

REPORT OF  
THE INDEPENDENT MONITOR  
FOR THE  
DETROIT POLICE DEPARTMENT



REPORT FOR THE QUARTER ENDING  
FEBRUARY 28, 2009  
ISSUED APRIL 20, 2009

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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 twenty-second quarterly report of the Independent Monitor.<sup>4</sup>

The two Consent Judgments contain a total of 203 substantive paragraphs and subparagraphs with which the City and the DPD must substantially comply, 129 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.

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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 (subparagraphs U88c and f and paragraphs U89, U90, 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 203. 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.

Each quarter, the Monitor examines a certain number of substantive paragraphs and subparagraphs. During the twenty-second quarter, which ended on February 28, 2009, the Monitor examined a total of 97 paragraphs or subparagraphs (68 paragraphs or subparagraphs of the UOF CJ and 29 paragraphs or subparagraphs of the COC CJ). Of these, the City and the DPD are in compliance with 25, in partial compliance with three, and not yet in compliance with 55;<sup>8</sup> the Monitor did not complete its evaluation<sup>9</sup> of 14 paragraphs or subparagraphs.<sup>10</sup>

As described above, overall, the Monitor is assessing the City and DPD's compliance with 203 paragraphs and subparagraphs, 129 from the UOF CJ and 74 from the COC CJ. The City and the DPD are currently in compliance with 73 of these paragraphs and subparagraphs (47 from the UOF CJ and 26 from the COC CJ)<sup>11</sup> and in partial compliance with six (four from the UOF CJ and two from the COC CJ).<sup>12</sup>

### *Use of Force Paragraphs*

The Monitor assessed the Department's compliance with UOF CJ requirements regarding the use of firearms, the DPD's intermediate force device, and the use of chemical spray.

The Monitor has not completed the evaluation of the DPD's firearms qualification program. The Monitor found that the DPD is not yet in compliance with its policy prohibiting officers from

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<sup>8</sup> The Monitor continues to utilize the terms "notable progress" and "significant progress" for paragraphs that are not yet in compliance or partial compliance. This quarter, there were nine non-compliant paragraphs that qualified for the notable progress designation (U49, U115-122) and three that qualified for the significant progress designation (U25-26 and C62).

<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> Included in these 73 paragraphs and subparagraphs are four paragraphs and subparagraphs that were in compliance prior to the current quarter but for which a compliance determination was not yet completed during the current quarter. Two of these are from the UOF CJ (U61 and U96) and two are from the COC CJ (C65b and C65c).

<sup>12</sup> Included in these five paragraphs and subparagraphs are two subparagraphs that were in compliance prior to the current quarter but for which a compliance determination was not yet completed during the current quarter. One of these is from the UOF CJ (U95a) and one is from the COC CJ (C65a).

firing at or from a moving vehicle or intentionally placing themselves in the path of a moving vehicle. In three applicable incidents, the conduct of officers who violated the policy was found to be justified due to exigent circumstances; however, the supervisors conducting the investigations failed to include an evaluation of the officers' tactics in the investigatory reports, making it difficult to determine the appropriateness of the officers' actions. The DPD also is not yet in compliance with the implementation of policies regarding authorized ammunition and number of rounds carried primarily due to the fact that it appears that the inspection forms are not being completed across the board.

The Monitor found that the DPD is not yet in compliance with the training and implementation requirements related to the DPD's intermediate force device, the PR-24. The DPD has not yet trained a sufficient number of members on the device. PR-24s are not supposed to be issued to members until they receive training.

The Monitor had previously found the DPD in compliance with requirements regarding the use of chemical spray. However, the Monitor found that the DPD was no longer in compliance with these requirements in our previous assessment (the quarter ending August 31, 2008) and again during the current quarter, as Department personnel are not consistently documenting the investigation of each use of chemical spray using Form UF-002A (Supervisor's Investigation Report).

The Monitor also assessed the DPD's compliance with requirements to revise its policies regarding prisoners and comply with the DPD's use of force policies and procedures for any uses of force on prisoners in holding cells. The Monitor determined that two of eleven force incidents that occurred within holding cells reviewed were in violation of the DPD's use of force policies. As a result, the Monitor found the DPD in partial compliance (it had previously been in full compliance).

The Monitor also found that the DPD was not yet in compliance with the requirement that officers utilize appropriate precautions when interacting with a prisoner who has previously demonstrated he or she is recalcitrant or resistant. Reports reviewed failed to document that additional officers were summoned when officers were dealing with resistant detainees. The DPD has recently indicated that going forward officers will begin documenting any assistance requested and/or provided in connection with force incidents.

Lastly, during inspections conducted by the Holding Cell Compliance Committee during September through December 2008, no detainees were observed handcuffed to fixed objects at all. As a result, the Monitor found the DPD in compliance with the prohibition against handcuffing prisoners to benches for longer periods of time than are necessary, but noted that additional, more comprehensive, testing should be conducted in the future to ensure compliance.

### *Arrest and Detention Paragraphs*

The Monitor assessed the Department's compliance with several UOF CJ requirements regarding documentation of prompt judicial review, holds, restrictions and material witnesses. The DPD regained a compliant assessment for material witnesses but failed to achieve compliance or dropped out of compliance in all other areas that were evaluated this quarter.

The DPD did not yet achieve full compliance and is no longer in partial compliance with the requirements related to arraignments occurring within 48 hours. Detainees were presented for arraignment after 48 hours had elapsed with no exigent circumstances documented in 10 of 39 arrests reviewed, resulting in a compliance rate of 74.4%.

The Monitor found that the DPD is not yet in compliance with the requirement that the DPD submit to the prosecutor's office, within 24 hours of the arrest, a warrant request for arraignment on the charges underlying the arrest. The Monitor determined that warrant requests were not submitted within 24 hours for 21 of 61 arrests reviewed. However, the resulting compliance rate of 65.6% demonstrates that the DPD has made notable progress in this area.<sup>13</sup>

The Monitor also found that the DPD is no longer in compliance with requirements regarding the documentation of late requests for arraignment warrants and late arraignments. Of 25 arrests that required an auditable form, the Monitor determined that the required auditable form was not completed when required in five instances in which a warrant request was not submitted within 24 hours, in one instance in which the detainee was not presented within 48 hours, and in six instances in which the warrant request was not submitted within 24 hours and the detainee was not presented within 48 hours.

The Monitor also found that the DPD is not yet in compliance with requirements relating to the documentation of holds and restrictions, as the DPD is not consistently documenting the dates and times that holds are identified or cleared and the dates and times that restrictions are lifted.

As mentioned above, significantly, the DPD again achieved 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, after falling out of compliance during the previous assessment. For two material witnesses identified from June 1, 2008 through November 30, 2008, the DPD provided evidence that court orders were obtained prior to taking the material witnesses into DPD custody and all required information responsive was documented on auditable forms and attached to the court orders.

Lastly, the DPD remained out of compliance with the requirements regarding Commander reviews for violations of prompt judicial review, holds, restrictions and material witness

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<sup>13</sup> On April 15, 2009 the Court issued an Order Amending the Consent Judgments, agreeing to the parties' request to change the 24-hour requirement in paragraphs U50-51 and U53 to 48 hours. The Order, which also granted changes to the frequency of audits required under paragraph C72, will be more fully described in the Monitor's Report for the Quarter Ending May 31, 2009.

detention policies. There was no evidence that the Commander review occurred for ten out of 11 violations that occurred in the applicable areas.

### *External Complaints*

Regarding the intake and tracking of external complaints, the Monitor completed its review of 48 external complaint investigations that were completed by the Office of the Chief Investigator during the month of September 2008 and determined that the DPD continues to properly define *complaint* and *misconduct* as those terms are defined and all complaints were accepted and documented in accordance with the UOF CJ. None of the investigations included inappropriate descriptions of the complainant's demeanor and physical condition or the officer's subjective opinion of the complainant's mental competency or veracity. Additionally, a unique identifier was assigned to all Office of the Chief Investigator complaints and was provided to the complainant along with a description of the basis for the complaint.

Based upon the Monitor's review of the 48 complaint investigations that the Office of the Chief Investigator closed in September 2008, the Monitor determined that the DPD was in compliance with review and evaluations requirements for the Chief Investigator and the Board of Police Commissioners and with resolving the matters reaching one of the required dispositions. However, the DPD is not yet in compliance with the requirement that the Chief of Police complete reviews of external complaints within seven days of Board of Police Commissioner's reviews due to a lack of documentation. Also, there were mixed results in complying with the implementation requirements of revisions to the general external complaint investigations policies.

Regarding the implementation of the general external complaint policies, the Monitor found the DPD in compliance with the requirements regarding the appropriate referral, informal resolution of only specific types of complaints, mandatory in-service training for all investigators, and notification to complainants of the investigations' outcomes. The Monitor found that the DPD was not yet in compliance with implementation requirements to refer complaints to the appropriate agency within five business days, periodically keep the complainant informed of the complaint status, and for investigators to complete all investigations within 60 or 90 days of receiving the complaint. In fact, it took 110 to 748 days to close 43 of the 48 investigations. The Monitor did not complete its evaluation of the requirement to develop written criteria for investigator applicants.

### *General Policies Paragraphs*

While the DPD continues to be in compliance with the policy requirements of UOF CJ general policies paragraphs, the Monitor found the DPD in overall non-compliance with the paragraphs reviewed primarily due to the fact that training has not yet been completed. While the DPD continues to conduct training on the applicable requirements of the section, it has not yet trained a sufficient number of its members. However, the DPD achieved partial compliance with the implementation of the requirement to develop a plan for adequate deployment of supervisors in the field by achieving a compliance rate of 87.3%. In addition, the DPD achieved compliance with the implementation of two of the three requirements regarding its policies on off-duty

officer police actions (prohibition on 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 also achieved compliance with the implementation requirements regarding prisoner policies.

### *Risk Management Paragraphs*

#### Management Awareness System

Although the DPD's Management Awareness System is available Department-wide, obstacles to its full and effective implementation remain. Some of the obstacles include infrastructure issues, such as computers with inadequate memory and inconsistent power supply; and the system's inability to consistently link and cross-reference information or capture and aggregate information for statistical analysis. There is also less than full user acceptance of the system. As a result, the Monitor found that the DPD is not yet in compliance with the implementation requirements of the Management Awareness System.

#### Risk Management Plan

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.

#### Performance Evaluation System

The Monitor assessed the DPD's compliance with the requirement to ensure that performance evaluations for all DPD employees occur at least annually and include consideration of a number of specific items. Of a sample of 94 evaluations reviewed, 25 evaluations had no issues pertaining to completeness, form, or evaluations of civil rights integrity and, where appropriate, supervisory oversight. The remaining 69 evaluations had issues in one or more area, including unexplained failures to submit a form, the use of outdated forms, no evaluation of civil rights integrity, and no evaluation of supervisory oversight.

#### Use of Video Cameras

The Monitor also assessed compliance with Consent Judgment requirements regarding scout car video recording equipment, prisoner processing video cameras and incident videotapes. The Monitor determined that the DPD has not effectively trained its personnel on or implemented its procedures to conduct periodic random reviews of videotapes and surveys of recording equipment, and that the in-car video recording system and implementation of the procedures had not improved measurably since the Monitor's last assessment. Although several technical

obstacles remain, the DPD continued its efforts to establish a functioning system.<sup>14</sup> The Monitor also found that the DPD is not yet in substantial compliance with its policy regarding video cameras in holding cells. Although the cameras have been installed in all processing areas, the DPD acknowledged that it had not commenced training of DPD members regarding this requirement. In addition, DPD inspections found some issues with working cameras, availability of videotapes of incidents and supervisory reviews of the videotape not occurring on a consistent basis.

### Discipline

The Monitor reviewed disciplinary files provided by the DPD pursuant to document request and determined that the DPD did not adhere to the disciplinary timeline in any of the seven applicable files reviewed. As a result, the DPD is no longer in compliance with requirements to eliminate the backlog of disciplinary cases and ensure that all disciplinary matters are resolved as soon as reasonably possible, and is not yet in compliance with requirements to schedule disciplinary hearings, trials, and appeals at appropriately frequent intervals to prevent a disciplinary backlog. The Monitor found the DPD in compliance with requirements regarding the disciplinary matrix, as the discipline imposed was within the range identified in the disciplinary matrix for all of the files that the Monitor reviewed.

### *Audit Paragraphs*

During the current quarter, the Monitor completed its review of the *Allegations of Misconduct Investigations* and the *Witness Identification and Questioning Audits* that were submitted on August 31, 2008. The Monitor found the *Witness Identification and Questioning Audit* in compliance, as it was a quality audit and it identified systemic problems and recommended important revisions to the DPD's processes. Conversely, the Monitor found the *Allegations of Misconduct Investigations Audit* in non-compliance because the audit contained numerous flaws in its scope that significantly affected the quality of the audit. In particular, the audit failed to include and properly assess several UOF CJ requirements regarding uses of force and external complaints that were applicable to some of the misconduct investigations reviewed. Additionally, similar to the most recent use of force audits conducted by the DPD's Audit Team, the *Allegations of Misconduct Investigations Audit* failed to identify that investigators had not evaluated officers' tactics along with the force used in the use of force investigations.

During the current quarter, the Monitor also completed its review of the DPD's compliance with the paragraph U93 requirement to follow up on officer-specific audit findings in connection with the UOF CJ audits submitted in 2008. Although the DPD has recently implemented a process to ensure that non-disciplinary and disciplinary corrective action is taken when appropriate on all UOF CJ audits going forward, this process was not in place to address all of the findings in the

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<sup>14</sup> After the end of this quarter, the DOJ offered and the City and DPD accepted, an offer of technical assistance to help the DPD develop a workable system. Also the DPD is currently conducting a pilot program using a prototype vehicle which is designed to eliminate the current obstacles.



2008 audits. The Monitor is confident that the DPD's newly implemented process will ensure that the significant officer-specific audit findings are properly addressed.

On January 31, 2009, the DPD submitted all seven COC CJ audits required to be submitted by that date: the *Holding Cells Investigations Audit*; the *Fire Safety Practices and Policies Audit Report*; the *Emergency Preparedness Program Audit*; the *Medical/Mental Health Program and Policies Audit*; the *Detainee Safety Program and Policies Audit*; the *Environmental Health and Safety Audit*; and, the *Food Service Program and Personal Hygiene Practices Audit*. On February 18, 2009, the DPD submitted the *Arrests Audit*, which was due to be submitted by May 31, 2009 and on February 28, the last day of the current quarter, the DPD submitted its *Prisoner Injury Investigations Audit*, which was due by that date, and the *Custodial Detention Audit*, which was due to be submitted by May 31, 2009. Of these ten audits submitted by the DPD during the current quarter, the Monitor completed its review of the *Environmental Health and Safety Audit* and the *Food Service Program and Personal Hygiene Practices Audit*, and is continuing its review of the remaining eight audits. The Monitor found both the *Environmental Health and Safety Audit* and the *Food Service Program and Personal Hygiene Practices Audit* in compliance, as they were quality audits and contained no significant or material deficiencies. The Monitor expects to complete its reviews of the remaining eight audits during the quarter ending May 31, 2009.

### *Training Paragraphs*

As described in previous quarters, the DPD began its in-service training program on August 4, 2008. This mandatory 40-hour block of training for all officers, recruits and supervisors includes the delivery of Consent Judgment approved lesson plans in the following areas: Use of Force, PR-24 Intermediate Weapon, Law of Arrest and Search and Seizure, and Supervisory Leadership and Accountability. The Monitor has attended a substantial number of in-service training classes and provided feedback to the DPD. Nevertheless, the DPD has not yet trained greater than 94% of its members required to attend this training, which is a requirement for achieving compliance. As a result the Monitor found that the DPD is not yet in compliance with requirements regarding supervisory training; leadership and command accountability training; risk assessment training; investigator training; and training on the handling of external complaints. However, the Monitor commends the DPD for the notable progress made in complying with these requirements by initiating and continuing in-service training over the past two quarters.

Regarding requirements to implement the DPD's FTO protocol, which was previously approved by the DOJ, the Monitor attended several days of the DPD's FTO 40-hour certification course and reviewed documentation of the selection of 9 new FTOs to determine whether it met the requirements of the protocol, finding the DPD in partial compliance with the requirements. With regard to the training course, while the Monitor found that there were various aspects of the course that were good, several areas need to be improved upon, including time management for the course, the lack of an agenda, and some aspects of the training that were not included in the lesson plan. Regarding the documentation for selecting the 9 FTO trainees, the Monitor found that the DPD met the requirements of the protocol.

