During the current quarter, the Monitor was informed that the DPD Training Center was offering a 40-hour FTO certification course to nine FTO candidate/trainees on August 4 through 8, 2008.<sup>98</sup> A member of the Monitoring Team attended one day of the course on August 7, 2008. Prior to the Monitor's attendance, a copy of the FTO lesson plan was requested and the Monitor was told that there was not a lesson plan for the FTO training course. Instead, the instructor would be teaching directly from the FTO Program SOP. The DPD then provided a copy of the lesson plan on the day that the Monitoring Team Member was already in attendance at the FTO training. As a result, the Monitoring Team member who attended one day of the course did not have a copy of the lesson plan. When the Monitor requested a copy of the lesson plan from the instructor during the course, the team member was given a copy of the Student Guide and the SOP (not a copy of the lesson plan that was separately provided on that day by the DPD). For these reasons, the Monitor was not able to evaluate whether the instructor utilized the lesson plan during the course. Most of the morning of the day of FTO trainee instruction attended by the Monitor was spent on review from the previous three days; however, the Monitor made the following observations:

The instructor demonstrated acceptable knowledge of the topics presented and discussed. The instructional content was presented in a clear and concise manner and participant questions were handled well. The topics discussed included psychomotor, cognitive and affective skills, and the level of difficulty of teaching each, and an in-depth discussion regarding FTOs as role models and how they can influence new recruits.

The Monitor will have to review the lesson plan and attend more days of the course to fully evaluate the requirements of paragraph U109. However, the Monitor notes that there was no in-depth discussion of strategies that could be used to impact the learning needs of new recruits in the identified Domains of Learning (psychomotor, cognitive, affective). For example, the instructor stated that time management and officer safety were examples of "attitude" or affective skills; however, an explanation of this statement was not provided and neither was a strategy for addressing these issues with a new recruit.

A question from an FTO trainee about when a new recruit should be exposed to various activities resulted in a discussion regarding ways to train the Probationary Police Officer (PPO). The

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<sup>97</sup> The DPD has indicated that these 40 officers were already in the pre-existing FTO program and therefore were not selected under the SOP.

<sup>98</sup> The nine FTO trainees offer the first opportunity for the Monitor to assess the implementation of the SOP with regards to the selection criteria and evaluation process for FTOs.

discussion highlighted that there was no specific direction provided to the FTO trainees in terms of the process for progression of PPO skills.

The Monitor intends to evaluate the next FTO training course if advance notice is given. Furthermore, the Monitor will evaluate the implementation of the SOP by assessing whether the SOP was followed when the nine new FTO trainees were chosen.

Based on the foregoing, the Monitor withholds a determination of the DPD's 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 also 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 August 31, 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>99</sup> The Monitor last assessed the DPD's compliance with paragraphs C14-21 during the quarter ending November 30, 2007. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

#### **Paragraphs C14-21 – Life Safety Code Compliance; Detection, Suppression and Evacuation Programs; Fire Safety Program Development; Fire Safety Program Implementation; Interim Fire Safety Measures; and Testing of Fire Safety Equipment**

Paragraph C14 requires the DPD to ensure that all holding cells, and buildings that contain them, meet and maintain compliance with the current Life Safety Code (LSC) within one year of the effective date of the COC CJ. As part of this effort, the City of Detroit shall ensure that the Detroit Fire Department (DFD) conducts regular and periodic inspections to evaluate whether the conditions in DPD holding cells, and buildings that contain them, are in compliance with the LSC.

Paragraph C15 requires the DPD to develop and implement a comprehensive fire detection, suppression and evacuation program<sup>100</sup> for all holding cells, and the buildings that contain them, in accordance with the requirements of the LSC and in consultation with the DFD.

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<sup>99</sup> The DPD will remain in compliance with paragraph C22 unless it begins using buildings that contain Kane Fiber Ceiling Tiles to detain prisoners.

<sup>100</sup> Within the COC CJ and in the Monitor's report, the Comprehensive Fire Detection, Suppression and Evacuation Program is also referred to as the "Fire Safety Program" or "FSP" (paragraph C16).

Paragraph C16 requires the DPD to develop the fire safety program in consultation with, and receive written approval by, the DFD. As part of the overall program, the DFD must evaluate the need for, and if necessary, the DPD must install fire rated separations, smoke detection systems, smoke control systems, sprinkler systems and/or emergency exits for holding cells and buildings that contain them. The approved plan must be submitted for review and approval of the DOJ within three months of the effective date of the COC CJ.

Paragraph C17 requires the DPD to implement the fire safety program within one year of the effective date of the UOF CJ (July 18, 2004). The approved program must be reviewed and approved in writing by the DFD, at a minimum of once per year and prior to any revisions.

Paragraph C18 requires the DPD to take immediate interim fire safety measures for all buildings that maintain holding cells including ensuring proper alarm activation, emergency reporting by prisoners, and automated back-up systems for life safety equipment (i.e. emergency lighting, signage, fire alarms and smoke detection systems). In addition, the interim measures must reduce the spread of smoke and fire via the stairs, garages, hazardous rooms and exposed pipes.

Paragraph C19 requires the DPD to ensure that fire safety equipment is routinely tested, inspected and maintained in all precincts that maintain holding cells. This equipment includes such items as sprinkler systems, fire alarm systems, manual fire extinguishers, emergency lighting and exit signs, and self-contained breathing apparatus.

Paragraph C20 requires the DPD to immediately enforce its no-smoking policy in all holding cells or provide ashtrays and ensure that the holding cells are constructed and supplied with fire rated materials.<sup>101</sup>

Paragraph C21 requires the DPD to immediately ensure the proper storage of all flammable and combustible liquids in all detention cell areas, buildings that house detention cells, and connected structures, including garages.

## *Background*

The Monitor last assessed the DPD's compliance with paragraphs C14-C21 during the quarter ending November 30, 2007, finding that the DPD was in compliance with paragraphs C20-21 and in compliance with the policy requirements of paragraphs C14-19, but the DPD was not yet in compliance with the implementation requirements of paragraphs C14-19. The DPD indicated to the Monitor that no changes had been made to DPD buildings or the status of the DPD's compliance with the LSC since the Monitor's previous assessment, and the City committed to moving forward with plans to retrofit the existing facilities containing holding cells in an effort

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<sup>101</sup> The Monitor notes that although paragraph C20 specifies that the DPD's no smoking policy be enforced within "holding cells," the DPD policy, which is in accordance with the Michigan Clean Indoor Air Act, P.A. 198 of 1986 and P.A. 296 of 1988, prohibits smoking throughout Department facilities.

to achieve compliance with the Consent Judgment paragraphs. Additionally, the DPD developed, but had not fully implemented a comprehensive FSP for all buildings that maintain holding cells, had not fully complied with all of the LSC in each building nor had they developed a consistent method for ensuring that all fire safety equipment contained within these facilities was routinely inspected, tested and maintained.

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

In previous assessments of the DPD's compliance with paragraphs C14-21, the Monitor has reviewed the DPD's semi-annual audit of the FSP, which is required by paragraph C66, to supplement the Monitor's on-site inspections of the DPD holding cell facilities. However, the DPD did not conduct the FSP audit required to be submitted by July 31, 2008. Given the status of the DPD's ongoing efforts to comply with the requirements of paragraphs C14-19, the Monitor conducted limited on-site inspections of all DPD buildings containing holding cells to assess only the areas where the DPD has previously achieved compliance.<sup>102</sup> Once the DPD has completed the retrofit process, the Monitor will assess the DPD's compliance with all requirements contained in paragraphs C14-21.

The current status of the retrofit and the results of the Monitor's inspections follow.

### ***Paragraph C14 – LSC Compliance***

On May 15 and July 23, 2008, the City submitted plans to DOJ detailing proposed fire alarm and sprinkler systems in most of the holding cell facilities. These plans are part of the DPD's continuing efforts to retrofit the existing facilities to achieve compliance with the LSC and related Consent Judgment paragraphs. On August 22, 2008, the DOJ responded in a letter to the City stating that the systems appear to be designed properly but requesting that similar plans for the Southwestern District be provided for DOJ review and approval as required.

According to the DPD's 20<sup>th</sup> Quarter Status Report, the Eastern District had received retrofit upgrades during July 2008 and the remaining facilities are on schedule for completion by December 31, 2008, as ordered by the Court.<sup>103</sup>

### ***Paragraph C15 – Comprehensive Fire Detection, Suppression and Evacuation Program***

While the DPD had previously developed a FSP and had received approval from DOJ on that plan as required, the DPD experienced difficulties in fully implementing many of the specific requirements of the program, especially those that are connected to compliance with the LSC.

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<sup>102</sup> The Monitor conducted on-site inspections of DPD facilities containing holding cells on September 11, 2008.

<sup>103</sup> The Monitor will assess the status of these upgrades during planned on-site inspection of the districts to be conducted during the quarter ending November 30, 2008 in connection with its assessment of compliance with requirements regarding medical and mental health care and detainee safety policies.

The DPD recently made substantial revisions to the Emergency Response Plans (ERP), which are a part of the Comprehensive Emergency Preparedness Program (CEPP) required by paragraphs C23-25. During the ERP revisions, the DPD opted to incorporate the FSP into the revised ERP/CEPP. The newly revised ERPs, incorporating the FSP, were reviewed and approved by the DFD on June 5, 2008 for the five districts that contain holding cells.<sup>104</sup>

Although the FSP was approved by the DFD as required, the DPD has not yet implemented the specifics of the FSP. Once the DPD has completed the retrofit in the holding cell facilities, and conducts the training on the FSP and CEPP as required by paragraph C75, the Monitor expects that the DPD will be able to implement the requirements of those programs and the COC CJ.

***Paragraphs C16 – C19 Development and Implementation of the Fire Safety Program, Interim Fire Safety Measures, and Testing of Fire Safety Equipment***

As reported above in paragraph C14, the DPD is in the process of retrofitting the holding cell facilities in order to address the requirements of paragraphs C16-19, among others. As a result, the DPD has not yet implemented the entire FSP.

***Paragraph C20 – Smoking Policy***

While the Monitor found no evidence of smoking within the holding cells during its inspections, the Monitor did find evidence of smoking in several district buildings containing holding cells.<sup>105</sup> Although smoking in the building is a violation of DPD Policy and the Michigan Clean Indoor Act, it is not a violation of the specific requirements of paragraph C20.

***Paragraph C21 – Storage of Flammable Liquids***

During its inspections, the Monitor found that all district buildings maintaining holding cells met the requirements to properly store flammable and combustible liquids.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with paragraphs C20-21. The Monitor also finds that the DPD is in compliance with the policy requirements but not yet in compliance with the implementation requirements of paragraphs C14-19.

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<sup>104</sup> Central District does not have holding cells, but its staff oversee the cells at the Detroit Receiving Hospital (DRH) where detainees from other districts may be taken if they are in need of medical attention. The hospital has its own emergency plan.

<sup>105</sup> Cigarette butts were observed on the garage floor and directly outside the perimeter of the Eastern, Northwestern and Northeastern Districts.

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

### *Paragraph C23 – Establishing of Safety Levels*

Paragraph C23 requires the DPD to ensure a reasonable level of safety and security of all staff and prisoners in the event of a fire and/or other emergency.

#### *Background*

The Monitor last assessed the DPD's compliance with paragraph C23 during the quarter ending November 30, 2007, finding that the DPD was not yet in compliance. As noted by the Monitor, compliance with paragraph C23 cannot occur until the DPD attains compliance with paragraphs C24-25, and the DPD had not achieved compliance with these paragraphs as of the end of that quarter.

#### *Current Assessment of Compliance*

As described in the *Current Assessment of Compliance* for paragraphs C24-25, below, the DPD is not yet in compliance with these paragraphs.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph C23.

### *Paragraph C24 – Emergency Preparedness Program Development*

Paragraph C24 requires the DPD to develop a comprehensive emergency preparedness program (CEPP or EPP), with the written approval of the DFD, for all DPD buildings that contain holding cells. The program must be submitted for the review and approval of the DOJ within three months of the effective date of the COC CJ and implemented within three months of the DOJ's approval. The approved program must be reviewed and approved in writing by the DFD, at a minimum of once per year and prior to any revisions. The program must include an emergency response plan for each building that contains holding cells in the event of a fire-related

emergency, which identifies staff responsibilities and key control procedures. The program must also require that fire drills be performed and documented for each building that contains holding cells on all shifts once every six months.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph C24 during the quarter ending November 30, 2007, at which time the Monitor found that the DPD was not yet in compliance with the requirements of this paragraph. The *Emergency Preparedness Program Audit* submitted by the DPD on July 31, 2007 identified a number of deficiencies in connection with the requirements of paragraph C24, including significant operational inconsistencies in the ERPs for each district building containing holding cells and ERPs that varied in terms of formatting and terminology or did not reflect actual practices. In addition, 21 of 36 (58%) Police Detention Officers (PDOs) who were interviewed could not demonstrate knowledge of all of their responsibilities under the EPP. The audit also determined that the DPD failed to document relevant information for each fire drill that was conducted. Lastly, although the DPD disseminated the ERPs via the DPD's Intranet and placed a copy in each district, considering the high percentage of members who could not demonstrate their responsibilities under the ERP, the Monitor concluded that the associated training must be delivered to relevant DPD personnel in order to effectively implement the information contained in the ERPs.

### *Current Assessment of Compliance*

In order to assess the DPD's compliance with paragraph C24 during the current quarter, the Monitor reviewed the *Emergency Preparedness Program Audit* submitted by the DPD on July 31, 2008, and had several discussions with the HCCC members who were involved in the conduct of the audit. Although the Monitor concluded that the audit was not in compliance with the requirements of paragraph C67, the circumstances contributing to that finding did not prevent the Monitor from relying upon the audit's findings in connection with the requirements of paragraph C24, as the Monitor's testing resulted in concurrence with the audit findings of non-compliance for all paragraphs tested.<sup>106</sup>

The following reflects the Monitor's and AT's findings.