The Monitor found the DPD in compliance with the requirement to meet with the City Law Department on a quarterly basis concerning the conclusion of civil lawsuits alleging officer misconduct and to distribute information gleaned from this process to risk management and training staff.

#### *COC CJ Holding Cell Paragraphs*

The Monitor assessed compliance with COC CJ requirements to develop and implement environmental health and safety policies for all facilities that maintain holding cells. In doing so, the Monitor reviewed and relied upon the *Environmental Health and Safety Audit*. The audit and the Monitor found the DPD in compliance with the requirements to ensure that all holding cells are maintained in a clean and sanitary manner; design and implement a cleaning policy for routine cleaning and supervisory inspection of the holding cells and nearby areas; provide adequate heating and ventilation for all buildings containing holding cells; repair all broken or malfunctioning lighting, toilets, sinks and windows in holding cells and observation cells; and provide all prisoners with reasonable access to toilets and potable water 24 hours-a-day. However, the audit and the Monitor found that the DPD is not yet in compliance with the requirement for the DPD to implement a maintenance policy for all holding cells that requires timely performance of routine maintenance, as well as the documentation of all maintenance requests and responses in an auditable log. The DPD's Audit Team found 25% of the maintenance logs included in the selected time period were missing, and the available logs did not contain adequate detail to track the status of the repair requests.

In assessing compliance with requirements regarding food service and personal hygiene, the Monitor reviewed and relied upon the DPD's *Detainee Food Services Programs and Personal Hygiene Practices Audit*. The audit and the Monitor found that the DPD was in compliance with requirements regarding the availability of personal hygiene items, in partial compliance with requirements regarding food service and storage, and not yet in compliance with the implementation of the food service policy. Although the AT found that the DPD met many of the requirements regarding the storage and service of food to detainees, the DPD was not adequately documenting the routine recordation of the temperature, cleaning, and sanitation of the refrigerators as required and was not consistently documenting its processes in order to demonstrate compliance. Regarding the development and implementation of food service policies, non-compliance was largely based on deficiencies in documentation.

**REPORT CONTENTS:**

**SECTION ONE: INTRODUCTION.....1**

- I. BACKGROUND .....1**
- II. MONITOR’S ROLE.....2**
- III. FINDINGS FROM COMPLIANCE ASSESSMENTS .....2**
- IV. METHODOLOGIES .....3**
- V. REPORT CARD .....5**
- VI. MONITOR’S PLEDGE.....5**

**SECTION TWO: COMPLIANCE ASSESSMENTS - THE USE OF FORCE AND  
ARREST AND WITNESS DETENTION CONSENT JUDGMENT .....7**

- I. USE OF FORCE POLICY.....7**
  - A. General Use of Force Policies.....7
  - B. Use of Firearms Policy.....7
  - C. Intermediate Force Device Policy.....11
  - D. Chemical Spray Policy.....12
- II. INCIDENT DOCUMENTATION, INVESTIGATION, AND REVIEW ...15**
  - A. General Investigations of Police Action .....15
  - B. UOF and Prisoner Injury Investigations .....15
  - C. Review of Critical Firearms Discharges and In-Custody Deaths .....15
- III. ARREST AND DETENTION POLICIES AND PRACTICES.....16**
  - A. Arrest Policies.....16
  - B. Investigatory Stop Policies .....16
  - C. Witness Identification and Questioning Policies .....17
  - D. Prompt Judicial Review Policies .....17
  - E. Hold Policies.....20
  - F. Restriction Policies .....21
  - G. Material Witness Policies .....22

H. Documentation of Custodial Detention .....	24
I. Command Notification.....	24
<b>IV. EXTERNAL COMPLAINTS .....</b>	<b>26</b>
A. Intake and Tracking .....	27
B. External Complaint Investigations.....	28
<b>V. GENERAL POLICIES.....</b>	<b>33</b>
<b>VI. MANAGEMENT AND SUPERVISION .....</b>	<b>40</b>
A. Risk Management Database.....	41
B. Performance Evaluation System.....	46
C. Oversight.....	47
D. Use of Video Cameras .....	57
E. Discipline .....	59
<b>VII. TRAINING .....</b>	<b>63</b>
A. Oversight and Development .....	63
B. Use of Force Training .....	64
C. Firearms Training.....	64
D. Arrest and Police-Citizen Interaction Training.....	64
E. Custodial Detention Training.....	64
F. Supervisory Training .....	66
G. Investigator Training.....	67
H. Field Training.....	68
<b>VIII. MONITORING, REPORTING, AND IMPLEMENTATION.....</b>	<b>70</b>
<b>SECTION THREE: COMPLIANCE ASSESSMENTS - THE CONDITIONS OF CONFINEMENT CONSENT JUDGMENT .....</b>	<b>71</b>
<b>I. FIRE SAFETY POLICIES .....</b>	<b>71</b>
<b>II. EMERGENCY PREPAREDNESS POLICIES .....</b>	<b>71</b>
<b>III. MEDICAL AND MENTAL HEALTH CARE POLICIES .....</b>	<b>72</b>
<b>IV. PRISONER SAFETY POLICIES .....</b>	<b>72</b>

<b>V.</b>	<b>ENVIRONMENTAL HEALTH AND SAFETY POLICIES .....</b>	<b>73</b>
<b>VI.</b>	<b>POLICIES CONCERNING PERSONS WITH DISABILITIES.....</b>	<b>76</b>
<b>VII.</b>	<b>FOOD SERVICE POLICIES .....</b>	<b>76</b>
<b>VIII.</b>	<b>PERSONAL HYGIENE POLICIES.....</b>	<b>79</b>
<b>IX.</b>	<b>USE OF FORCE AND RESTRAINTS POLICIES.....</b>	<b>80</b>
<b>X.</b>	<b>INCIDENT DOCUMENTATION, INVESTIGATION AND REVIEW.....</b>	<b>84</b>
<b>XI.</b>	<b>EXTERNAL COMPLAINTS .....</b>	<b>84</b>
<b>XII.</b>	<b>GENERAL POLICIES.....</b>	<b>84</b>
<b>XIII.</b>	<b>MANAGEMENT AND SUPERVISION .....</b>	<b>85</b>
<b>XIV.</b>	<b>TRAINING .....</b>	<b>97</b>
<b>XV.</b>	<b>MONITORING AND REPORTING .....</b>	<b>97</b>
	<b>CONCLUSION.....</b>	<b>98</b>

APPENDICES:

- A. Acronyms Frequently Utilized in Quarterly Reports Issued by the Independent Monitor for the Detroit Police Department
- B. “Report Card” Summarizing the Monitor’s Evaluation of Compliance with the Consent Judgments as of the Quarter Ending February 28, 2009

## 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>15</sup> This is the twenty-second report of the Independent Monitor.

In the first quarterly report, for the quarter ending November 30, 2003, the Monitor<sup>16</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>17</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>18</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 twenty-second quarter, which ended on February 28, 2009, are assessed in this report.<sup>19</sup>

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<sup>15</sup> The primary members of the Monitoring Team are Joseph Buczek, Jerry Clayton, Penny Cookson, Hazel de Burgh, Thomas DeGonia, Ronald Filak, Thomas Frazier, Marshall Johnson, Denise Lewis, Jane McFarlane, Terry Penney, and Sherry Woods.

<sup>16</sup> The word "Monitor" will be used to describe both the Monitor and the Monitoring Team throughout this report.

<sup>17</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>18</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>19</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>20</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 twenty-second quarter, the City and the DPD demonstrated a high level of commitment toward achieving compliance with the Consent Judgments. This will serve as a great benefit and is sure to improve the compliance assessments going forward. Nevertheless, the DPD continued to face the same ongoing challenges with regard to compliance. As previously noted, these challenges are mostly due to the lack of automated systems and resulting failure to provide adequate and complete documentation of the implementation of Consent Judgment requirements. Nevertheless, significantly, as reported below, the City and the DPD are moving in the right direction and have increased the number of paragraphs that are in compliance, in partial compliance or that have achieved significant or notable progress.

During this quarter, the DPD achieved compliance for the first time in several areas, including requirements regarding certain external complaint investigations, the witness identification and questioning audit, cleaning log documentation, and personal hygiene items. The DPD is also in partial compliance with requirements related to food storage and service and the FTO protocol for the first time. In addition, paragraphs in three areas (material witnesses, unique identifiers for external complaints, and the disciplinary matrix) had fallen out of compliance but are now back in compliance.

However, there were also several paragraphs where the DPD has gone from being in compliance or in partial compliance to non-compliance. Specifically, the DPD went from being in compliance to being non-complaint with requirements regarding requests for arraignment warrants and eliminating the disciplinary backlog, and from being in compliance to being partially compliant with requirements regarding arraignments in 48 hours and use of force policies applicable to detainees.

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<sup>20</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.

Of the 97 paragraphs or subparagraphs that the Monitor assessed during the current quarter, the Monitor found that the DPD achieved compliance with 25 paragraphs and subparagraphs and partial compliance with three paragraphs or subparagraphs. There were also nine non-compliant paragraphs that qualified for the notable progress designation and three that qualified for the significant progress designation this quarter. Overall, the DPD is currently in compliance with 73 of the 203 paragraphs and subparagraphs that are assessed in the combined Consent Judgments (47 of 129 paragraphs and subparagraphs from the UOF CJ and 26 of 74 paragraphs and subparagraphs from the COC CJ).<sup>21</sup> This is an overall increase of seven paragraphs or subparagraphs that are in compliance from last quarter.

#### IV. METHODOLOGIES

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The *Methodologies to Aid in Determination of Compliance with the Consent Judgments* (the *Methodologies*) generally outline the methods that will be employed by the Monitor to determine compliance by the City and the DPD with each substantive provision of the Consent Judgments. The Monitor has submitted final copies of the *Methodologies* for both Consent Judgments to the parties. Any future modifications to the *Methodologies* will generally be made on a paragraph-by-paragraph basis.

Under the *Methodologies*, the DPD will generally be assessed as compliant 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>22</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

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<sup>21</sup> Included in these 73 paragraphs and subparagraphs are four paragraphs and subparagraphs that were in compliance prior to the current quarter but for which a compliance determination was not yet completed during the current quarter. Two of these are from the UOF CJ (U61 and U96) and two are from the COC CJ (C65b and C65c).

<sup>22</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.



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.

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>23</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>24</sup> while others do

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<sup>23</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>24</sup> See, for example, paragraph U43 – Arrest Policies and paragraph U45 – Stop and Frisk Policies and related training paragraph U114.

not.<sup>25</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>26</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>27</sup> of the Consent Judgments for the five most recent quarters, including the current quarter, in which compliance has been assessed.<sup>28</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. 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.

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<sup>25</sup> See, for example, paragraphs U73 -- Supervisory Deployment and paragraph U77 -- Foot Pursuit Policies.

<sup>26</sup> As described in the Introduction to the Methodologies, this is the Training Component of compliance.

<sup>27</sup> Although subparagraphs are often specifically identified in the Consent Judgments, the Monitor has split certain paragraphs that include more than one topic. The purpose of this is to facilitate the future evaluation of and reporting on each sub-topic.

<sup>28</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.

To that end, we have provided the parties with interim assessments of compliance throughout each quarter, including the quarter ending February 28, 2009. 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>29</sup> and to provide the parties with an opportunity to seek clarification on any aspect of compliance articulated in this report.

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

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

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This section contains the Monitor's compliance assessments of the UOF CJ paragraphs scheduled for review during the quarter ending February 28, 2009.

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

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

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

This section comprises paragraphs U14-19. The Monitor 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 unless the policies directly responsive to the paragraphs are revised.<sup>30</sup>

The Monitor last assessed the DPD's compliance with paragraph U18 during the quarter ending November 30, 2008, and is scheduled to again assess compliance during the quarter ending May 31, 2009.

#### **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 unless the policy directly responsive to the paragraph is revised. The Monitor last assessed the DPD's compliance with paragraphs U21-23 during the quarter ending August 31, 2008. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

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<sup>30</sup> As with all "policy-only" paragraphs with which the DPD has achieved compliance, any revisions to the policy will trigger an additional assessment by the Monitor. Implementation of the policy is tested under paragraph U18.

**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.

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

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

***Background***

The Monitor last assessed the DPD's compliance with paragraphs U21-23 during the quarter ending August 31, 2008, finding that the DPD remained in compliance with the policy requirements of the paragraphs. The Monitor found that the DPD was not yet in compliance with the implementation requirements of paragraph U23, as the Monthly Equipment Inspection Reports (DPD 709) provided to the Monitor did not identify whether violations reported related to an unauthorized weapon, unauthorized ammunition, an officer carrying an unauthorized number of rounds, or something else entirely. The Monitor withheld a determination of the DPD's compliance with the implementation requirements of paragraph U21 pending follow-up on the status of 98 officers who missed their firearms qualification and the 343 who were "unavailable" for qualification during the first six months of 2008. The Monitor withheld a determination of the DPD's compliance with the implementation requirements of paragraph U22 pending follow-up on the disposition of four 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 incidents were provided to the Monitor after the close of the quarter pursuant to a document request from the Monitor).

***Current Assessment of Compliance***

***Paragraph U21***

The Monitor did not complete its evaluation of this paragraph, as the DPD is in the process of developing a tracking system for members who are unavailable to be trained. The Monitor will evaluate this paragraph again during the quarter ending August 31, 2009.

### ***Paragraph U22***

In order to assess the DPD's compliance with paragraph U22, the Monitor completed its follow-up on the four incidents that occurred between January 1 and July 1, 2008 as identified by the DPD. The Monitor determined that paragraph U22 was not applicable to one of the four incidents, as it involved an off-duty officer who was intoxicated and had engaged in criminal misconduct.<sup>31</sup> In regards to the remaining three incidents, the DPD's investigation found that in each case the officers had violated the paragraph U22 prohibition against firing at or from a moving vehicle;<sup>32</sup> however, the investigations concluded that exigent circumstances were present in all three incidents, and found that the officers' conduct was justified. While the Monitor agrees that exigent circumstances were present in each of the three incidents, it should be noted that neither the DPD's policy<sup>33</sup> nor paragraph U22 specifically provide for exceptions based on exigent circumstances.<sup>34</sup> Significantly, none of the investigations included an evaluation of the officers' tactics, as required by subparagraph U32f. The absence of a documented tactics evaluation resulted in the lack of critical information needed to fully explore other tactical options that may have been available to the officers at the time of the incident, and made it difficult to determine the appropriateness of the officers' actions.<sup>35</sup>

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph U22.

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<sup>31</sup> The incident is more appropriately discussed under subparagraphs U75b-c. See *Current Assessment of Compliance* for paragraphs U75 for details.

<sup>32</sup> In one incident, the officer intentionally placed his vehicle in the path of the suspect's moving vehicle, which is also prohibited.

<sup>33</sup> Directive 304.1, *Firearms*.

<sup>34</sup> The Monitor recommends that the DPD modify its policy to address this issue; however, in this instance the policy omission alone is not the reason for the finding of non-compliance for this paragraph.

<sup>35</sup> For example, in two of the incidents, the officers were engaged in a pursuit and deployed their vehicles ahead of the suspects' vehicles in an attempt to intercept the suspects and prevent escape. By doing so, the officers inadvertently put themselves in positions of disadvantage and directly inline with the suspects' vehicles. The suspects then drove directly at the officers, necessitating that the officers shoot at the suspects' moving vehicles in order to protect themselves. The investigations did not evaluate the officers' tactical decisions. During the current quarter, on January 7th, the Monitor met with the DPD to discuss the fact that the tactics are generally not being evaluated in the Department's investigations, despite the fact that several areas of the Consent Judgments require that tactics be considered, in connection with both the officers' uses of force and the investigations of the force incidents. The DPD has indicated that it will begin evaluating tactics and will include this in its training program. According to the DPD, Force Investigation (FI) began evaluating tactics following the January 7, 2009 meeting.

### ***Paragraph U23***

In order to assess the DPD's compliance with paragraph U23, the Monitor requested and received Monthly Equipment Inspection Reports for the months of September, October and November 2008. The Monitor also received an updated list of the DPD Commands that are responsible for completing the inspection reports. The Monitor reviewed the forms to determine whether they were being completed for all Commands and whether violations were being found, and found that the DPD corrected the deficiencies identified by the Monitor related to identifying the categories to which the violations related.