- As described above in the *Current Assessment of Compliance* for paragraphs C14-21, the DPD recently revised its ERPs for the buildings containing holding cells with the exception of the DRH.<sup>107</sup> The DPD met the requirement of having the EPP, including the ERPs,

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<sup>106</sup> Refer to the *Current Assessment of Compliance* for paragraph C67 for information regarding the Monitor's assessment of the audit.

<sup>107</sup> The DRH has its own emergency plan for which the DPD members assigned to DRH must operate under in an emergency.

annually reviewed and approved by the DFD,<sup>108</sup> and provided staff access to the ERPs by placing them in a red binder at the front desk areas, which addresses the policy component of paragraph C24.

In regards to the implementation of the EPP; during interviews of the holding cell area staff, specifically Officers in Charge (OIC), Cell Block Supervisors (CBS) and PDOs, the audit found that 92% of the staff members knew their responsibilities in connection with notifications, evacuation procedures, and key control as described in the EPP. This is a decrease from the 99% reported in the prior audit submitted on January 31, 2008, but an increase from the 58% described in the Monitor's previous assessment, which was a finding from the audit submitted on July 31, 2007. Additionally, the audit found that the DPD failed to ensure that all of their district facilities with holding cells and the DRH performed and properly documented at least one fire drill on all three shifts every six months.<sup>109</sup>

Although the EPP was approved by the DFD as required, as with the FSP mentioned above, the DPD has not yet implemented the specifics of the EPP, as evidenced by the varying findings when holding cell staff were interviewed regarding their knowledge of their responsibilities under the EPP. Once the DPD has conducted the training on the EPP as required by paragraph C75, the Monitor expects that the DPD will be able to implement the requirements of the COC CJ in this area.

Based on the foregoing, the Monitor finds that the DPD is in compliance with the policy requirements but is not yet in compliance with the implementation requirements of paragraph C24.

### **Paragraph C25 – Key Control Policies**

Paragraph C25 requires the DPD to develop and implement key control policies and procedures that will ensure that all staff members are able to manually unlock all holding cell doors in the event of a fire or other emergency. At a minimum, these policies and procedures shall ensure that keys can be identified by touch in an emergency and that the DPD conduct regular and routine inventory, testing and maintenance of all holding cell keys and locks.

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph C25 during the quarter ending November 30, 2007, at which time the Monitor found that the DPD was not yet in compliance

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<sup>108</sup> Notification of the DFD review and approval of the EPP occurred on June 5, 2008.

<sup>109</sup> Some of the issues contributing to the finding are: failure to provide documentation of the performance of required number of fire drills (Eastern District, DRH) and failure to properly/completely document performance of fire drills (Northwestern District, Eastern District, and DRH).

with the requirements of this paragraph. The *Emergency Preparedness Program Audit* submitted by the DPD on July 31, 2007 identified a number of deficiencies in connection with the requirements of paragraph C25, including failure to ensure routine inventory, testing and maintenance of keys; district buildings maintaining holding cells that documented key and lock inventory in the desk blotter, which is a non-auditable format; and failure to implement a uniform procedure for performing and documenting key and lock maintenance. In addition, although the DPD developed a procedure requiring the documentation of key and lock testing and inventory on an auditable form, "Fire Drill Documentation Log" (DPD 703), this procedure was performed too infrequently, failing to address the "routine testing and inventory" requirement of paragraph C25.

### *Current Assessment of Compliance*

In order to assess the DPD's compliance with paragraph C25 during the current quarter, the Monitor reviewed the *Emergency Preparedness Program Audit* submitted on July 31, 2008.<sup>110</sup>

The following reflects the Monitor's and AT's findings:

- PDOs interviewed were able to demonstrate the ability to identify cellblock keys by touch and manually unlock/open all holding cell doors; however, CBSs interviewed could not demonstrate this proficiency. Given that any of the DPD staff assigned to the holding cell area may need to unlock the doors in an emergency, the CBSs should also possess this ability.
- The DPD policy for inventory, inspection and maintenance of keys and locks (Directive 305.4-6.6, *Holding Cell Areas*) does not reflect recently revised practices, including the use of the DPD Form 715, which is an inspection checklist used by the HCCC to document and conduct the inventory, testing and maintenance of keys and locks as required.
- During the audit time period, from January through June 2008, the HCCC used several different versions of forms in an attempt to document the required inventory, maintenance and inspections of keys and locks, which prevented the AT from adequately assessing the DPD's compliance with this requirement.
- The audit found that the Southwestern District-Annex and the Northwestern District both had cellblock keys missing during the March 2008 monthly inspection, and no maintenance or replacement requests could be located.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph C25.

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<sup>110</sup> Refer to the *Current Assessment of Compliance* for paragraph C67 for information regarding the Monitor's assessment of the audit.

### *Recommendations*

The Monitor recommends that the DPD amend Directive 305.4 to reflect current approved practices and ensure that all staff use the approved forms to document the inventory, maintenance and inspection of cellblock keys and locks.

## **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.

The Monitor last assessed the DPD's compliance with paragraphs C26-34 during the quarter ending February 29, 2008. The Monitor found the DPD in compliance with paragraphs C28-29, 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>111</sup> The Monitor is scheduled to again assess compliance with paragraphs C26-27 and C30-34 during the quarter ending November 30, 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 February 29, 2008, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending November 30, 2008.

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<sup>111</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 U27.

## 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>112</sup>

The Monitor last assessed the DPD's compliance with paragraphs C39-43 and C45 during the quarter ending May 31, 2008, and is scheduled to again assess compliance with these paragraphs during the quarter ending February 28, 2009.

## VI. POLICIES CONCERNING PERSONS WITH DISABILITIES

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

The Monitor last assessed the DPD's compliance with paragraphs C47-48 during the quarter ending February 29, 2008, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending November 30, 2008.

## 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>112</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.

program must ensure that all prisoners are provided with an alternative meal if they are unable to eat the standard meal for religious or dietary reasons.

The Monitor last assessed the DPD's compliance with paragraphs C49-50 during the quarter ending May 31, 2008, and is scheduled to again assess compliance with these paragraphs during the quarter ending February 28, 2009.

## 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 May 31, 2008, and is scheduled to again assess compliance with this paragraph during the quarter ending November 30, 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 February 29, 2008. 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 to require that:

- a. officers utilize appropriate precautions when interacting with a prisoner who has previously demonstrated he or she is recalcitrant or resistant, including: summoning additional officers; summoning a supervisor; and using appropriate restraints;
- b. absent exigent circumstances, officers notify a supervisor before using force on a prisoner confined to a cell; and
- c. the supervisor assess the need to use force on a prisoner confined to a cell, direct any such force and ensure the incident is videotaped.

## *Background*

During the quarter ending February 29, 2008, the Monitor elected to defer its assessment of the DPD's compliance with paragraphs C52-53 so that the assessment could be made in conjunction with the review of the *UOFHC Investigations Audit*, which covers paragraphs C52-53, among others, and was to be submitted by the DPD on July 31, 2008.