With regard to the requirement to carry authorized ammunition, no violations were identified in the reports that were provided.

With regard to the requirement for a certain number of rounds to be carried, there were 24 violations identified in September 2008, 15 violations in October 2008 and 14 in November 2008. However, the Monitor was unable to determine whether there were additional violations in this category due to the fact that the reports do not indicate the type of weapon that the member has.<sup>36</sup>

The Monitor identified a number of deficiencies in connection with the Monthly Equipment Inspection Reports, including the facts that the reports do not completely match up with the list of Commands provided by the DPD; there were numerous Commands for which reports were missing; and the reports were not consistently filled out in accordance with the guidelines for completion. For example, various forms indicated "yes" under the violations column without providing the identifying letter of the category that was violated, or the violations column would indicate "yes" and "corrective," the meaning of which is unclear. In addition, driver's licenses that had expired in the month before the inspection were not counted as violations; often entire columns were left blank instead of noting that the category was not applicable ("N/A"); and the number of rounds carried varied from the standard of 46, instead noting various amounts such as 45, 43, 40, 37, 28, 16, 15, and 10.<sup>37</sup>

Last, according to the DPD, these reports are to be reviewed by supervisory personnel in order to identify any violations and take corrective action where appropriate. Overall, the inspections

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<sup>36</sup> According to the guidelines for completing the 709 Reports, members should have 46 rounds except in instances when the member's magazine is incapable of holding the maximum number of rounds. Since the reports include only the firearm's serial number, and not the type of firearm, the Monitor was unable to ascertain which members have magazines that will not hold 46 rounds.

<sup>37</sup> Because these were not counted as violations, the Monitor assumes that the magazines could not hold 46 rounds, but there is no way to tell this from the forms. One form which noted that the number of rounds carried was 18 for two officers also noted that they were carrying .38-caliber Smith & Wesson weapons, which may assist in identifying the applicable number of rounds. However, the 90-day weapon inspection dates of the weapons for these same two officers were April 16 and May 14, 2008, which means that by the time of this October 2008 inspection the 90 days had expired. However, the form did not indicate that this was a violation.

found 475 total violations in various categories for all Commands reported in September 2008, 542 violations in October 2008, and 625 violations in November 2008. In the next assessment of the DPD's compliance with this paragraph, the Monitor will determine whether supervisors are following up on the violations identified.

It should be noted that in January 2009, the DPD revised the 709 report, renaming it the Quarterly Equipment Inspection Report (DPD 709) and requiring it to be completed on a quarterly basis.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with 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 August 31, 2008. The Monitor again assessed the DPD's 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.

#### *Background*

The Monitor last assessed the DPD's compliance with paragraph U24 during the quarter ending August 31, 2008, finding that the DPD was not yet in compliance with the training and implementation requirements. A sufficient number of officers had not yet received PR-24 training.

#### *Current Assessment of Compliance*

As described in previous quarters, Directive 304.2, *Use of Force*, requires police officers to be trained to use the PR-24 prior to its issuance to the officers. During the quarter ending August 31, 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 indicated that PR-24 training had started November 2005). Although the Department has provided a percentage of officers trained in the past, the DPD has indicated that going forward it can only provide training records for PR-24 training that began in



August 2008, when in-service training began and the DPD initiated a tracking system. The DPD has not yet trained a sufficient number of members to achieve compliance with the training component of this paragraph. This is supported by the Monitor's review of the DPD 709 forms, which indicated that numerous officers have not been issued a PR-24. The devices can only be issued to members who have completed their training.

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 U24.

#### D. CHEMICAL SPRAY POLICY

This section comprises paragraphs U25-26. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending August 31, 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 decontaminated or they indicate that they have a pre-existing medical condition that may be aggravated by chemical spray, and if such signs are observed the subject shall be immediately conveyed to a local hospital for professional medical treatment; and obtain the approval of a supervisor any time chemical spray is used against a crowd.

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

##### *Background*

The Monitor last assessed the DPD's compliance with paragraphs U25 and U26 during the quarter ending August 31, 2008, finding that the DPD was no longer in compliance with the implementation requirements of the paragraphs. 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>38</sup> The DPD produced the UF-002 forms related to five uses of chemical spray during the relevant time period,<sup>39</sup> but the UF-002A was provided for only three of the five incidents. The Monitor's review of auditable forms that were received revealed that the DPD adequately implemented Directive 304.2, *Use of Force*, with regard to the use of chemical spray for these incidents.

### *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 July 1, 2008, and September 30, 2008. UF-002 forms are used for reporting all uses of force. UF-002A or Supervisor's Investigation Report (SIR) forms are used to document the investigation of all uses of force. Therefore each use of force, including the use of chemical spray, should have both forms completed. On January 28, 2009, the DPD produced the UF-002 forms related to fifteen uses of chemical spray during the relevant time period. The UF-002A form was provided for only 11 of the 15 incidents;<sup>40</sup> inadequate documentation was provided for evaluation of the four remaining incidents.

The Monitor reviewed the UF-002 forms and determined that a warning was provided prior to the use of the chemical spray in all 15 incidents. In 14 incidents, the subjects were given an opportunity to wash their eyes with cold water. The washing appears to have occurred within 20 minutes, as required by paragraph U25. In eight instances, the subjects were treated at the hospital; hospital treatment was not warranted in the other seven incidents. There were no instances in which chemical spray was used against a crowd, and none of the 15 incidents indicated the use of chemical spray on handcuffed individuals while in a police vehicle.

The Monitor also requested a listing of all external complaints relating to the use of chemical spray during the relevant time period. The DPD responded that no relevant external complaints were made during the identified time period.

Although the UF-002 forms indicated that the DPD followed the procedures required by paragraphs U25-26, all use of force incidents must be investigated and a Form UF-002A must be

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<sup>38</sup> As explained in the *Current Assessment of Compliance* below, the UF-002 form is used to report all uses of force by officers and the UF-002A is used for supervisory investigations and is required for all uses of force.

<sup>39</sup> The five incidents during this reporting period stood 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 reported its concern that the five incidents may not represent the entire population of uses of chemical spray for this time period, but did not conduct any completeness testing.

<sup>40</sup> After the end of the quarter, the Monitor inquired about the four missing UF-002A forms. In response to the Monitor's inquiry, the DPD provided one additional form and indicated that the other three were not yet completed, despite the fact that the incidents related to the three missing forms occurred between July 31, 2008 and September 4, 2008. No explanation was provided for the delay of over six months in completing the investigations.

completed for each. Forms UF-002A were completed for only 80% (12 of 15)<sup>41</sup> of the incidents reported during the time period selected for review.

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 paragraphs U25-26. However, the Monitor commends the DPD for the significant progress it has made in again nearing compliance with these paragraphs.

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<sup>41</sup> This calculation includes the additional Form UF-002A that was provided after the end of the quarter.

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

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This section of the UOF CJ (paragraphs U27-41) requires the DPD to make significant changes to its policies related to general investigations of police action and to investigations of UOF, prisoner injuries (PI), 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>42</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 uses of force (which includes all CFDs), uses of force 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 November 30, 2008, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending May 31, 2009.

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

This section comprises paragraphs U34-36. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2008, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending May 31, 2009.

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

This section comprises paragraphs U37-41. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2008, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending May 31, 2009.

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<sup>42</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, and 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>43</sup> The Monitor last assessed the DPD's compliance with paragraph U43 during the quarter ending November 30, 2008, and is scheduled to again assess compliance with this paragraph during the quarter ending May 31, 2009.

#### **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>44</sup> The Monitor last assessed the DPD's compliance with paragraph U45 during the quarter ending November 30, 2008, and is scheduled to again assess compliance with this paragraph during the quarter ending May 31, 2009.

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<sup>43</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>44</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 November 30, 2008, and is scheduled to again assess compliance with this paragraph during the quarter ending May 31, 2009.

## D. PROMPT JUDICIAL REVIEW POLICIES

This section comprises paragraphs U49-51. The Monitor last assessed the DPD’s compliance with these paragraphs during the quarter ending August 31, 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.<sup>45</sup>

### *Background*

The Monitor last assessed the DPD’s compliance with paragraph U49 during the quarter ending August 31, 2008, finding the DPD in compliance with the policy requirements of the paragraph and in partial compliance with the implementation requirements of the paragraph. The Monitor reviewed a sample of 87 arrests, noting that 42 detainees were released prior to arraignment. Of the remaining 45 detainees, eight were presented for arraignment after the 48-hour period elapsed, resulting in a compliance rate of 82.2% (37 of 45).

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<sup>45</sup> During the quarter ending February 29, 2008, the Monitor reached a consensus that paragraph U49 was intended to apply to warrantless arrests.

### *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>46</sup> of 72 warrantless 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 72 arrests selected for review. Of the 72 arrests, 32 detainees were released prior to arraignment or released to another law enforcement agency. For one arrest, the DPD was unable to produce documentation and the Monitor was unable to assess compliance. The remaining 39 detainees were presented for arraignment. For ten of these 39 arrests, the detainees were presented for arraignment after 48 hours had elapsed with no exigent circumstances documented.<sup>47</sup> This translates into a compliance rate of 74.4% (29 of 39).

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 U49 and is, in fact, no longer in partial compliance with these requirements.

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

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

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U50 during the quarter ending August 31, 2008, finding that the DPD was not yet in compliance. The Monitor reviewed a sample of 87 arrests, noting that the 24-hour rule of paragraph U50 was not applicable to 39 arrests. 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, resulting in a compliance rate of 54.2% (26 of 48).

### *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 72 arrests selected to assess compliance with paragraph U49,

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<sup>46</sup> As required, a random, statistical sample of 72 arrests was selected out of a population of approximately 914 arrests that occurred during the period October 12 through October 18, 2008, utilizing a confidence level of 95% with an acceptable error rate of +/- 4.

<sup>47</sup> For the ten detainees, the amount of time that elapsed before arraignment ranged from approximately 51 hours and 43 minutes to approximately 86 hours and 44 minutes.

among others. The Monitor determined that the 24-hour rule of paragraph U50 was not applicable to 10 of the 72 arrests selected for review, as the DPD released the detainee without seeking a warrant request.<sup>48</sup> For one arrest the DPD was unable to produce supporting information and the Monitor was unable to assess compliance. For the remaining 61 arrests to which the requirements of paragraph U50 were applicable, the Monitor determined that warrant requests were not submitted within 24 hours for 21 arrests. This translates into a compliance rate of 65.6% (40 of 61).

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph U50. However, the Monitor commends the DPD for the notable progress it has made in this area.

### *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 August 31, 2008, finding that the DPD was in compliance with the paragraph. The Monitor reviewed a sample of 87 arrests noting that 24 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 was not completed in one instance when a warrant request was not submitted within 24 hours, resulting in a compliance rate of 95.8% (23 of 24).

### *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 72 arrests selected to assess compliance with paragraphs U49

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<sup>48</sup> In some instances, the underlying charges were minor, not requiring the warrant request.



and U50, among others. Of the 72 arrests selected for review, 25 arrests required an auditable form because either a warrant request was not submitted within 24 hours or the detainees were not presented for arraignment within 48 hours, or both. The Monitor determined that the required auditable form was not completed when required in the following instances:

- five instances in which a warrant request was not submitted within 24 hours;
- one instance in which the detainee was not presented within 48 hours; and
- six instances in which the warrant request was not submitted within 24 hours and the detainee was not presented within 48 hours.

This translates into an overall compliance rate of 52% (13 of 25).

Based on the foregoing, the Monitor finds that the DPD is no longer 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>49</sup> The Monitor last assessed the DPD’s compliance with paragraph U53 during the quarter ending August 31, 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 August 31, 2008, finding that the DPD was not yet in compliance with the paragraph. The Monitor reviewed 22 holds and determined that 21 of the 22 Detainee Intake Sheets (DISs) reviewed did not capture the times and or dates the holds were cleared.

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<sup>49</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 December 1 through December 4, 2008. The Monitor reviewed 20 holds documented on a DIS, noting that the hold was cleared within 24 hours of identification for ten holds (50%).<sup>50</sup> For the remaining ten holds, the dates and times the holds were identified or cleared were not documented on the DIS.

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>51</sup> The Monitor last assessed the DPD's compliance with paragraph U55 during the quarter ending August 31, 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 August 31, 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 120 of 138 restrictions reviewed, the dates and times that the restrictions were lifted were not documented on logs and forms; as a result, the Monitor was unable to determine whether the restrictions exceeded the 24-

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<sup>50</sup> In determining compliance, the Monitor was able to ascertain compliance as the detainee was arrested and presented within 24 hours, and in the interim, a hold was identified and addressed at arraignment.

<sup>51</sup> Revisions to policy will trigger an additional assessment by the Monitor. Implementation of policy is tested under paragraph U55.

hour period requiring reevaluation. For 13 restrictions, the DPD documented all required information and the restrictions were in place for one 24-hour period not requiring reevaluation. For five restrictions, although the dates and times the restrictions were lifted were documented on the requisite auditable form, they exceeded the 24-hour re-evaluation period.

### *Current Assessment of Compliance*

In order to assess the DPD's compliance with paragraph U55 during the current quarter, the Monitor requested a listing of all detainees with restrictions for the period June 1 through November 30, 2008. The Monitor selected and reviewed 26 restrictions documented on *Privilege Restriction Logs* and *Detainee Telephone and/or Visitor Restriction Exceptions Forms*.<sup>52</sup> For nine of the 26 (34.6%) restrictions reviewed, the DPD documented all required information and the restrictions were in place for one 24-hour period not requiring reevaluation. For one restriction, although the date and time the restriction was lifted were documented on the requisite auditable form, they exceeded the 24-hour re-evaluation period. Lastly, for 16 restrictions 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.

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>53</sup> The Monitor last assessed the DPD's compliance with paragraph U57 during the quarter ending August 31, 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>52</sup> The *Privilege Restriction Log* was effective April 2006. The *Detainee Telephone and/or Visitor Restriction Exceptions Form* was effective February 2007.

<sup>53</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 August 31, 2008, at which time the Monitor found that the DPD was no longer in compliance. The Monitor reviewed supporting documentation for three material witnesses identified by the DPD for the period January 1, 2008 through May 31, 2008. For all three material witnesses, the DPD obtained the required court order prior to detaining the witness and completed the requisite auditable form.

The Monitor also received the DPD Audit Team's (AT's) *Witness Identification and Questioning Audit Report*, dated August 31, 2008.<sup>54</sup> The DPD AT noted that 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.

***Current Assessment of Compliance***

In order to assess the DPD's compliance with paragraph U57 during the current quarter, the Monitor requested a listing of all material witnesses for the period June 1, 2008 through November 30, 2008. The DPD identified two material witnesses for the period under review. For both material witnesses, the DPD provided evidence that court orders were obtained prior to taking the material witnesses into DPD custody. Also, for both material witnesses, all required information responsive to paragraph U57 was documented on auditable forms and attached to the court orders.<sup>55</sup>

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

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<sup>54</sup> The AT reviewed files at the DPD's Office of Civil Right (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.

<sup>55</sup> Based on our previous assessment, the population of material witnesses represented by the DPD during the current assessment period might be incomplete. During the quarter ending August 31, 2008, the Monitor requested and received a listing of material witnesses. The DPD's response identified three material witnesses and included the requisite underlying information. Shortly thereafter the DPD AT issued an audit report that included an assessment of paragraph U57 wherein it identified an additional eight material witnesses not previously reported to the Monitor.

## 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 November 30, 2008. The Monitor is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending May 31, 2009.

## I. COMMAND NOTIFICATION

This section comprises paragraphs U59-60. The Monitor last assessed the DPD's compliance with paragraph U59 during the quarter ending November 30, 2008, and is scheduled to again assess compliance with the paragraph during the quarter ending May 31, 2009. The Monitor last assessed the DPD's compliance with paragraph U60 during the quarter ending August 31, 2008 and again assessed the DPD's compliance with the paragraph during the current quarter. The results of our current assessment follow.

### *Paragraph U60 – Daily Reporting Requirements*

Paragraph U60 requires the Commander of each precinct or, if applicable, a specialized unit to review in writing all reported violations of the DPD's Prompt Judicial Review, Holds, Restrictions, and Material Witness Detention policies. Such review must be completed on the day the violation occurs.<sup>56</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 August 31, 2008, finding the DPD in compliance with the policy requirements but not yet in compliance with the implementation requirements of the paragraph. For 13 violations of prompt judicial review, the corresponding CO review was not completed. For an additional four incidents, although the CO reviews of prompt judicial review violations were documented, such reviews occurred in excess of the mandated 24-hour review period. Lastly, the Monitor noted that the requisite auditable form was not completed for seven material witnesses identified by the DPD AT's *Witness Identification and Questioning Audit*.

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<sup>56</sup> The Monitor has interpreted this paragraph to require Commanding Officer (CO) review within 24 hours of receipt of the violation.

### *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>57</sup>

The Monitor noted that for ten of the 11 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, or the auditable form was not available for review.<sup>58</sup> For one of the 11 required Commander reviews, although the review occurred, it was completed in excess of 24 hours of receipt.<sup>59</sup>

As described in the *Current Assessment of Compliance* for paragraph U57 above, the DPD provided the requisite auditable forms for the two material witnesses identified in the period selected for review; as a result, the requirements of paragraph U60 were not applicable.

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>57</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>58</sup> Forms that were not available for review are forms that were not provided to the Monitor and there is no evidence that a form was completed.

<sup>59</sup> Documentation of the review occurred approximately 26 hours after receipt from the documenting supervisor.

## IV. EXTERNAL COMPLAINTS

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This section of the UOF CJ (paragraphs U61-69) requires the DPD to revise its policies and procedures regarding the intake, tracking, investigation and review of external complaints. There are specific requirements relative to the roles and responsibilities of the Office of the Chief Investigator (OCI) and the DPD, including the development and implementation of an informational campaign and the review and evaluation of each allegation in an external complaint investigation.<sup>60</sup>

Section IV's introductory section comprises paragraphs U61-63. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2008, and is scheduled to again assess compliance with paragraphs U62-63 during the quarter ending May 31, 2009. The Monitor again assessed the DPD's compliance with paragraph U61 during the current quarter. The results of our current assessment follow.

### ***Paragraph U61 – Revision of External Complaints Policy***

Paragraph U61 requires the DPD and City to revise their external complaint policy to clearly delineate the roles and responsibilities of OCI and the DPD regarding the receipt, investigation and review of external complaints. At a minimum, the plan shall specify each agency's responsibility for receiving, recording, investigating and tracking complaints; each agency's responsibility for conducting community outreach and education regarding complaints; how, when and in what fashion the agencies shall exchange information, including complaint referrals and information about sustained complaints.

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U61 during the quarter ending November 30, 2008. At that time, the Monitor withheld a determination of the DPD's compliance with the paragraph. Because the DPD did not submit the audit of external complaints and complaint investigations (EC&CI) that was due on August 31, 2008, the Monitor elected to conduct an independent review of a sample of complaint investigations that were completed during the month of September 2008. The Monitor was in the process of conducting this review as of the end of that quarter.

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<sup>60</sup> The OCI reports to the Board of Police Commissioners (BOPC) and is responsible for conducting external complaint investigations.

The Monitor found the DPD in compliance with paragraph U61 in its Report for the Quarter Ending May 31, 2008, as the requirements to receive, record, investigate and track complaints were effectively implemented by the DPD and OCI.

### *Current Assessment of Compliance*

Due to the complexity of the paragraph, the Monitor elected not to evaluate paragraph U61 using the sample described below that was used to assess paragraphs U64-69, since that sample included OCI investigations only. The Monitor expects to evaluate this paragraph during the quarter ending November 30, 2009 in conjunction with the DPD's *EC&CI Audit*, which is due on August 31, 2009.

As a result, the Monitor has not yet completed its evaluation of paragraph U61.

## A. INTAKE AND TRACKING

This section comprises paragraphs U64-66. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2008. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### *Paragraphs U64-66 – Policies Regarding Intake and Tracking; Factual Account by Intake Officer; Unique Identifier*

Paragraph U64 requires the DPD and City to revise their policies regarding the intake and tracking of external complaints to define *complaint* and *misconduct* as those terms are defined in the UOF CJ and require all officers and OCI employees to accept and document all complaints filed in writing or verbally, in person or by mail, telephone (TDD), facsimile or electronic mail.

Paragraph U65 requires the DPD and the City to permit the intake officer or employee to include a factual account and/or description of a complainant's demeanor and physical condition but not an opinion regarding the complainant's mental competency or veracity.

Paragraph U66 requires the DPD and the City to assign all complaints a unique identifier, which shall be provided to the complainant, and a description of the basis for the complaint.

### *Background*

The Monitor last assessed the DPD's compliance with paragraphs U64-66 during the quarter ending November 30, 2008. Because the DPD did not submit an audit of EC&CI on August 31,



2008,<sup>61</sup> in order to assess compliance with these paragraphs, the Monitor conducted an independent review of external complaint investigations. The Monitor had not yet completed its evaluation of these investigations as of the end of that quarter. The Monitor previously found the DPD in compliance with paragraph U64 during the quarter ending November 30, 2007. The Monitor previously found the DPD in compliance with paragraph U65 and not yet in compliance with paragraph U66 during the quarter ending May 31, 2008.

### *Current Assessment of Compliance*

During the current quarter, the Monitor completed its review of external complaint investigations that were conducted by the OCI during the month of September 2008. A total of 126 complaints were provided in response to the Monitor's document request. A random sample of 55 investigations were selected for review; of these, seven were eliminated as duplicates or were properly referred as allegations of force, leaving a population of 48 investigations.

The Monitor's evaluation of these investigations revealed that the DPD continues to properly define *complaint* and *misconduct* as those terms are defined in the UOF CJ. All complaints were accepted and documented in accordance with paragraph U64. In regard to paragraph U65, none of the investigations included inappropriate descriptions of the complainant's demeanor and physical condition or the officer's subjective opinion of the complainant's mental competency or veracity. Additionally, a unique identifier was assigned to all complaints and was provided to the complainant along with a description of the basis for the complaint.

Based on the foregoing, the Monitor finds the DPD in compliance with paragraphs U64-66.

## **B. EXTERNAL COMPLAINT INVESTIGATIONS**

This section comprises paragraphs U67-69. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2008. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### **Paragraphs U67-69 – Revision of External Complaint Investigations Policy; External Complaint Review Process Time Limits; External Complaint Dispositions**

Paragraph U67 requires the DPD and the City to revise its policies regarding external complaint investigations to:

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<sup>61</sup> The Monitor's methodology for assessing the DPD's implementation of and compliance with paragraphs U67-69 includes a review of the DPD's *EC&CI Audit Report* findings and a review of the underlying complaint investigations from the audit's population.

- a. provide that all complaints be referred for investigation and resolution by OCI or, if the complaint alleges potentially criminal conduct by an officer, by Internal Affairs (IA);
- b. permit informal resolution of complaints alleging only inadequate service or the complainant's innocence of a charge and require the investigation and resolution of all other complaints;
- c. refer all complaints to the appropriate agency within five business days;
- d. require that complainants be periodically kept informed of complaint status;
- e. develop written criteria for IA and OCI investigator applicants;
- f. implement mandatory pre-service and in-service training for all IA and OCI investigators;
- g. require IA and OCI to complete all investigations within 60 days of receiving the complaint; and
- h. upon completion of investigation, the complainant shall be notified of its outcome.

Paragraph U68 requires the DPD and the City to review and evaluate the external complaint process to require:

- a. the Chief Investigator (CI) to complete review of OCI investigations within seven days of supervisor's review;
- b. the Board of Police Commissioners to complete review of OCI investigations within forty-five days of Chief Investigator's review; and
- c. the Chief of Police to complete review of external complaints within seven days of Board of Police Commissioner's review.

Paragraph U69 requires that each allegation in an administrative external complaint investigation be resolved by making one of the following dispositions:

- a. "unfounded," where the investigation revealed no facts to support that the incident complained of actually occurred;
- b. "sustained," where a preponderance of the evidence shows that the alleged conduct did occur and the actions of the officer violated DPD policies, procedures or training;
- c. "not sustained," where there are insufficient facts to decide whether the alleged misconduct occurred; and
- d. "exonerated," where a preponderance of the evidence shows that the alleged conduct did occur but did not violate DPD policies, procedures or training.

## ***Background***

The Monitor last assessed the DPD's compliance with paragraphs U67-69 during the quarter ending November 30, 2008. Because the DPD did not submit an audit of EC&CI that was due on August 31, 2008,<sup>62</sup> in order to assess compliance with these paragraphs, the Monitor conducted an independent review of external complaint investigations. The Monitor had not yet completed its evaluation of these investigations as of the end of that quarter.

The Monitor's previous assessment of paragraphs U67-69 occurred during the quarter ending May 31, 2008. The Monitor found the DPD in compliance with subparagraph U67b but not yet in compliance with subparagraphs U67c, d and g; the Monitor was unable to assess compliance with the implementation requirements of subparagraphs a, e and f; and the Monitor withheld a determination of the DPD's compliance with subparagraph U67h. The Monitor also found the DPD in compliance with paragraph U69 but not yet in compliance with the implementation requirements of paragraph U68.

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

During the current quarter, the Monitor completed its review of 48 complaint investigations that OCI closed in September 2008. The Monitor's findings relative to paragraphs U67-69 are as follows:

### ***Subparagraph U67a - Referral of Complaints for Investigation***

All of the reviewed complaints were properly investigated by OCI based on the content of the complaint. Complaints that contained allegations of force were properly referred to IA.

### ***Subparagraph U67b - Complaints Permitted to be Resolved Informally***

None of the 48 complaint investigations reviewed by the Monitor were resolved informally, nor did any of the complaints contain allegations of inadequate service or the complainant's innocence of a charge. Therefore, the DPD did not incorrectly permit the informal resolution of any complaints.

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<sup>62</sup> The Monitor's methodology for assessing the DPD's implementation of and compliance with paragraphs U67-69 includes a review of DPD's *EC&CI Audit Report* findings and a review of the underlying complaint investigations from the audit's population.

***Subparagraph U67c - Complaints Referred within Five Days of Receipt***

The Monitor found that 31 of the complaints were properly referred to the appropriate agency within five days of receipt. Of the remaining 17 complaints, 16 documented a referral date in excess of five days,<sup>63</sup> and one did not adequately document the referral date.

***Subparagraph U67d - Periodic Notification of the Status of the Investigation***

The complainant was periodically informed of the status of the investigation in only five of the 48 complaints reviewed by the Monitor. In those five investigations, the complainants were updated at least twice and as many as five times during the investigation.

***Subparagraph U67e - Written Criteria for IA and OCI Investigator Applicants***

The DPD and OCI have developed written criteria for investigator applicants and are in compliance with the policy requirement of this subparagraph. The Monitor has not yet been able to determine whether the criteria have been implemented in the consideration of applicants since previous document request responses indicated that no new applicants had been considered by the DPD. The Monitor will periodically send additional documents requests.

***Subparagraph U67f - Mandatory Pre-Service and In-Service Training***

The DPD held in-service training for OCI investigators on November 16, 2008 and for IA / FI investigators on November 12, 2008. The Monitor had previously approved the lesson plan for the paragraph U67f investigator training. A member of the Monitoring Team attended the training of OCI investigators on November 16, 2008 and found the training to be adequate.

***Subparagraph U67g - Investigations Completed within 90 Days of Receipt***<sup>64</sup>

The OCI did not complete its investigations within the time period required, whether it is 60 or 90 days. Even if the requirement were 90 days, 43 of the 48 complaint investigations reviewed by the Monitor were not completed in a timely manner. In fact, the time it took to close the 43 investigations ranged from 110 days to 748 days. The Monitor was unable to determine when OCI received one complaint due to inadequate documentation.

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<sup>63</sup> The referral for these 16 complaints ranged from 6 days to 19 days after receipt.

<sup>64</sup> On September 15, 2008, at the parties' request, the Court ordered that this requirement be modified from 60 days to 90 days. This would not have been applicable to the sample of investigations evaluated here since they were closed in September 2008.

### ***Subparagraph U67h - Notification of Outcome of Investigation***

In all but one investigation where no address was provided, a letter was sent to the complainant at the close of the investigation. This subparagraph also requires that if the outcome was sustained, the notification must include an appropriate statement regarding whether any non-disciplinary corrective action or disciplinary action was taken. In the 11 allegations containing "Sustained" allegations, complainants were informed that the investigation was sent to the Chief of Police for disciplinary or non-disciplinary corrective action.

### ***Paragraph U68 - External Complaint Review Process***

- In all 48 investigations reviewed by the Monitor, the Chief Investigator of OCI, or his designee, completed reviews of OCI investigations within seven days of completion of the supervisors' reviews, as required by subparagraph U68a.
- In all 48 investigations reviewed by the Monitor, the BOPC completed its review of OCI investigations with 45 days, as required by subparagraph U68b.
- The Monitor was unable to determine whether the Office of the Chief of Police completed its review of external complaints within seven days of BOPC review, as required by subparagraph U68c.<sup>65</sup> Documentation in the case files reviewed did not reference the Chief's review. The log that OCI uses to track timelines included only the dates on which the closed investigations were sent to the Chief; there was no further indication when the investigations were received or reviewed. As a result, the Monitor was unable to determine the actual length of time that the Chief's review took.

### ***Paragraph U69 - Disposition of External Complaint Investigations***

All 48 of the investigations reviewed by the Monitor resulted in a finding of "unfounded," "sustained," "not sustained," or "exonerated."<sup>66</sup>

Based on the foregoing, the Monitor finds that the DPD continues to be in compliance with the policy requirements of paragraphs U67-69. Regarding the implementation requirements of paragraph U67, the Monitor finds the DPD in compliance with subparagraphs U67a, b, f and h, but not yet in compliance with subparagraphs U67c, d and g. The Monitor has not yet evaluated subparagraph U67e. The Monitor further finds that the DPD is in compliance with the implementation requirements of subparagraphs U68a and b and not yet compliant with

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<sup>65</sup> The Monitor has raised this issue in previous reports and recommended that the DPD and OCI address this issue. Only 16 of the 48 investigations were even sent to the Office of the Chief of Police within 7 days of their completion; therefore, it would be impossible for the Chief of Police to complete his review of at least 32 of the investigations within 7 days of the BOPC's review because the Chief's office had not received them in a timely manner.

<sup>66</sup> The Monitor's review did not include a determination of whether the disposition was appropriate.

subparagraph U68c; as a result, the Monitor finds that the DPD is not yet in overall non-compliance with the implementation requirements of paragraph U68. Lastly, the Monitor finds the DPD in compliance with the implementation requirements of paragraph U69.

## V. GENERAL POLICIES

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This section of the UOF CJ (paragraphs U70-77) requires the DPD to develop, revise, and/or enforce a variety of general policies. The DPD is required to ensure that all terms are clearly defined in policies that it develops, revises, and augments, and to make proposed policy revisions available to the community. This section also requires the DPD to advise its personnel that taking police action in violation of DPD policy will subject them to discipline, possible criminal prosecution, and/or civil liability. In addition, the DPD must enforce its policies requiring all DPD officers to report misconduct committed by another DPD officer. The DPD must also revise its policies regarding off-duty officers taking police action, revise its policies regarding prisoners and develop a foot pursuit policy. Finally, the DPD and the City are required to develop a plan for adequate deployment of supervisors in the field.

The Monitor last assessed the DPD's compliance with paragraphs U70 and U71 during the quarter ending November 30, 2008, and is scheduled to again assess compliance with paragraph U70 during the quarter ending May 31, 2009.

The Monitor last assessed the DPD's compliance with paragraphs U72-77 during the quarter ending August 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 August 31, 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. The Monitor requested documentation in connection with the DPD's training on the requirements of paragraphs U72 and U74 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.

### *Current Assessment of Compliance*

During the current quarter the Monitor requested the DPD to produce any and all training conducted in relation to paragraphs U72 and U74. On August 4, 2008, the DPD commenced its week-long 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, based on its estimates, is expected to have trained substantially all officers. As of January 28, 2009, approximately 36.9% of all sworn personnel required to complete this training had done so.

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 requirements of paragraphs U72 and U74. As a result, the Monitor finds the DPD in overall non-compliance with paragraphs U72 and U74, and has not yet evaluated compliance with the implementation requirements of these paragraphs.

### *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*

During the quarter ended August 31, 2007, the parties and the Monitor agreed that an acceptable field deployment ratio of supervisors to officers in patrol units and specialized units is one to ten. Previously, the acceptable field deployment ratio utilized in assessing compliance with this requirement was one to eight.