## *Current Assessment of Compliance*

In order to assess the DPD's compliance with the paragraphs C52-53 during the current quarter, the Monitor reviewed the *UOFHC Audit Report*,<sup>113</sup> which included ten incidents involving a use of force that occurred in a holding cell (or holding cell area).<sup>114</sup>

In regards to the requirements of paragraph C52, the types of force used by officers in these ten incidents included hard-hands only (compliance controls and physical controls). Based on the information reported in the officers' reports and supervisory investigations, the Monitor found that in all ten incidents officers used an appropriate level and type of force in response to and commensurate with the subjects' resistance.<sup>115</sup> The officers gave verbal warnings when possible and de-escalated the level once the situations were under control, as is required in the DPD's use of force polices.

Only two of the incidents were applicable to the requirements of paragraph C53.<sup>116</sup> In these two incidents, the detainees were verbally threatening to harm the detention officers just prior to the officers removing handcuffs. Once removed, the subjects became physically aggressive, resulting in the need for officers to use force to control the detainees. In both incidents, the officers' statements described the detainees as being recalcitrant, intoxicated and verbally resistant just prior to the uses of force. In order to comply with the requirements of paragraph C53, the officers should have used appropriate precautions in both incidents, such as summoning additional officers and a supervisor prior to removing the restraints. While the Monitor acknowledges that the officers' statements contained in the documentation may or may not be complete, officers should be reminded that they should request assistance whenever possible.<sup>117</sup>

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<sup>113</sup> The *UOFHC Audit* was submitted on July 31, 2008. Refer to the *Current Assessment of Compliance* for subparagraph C65a, below.

<sup>114</sup> The AT is not required to audit the force incident, only the "investigation" of the force. As such, the Monitor conducted an independent assessment of the force using the ten incidents included in this audit.

<sup>115</sup> All ten force incidents occurred in holding cell areas; none of the ten incidents occurred on a prisoner confined to a holding cell.

<sup>116</sup> In these incidents, the force occurred in the processing area. .

<sup>117</sup> Although paragraph U32f is not being evaluated this quarter, the Monitor notes that none of the eight investigations that included a force incident specifically evaluated the officers' tactics. Instead, in many instances

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph C52, but not yet in compliance with paragraph C53.

### *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 February 29, 2008, finding the DPD in compliance with the requirements of the paragraph. The DPD demonstrated that through its policies and reporting requirements, detainees are rarely, if ever, being handcuffed to fixed objects, and even if so, for only limited duration.

### *Current Assessment of Compliance*

The DPD has discontinued its use of the *Handcuff to Object (H2O) Form* (DPD 670), which had been employed to capture 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 reiterated the importance of not handcuffing a detainee to a fixed object for longer than three hours. In response to a document request, the DPD provided the Monitor with an administrative message, teletype #08-02281, dated April 22, 2008, which, while announcing the discontinuation of the form, instructed DPD officers that they were still bound to follow the requirements of this paragraph.

In its 20th Quarter Status Report, the DPD noted that the provisions of paragraph C54 are addressed in the Directive 305.4,  *Holding Cell Areas*. The DPD noted that it prohibits the handcuffing of a detainee to a fixed object for periods longer than three hours, and that the HCCC conducts inspections to evaluate the DPD's compliance with this paragraph. During the months of June, July and August 2008, the DPD reported that inspections conducted by the HCCC found all five holding cell facilities compliant with the requirements of this paragraph.

The DPD provided the Monitor with documentation related to the inspections performed by HCCC with respect to the five holding cell facilities. The following inspections were conducted:

- June 9, 2008 in the Western District;
- June 10, 2008 in the Eastern, Northeastern, Northwestern, and Southwestern Districts;

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the underlying facts and circumstances were simply restated by the investigator from the officer's reports without any evaluation as required by subparagraph U32f.

- July 8, 2008 in the Southwestern, Northeastern, Eastern and Northwestern Districts;
- August 6, 2008 in the Southwestern District;
- August 7, 2008 in the Eastern District;
- August 8, 2008 in the Western District; and
- August 11, 2008 in the Northeastern and Northwestern Districts.

At no time during these inspection were any detainees observed handcuffed to a fixed object. These inspections appear to support the DPD's contention that this practice has become increasingly rare, and in the instances where it does occur, detainees are not handcuffed for more than three hours.<sup>118</sup> The Monitor will conduct an independent assessment during the next quarter that this paragraph is scheduled for review.

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph C54.

## **X. INCIDENT DOCUMENTATION, INVESTIGATION AND REVIEW**

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This section of the COC CJ (paragraphs C55-57) requires the DPD to comply with its general incident investigation policies, UOF investigation policies and PI 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 May 31, 2008. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### **Paragraph C55-57 – Prisoner Injury and Use of Force in Holding Cell 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.

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<sup>118</sup> The Monitor is concerned that these inspections are spot-checks and may not reveal whether individuals are being handcuffed to objects at all and if so, for more than three hours.

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 PI investigation policies.

### *Background*

The Monitor last assessed the DPD's compliance with paragraphs C55-57 during the quarter ending May 31, 2008, finding that the DPD remained in compliance with the policy requirements but was not yet in compliance with the implementation requirements of the paragraphs. In reaching these conclusions, the Monitor reviewed and placed reliance on the findings contained in the *Prisoner Injuries in Holding Cells (PIHC) Audit* submitted by the DPD on January 31, 2008, which was required by subparagraph C65b.

### *Current Assessment of Compliance*

On July 31, 2008, the DPD submitted the *PIHC Audit Report* and the *UOFHC Audit Report*, both of which included UOF and/or PI investigations of incidents that occurred in a holding cell. A total of 12 such investigations were reviewed in these two audits, ten of which were UOF investigations and two of which were PI investigations. All 12 investigations were conducted at the command level.

The Monitor has not yet completed its evaluation of the above audits and is therefore electing to defer its assessment of the DPD's compliance with paragraphs C55-57. This assessment will be completed in conjunction with the review of the audit, which is expected to be completed during the quarter ending November 30, 2008. As a result, the Monitor has not yet completed its evaluation of the DPD's compliance with paragraphs C55-57.

## **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 May 31, 2008, and is scheduled to again assess compliance with these paragraphs during the quarter ending November 30, 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 May 31, 2008, and is scheduled to again assess compliance with these paragraphs during the quarter ending November 30, 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>119</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>120</sup>

The Monitor last assessed the DPD's compliance with paragraphs C62-64, subparagraph C65a, the HCCC requirement of paragraph C66, and paragraphs C68 and C69 during the quarter ending February 28, 2008. The Monitor last assessed the DPD's compliance with subparagraphs C65b and c, the Fire Safety Audit requirement of paragraph C66, paragraph C67, and paragraphs C70-C72 during the quarter ending 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 February 29, 2008, finding that the DPD was not yet in compliance with the paragraph. During that quarter the DPD commenced conducting inspections of each building containing holding cells, once per month, and documenting the inspections using the revised "*Evaluation of the Operation of the Holding Cells*" (DPD715 form). The DPD715 form is a checklist designed to

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<sup>119</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>120</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.

facilitate compliance with paragraph C62. While the Monitor provided feedback on the form, and found the form a good tool to routinely evaluate the operation of the holding cells, the DPD had not yet developed guidelines and instruction for the staff who will be using the checklist. The Monitor indicated that until the guidelines are developed, the DPD could not achieve compliance with the requirements of paragraph C62.