The Monitor last assessed the DPD's compliance with paragraph U73 during the quarter ending August 31, 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 72 daily attendance records for all district station and specialized unit platoons for May 30, 2008 and calculated an overall compliance rate of 84.7%.

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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.

### *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 November 17 and 18, 2008. In response, the DPD identified the existence of 134 daily attendance records, but provided only 131 records for review.

The Monitor reviewed all 131 of the daily attendance records that were provided, noting that for 117 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 87.3% (117 of 134).<sup>69</sup>

The Monitor also requested any and all training conducted responsive to paragraph U73. On August 4, 2008, the DPD commenced its week-long 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, based on its estimates, is expected to have trained substantially all officers. As of March 10, 2009, the DPD reported that approximately 295 of 665 supervisors, or 44%, completed this training.

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. As a result, the Monitor finds the DPD in overall non-compliance with 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

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<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.



- c. required to submit to field sobriety, breathalyzer, and/or blood tests if it appears that the officer has consumed alcohol or is otherwise impaired.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U75 during the quarter ending August 31, 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 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.

### *Current Assessment of Compliance*

During the current quarter, the Monitor requested documentation in connection with the DPD's training on the requirements of paragraph U75 and the implementation of relevant policy. 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. As of January 29, 2009, approximately 36.9% of sworn personnel required to complete the training had done so.

The Monitor also requested a list of incidents in which an officer, while off-duty, exhibited signs of impairment that might possibly impair performance and judgment. The DPD identified ten such incidents that occurred during the period January 13, 2008 through October 25, 2008.<sup>70</sup> Our findings are as follows:

- For all ten incidents, the complaint investigation adjudication was "sustained" and nine of the ten accused officers were awaiting discipline as of this report.<sup>71</sup>
- For three incidents, the accused officer was in possession of a firearm while impaired.<sup>72</sup>
- The officers in nine of the ten incidents submitted to a blood test; in one incident, the accused officer refused a blood test, at which time a search warrant was secured for one.
- All of the incidents were handled properly under subparagraphs b and c.

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

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<sup>70</sup> Seven incidents were alcohol-related and three incidents were narcotic-related.

<sup>71</sup> For one incident, the accused officer resigned.

<sup>72</sup> In another incident, although the officer was not in possession of a firearm, the officer was in possession of two other weapons.

the implementation requirements of paragraph U75 subsections (b) and (c). The Monitor has not yet evaluated the implementation requirements for subsection (a). As a result, the Monitor finds the DPD in overall non-compliance with paragraph U75.

### *Paragraph U76 – Handling of Prisoners*

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

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

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U76 during the quarter ending August 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 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, at which time the DPD, based on its estimates, is expected to have trained substantially all officers

### *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. As of January 28, 2009, approximately 36.9% of sworn officers required to attend the *Use of Force Lesson Plan* completed this training.

The Monitor also requested and received a listing of uses of force that occurred during the period September 1, 2008 through November 30, 2008. In total, the DPD identified approximately 154 uses of force. The Monitor randomly selected and reviewed 60 uses of force,<sup>73</sup> noting that the

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<sup>73</sup> As required, a random, statistical sample of 60 uses of force was selected out of a population of approximately 154 that occurred during the period September 1, 2008 through November 30, 2008, utilizing a confidence level of 95% with an acceptable error rate of +/- 4.

requirements of paragraph U76 were applicable in 51.<sup>74</sup> For all 51 of these uses of force, the Monitor reviewed the circumstances and the DPD's response and noted that the officers adhered to the requirements of paragraph U76.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements, is in compliance with the implementation requirements, and is not yet in compliance with the training requirements of paragraph U76. As a result, the Monitor finds the DPD in overall non-compliance with paragraph U76.

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

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

- a. Requires officers to consider particular factors in determining whether a foot pursuit is appropriate, including the offense committed by the subject, whether the subject is armed, the location, whether more than one officer is available to engage in the pursuit, the proximity of reinforcements, and the ability to apprehend the subject at a later date;
- b. Emphasizes alternatives to foot pursuits, including area containment, surveillance, and obtaining reinforcements;
- c. Emphasizes the danger of pursuing and engaging a subject with a firearm in hand; and
- d. Requires officers to document all foot pursuits that involve a UOF on a separate, auditable form, such as the UOF report.

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U77 during the quarter ending August 31, 2008, finding that the DPD remained in compliance with the policy requirements but was not yet in compliance with the training and implementation requirements of the paragraph. In response to a request for a listing of any and all training conducted in relation to paragraph U77, 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 was clear and concise and sufficiently addressed the requirements of paragraph U77.<sup>75</sup> According to the DPD, the *Use of Force Lesson Plan* training commenced on August 4, 2008, and will continue for approximately 43 weeks at which time the DPD, based on its estimates, is expected to have trained substantially all officers.

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<sup>74</sup> The remaining nine consisted of animal shootings, detainee injuries or an unsubstantiated use of force.

<sup>75</sup> However, the DPD confirmed that the roll call training is not intended to fulfill or partially fulfill Consent Judgment requirements.

### *Current Assessment of Compliance*

As described in the Current Assessment of Compliance for paragraph U76, as of January 28, 2009, approximately 36.9% of sworn officers required to attend the *Use of Force Lesson Plan* completed this training.

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 requirements of paragraph U77. As a result, the Monitor finds the DPD in overall non-compliance with paragraph U77, and the Monitor has not yet evaluated the DPD's compliance with the implementation requirements of the paragraph.

## VI. MANAGEMENT AND SUPERVISION

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

The Monitor last assessed the DPD's compliance with paragraph U78, the introductory paragraph to section VI, during the quarter ending August 31, 2008, and again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

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

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

- a. a Risk Management Database (discussed in paragraphs 79-90);
- b. a performance evaluation system (discussed in paragraph 91);
- c. an auditing protocol (discussed in paragraphs 92-99);
- d. regular and periodic review of all DPD policies; and
- e. regular meetings of DPD management to share information and evaluate patterns of conduct by DPD that potentially increase the DPD's liability.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U78 during the quarter ending August 31, 2008, finding 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 its assessment of compliance with the requirements of paragraph U91.

Regarding subparagraph U78a, the Management Awareness System (MAS) database had not yet been tested to verify that it is fully developed or operational. Regarding subparagraph U78b, the Monitor had not yet re-evaluated the requirements of paragraph U91, and indicated that this evaluation will be conducted after the next cycle of performance evaluations is complete.

Regarding subparagraph U78c, the DPD was not yet in compliance with the majority of the paragraphs relating to the auditing protocol. Regarding subparagraph U78d, the DPD's Policy Focus Committee continued to meet, with its most recent meeting focusing on the plan to update the DPD manual and the identification of 123 directives to be reviewed for updates. Regarding subparagraph U78e, the DPD continued to meet to address issues of liability as required by the subparagraph.

### *Current Assessment of Compliance*

Regarding subparagraph U78a, the DPD is not yet in compliance with the MAS implementation requirements.<sup>76</sup>

Regarding subparagraph U78b, the Monitor evaluated the DPD's compliance with paragraph U91, which contains requirements for the Department's performance evaluation system. The Monitor found that the DPD is not yet in compliance with this paragraph.<sup>77</sup>

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 met on December 15, 2008. Consistent with the subparagraph's requirements, the meeting addressed Department directives related to performance evaluations, fingerprinting of detainees, electronic recording of interviews, separation from service, and detainee "holds." A plan was outlined to accomplish the goals discussed. The next meeting was not scheduled at that time.

Regarding subparagraph U78e, the DPD provided the Monitor with the minutes and agendas of the latest Senior Management Team meetings held on February 2 and 16, 2009. The DPD is continuing to meet to address issues of liability as required by subparagraph U78e.

Based on the foregoing, the Monitor finds that the DPD is in compliance with subparagraphs U78d and e, but not yet in compliance with subparagraphs U78a, b and c.

## **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

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<sup>76</sup> Refer to the *Current Assessment of Compliance* for paragraphs U79-81 and U86-87 for further information regarding the MAS database.

<sup>77</sup> See *Current Assessment of Compliance* for paragraph U91 for more detailed information.

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 subparagraphs U88c<sup>78</sup> and U88f<sup>79</sup> and paragraph U89.<sup>80</sup>

The Monitor last assessed the DPD's compliance with subparagraph U88g during the quarter ending August 31, 2008, and is scheduled to again assess the DPD's compliance with subparagraph U88g during the quarter ending February 28, 2009.

The Monitor last assessed the DPD's compliance with paragraphs U79-81 and U86-87 during the quarter ending November 30, 2008. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

**Paragraphs U79-81 and U86-87; Subparagraph U88g – Expansion of Risk Management Database; Risk Management Database Information Requirements; Identifying Information for Officers and Civilians; Data Input Plan; Common Control Number; Information Maintained in Database; Risk Management Database Operational**

Paragraph U79 requires the DPD to enhance and expand its risk management system to include a new computerized relational database for maintaining, integrating and retrieving data necessary for supervision and management of the DPD. The DPD must ensure that the risk management database it designs or acquires is adequate to evaluate the performance of DPD officers across all ranks, units and shifts; to manage risk and liability; and to promote civil rights and best police practices. The DPD must regularly use this data for such review and monitoring.

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<sup>78</sup> Subparagraph U88c requires the issuance of a Request for Proposal (RFP). The DOJ's agreement to allow the DPD to convert the Interim Management Awareness System (IMAS) into the Management Awareness System (MAS) without the use of an outside vendor obviated the need for an RFP. As a result, the Monitor is no longer assessing the DPD's compliance with subparagraph U88c.

<sup>79</sup> Subparagraph U88f includes the requirements for a beta version of the risk management database. Although the DPD did not achieve compliance with these requirements, as described in the Monitor's Report for the Quarter Ending August 31, 2008, the DPD has begun implementing the MAS. As a result, the Monitor is no longer assessing the DPD's compliance with subparagraph U88f.

<sup>80</sup> Paragraph U89 requires the DPD to develop an interim system to identify patterns of conduct by DPD officers or groups of officers prior to the implementation of the new Risk Management Database. Although the DPD did not achieve compliance with this requirement, as described in the Monitor's Report for the Quarter Ending August 31, 2008, the DPD has begun implementing the MAS. As a result, the requirements for an interim system are now obsolete, and the Monitor is no longer assessing the DPD's compliance with paragraph U89.

Paragraph U80 requires the new risk management database to collect and record the following information:

- a. all UOF reports and UOF investigations;
- b. all canine deployments;
- c. all canine apprehensions;
- d. all canine bites;
- e. all canisters of chemical spray issued to officers;
- f. all injured prisoner reports and injured prisoner investigations;
- g. all instances in which force is used and a subject is charged with “resisting arrest,” “assault on a police officer,” “disorderly conduct” or interfering with a city employee;”
- h. all firearms discharge reports and firearms discharge investigations;
- i. all incidents in which an officer draws a firearm and acquires a target;
- j. all complaints and complaint investigations, entered at the time the complaint is filed and updated to record the finding;
- k. all preliminary investigations and investigations of alleged criminal conduct;
- l. all criminal proceedings initiated as well as all civil or administrative claims filed with, and all civil lawsuits served upon, the City, or its officers or agents, resulting from DPD operations or the actions of DPD personnel, entered at the time proceedings are initiated and updated to record disposition;
- m. all vehicle and foot pursuits and traffic collisions;
- n. all reports regarding arrests without probable cause or where the individual was discharged from custody without formal charges being sought;
- o. all reports regarding investigatory stops and/or frisks unsupported by reasonable suspicion;
- p. all reports regarding interviews, interrogations or conveyances in violation of DPD policy;
- q. the time between arrest and arraignment for all arrests;
- r. all reports regarding a violation of DPD prompt judicial review policy;
- s. all reports regarding a violation of DPD hold policy;
- t. all restrictions on phone calls or visitors imposed by officers;
- u. all instances in which the DPD is informed by a prosecuting authority that a declination to prosecute any crime was based, in whole or in part, upon concerns about the credibility of a



DPD officer or that a motion to suppress evidence was granted on the grounds of a constitutional violation by a DPD officer;

- v. all disciplinary action taken against officers;
- w. all non-disciplinary corrective action required of officers, excluding administrative counselling records;
- x. all awards and commendations received by officers;
- y. the assignment, rank, and training history of officers; and
- z. firearms qualification information of officers.

Paragraph U81 requires the new risk management database to include, for each incident, appropriate identifying information for each involved officer (including name, pension number, badge number, shift and supervisor) and civilian (including race, ethnicity or national origin, sex, and age).

Paragraph U86 mandates that where information about a single incident is entered into the risk management database from more than one document, the risk management database must use a common control number or other equally effective means to link the information from different sources so that the user can cross-reference the information and perform analyses.

Paragraph U87 requires the City to maintain all personally identifiable information about an officer included in the risk management database during the officer's employment with the DPD and for at least five years after separation. Information necessary for aggregate statistical analysis must be maintained indefinitely in the risk management database.

Subparagraph U88g requires the risk management database to be operational and fully implemented by December 31, 2005.<sup>81</sup>

### *Background*

The Monitor last assessed the DPD's compliance with paragraphs U79-81 and U86-87 during the quarter ending November 30, 2008. As of the end of that quarter, the Monitor had not completed its evaluation of the DPD's compliance with the implementation requirements of the paragraphs, as the operation of the MAS was scheduled to be reviewed by a DOJ expert and the Monitor in January 2009.

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<sup>81</sup> 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.

The Monitor last assessed the DPD's compliance with subparagraph U88g during the quarter ending August 31, 2008; the Monitor did not complete its evaluation of compliance as of the end of that quarter. During that quarter, the City complied with the conditions of the Court's order extending implementation until August 11, 2008. The City represented that on July 24, 2008, MAS was implemented in the OCR. Implementation was planned in the Districts for the weeks of July 28, and 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, the DPD reported that the roll-out of the MAS Department-wide was "proceeding smoothly."

### *Current Assessment of Compliance*

During the last quarter, the Monitor attended regular meetings regarding MAS implementation held by DOJ and the DPD. On January 12-13, 2009, the Monitor, DOJ and DOJ's expert spent two days evaluating the MAS. The parties met with command staff, line supervisors, patrol officers and IT personnel. During the first day, the parties toured the Eastern District Station and randomly sampled MAS capabilities. On the second day, the DOJ provided feedback and technical input to City and DPD IT personnel.

The MAS is available Department-wide and the DPD IT maintains a "MAS Phase 1 Implementation Wrap Up" spreadsheet to track and prioritize needed adjustments based on officer input and internal testing of the system.

Nevertheless, obstacles to full and effective implementation remain. While both the command staff and officers appear to appreciate the need for MAS, user acceptance of the system is far from complete. Less than full user acceptance of the system undermines the reliability of the information entered into the system. In addition, officers complained of specific infrastructure needs, such as the number of computers with adequate memory and a regular power supply. The DPD is replacing inadequate computers. There appears to be no immediate solution for a regular power supply at the Eastern District Station.

An attempt to pull and cross-reference an incident report while at the Eastern District Station was unsuccessful. The inability to retrieve an incident report demonstrates that the system is not yet capable of linking and cross-referencing information. It also appears incapable of accurately capturing and aggregating information for statistical analysis.

Based on the foregoing, the Monitor concludes that the DPD is not yet in compliance with the implementation requirements of paragraphs U79-81 and U86 and subparagraph U88g. The Monitor has not yet evaluated paragraph U87.

## B. PERFORMANCE EVALUATION SYSTEM

Paragraph U91 is the sole paragraph in this section. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending August 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 U91 – Performance Evaluation System*

Paragraph U91 requires the DPD to ensure that performance evaluations for all DPD employees<sup>82</sup> occur at least annually and include, but are not limited to, consideration of the following: civil rights integrity; adherence to law, including performing duties in a manner consistent with the requirements of the Fourth and Fifth Amendments to the Constitution and the Civil Rights laws of the United States; and supervisor's performance in identifying and addressing at-risk behavior in subordinates, including their supervision and review of use of force, arrests, care of prisoners, prisoner processing, and performance bearing upon honesty and integrity.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U91 during the quarter ending August 31, 2008. The Monitor noted that performance evaluation ratings are supposed to be completed twice per year on all DPD members from the rank of police officer to lieutenant and that the rating period at that time began on May 1, 2008 and would end 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 agreed to assess the implementation requirements of this paragraph after the assessment period, which would be the quarter ending February 28, 2009.