### *Current Assessment of Compliance*

In order to assess the DPD's compliance with paragraph C62 during the current quarter, the Monitor reviewed the recently submitted Guidelines to the DPD715 form, along with completed DPD715 forms for inspections conducted by the HCCC during this quarter.

The Monitor's review of the Guidelines identified a few areas that should be clarified and/or improved, such as adding language to direct the inspector to check for improper storage of flammable liquids in areas other than the garage and adding verbiage to more clearly define ambiguous terminology (such as "cleanliness" and "properly completed"). By providing sufficient and clear direction to the members conducting the inspections, the evaluations of the holding cells will be more consistent, accurate, and will help to ensure that the holding cells are evaluated by the DPD to minimize the risk of harm to staff and prisoners. The Monitor will initiate discussions with the DPD to communicate all of the details of the Monitor's assessment of the Guidelines.

The HCCC conducted inspections, utilizing the DPD715 forms, on June 9-10, July 8, and August 6-8 and 11th, 2008 in five districts, totaling 15 inspections during the current quarter; however, no inspections were conducted at DRH even though many of the items on the form apply to the DRH holding cells.<sup>121</sup> While the inspections identified a number of problems in the holding cells, such as non-functioning video cameras, burned-out light bulbs, and a lack of required number of cell checks being documented on the cell check log, not all areas of the forms were completed (i.e., some checkboxes were left blank.) Furthermore, only about half of the forms indicated the name of the person to whom notification of the results and a copy of the form were provided. Additionally, based on the manner in which certain items were or were not inspected, and the manner in which the forms were completed, it does not appear that the Guidelines were used by the HCCC to conduct these inspections. Once the DPD revises the Guidelines, and disseminates them to the members conducting the inspections, the quality of such inspections should improve.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph C62.

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<sup>121</sup> In its 20th Quarter Status Report, the DPD indicated that the HCCC performs unannounced "district" holding cell inspections. The DPD has indicated that it plans to implement an inspection process for the DRH during the next quarter. This process will be a modified version of the inspections being conducted at the districts.

### **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 February 29, 2008 finding that the DPD was not yet in compliance with subparagraphs C63a and c and was in compliance with subparagraphs C63d and e. The Monitor had not yet re-evaluated the DPD's compliance with subparagraph C63b.

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

Regarding subparagraph C63a, as described in the *Current Assessment of Compliance* for paragraph U78, the MAS database has not yet been tested to verify that it is fully developed or operational.

Regarding subparagraph C63b, as described in the *Current Assessment of Compliance* for paragraph U78, the Monitor has not yet re-evaluated the requirements of paragraph U91, and intends to do so after the next cycle of performance evaluations are complete.

Regarding subparagraph C63c, the DPD is not yet in compliance with the majority of the paragraphs relating to the auditing protocol.

Regarding subparagraph C63d, as described in the *Current Assessment of Compliance* for paragraph U78, the DPD's Policy Focus Committee did not meet during this quarter, and the Monitor is awaiting information confirmation of the next scheduled meeting.

Regarding subparagraph C63e, as described in the *Current Assessment of Compliance* for paragraph U78, the DPD is continuing to meet to address issues of liability as required by subparagraphs U78e and C63e.

Based on the foregoing, the Monitor finds that the DPD is in compliance with subparagraphs C63d and e, but not yet in compliance with subparagraph C63c. The Monitor has not yet evaluated the DPD's compliance with subparagraph C63a and withholds a determination of 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 February 29, 2008, finding that the DPD was not yet in overall compliance with the paragraph. The Monitor found that the DPD remained in compliance with the policy requirements of the paragraph, but was not yet in compliance with the implementation requirements of subparagraphs C64a-c because training had not begun under the *Detention Officer Training Lesson Plan*. The Monitor withheld a determination of the DPD's compliance with the implementation requirements of subparagraph C64d pending further review of the DPD's Video Review Protocol.

### *Current Assessment of Compliance*

Regarding subparagraph C64a, on September 11, 2008, Monitoring Team members conducted inspections of the Northeastern, Eastern, Northwestern, Western, and Southwestern Districts. The cameras in the prisoner processing areas were functioning in each of the districts. The DPD states in its 20th Quarter Status Report that the installation of the equipment and continuous operation of the video equipment is the responsibility of Technology Services, which continues to operate, maintain and ensure the proper functionality of all digital video equipment in holding cell processing areas. The DPD further acknowledges that it has not yet commenced training of DPD members regarding this requirement.

Regarding subparagraph C64b, in its 20th Quarter Status Report, the DPD noted that the *UOFHC Audit*, which was submitted on July 31, 2008, evaluated ten UOF incidents. The *PIHC Audit*, which was submitted on July 31, 2008, evaluated two detainee injury incidents. Of those 12 incidents, there were eight incidents where a supervisory review of the videotape should have been performed. However, it was determined that the supervisory review of videotape was actually performed for only one incident. In the remaining incidents a supervisory review of the videotape did not take place because there was a pending request for the videotape to be obtained, the videotape was no longer available, or the video system did not work at the time of the incident.

Regarding subparagraph C64c, in its 20th Quarter Status Report, the DPD noted that Technology Services maintains the archives of digitally captured video for 90 days, or for longer periods when an investigation will take longer than 90 days to conclude. The video archive system also provides supervisors the option of downloading the video to a desktop computer and/or a CD-ROM for review and retention purposes. However, the issues identified in the *PIHC Audit* in connection with subparagraph C64b and those identified in the *Current Assessment of Compliance* for paragraphs U100-102 are relevant here. The DPD must ensure that all video archives are properly maintained.

Regarding subparagraph C64d, in its 20th Quarter Status Report, the DPD noted that members of the HCCC performed monthly random inspections of the video camera equipment located within the processing areas of all district holding cell facilities for operability on June 13, 2008, July 17, 2008 and August 15, 2008. In addition, the DPD reported that when a camera is identified as inoperable, Technology Services is notified to ensure that repairs are made. The inspections confirmed that all detainee processing area cameras were in operation, with the exception of the Eastern District due to an electrical problem that occurred there. Cameras in the Eastern District were functioning at the time of the Monitor's inspection on September 11, 2008.

The Monitor also finds that the Training Directive related to paragraph C64 is sufficient to meet the policy component of the subparagraph. The Monitor has recommended, however, that when operations allow, the number of reviews should be increased to more than once per month. The DPD has confirmed that it has not yet implemented this requirement to begin reviewing video of the prisoner processing areas. The DPD is prepared to begin training geared towards implementation.

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 C64.

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

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

In order to address the requirements of paragraph C65, the DPD's AT has historically conducted three separate audits of a) investigations of UOF in holding cells, b) investigations of PIs in holding cells, and c) investigations of AOM in holding cells. The Monitor has similarly split its evaluation of this paragraph into three separate evaluations (subparagraphs C65a, C65b and C65c).

***Background***

The Monitor last assessed the DPD's compliance with subparagraph C65a during the quarter ending February 29, 2008, finding that the DPD was not yet in compliance as the DPD did not submit the *UOFHC Audit*, which was due on January 31, 2008.

The Monitor last assessed the DPD's compliance with subparagraphs C64b and C65c during the quarter ending May 31, 2008, finding the DPD in compliance with the requirements of these subparagraphs.

***Current Assessment of Compliance***

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

On July 31, 2008, the DPD submitted a *UOFHC Audit*, which found that the Department was not yet in compliance with all paragraphs tested (C55-57, and U27-40). During the current quarter, the Monitor began its review of the audit report and working papers for this audit and conducted on-site reviews of all ten investigations included in the audit. However, the Monitor has not yet completed its overall evaluation of this audit or the DPD's compliance with subparagraph C65a. The Monitor expects to report its findings in the Monitor's Report for the Quarter Ending November 30, 2008.

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

On July 31, 2008, the DPD submitted a *PIHC Audit*, which found that the Department was not yet in compliance with all paragraphs tested (C55, C57, U27-36, and U39.) During the current quarter, the Monitor began its review of the audit report and working papers for this audit and conducted on-site reviews of the two investigations included in the audit. However, the Monitor has not yet completed its overall evaluation of this audit or the DPD's compliance with subparagraph C65b. The Monitor expects to report its findings in the Monitor's Report for the Quarter Ending November 30, 2008.

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

On July 31, 2008, the DPD submitted an *Allegations of Misconduct Investigations in Holding Cells (AOMHC) Audit*, which found that the Department met the requirements of paragraphs U29-30, U32-33, U58, U61, U65-67 and U68; and did not meet the requirements of paragraphs U27 and U59. The AT also found the DPD in partial compliance with paragraph U28, and did not evaluate compliance with paragraph U31. During the current quarter, the Monitor began its review of the audit report and working papers for this audit and conducted on-site reviews of all five investigations included in the audit. However, the Monitor has not yet completed its overall evaluation of this audit or the DPD's compliance with subparagraph C65c. The Monitor expects to report its findings in the Monitor's Report for the Quarter Ending November 30, 2008.

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

Paragraph C66 requires the DPD to form a HCCC that is responsible for assuring compliance with the relevant provisions of the COC CJ. This paragraph also requires the HCCC to conduct regularly scheduled semi-annual audits of all facilities that house holding cells to evaluate and report upon compliance with the fire detection, suppression and evacuation program as detailed in the COC CJ.<sup>122</sup>

***Background***

The Monitor last assessed the DPD's compliance with the HCCC requirement of paragraph C66 during the quarter ending February 29, 2008, finding the DPD in compliance because the HCCC met at least once per month and the meetings were attended by members with appropriate expertise in the topic areas discussed. These topic areas 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.

The Monitor last assessed the DPD's compliance with the *Fire Safety Practices and Policies (FSPP) Audit* requirement of paragraph C66 during the quarter ending May 31, 2008, finding the DPD in compliance. The Monitor determined that the *FSPP Audit* due and submitted on January 31, 2008 was conducted by appropriate members of the HCCC and was a quality audit.

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<sup>122</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.

## *Current Assessment of Compliance*

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

In order to assess the DPD's compliance with the HCCC requirements of paragraph C66 during the current quarter, on August 28, 2008, the Monitor requested that the DPD submit a current listing of all members assigned to the HCCC and their roles within the HCCC; a listing of the dates and attendance rosters of all HCCC meetings held from May 1, 2008 through July 31, 2008; and a copy of the Agenda and minutes taken (if any) describing the subject matter and content of the meetings. The Monitor also attended a scheduled HCCC meeting on September 25, 2008.<sup>123</sup>

The September 25th meeting was attended by appropriate HCCC members and the items discussed were in relation to areas pertinent to achieving compliance with various COC CJ provisions, such as the operation of fire sprinkler systems in the holding cells; scheduling training on the Audit Protocol for HCCC members involved in the conduct of audits; and the use of the electronic blotters to document various holding cell activities. The HCCC members present took an active role in discussing remedies to solve recently identified issues and ways to further the DPD towards full compliance with the COC CJ requirements.

In regards to the requested documentation, the Monitor received some materials on September 15, 2008 and additional materials on September 24, 2008. Given the timing for receipt of these materials, the Monitor has not yet completed its review and assessment of the DPD's compliance with the HCCC requirement of paragraph C66.

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

The DPD did not submit the Fire Safety Program and Policies (FSPP) Audit Report that was due by July 31, 2008.<sup>124</sup>

As a result, the Monitor finds that the DPD is no longer in compliance with the FSPP audit requirements of paragraph C66.

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<sup>123</sup> Due to scheduling issues, the HCCC meeting attended by the Monitor was after the end of the current quarter.

<sup>124</sup> The DPD advised the Monitor that the non-submission of this audit was a strategic decision to allocate its audit resources to other COC CJ required audits, since the DPD is currently upgrading the fire alarm and sprinkler systems at various district buildings, and this audit would have found the DPD in non-compliance during the period of transition. These upgrades are being made pursuant to the court-ordered retrofit of DPD facilities in order to comply with certain LSC requirements, and are required to be completed by December 31, 2008. They are described in the Executive Summary to this report and in the *Current Assessment of Compliance* for paragraphs C14-21. The DPD expects to conduct the FSPP audit once the LSC upgrades are completed.

### **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 May 31, 2008, finding the DPD in compliance. The Monitor determined that the *EPP Audit* submitted by the DPD on January 31, 2008 was appropriately conducted by the HCCC and was a quality and thorough audit.

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

During the current quarter, the Monitor completed its review of the *EPP Audit* submitted by the AT on July 31, 2008 and the associated audit work plan, working papers and fieldwork documents.

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

- The audit report was submitted on a timely basis by the required due date of July 31, 2008 and was appropriately conducted by members of the AT and HCCC with expertise in emergency management.
- The audit included all substantive paragraphs and found that the DPD has not yet achieved compliance with the requirements of paragraphs C23-25 and the training requirements of paragraph C75. Based on its review of the audit, the Monitor concurs with the AT's findings.<sup>125</sup>
- On June 5, 2008, revised ERPs were approved by the DFD for the five districts that contain holding cells.<sup>126</sup> The AT, the HCCC and the DPD members all played an important role in the revision process and are commended for facilitating the development of the significantly improved ERPs.
- Paragraph C67 specifically requires that the EPP audit include a sampling of key maintenance and inventory records, which are required by subparagraph C25b (requires routine testing, inventory and maintenance of keys and locks.) The AT was able to conduct

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<sup>125</sup> The Monitor notes that while the AT found the DPD non-compliant with the primary paragraphs C23-25, the AT correctly identified that the DPD was in compliance with certain subparagraphs and/or components of these paragraphs. Refer to the Monitor's *Current Assessment of Compliance* for paragraphs C23-25 for further detail.