Previously, the Monitor evaluated this paragraph during the quarter ending August 31, 2006, finding the DPD in non-compliance after reviewing a sample of 102 evaluations, some of which were incomplete or were in excess of 15 months old. The Monitor agreed not to evaluate this paragraph while changes were made to the DPD's performance evaluation system.

### *Current Assessment of Compliance*

In order to assess the DPD's compliance with the implementation requirements of paragraph U91 during the current quarter, the Monitor submitted a document request for recent annual

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<sup>82</sup> The parties proposed a modification to the language of this paragraph, stating that it is applicable to all DPD employees below the rank of Deputy Chief. The Court issued an order on October 4, 2004, adopting the proposed modification.

evaluations of personnel who were randomly selected from the DPD's roster. With the response, the DPD provided a very useful chart that summarized which evaluations were complete, were on the correct form, and contained an evaluation of the member's civil rights integrity. The chart also contained a column for additional explanatory comments, which included information about whether effective supervisory oversight was evaluated where appropriate. The Monitor reviewed a sample of 94 evaluations.<sup>83</sup> Of these, 25 evaluations had no issues pertaining to completeness, form, or evaluations of civil rights integrity and, where appropriate, supervisory oversight. The remaining 69 evaluations had issues in one or more of these areas, resulting in a compliance rate of 26.6% (25 of 94).<sup>84</sup> Specifically, no forms were submitted for seven members, and no explanation was provided for the failure to submit.<sup>85</sup> Specific problems with the evaluations included the use of an outdated form (13 instances), no evaluation of civil rights integrity (27 instances), and no evaluation of supervisory oversight (17 instances).<sup>86</sup>

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph U91.

### C. OVERSIGHT

This subsection of the UOF CJ (paragraphs U92-99) requires the DPD to establish an internal audit process, to perform annual audits of all Commands, including specialized units on eight areas of policing,<sup>87</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.

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<sup>83</sup> As required, a random, statistical sample of 94 DPD members was selected out of a population of approximately 3,047 listed on a roster provided by the DPD, utilizing a confidence level of 95% with an acceptable error rate of +/- 4.

<sup>84</sup> After the end of the quarter, the Monitor was informed that OCR sent the non-compliant evaluation forms back to the relevant commands for review by the responsible supervisors so that these programs can be corrected going forward.

<sup>85</sup> The Monitor removed a number of members from the original sample when an explanation was provided for why the member was not evaluated during the rating period. The reasons for a lack of evaluation included members who were probationary, students, disabled, or on extended leave, and one member who was a Deputy Chief and, therefore, not subject to evaluation. These members' names were replaced with the next names on the list from the random sample.

<sup>86</sup> As to be expected, the majority of the members on the list were police officers who are not supervisors. However, the vast majority of those who are supervisors were not evaluated for the effectiveness of their oversight duties.

<sup>87</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.

The Monitor last assessed the DPD's compliance with paragraph U92, subparagraphs U94a, U94c, U95b, U95c, and paragraph U99 during the quarter ending November 30, 2008; subparagraphs U94b and U95a, and paragraphs U96-98 during the quarter ending August 31, 2008; and paragraph U93 during the quarter ending November 30, 2007.

The Monitor again assessed the DPD's compliance with paragraph U93; subparagraphs U94b, U94c, U95a and U95c; and paragraphs U96 and U98 during the current quarter. The results of our current assessments follow.

### **Paragraph U93 – Audit Reporting Requirements**

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

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U93 during the quarter ending November 30, 2007, at which time the Monitor found that the DPD was not yet in compliance. The Monitor had not received sufficient documentation evidencing that corrective action had been taken in connection with the UOF CJ audits submitted during the 2007 annual audit period.

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

Since January 1, 2008, the DPD AT has submitted a total of seven UOF CJ required audits.<sup>88</sup> The OCR distributed the audit reports to the Chief of Police and COs as required. The DPD also submitted a *Response to Audit Recommendations Report* for two of the seven audits in order to address the audit findings related to systemic DPD-wide problems.<sup>89</sup>

Regarding the requirement for COs to take action to address the audit findings specific to employees under their Commands, although all seven audits identified findings that required follow-up, the DPD did not submit any documentation related to disciplinary or non-disciplinary action taken in connection with these audits. For example, the following are examples of

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<sup>88</sup> In 2008, the DPD submitted the *PI Audit*; the *Custodial Detention Practices Audit*; the *Arrests Audit*; the *Stops and Frisks Audit*; the *UOF Audit*; the *AOM Audit*; and, the *Witness Identification and Questioning Audit*.

<sup>89</sup> *Response to Audit Recommendations Reports* were submitted for the *Custodial Detention Practices Audit* and the *Stops and Frisks Audit*.

employee-related findings from the *UOF* and *Arrests Audits* for which corrective action should have been taken:

- The *UOF Audit* found that seven of eight Citizen Complaint Records (CCRs) alleging force that were identified at OCI involved an actual use of force that was not reported by the officers involved in the incidents. Additionally, in ten of the investigations evaluated, the involved officers did not complete an auditable form to self-report their uses of force.
- The *Arrests Audit* found that two arrests did not document sufficient probable cause for the arrests. In addition, for five arrests, the narrative was incomplete, which rendered it ambiguous.

On February 25, 2009, the Monitor met with the OCR staff to discuss the status of implementing the processes described in the City's 22<sup>nd</sup> *Quarter Status Report*<sup>90</sup> and the recently-assigned OCR staff member charged with coordinating the identification, tracking and follow-up on significant employee-related audit findings. The OCR staff provided a visual demonstration of a newly created tracking document and stated that the implementation of the related tracking and follow-up processes has commenced. However, because the DPD is now submitting new audits in 2009, the OCR staff does not plan to track audit findings from earlier audits of the same topics.<sup>91</sup>

As a result, the Monitor finds that the DPD is not yet in compliance with paragraph U93.

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

Paragraph U94 requires the DPD to conduct regularly scheduled annual audits 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 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).

### ***Background***

The Monitor last assessed the DPD's compliance with subparagraph U94a during the quarter ending November 30, 2008, finding that the DPD was not yet in compliance. The Monitor

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<sup>90</sup> According to the DPD's 22<sup>nd</sup> *Quarter Status Report*, COs are required to document any corrective action taken in response to the audit findings in an inter-office memorandum that was recently implemented by the OCR.

<sup>91</sup> For example, the DPD recently submitted the *PI Audit* on February 28, 2009, but had not documented any action taken in connection with the previous audit of the same topic submitted on February 29, 2008.

concluded that the *Use of Force Audit* submitted by the DPD on August 31, 2008 contained substantial performance-related deficiencies associated with audit time period and scope. The Monitor is scheduled to next review the DPD's compliance with subparagraph U94a during the quarter ending August 31, 2009.

The Monitor last assessed the DPD's compliance with subparagraph U94b during the quarter ending August 31, 2008, finding that the DPD was not yet in compliance. The *PI Investigations Audit* submitted by the DPD AT on February 29, 2008, contained both qualitative performance-related deficiencies and quantitative errors that significantly affected the overall quality of the audit.

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 U94b – Prisoner Injury Investigations Audit***

The DPD submitted the *PI Investigations Audit* to the Monitor on February 28, 2009, which was earlier than the required due date of May 31, 2009. The audit found that the Department was in compliance with paragraphs U28, U30-31, U33-35, and U37, and not yet in compliance with paragraphs U27, U29, U32, U36, and U40. Given the timing of submission, on the last day of the current quarter, the Monitor has not yet completed its evaluation of this audit or the DPD's compliance with subparagraph U94b. The Monitor expects to report its findings in the Monitor's Report for the Quarter Ending May 31, 2009.

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

In order to assess the DPD's compliance with subparagraph U94c, the Monitor reviewed the *AOM Audit Report* submitted by the DPD AT on its required due date of August 31, 2008. The Monitor also reviewed the audit work plan, matrices and other working papers, and a statistically valid random sample of the investigations included in the audit.<sup>92</sup>

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

- The AT identified two populations of closed AOM investigations: the IA population, which consisted of both internal and external criminal complaints, and the Command population, which consisted of only those complaints that were non-administrative in nature (see discussion below). The AT conducted thorough completeness tests of the IA population.

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<sup>92</sup> The Monitor reviewed to a total of 25 investigations, which was a representative sample of the AT's fieldwork at a +/-4% error rate.

- The AT intended to include only Command misconduct investigations that were “non-administrative.”<sup>93</sup> While the Monitor does not disagree with the concept of excluding investigations of relatively minor policy violations, DPD policy does not currently define misconduct investigations as either administrative or non-administrative. The AT did not, but should have, defined this terminology for purposes of the audit and should have communicated criteria for this population to the Commands when requesting all “non-administrative” investigations. The AT should also have included a recommendation for the DPD to formally define these terms and indicate whether investigations of serious policy violations are considered administrative or non-administrative.
- The AT selected time periods of March 1 through May 31, 2008 for the IA population and December 1, 2007 through May 31, 2008 for the Command population. Within these time periods, the AT identified 44 IA and zero Command investigations. The AT correctly selected a random, statistically valid sample of 32 investigations from the 44 IA investigations identified.
- With regard to the lack of Command investigations, similar to previous audits of this topic, the AT again properly reported that the Commands continue to lack a systematic procedure for tracking investigations and that these deficiencies will continue to present challenges for the AT and the DPD to definitively determine compliance with pertinent Consent Judgment requirements.
- The AT included all of the requirements in paragraphs U27-33, U61, U65-67 and U69 that were applicable to this audit topic, and tested all 32 investigations. The AT found the DPD in compliance with paragraphs U31, U33, U61, and U65-66, subparagraphs U67a-c, and paragraph U69, and found the DPD not yet in compliance with paragraphs U27-28, U32, U34-36, and subparagraphs U67d, U67g, and U67h. The Monitor concurs with these findings.
- The AT’s working papers were well-organized and contained the elements necessary to conclude on each objective, and the AT made appropriate recommendations where the DPD was non-compliant. However, the following deficiencies were also identified:
  - One of the AOM investigations reviewed by the AT contained a UOF. While the AT identified the UOF element of the investigation and properly applied the requirements of subparagraph U32f, the AT should also have applied the requirements of the remaining applicable force investigation paragraphs (U34-36) to this investigation, but did not. This error resulted in an inappropriate limitation in the scope of the review due to the failure to report compliance for paragraphs U34-36. The AT also incorrectly assessed this UOF investigation as being in-applicable to the requirements of subparagraph U32e even though the officer failed to report the UOF and the investigator appropriately

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<sup>93</sup> The DPD command investigations usually involve violations of DPD policy, not originating from an external complaint.



recommended a sustained charge against the officer for the failure to report the UOF as required by subparagraph U32e.

- The AT incorrectly classified 13 incidents as UOF incidents instead of off-duty criminal misconduct (such as assault and battery, domestic violence, etc.). Based on the incorrect classification of these incidents, the AT reported subparagraph U32f as partially compliant when in fact, subparagraph U32f was not applicable to the AT’s review of these 13 investigations. Instead, the Department should have been found in non-compliance with subparagraph 32f as a result of the failure of the investigators to evaluate the officers’ force or tactics in connection with the one incident that was applicable to subparagraph U32f, which was the AOM investigation described immediately above. Additionally, the AT’s matrix did not contain a reference to the tactics requirement of subparagraph U32f.
- The Monitor noted that the completion time for six investigations ranged from approximately 150 days to approximately 545 days, which is in excess of the 60-day completion requirement of subparagraph U67g. The AT incorrectly assessed that the requirements of subparagraph U67g were “not applicable” to these six investigations, reasoning that an extension had been requested and approved before the 60-day deadline had lapsed.<sup>94</sup> The timing requirement is not eliminated by a valid extension, but rather a new deadline should have been established. Since a new deadline had not been established for these six investigations, the AT should have found these investigations non-compliant rather than non-applicable. The Monitor notes that this error did not change the AT’s overall finding that the DPD was non-compliant with subparagraph U67g.
- In one investigation, the AT determined that the investigator had evaluated the initial stop and seizure, while the Monitor found that no stop or seizure had occurred in connection with this incident. The AT should have found that this incident was not applicable to the related requirement under subparagraph U32a, which requires, in part, that the investigator evaluate the initial stop and seizure.
- The Monitor noted that in four instances the AT determined that the investigators had evaluated the officers’ compliance with DPD policy as required by subparagraph U32e based solely on the disposition of “not sustained.” Because an adjudication of “not sustained” for the initial complaint often includes other violations of policy, the investigators should be required to specifically state that no violations were identified, and the AT should not infer its assessment based on the disposition of the complaint.
- The Monitor noted that several investigations within the audit population referred to a cross complaint and/or connected complaint against additional officers. In these

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<sup>94</sup> Effective September 15, 2008, subparagraph U67g was amended to allow 90 days for the completion of external compliant investigations. At the time of this audit, this deadline was 60 days.

instances, the AT assessed and reported only on the particular file that was selected as part of the audit population, even though the investigations were clearly connected and should have been assessed as one complete investigation.

- The Monitor also noted that when multiple allegations are present in an investigation, often there is only one disposition and it is unclear whether all elements of the investigations have been properly adjudicated. The AT did not identify or report this issue.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with subparagraph U94c. In arriving at this conclusion, the Monitor identified three substantial performance-related deficiencies: the issues associated with the AT's failure to test paragraphs U34-36; the incorrect classification of 13 incidents as UOF incidents, rather than criminal misconduct; and the incorrect assessment of investigations related to subparagraph U67g. The Monitor also identified three material performance-related issues associated with the AT's testing of subparagraphs U32a and U32e, and the multiple allegations issues, which also had some affect on the quality of the audit, along with several administrative deficiencies.

### *Monitor's Recommendations*

As recommended in the *Monitor's Reports for the Quarters Ending August 31, 2008 and November 30, 2008*, the Monitor again suggests that the AT separately assess each of the subparagraph U32f requirements, including the element that requires investigators to evaluate the officers' tactics. The Monitor notes that the *AOM Audit* matrix did not include any references to the tactics requirement, which contributed to the problems related to the AT's assessment of the unreported UOF incident.

The Monitor also recommends that the AT staff use subject matter experts (e.g. DPD investigation experts), as needed, to review the auditor's assessments.

### **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, 2008, finding that the DPD was partially compliant. The *Arrest Practices Audit* submitted on May 31, 2008 contained several qualitative performance-related deficiencies that had some effect on the quality of this audit.

The Monitor last assessed the DPD's compliance with subparagraph U95b during the quarter ending November 30, 2008, finding the DPD in partial compliance because the *Stop and Frisk Audit* submitted on August 31, 2008 had one substantial performance-related deficiency and a number of quantitative, material and administrative errors that had some impact on the overall audit quality. The next audit of this topic is due to be submitted by August 31, 2009.

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, as the *Witness Identification and Questioning Audit* submitted in August 2007 contained a number of deficiencies, including overlapping objectives that resulted in duplicate testing and inconsistent findings.

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

### ***Subparagraph U95a – Arrests Audit***

The DPD submitted the *Arrests Audit* to the Monitor on February 18, 2009, which was earlier than the required due date of May 31, 2009. The audit found that the Department remained in compliance with the paragraph U42, which is a “policy-only” paragraph,<sup>95</sup> and subparagraph U46c, and was not yet in compliance with paragraphs U43, U48, U59, U95 and U114. Given the timing of submission, near the end of the current quarter, the Monitor has not yet completed its evaluation of this audit or the DPD's compliance with subparagraph U95a. The Monitor expects to report its findings in the Monitor's Report for the Quarter Ending May 31, 2009.

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

During the current quarter, the Monitor completed its review of the *Witness Identification and Questioning Audit Report* submitted by the DPD's AT on August 31, 2008 and the associated audit work plan, working papers and fieldwork documents.<sup>96</sup> The Monitor's findings, which were discussed with the AT, are as follows:

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<sup>95</sup> The compliance finding for this paragraph does not change unless the DPD revises its policy so that it does not comply with the consent judgments.

<sup>96</sup> The Monitor selected for review 100% of the sample reviewed by the AT for the interviews/interrogations and conveyances associated with investigations other than homicide investigations. Additionally, the Monitor reviewed a randomly selected sample using a 95% confidence interval and an error factor of +/-4%.

- The AT appropriately identified three populations: a) interviews, interrogations and conveyances conducted by Homicide<sup>97</sup> from April 1 through April 7, 2008; b) interviews, interrogations and conveyances conducted by the district investigative operation units and specialized investigative units for the same time period;<sup>98</sup> and c) all material witness detentions identified from November 1 2007 through April 30, 2008.
- The AT conducted extensive completeness tests, which consisted of reviewing Crisnet reports, activity logs, and desk blotters in order to identify a complete population. The AT could not identify any *Witness Conveyance Consent* forms, which are designed to document the circumstances of all witness conveyances. The AT correctly concluded that, overall, the identification of all activities in connection with witness interviews, interrogations and conveyances is problematic because the investigators are not documenting these activities on their activity logs or on the proper forms as required by DPD policy.
- The scope of the audit addressed all relevant sections of the UOF CJ. Overall, the AT found that the DPD has not met the requirements of paragraphs U46, U48, U57, U59 and U60 and is not following the policies developed to ensure compliance with these paragraphs. The Monitor concurs with these findings.
- The AT's matrix questions, working papers and associated documents supporting the responses to the matrix questions were well-organized. The AT's responses to the matrix questions were well-supported. The Monitor identified a few summary matrix questions that could be clarified in future audits in order to avoid what appeared to be conflicting information in the underlying work papers that resulted from the AT combining findings from multiple questions. Notwithstanding the apparent working paper conflicts, in each instance, the correct response was included in the audit report.
- The Monitor identified a few minor errors in the tables within the report where the AT provided additional detail that was considered in their response to a matrix question but was not detailed in the AT's underlying work papers.
- While the audit work was thoughtful and well-organized and supported the audit findings, the audit report did not reflect these qualities. The report was lengthy and repetitive, and included an excessive use of tables that were disorganized, and details that could not be easily reconciled to the information in the tables. This made the report difficult to read and identify the audit findings that should be considered by the Department. However, the quality problems with the report were somewhat overcome by the fact that the AT met with

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<sup>97</sup> The AT appropriately identified activities associated with homicide investigations as high risk to the DPD, and tested 100% of all Homicide interrogations and conveyances and a random sample of interviews.

<sup>98</sup> The AT selected a sample of interviews and interrogations using a 95% confidence interval and an error factor of +/-10%. The AT appropriately stopped testing at that level after concluding that the Department was non-compliant with all substantive paragraphs tested.

the DPD's senior management to discuss the audit findings and develop an appropriate approach to addressing such findings.

Although the above reporting issue is considered a material performance-related deficiency, based on the fact that it was the only material issue and the audit contained no substantial performance-related deficiencies, the Monitor finds the DPD in compliance with paragraph U95c.

### **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 taken to adjudicate holds. Such audits must cover all precincts and specialized units.

#### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U96 during the quarter ending August 31, 2008, finding that the DPD was in compliance, as the *Custodial Detention Practices Audit* submitted on May 31, 2008, was timely, appropriately assessed the DPD's compliance, and made insightful recommendations.

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

On February 28, 2009, which was earlier than the required due date of May 31, 2009, the DPD submitted the *Custodial Detention Practices Audit* required by paragraph U96. The audit found that the DPD was not yet in compliance with all paragraphs tested (U49-55, U58, U60, and U115-116). Given the timing of submission, on the last day of the current quarter, the Monitor has not yet completed its evaluation of this audit or the DPD's compliance with paragraph U96. The Monitor expects to report its findings in the Monitor's Report for the Quarter Ending May 31, 2009.

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

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

## *Background*

The Monitor last assessed the DPD's compliance with paragraph U98 during the quarter ending August 31, 2008, finding that the DPD was in compliance with the policy requirements but not yet in compliance with the training and implementation requirements of the paragraph. Although the Monitor reviewed and approved the Video Review Protocol, as well as Directives 303.3, *In-Car Video Equipment*, and 305.4, *Holding Cell Areas*, it was apparent that the DPD had not effectively trained its personnel on or implemented these policies to conduct reviews of the patrol car videos.

## *Current Assessment of Compliance*

During this quarter, the Monitor and the parties discussed issues concerning recording equipment in DPD scout cars on several occasions. For the reasons set forth more fully in the Monitor's *Current Assessment of Compliance* for paragraphs U100-102, the DPD has not effectively trained its personnel on or implemented its procedures to conduct periodic random reviews of videotapes and surveys of recording equipment.

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 to activation, recording, review and preservation of video cameras and tapes. Additionally, the DPD is required to repair and replace all non-functioning video equipment. Other paragraphs in the UOF CJ and COC CJ that require periodic random reviews of videotapes and periodic random surveys of recording equipment are U98 and C64, which are also discussed in this report.

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

The Monitor last assessed the DPD's compliance with paragraphs U100-102 during the quarter ending August 31, 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 when 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 the DPD policy on video cameras shall require officers to record all motor vehicle stops, consents to search a vehicle, deployments of a drug-detection canine, or vehicle searches.

***Background***

The Monitor last assessed the DPD's compliance with paragraphs U100-102 during the quarter ending August 31, 2008, finding that the DPD remained in compliance with the policy requirements but was not yet in compliance with the training or implementation requirements of the paragraphs. During on-site inspections conducted at six DPD districts, Monitoring team members identified numerous deficiencies in connection with the requirements of these paragraphs, including a lack of adequate training for supervisors and officers, inoperable in-car video equipment, and an inability to upload and retain video recordings on a consistent basis.

***Current Assessment of Compliance***

During the current quarter, the Monitor requested and received updates from DPD at the monthly status meetings regarding in-car video equipment. Although the DPD continued its efforts to establish a functioning system, several technical obstacles are preventing the DPD from developing a system that will meet the requirements of the Consent Judgment. In order to address the failure of the in-car video to upload to a server, the DPD suggested modifying the constant record feature on operable systems to a trigger-activated system. While this solution could decrease the volume of data uploaded and increase the speed at which it is uploaded, the DPD did not yet have a working prototype vehicle as of the end of the quarter.

The DPD continues to struggle with retrofitting existing vehicles with operable systems while maintaining existing units. Many of the properly equipped vehicles failed to upload video. Additionally, concerns persist regarding the functionality of the microphones, the availability of personnel to perform repairs, and access to the system being provided to supervisors for the

purposes of conducting reviews of videos. The system has not improved measurably since the Monitor's last report.<sup>99</sup>

With regard to training, the DPD has indicated that the requirements of this paragraph have been included in its *Supervisory Leadership and Accountability Lesson Plan*.<sup>100</sup>

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, establish guidelines, and create a scheduling process that will prevent backlogs from developing in the future. In order to provide guidelines for uniformity in discipline, the DPD must create a matrix that establishes a presumptive range of discipline for each type of rule violation.

The Monitor last assessed the DPD's compliance with paragraphs U103-105 during the quarter ending August 31, 2008. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

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

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

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

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

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<sup>99</sup> After the end of this quarter, the DOJ offered and the City and DPD accepted, an offer of technical assistance to help the DPD develop a workable system. The DPD is also currently conducting a pilot program using a prototype vehicle which is designed to eliminate the current obstacles.

<sup>100</sup> As of March 10, 2009, the DPD reported that approximately 295 of 665 supervisors, or 44%, completed this training.



## *Background*

The Monitor last assessed the DPD's compliance with paragraphs U103-104 during the quarter ending August 31, 2008. The Monitor found the DPD in compliance with paragraph U103 but did not complete its evaluation of compliance with paragraph U104. In connection with paragraph U104, on September 18, 2008, the Monitor received a list of 100 disciplinary files for which discipline was imposed in June 2008, but did not complete its assessment of a statistically valid sample of the files.

## *Current Assessment of Compliance*

The Monitor reviewed 53 of the 100 disciplinary files that were provided in response to the Monitor's document request asking for files closed in June 2008.<sup>101</sup> The Monitor later learned that for these 100 files, discipline had been imposed in various months before June 2008, and the month of June was when Disciplinary Administration (DA) entered the "closed" files into its computer system. DA had additional personnel entering files, which accounted for the vast increase in the number of files received for a one-month period of time compared with previous document requests.<sup>102</sup>

Of the 53 files, six were Commander's Disciplinary Actions (CDAs), 44 were handled at the Command level, and two were scheduled for a police trial board.<sup>103</sup> One of the files scheduled for a trial board was not held due to the officer's resignation prior to the adjudication. Therefore, there were seven files that were subject to the disciplinary timeline under paragraph U104: six CDAs and one that was scheduled for a police trial board. The Monitor determined that the DPD did not adhere to the disciplinary timeline for any of these seven files. The Monitor was unable to determine from the information provided whether two CDAs were scheduled within the prescribed timeline (within 60 days, or approximately 2 months, of receipt by DA), and, as illustrated in the chart below, four of the six CDAs were not scheduled within the prescribed timeline:

<b>CDA File</b>	<b>Date DA Received File</b>	<b>Date Charge Sheet Drafted</b>	<b>Approximate Time Elapsed</b>
<b>CDA 1</b>	2/27/07	3/4/08	12 months
<b>CDA 2</b>	10/8/07	4/22/08	6 months
<b>CDA 3</b>	8/27/07	5/5/08	8 months
<b>CDA 4</b>	6/1/07	4/28/08	11 months

<sup>101</sup> The Monitor intended to review a sample of 54 files; however, late in the process it was discovered that one of the files on the list was a duplicate.

<sup>102</sup> A document request for files "closed" in December 2007 resulted in 12 files being provided by the DPD and a similar request for June 2007 resulted in 13 files.

<sup>103</sup> There was also one additional file that was listed as "N/A" (not applicable), because after IA completed its investigation and forwarded it to DA, the officer resigned before a Charge Sheet could be written.

Once the charge sheets were drafted, five of the six CDAs were conducted within the prescribed disciplinary process timelines (30 days after receiving from DA).<sup>104</sup> The single Police Trial Board also was not scheduled within the prescribed disciplinary timeline (120 days). DA received the file on January 30, 2007, and the charge sheet was drafted on September 7, 2007, approximately nine months later.

The review also identified that the DPD has a backlog of cases, as CDA matters are sitting in DA for six to twelve months before the charge sheets are drafted, which does not allow the matters to be resolved as soon as reasonably possible. The Monitor understands that additional resources have been devoted to DA, which will likely help to resolve these problems in the future.

Based on the foregoing, the Monitor finds that the DPD is no longer in compliance with paragraph U103 and is not yet in 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 August 31, 2008. The Monitor found the DPD in compliance with the policy requirements and in non-compliance with training requirements of the paragraph; the Monitor did not complete its evaluation of compliance with the implementation requirements of the paragraph, as it did not complete its assessment of a statistically valid sample of the files referred to in the *Background* section of paragraphs U103 and U104. Regarding training, the Monitor reported that 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 incorporated the *Supervisory Leadership and Accountability Lesson Plan*, on

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<sup>104</sup> Regarding the one CDA that did not occur within the prescribed timeline, the incident occurred on February 8, 2007, and the CDA was held on September 13, 2007. The Command conducting the CDA did not prepare a charge sheet at the time of the CDA, and one was not drafted until DA received the file on 4/15/08 (well after the CDA had occurred).

August 4, 2008. The DPD, based on its estimates, is expected to have trained substantially all officers within 43 weeks.

### *Current Assessment of Compliance*

The Monitor reviewed 53 of the 100 disciplinary files that were entered into DA's database in June 2008 and determined that discipline imposed was within the range identified in the disciplinary matrix for all of the files. Although the Monitor has previously assessed this paragraph as non-compliant because the training requirements have not been met, since the DPD has consistently adhered to the disciplinary matrix and only certain personnel are responsible for imposing discipline, the Monitor finds the DPD in compliance with the implementation of this paragraph.

As a result, the Monitor finds the DPD in overall compliance with paragraph U105.<sup>105</sup>

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<sup>105</sup> The Monitor will only include an assessment of compliance with the training requirements of this paragraph if the DPD falls out of compliance with the implementation requirements of the paragraph.

## VII. TRAINING

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

### A. OVERSIGHT AND DEVELOPMENT

This section comprises paragraphs U106-111. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2008. The Monitor is scheduled to again assess compliance with paragraphs U106-109 and U111 during the quarter ending May 31, 2009. The Monitor again assessed compliance with paragraph U110 during the current quarter. The results of our current assessments follow.

#### *Paragraph U110 – Civil Lawsuits*

Paragraph U110 requires the DPD to meet with the City Law Department on a quarterly basis concerning the conclusion of civil lawsuits alleging officer misconduct. Information gleaned from this process must be distributed to DPD risk management and training staff.

#### *Background*

The Monitor last assessed the DPD's compliance with paragraph U110 during the quarter ending August 31, 2008. The Monitor did not complete its evaluation of compliance, as it was unable to confirm whether quarterly meetings between the City Law Department and the DPD adequately addressed the requirements of paragraph U110. A member of the Monitoring Team had been attending these quarterly meetings until March 2008, when the City raised concerns about the presence of the Monitor compromising confidential attorney-client discussions. As a result, the Monitor has not attended the meetings since March 2008. The DPD reported that a meeting took place on October 23, 2008, and the Monitor renewed its request for all non-privileged minutes and meeting notes to verify the occurrence of the meetings.

Prior to this, the Monitor found the DPD in compliance with paragraph U110, with the most recent finding occurring during the quarter ending May 31, 2008.

### *Current Assessment of Compliance*

The City recently indicated that it no longer objects to the Monitor's attendance at future meetings between the DPD and the City Law Department. The Monitor also renewed its request for all non-privileged minutes and meeting notes to verify the occurrence and substance of the meetings. The DPD responded by providing detailed notes from meetings on July 30, 2008, and October 23, 2008. Based on these minutes, it appears that concluded cases were discussed and suggested items for newsletters and training were developed during the meetings. Additionally, the DPD provided copies of Risk Management newsletters that were distributed during July, October and November 2008.

Based on the foregoing, the Monitor finds DPD in compliance with paragraph U110.

#### **B. USE OF FORCE TRAINING**

This section comprises paragraph U112 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending November 30, 2008, and is scheduled to again assess compliance with the paragraph during the quarter ending May 31, 2009.

#### **C. FIREARMS TRAINING**

This section comprises paragraph U113 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending November 30, 2008, and is scheduled to again assess compliance with the paragraph during the quarter ending May 31, 2009.

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

This section comprises paragraph U114 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending November 30, 2008, and is scheduled to again assess compliance with the paragraph during the quarter ending May 31, 2009.

#### **E. CUSTODIAL DETENTION TRAINING**

This section comprises paragraphs U115-117. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending August 31, 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 that the DPD arraignment policy shall not be delayed because of the assignment of the investigation to a specialized unit; the arrest charge(s) the availability of an investigator, the gathering of additional evidence or obtaining a confession.

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

***Background***

The Monitor last assessed the DPD's compliance with paragraphs U115-117 during the quarter ending August 31, 2008, finding the DPD in non-compliance with each, as in-service training classes that covered the requirements of these paragraphs had not yet been attended by greater than 94% of the DPD members required to attend the training. However, the Monitor commended the DPD for the notable progress it had made in complying with Consent Judgment requirements by initiating in-service training in August 2008.

***Current Assessment of Compliance***

As previously noted, the DPD's Office of Training and Professional Development began its in-service training program on August 4, 2008. This training is designed 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>106</sup>

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<sup>106</sup> The DPD has also included instruction on customer service, discrimination awareness, sexual harassment and realistic patrol tactics in the in-service training.

Starting in September 2008, the Monitor attended a first round of in-service training classes and provided feedback to the DPD at the end of November 2008.<sup>107</sup> Nevertheless, the DPD has not yet trained greater than 94% of its members required to attend this training, which is a requirement for achieving 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 and continuing in-service training over the past two quarters.

## F. SUPERVISORY TRAINING

This section comprises paragraphs U118-120. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending August 31, 2008. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### *Paragraphs U118-120 – Supervisory Training; Leadership and Command Accountability Training; Risk Assessment Training Requirement*

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.

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 paragraphs U118-120 during the quarter ending August 31, 2008, finding that the DPD was not yet in compliance with each, as in-service training classes that covered the requirements of these paragraphs had not yet been attended by

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<sup>107</sup> See *Current Assessment of Compliance* for paragraphs U109, U112 and U114 in the Monitor's Report for the Quarter Ending November 30, 2008 for a more detailed account of the feedback provided to the DPD.

greater than 94% of the DPD members required to attend the training. However, the Monitor commended the DPD for the notable progress it had made in complying with Consent Judgment requirements by initiating in-service training.

### *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. The Monitor has attended this and other in-service training classes and provided feedback to the DPD. Nevertheless, according to the training schedule, the DPD has not yet trained greater than 94% of its members 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 U118-120. However, the Monitor commends the DPD for the notable progress made in complying with Consent Judgment requirements by initiating and continuing in-service training during the past two quarters.