<sup>126</sup> Central District does not have holding cells, but its staff oversee the cells at the DRH, where detainees from other districts may be taken if they are in need of medical attention. The hospital has its own emergency plan.

this testing in the district buildings using the new HCCC monthly inspection form<sup>127</sup> and correctly found the DPD in non-compliance due to the lack of documentation. However, the HCCC did not conduct these inspections at the DRH holding cell facility and the AT also excluded the DRH from its testing of the C67 and C25b requirements. The AT stated that the examination of key and locks at DRH was performed in other audit tests, specifically by testing detention officers' ability to identify keys by touch, the ability to manually unlock cell doors, and the review of fire drill documentation. However, none of the aforementioned tests address the requirement for "routine" testing, maintenance and inventory, nor do they satisfy the paragraph C67 requirement for the audit to include a sampling of records in all buildings containing holding cells. Furthermore, as identified by the AT, the fire drills were not performed at the DRH for the period under review; as a result, the AT had no fire drill documentation to review in regards to keys and locks in any case. The AT should have included the DRH holding cells in its assessment of routine keys and locks testing, inventory and maintenance. The HCCC should also include the DRH holding cell facility in its monthly inspections schedule.

- In keeping with the established audit approach, during the period July 12 to 17, 2008, the AT conducted on-site interviews and "table-top" exercises with DPD holding cell staff to assess their knowledge of responsibilities during various emergency situations. With the exception of personnel from the DRH facility, the AT interviewed all ranks of DPD members with direct responsibility for detainees. In regards to the DPD personnel assigned to the DRH holding cells, the AT only interviewed PDOs; interviews of supervisors (OIC or Cellblock Supervisors) were not conducted, as no supervisors are stationed at the DRH's holding cells. However, the AT stated that the PDOs at DRH are responsible for making supervisory decisions during an emergency. Given this, the AT should have directed the interview questions for the testing of supervisory emergency preparedness knowledge to the PDOs, rather than excluding the questions altogether.
- With respect to the on-site interviews, the AT appropriately revised the interview questions to address the new ERPs and introduced more open-ended questions that are a stronger test of the individuals' knowledge. Although the Monitor welcomes these changes, it notes that open-ended questions require more complete documentation of answers to ensure they can be accurately analyzed and compared for consistency. The AT should thoroughly review the interview questions and accompanying answers prior to the next audit to ensure that interviewees' answers are adequately documented and assessed.
- The *EPP Audit* is required to include an overall evaluation of emergency preparedness, which includes testing the ERPs to ensure they are fully implemented and appropriately address all fundamental safety issues. However, in contrast to prior audits, the AT

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<sup>127</sup> Form DPD715, *Evaluation of the Operation of Holding Cells*, which was developed in response to paragraph C62.

eliminated testing to determine if evacuation routes are posted on the cellblock walls.<sup>128</sup> These and other safety issues of the ERPs should be evaluated in connection with the AT's evaluation of emergency preparedness.<sup>129</sup>

- The audit test results were accurately transferred from the testing matrices to the audit report and the report was well-presented, logical and included a number of important safety recommendations.
- The AT included a useful Appendix to the audit report illustrating compliance by Consent Judgment paragraph. This Appendix provides the DPD's executive staff and Monitor an at-a-glance picture of Consent Judgment compliance by paragraph and subparagraph. While this Appendix is not specifically required by the audit paragraph and the Monitor did not consider it in the assessment of the audit, the Monitor identified some inaccuracies and missing information, which were communicated to the AT.

As described above, the Monitor determined that the audit contained substantial qualitative performance-related deficiencies that significantly affected the overall quality of the audit. Based on the foregoing, the Monitor finds that the DPD is no longer in compliance with paragraph C67.

### **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 February 29, 2008, finding that the DPD was not yet in compliance as the *Medical and Mental Health Care Programs and Policies Audit Report* submitted by the DPD on January 31, 2008 had both quantitative and qualitative deficiencies that significantly affected the quality of the audit.

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<sup>128</sup> The ERPs require site-specific evacuation routes to be posted on the cellblock wall and in the common path of travel.

<sup>129</sup> In light of the extent of operational provisions contained in the DPD's ERPs, future audits will likely need to incorporate a system of "weighting" to consider the significance of each requirement when evaluating overall emergency preparedness.

### *Current Assessment of Compliance*

The DPD did not submit the *Medical and Mental Health Care Programs and Policies Audit* that was due by July 31, 2008. Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with the requirements of paragraph C68.

### *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 February 29, 2008, finding the DPD in compliance. The Monitor determined that the *Detainee Safety Program and Policies Audit* submitted on January 31, 2008 was appropriately conducted by the HCCC and was a quality and thorough audit.

### *Current Assessment of Compliance*

On July 31, 2008, the DPD submitted a *Detainee Safety Program and Policies Audit*, which found that the Department was not yet in compliance with all paragraphs tested (C35-38). During the current quarter, the Monitor began its review of the audit report and audit working papers for this audit. Based on the foregoing, the Monitor has not yet completed its evaluation of this audit or the DPD's compliance with paragraph C69.<sup>130</sup>

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

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

### *Background*

The Monitor last assessed the DPD's compliance with paragraph C70 during the quarter ending May 31, 2008, finding the DPD in compliance. The Monitor determined that the *Environmental Health and Safety (EH&S) Audit* submitted by DPD on January 31, 2008 was appropriately conducted by the HCCC and was a quality and thorough audit.

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<sup>130</sup> The Monitor expects to report its findings in its Report for the Quarter Ending November 30, 2008.

### *Current Assessment of Compliance*

During the current quarter, the Monitor completed its review of the *EH&S Audit* submitted by the DPD on July 31, 2008. The Monitor determined that the audit methodology was not significantly altered from the prior two audits of this topic that were found to be compliant.<sup>131</sup> The Monitor conducted an abbreviated review where the audit's findings of DPD's compliance with Consent Judgment provisions had not changed from the prior audit, and the Monitor conducted detailed testing of the audit fieldwork in those areas where the compliance findings had changed from non-compliant to compliant.

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

- The audit was submitted by the DPD in a timely manner on July 31, 2008, and was conducted by members of the HCCC, as required by paragraph C70, along with members of the AT.
- The audit properly included all of the substantive paragraphs related to this topic, including an assessment of related training. The audit methodology, including the time periods selected for review, the population determination and sampling, sufficiently tested each of the objectives and substantive paragraphs.
- The Monitor was able to reconcile the findings reported to the supporting work papers and reports and to the conclusions reached for each objective. The Monitor concurs with all of the AT's reported conclusions, namely that the DPD is in compliance with paragraphs C39 and C41-45 but is not yet in compliance with paragraph C40.
- Over the prior three audits, the AT has alternated its sampling procedures for testing the daily and weekly logs, sometimes using professional judgment when selecting sample sizes and sometimes using statistical methods to sample these same documents. Although both judgmental and statistical sampling are acceptable audit methods, going forward the AT should use statistical sampling in order to ensure consistency and enhance the validity and comparability of the audit findings.
- While the AT appropriately included DRH in the unannounced on-site inspections for cleanliness and repairs, similar to the most recent *EH&S Audit* submitted on January 31, 2008, the AT was unable to review cleaning or maintenance documentation at the DRH as no documentation is completed.<sup>132</sup> While the Monitor acknowledges that the AT could not review such documentation in this audit, futures audits should include this review when it

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<sup>131</sup> This approach is described in the *Monitor's Methodologies* section, above.

<sup>132</sup> DRH Environmental Service Department (ESD) and not the DPD personnel assigned to the DRH holding cells are responsible for cleaning and maintenance of the holding cells.

becomes available in order to support the DPD's compliance with paragraph C41 at the DRH holding cells.<sup>133</sup>

- As part of its on-site reviews the AT also inspected all holding cells for suicide hazards and compliance with the requirements of paragraph C34.<sup>134</sup> Although the AT completed these inspections and appropriately found the Department in compliance, as no suicide hazards were identified, the results of this testing were not reported by either objective or paragraph. The audit report should include the results of all testing, especially in connection to Consent Judgment compliance.

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

### **Paragraph C71 – Audits of 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 May 31, 2008, finding the DPD in compliance. The Monitor determined that the *Detainee Food Service Program (and Personal Hygiene Practices Audit)* submitted on January 31, 2008 was appropriately conducted by the HCCC and was a quality and thorough audit.

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

On July 31, 2008, the DPD submitted a *Detainee Food Service Program and Personal Hygiene Practices Audit FSP*, which found that the Department was not yet in compliance with paragraphs C50c-d, C51, C71a and C78b and in compliance with paragraphs C49, C50a-b and C71b. During the current quarter, the Monitor began its review of the audit report and working papers for this audit and has met with the AT to discuss several points of consideration. Based on the foregoing, the Monitor has not yet completed its evaluation of this audit or of the DPD's compliance with paragraph C71.<sup>135</sup>

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<sup>133</sup> The Monitor understands that the HCCC is working with DRH ESD personnel to facilitate the completion of cleaning and maintenance documentation.

<sup>134</sup> Paragraph 34 requires that the DPD remove or make inaccessible all suicide hazards in holding cells including exposed pipes, radiators and overhead bars.

<sup>135</sup> The Monitor expects to report its findings in its Report for the Quarter Ending November 30, 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>136</sup>

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. The Monitor last assessed the DPD's compliance with paragraphs C73, 75-78 during the quarter ending August 31, 2007. The Monitor again assessed compliance with these paragraphs during the current quarter. The results of our current assessments follow.

**Paragraphs C73; C75-78 – Training of Detention Officers Emergency Preparedness Training; Mental/Health Screening Program Testing; Detainee Safety Programs and Polices; Environmental Health and Hygiene Training**

Paragraph C73 directs the DPD to provide comprehensive pre-service and in-service training to all detention officers.

Paragraph C75 directs the DPD to provide all detention officers, supervisors of detention officers and members of the Holding cell compliance committee with annual training in emergency preparedness. Such training shall include drills and substantive training in the following topics:

- emergency response plans and notification responsibilities;
- fire drills and use of fire extinguishers and other fire suppression equipment;
- key control drills and key control policies and procedures; and
- responding to emergency situations, including scenarios detention officers likely will experience.

Paragraph C76 directs the DPD to provide all detention officers, supervisors and members of the Holding Cell Compliance Committee with annual training in the medical/mental health screening programs and polices. Such training shall include and address the following topics:

- prisoner intake procedures and medical and mental health protocols, including protocols for transferring or housing prisoners with infectious diseases, disabilities and/or requiring increased monitoring;

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<sup>136</sup> Refer to the UOF CJ training section in this report for additional information regarding DPD training-related issues.

- recoding, updating and transferring prisoner health information and medications;
- the prescription medication policy, including instructions on the storage, recording and administration of medications; and
- examples of scenarios faced by detention officers illustrating proper intake screening and action in response to information regarding medical and mental health conditions.

Paragraph C77 directs the DPD to provide all detention officers, supervisors and members of the Holding Cell Compliance Committee with annual training in detainee safety programs and policies. Such training shall include and address the following topics:

- the security screening program, including protocols for identifying and promptly and properly housing suspected crime partners, vulnerable, assaultive or special management prisoner;
- protocols for performing, documenting and obtaining supervisory review of holding cell checks;
- protocols concerning prisoners in observation cells, including protocols for direct and continual supervision, for spotting potential suicide hazards and providing appropriate clothing; and
- examples of scenarios faced by detention officers illustrating appropriate security screening, segregation and monitoring techniques.

Paragraph C78 directs the DPD to provide all detention officers, supervisors and members of the Holding Cell Compliance Committee with annual training in environmental health and safety and hygiene. Such training shall include and address the following topics:

- Cell block cleaning and maintenance protocols and
- Sanitary food preparation and delivery protocols.

### ***Background***

The Monitor last assessed the DPD's compliance with paragraphs C73 and C75-78 during the quarter ending August 31, 2007, finding that the DPD was not yet in compliance with any of these paragraphs. The DPD did not submit to the Monitor appropriate documentation in connection with the requirements of these paragraphs, including lesson plans for the Monitor's review. The DPD continued conducting custodial detention training on an ongoing basis, despite the fact that the lesson plan for the current training had not been submitted to the Monitor. According to the DPD's Sixteenth Quarter Status report, the DPD's CDDT identified deficiencies in the *Detention Officer Training Lesson Plan*, and was in the process of revising it. These revisions were to be based upon general TA and recommendations and evaluations provided by the Monitor from other recently reviewed lesson plans.

### *Current Assessment of Compliance*

Since the DPD's Detention Officer Training Lesson Plan was submitted to the Monitor on November 17, 2007, it has been submitted and re-submitted numerous times in response to feedback from the Monitor. During the quarter ending May 31, 2008, the Monitor forwarded a memorandum containing additional recommendations and comments regarding the lesson plan on April 24, 2008. The CDDT resubmitted a revised lesson plan on May 9, 2008. The Monitor met with the DPD on May 27, 2008 to discuss issues related to the lesson plan. Following the meeting, the DPD made additional revisions to the lesson plan to address the concerns raised at the meeting. The Monitor received the revised plan on May 28, 2008, and again on June 26, 2008. On July 22, 2008, the Monitor indicated that the lesson plan adequately addresses the applicable COC CJ paragraphs. According to the DPD, the Training Center is in the process of devising a schedule to deliver this training to DPD members who are required to receive it.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraphs C73 and C75-78.

## **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.

## CONCLUSION

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In August, the DPD began utilizing the Management Awareness System department-wide and commenced a 40-hour in-service training course that will cover many of the Consent Judgment requirements. These are significant achievements for which the City and the DPD are commended. The DPD also continues to work toward complying with the December 31, 2008, court-ordered deadline to retrofit the holding cells.

Nevertheless, the DPD continues to face challenges to compliance, many of which are related to the lack of adequate or complete documentation.

Sheryl Robinson Wood  
Independent Monitor

October 15, 2008

### **Principal Contributors**

Joseph Buczek  
Jerry Clayton  
Penny Cookson  
Charles Curlett  
Hazel de Burgh  
Ronald Filak  
Thomas Frazier  
Marshall Johnson  
Denise Lewis  
Jane McFarlane  
Terry Penney  
Sherry Woods

**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
CBS	Cell Block Supervisor
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
DDMHIL	Daily Detainee Meal and Hygiene Items Log
DDOH	Detroit Department of Health
DFD	Detroit Fire Department
DFF	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
FSPP	Fire Safety Practices and Policies [Audit]
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
PI	Performance Indicator
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