## G. INVESTIGATOR TRAINING

This section comprises paragraphs U121-122. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending August 31, 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 Internal Affairs Division (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 August 31, 2008, finding that the DPD was not yet in compliance with each, as in-service



training classes that covered the requirements of these paragraphs had not yet been attended by greater than 94% of the DPD members required to attend the training. However, the Monitor commended the DPD for the notable progress it had made in complying with Consent Judgment requirements by initiating in-service training.

### *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. The Monitor has attended select in-service training classes and provided feedback to the DPD. In addition, as part of its efforts towards compliance with paragraph U121, the DPD taught the approved *OCI/IA/FI Investigatory Lesson Plan* to personnel in those units on November 6 and November 12, 2008.<sup>108</sup> Nevertheless, according to the training schedule, the DPD has not yet trained greater than 94% of its members 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 and continuing in-service training during the past two quarters.

## H. FIELD TRAINING

This section comprises paragraph U123 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending August 31, 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 paragraph U123 during the quarter ending August 31, 2008. The Monitor was not informed of the FTO training that occurred in April 2008

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<sup>108</sup> See *Current Assessment of Compliance* for subparagraph U67g for more detailed evaluation of this training.

in advance. When the Monitor attended one day of the FTO training for new members in August 2008, there was no lesson plan provided to the Monitor before or during the training.<sup>109</sup> The lesson plan that was submitted is insufficient to teach a 40-hour course.<sup>110</sup>

The Monitor withheld a determination of the DPD's compliance with the paragraph pending its evaluation of the next FTO training course to be conducted by the DPD, as well as the DPD's implementation of the revised FTO Program Standard Operating Procedures (SOP) Manual.

### *Current Assessment of Compliance*

During the current quarter, in December 2008, the Monitor attended several days of the DPD's FTO 40-hour certification course. The Monitor found that there were various aspects of the course that were good; however, the Monitor will provide the DPD with specific feedback designed to improve the class. The Monitor only had the lesson plan in advance and was not provided with the handouts that were utilized during the class. One of the major problems was time management for the course. On one of the course days that the Monitor attended, there were only a total of 5.25 hours of instructional time during the 8-hour block. On another day there were a total of four breaks, excluding lunch. One of the breaks exceeded 30 minutes. There was no agenda provided to the students and there were aspects of the training that were not included in the lesson plan. Also, in order to fill time, portions of instruction planned for other days were moved up.

The Monitor recommends that the DPD contact similar sized departments that have mature FTO programs to obtain exemplar training material. The Monitor plans to attend and evaluate the forty-hour FTO program training presentation again when it is repeated. Adequate notice to the Monitor is necessary to ensure the attendance of Monitoring Team personnel.

The DPD timely responded to the Monitor's document request for FTO selection packages for members who attended FTO training in August 2008. The Monitor reviewed these packages and determined that proper evaluation criteria were rated, and officers selected were qualified to become FTOs. Gender diversity was also clearly achieved by the selection process.

Based on the foregoing, the Monitor finds that the DPD is in partial compliance with the requirements of paragraph U123.

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<sup>109</sup> The lesson plan was sent to the Monitor by email while a member of the Monitoring Team was attending the class.

<sup>110</sup> Although the DPD approved a FTO program protocol which was required to address the criteria and method for selecting and removing the FTOs and for training and evaluating FTOs and trainees, the protocol was not required to include or was the DOJ required to approve the actual FTO lesson plan (although the protocol must discuss training of FTOs).

## 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 February 28, 2009.

### **I. FIRE SAFETY POLICIES**

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

The Monitor 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>111</sup> The Monitor last assessed the DPD's compliance with paragraphs C14-21 during the quarter ending August 31, 2008, and is scheduled to again assess compliance with these paragraphs during the quarter ending May 31, 2009.

### **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 August 31, 2008, and is scheduled to again assess compliance with these paragraphs during the quarter ending May 31, 2009.

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<sup>111</sup> The DPD will remain in compliance with paragraph C22 unless it begins using buildings that contain Kane Fiber Ceiling Tiles to detain prisoners.

### **III. MEDICAL AND MENTAL HEALTH CARE POLICIES**

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

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 unless the policies directly responsive to the paragraphs are revised. The Monitor last assessed the DPD compliance with paragraphs C26-27 and C30-34 during the quarter ending November 30, 2008, and is scheduled to again assess compliance with these paragraphs during the quarter ending August 31, 2009.

### **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 compliance with paragraphs C35-38 during the quarter ending November 30, 2008, and is scheduled to again assess compliance with these paragraphs during the quarter ending August 31, 2009.

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

### *Paragraphs C39-43, C45 – Cleanliness of Cells; Development of Cleaning Policy; Maintenance Policy; Heating and Ventilation; Cell Block Repairs; Lighting; Access to Toilets and Potable Water*

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

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

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

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

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

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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.

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

### *Background*

The Monitor last assessed the DPD's compliance with paragraphs C39-43 and C45 during the quarter ending May 31, 2008, finding that the DPD was in compliance with paragraphs C39, C42-43 and C45; the Monitor also found the DPD in compliance with the policy requirements but not yet in compliance with the implementation requirements of paragraphs C40-41. The compliance assessments were based on random unannounced onsite inspections of DPD buildings containing holding cells conducted by the Monitor, as well as the findings contained in the *EH&S Audit* submitted by the DPD on January 31, 2008.

### *Current Assessment of Compliance*

In order to assess the DPD's compliance with paragraphs C39-43 and C45, the Monitor reviewed the *EH&S Audit* submitted by the DPD on January 31, 2009, which was required by paragraph C70.<sup>113</sup>

The *EH&S Audit* included assessments of compliance with the requirements of paragraphs C39-43 and C45, among others, as well as an assessment of the related DPD policies. The Monitor reviewed the audit report, work plan, and audit working papers related to the audit. The Monitor concluded that the audit was compliant with the requirements of paragraph C70 and the Monitor was able to rely upon the audit's findings.<sup>114</sup>

The following reflects the AT's findings with which the Monitor concurs:

#### *Paragraph C39 – Cleanliness of Cells*

The AT determined that the DPD was in compliance with the requirements of paragraph C39, as the AT's onsite inspections found the holding cells were maintained in a clean and sanitary manner.

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<sup>113</sup> The Monitor intends to conduct supplemental inspections in connection with the next EH&S audit submitted by the DPD.

<sup>114</sup> Refer to the *Current Assessment of Compliance* for paragraph C70 for information regarding the Monitor's assessment of the audit.

*Paragraph C40 – Development and Implementation of Cleaning Policy*

The AT determined that the DPD was in compliance with the requirements of paragraph C40, as all 305 required cleaning logs over a 61-day audit time period were available for review and sufficiently demonstrated that the holding cells' cleaning schedules are being followed and documented. The AT also found that each log included a supervisory signature as required by the DPD cleaning policy.

*Paragraph C41 – Maintenance Policy*

The AT found that the DPD is not yet in compliance with paragraph C41, as 25% of the maintenance logs included in the selected time period were missing.<sup>115</sup> As a result, the DPD failed to meet the greater than 94% requirement for compliance.

The AT's review of the 30 available logs found that although the logs noted various requests for repairs of inoperable equipment, the logs did not contain adequate detail to track the status of the repair requests. Consequently, the AT was unable to determine if repairs were made in a timely manner.

*Paragraph C42 – Heating and Ventilation*

The AT determined that the DPD is in compliance with the requirements of paragraph C42. The AT found that all 111 holding cells inspected had temperatures within the required range of 66-80 degrees Fahrenheit. The AT also identified that there were no reported changes or malfunctions in the DPD systems for all buildings containing holding cells since the most recent inspection by the independent contractor, who determined that the system provides adequate ventilation.<sup>116</sup>

*Paragraph C43 – Cell Block Repairs*

The AT determined that the DPD is in compliance with the requirements of paragraph C43, as all of the equipment within the individual holding cells that were in use at the time of the inspections<sup>117</sup> was operable or intact, including the light fixtures, sinks, toilets, and windows.

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<sup>115</sup> Logs from the Western and Northeastern Districts were missing.

<sup>116</sup> The inspections of both the independent contractor and the DHWP whose results were competent to test the adequacy of the ventilation systems, were last conducted in December 2007 and January 2008.

<sup>117</sup> Consistent with the findings reported in the *Current Assessment of Compliance* for paragraph C62, the AT's inspections found several cells with inoperable equipment. However, the cells were not occupied and had signs posted prohibiting their use until repaired, and a request for repair was documented on the maintenance log as required.



*Paragraph C45 – Access to Toilets and Potable Water*

The AT determined that the DPD was in compliance with the requirements of paragraph C45, as all of the holding cells that were in use at the time of the inspections were equipped with operable self-contained toilets and sink units with drinking fountain spigots that provide detainees with access to potable water and a toilet 24 hours a day.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements for all of the paragraphs in this section. The Monitor finds the DPD remains in compliance with the implementation requirements for paragraphs C39, C42 (both subparagraphs C42a and b), C43 and C45; and is now also in compliance with paragraph C40. The DPD is not yet in compliance with implementation requirements of paragraph C41.

## **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 November 30, 2008, and is scheduled to again assess compliance with these paragraphs during the quarter ending August 31, 2009.

## **VII. FOOD SERVICE POLICIES**

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

The Monitor last assessed the DPD's compliance with paragraphs C49-50 during the quarter ending May 31, 2008. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### **Paragraphs C49-50 – Food Storage and Service, Development and Implementation of Food Service Policies**

Paragraph C49 requires the DPD to ensure that food is stored and served in a sanitary manner and in compliance with state and local health codes. The DPD's efforts to ensure that food is

stored and served in a sanitary manner are also dependent on its implementation of the comprehensive food service policy required by paragraph C50.

Paragraph C50 requires the DPD to develop and implement a comprehensive food service policy, which must be reviewed and approved, in writing, by a qualified sanitarian. Under this policy, the meal plan must be initially reviewed and approved, in writing, by a qualified dietician. It must also be reviewed and approved, in writing, by a qualified dietician at least once a year, and prior to implementing any revisions to the program. In addition, all food must be stored and handled in a sanitary manner, all prisoners must be provided with an alternative meal selection and food must be provided to all detainees who are held over six hours.

### *Background*

The Monitor last assessed the DPD's compliance with paragraphs C49-50 during the quarter ending May 31, 2008, finding the DPD in compliance with the policy requirements but not yet in compliance with the implementation requirements of the paragraphs. The Monitor conducted onsite inspections of holding cells and reviewed the *Food Service Audit* submitted by the DPD on January 31, 2008. The Monitor found that the holding cell staff was not adhering to the specified feeding schedule and documentation requirements of the paragraphs.

### *Current Assessment of Compliance*

In order to assess the DPD's compliance with paragraphs C49-50, the Monitor reviewed the *Detainee Food Service Program and Personal Hygiene Practices Audit (FSP Audit)* submitted by the DPD on January 31, 2009, which was required by subparagraph C71.<sup>118</sup>

The *FSP Audit* included compliance assessments of the requirements of paragraphs C49-50 and the related DPD policies. The Monitor reviewed the audit report, work plan, and audit working papers related to the audit. The Monitor concluded that the audit was compliant with the requirements of paragraph C71 and that the Monitor was able to rely upon its findings.<sup>119</sup>

The following reflects the AT's findings with which the Monitor concurs:

#### *Paragraph C49 - Food Storage and Service*

The AT determined that the DPD is not yet in compliance with the requirements of paragraph C49, based on the following findings:

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<sup>118</sup> The Monitor intends to conduct supplemental inspections in connection with the next Food Service audit submitted by the DPD.

<sup>119</sup> Refer to the *Current Assessment of Compliance* for paragraph C71 for information regarding the Monitor's assessment of the audit.

- The AT found that at the time of all 15 inspections, the refrigerators in the DPD holding cells were clean and free of food residue; the temperature in the refrigerators was maintained at 41°F or less as required; all food items were sealed and labeled; and, the food and/or drinks were marked with a current expiration date. However, the AT's review of the documentation found that the DPD did not exceed the 94% compliance rate with regard to the routine recordation of the temperature, cleaning, and sanitation of the refrigerators as required by the DPD's Food Service Policy.<sup>120</sup>
- The AT's onsite observations found that at the time of the inspections, the food preparation areas were clean, the detention officers washed their hands prior to handling and serving food to the detainees, and antiseptic towelettes were offered to the detainees to sanitize their hands prior to serving them food. However, similar to the above finding, the DPD is not consistently documenting these processes in order to demonstrate compliance with these tasks consistently.<sup>121</sup>

*Paragraph C50 - Development and Implementation of Food Service Policies*

The AT determined that the DPD is not yet in compliance with the requirements of paragraph C50 based on the following findings:

- The food service documentation related to 13 of 15<sup>122</sup> detainees who were held in DPD custody over six hours did not demonstrate that these detainees were provided regular, adequate, and timely meals throughout their detainment. This translates to a compliance rate of 86.6%.
- The DPD is not ensuring that detainees arrested between the hours of 10:00 p.m. and 12:00 a.m. are provided meals shortly after intake. The AT could not verify that any of the twelve applicable detainees within the audit sample received meals in accordance with this requirement.
- The DPD is not ensuring that all detainees who are conveyed to and returned from a hospital facility were provided with a meal upon their return. Additionally, of the 15 detainees within the audit sample who were prescribed medication at the Detroit Receiving Hospital (DRH), the AT was unable to determine if 11 (73.3%) required food to be taken with medication, due to missing Hospital Discharge Instructions. The remaining four detainees were prescribed

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<sup>120</sup> The *FSP Audit* revealed that the DPD complied with the requirement to record the temperature of the refrigerator each shift on a daily basis at a rate of 92% (290/315) and with the requirement to record the weekly cleaning and sanitation of the refrigerator at a rate of 83 % (261/314).

<sup>121</sup> The routine cleaning of the food preparation areas is documented in the same log as the sanitation of the refrigerator, thus is the same compliance rate of 83 % (261/314).

<sup>122</sup> The AT stopped testing at the +/-10% error rate due to the non-compliance conclusion.

medication that was required to be taken with food, but a meal was not provided to them prior to the medication being dispensed as required.

- Cellblock Supervisors often signed the food service documentation even though the information recorded on the log was incomplete, such as whole columns left blank and whether or not a detainee was fed during the scheduled time. The logs also did not document if the detainees were provided a meal at the time of intake. These documentation problems were consistent throughout DPD.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements, is in partial compliance with the implementation requirement of paragraph C49, but is not yet in compliance with the implementation requirements of paragraph C50.

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

### *Paragraph C51 – Availability of Personal Hygiene Items*

Paragraph C51 requires the DPD to provide all prisoners with access to personal hygiene items such as soap, toothbrushes, toilet paper, comb, deodorant and feminine hygiene products. The DPD must implement this provision within one month of the effective date of the COC CJ.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph C51 during the quarter ending May 31, 2008, finding the DPD was no longer in compliance with the requirements of the paragraph. This finding was based on inadequate inventories and supplies of personal hygiene products and the lack of signage in holding cell facilities to ensure that detainees are made aware that the products are "available." The DPD's *Food Service Audit* submitted on January 31, 2008, which the Monitor found to be compliant, also found the DPD in non-compliance with paragraph C51.

### *Current Assessment of Compliance*

In order to assess the DPD's compliance with paragraph C51, the Monitor reviewed the *FSP Audit* submitted by the DPD on January 31, 2009, which was required by subparagraph C71.<sup>123</sup>

The *FSP Audit* included compliance assessments of the requirements of paragraph C51 and the related DPD policies. The Monitor reviewed the audit report, work plan, and audit working papers related to the audit. The Monitor concluded that the audit was compliant with the requirements of paragraph C71 and that the Monitor was able to rely upon its findings.<sup>124</sup>

The following reflects the AT's findings with which the Monitor concurs:

The AT determined that the DPD was in compliance with the requirements of paragraph C51, as adequate supplies of personal hygiene products (including feminine hygiene products) and toilet paper were available at all of the DPD district facilities with holding cells. Additionally, as described above, the AT's onsite observations found that antiseptic towelettes were offered to the detainees to sanitize their hands prior to serving them food. The audit also indicated that the appropriate signage informing detainees that personal hygiene products are available to them upon request was posted in all five district facilities that contain holding cells.

Based on the foregoing, the Monitor finds that the DPD is in compliance with the requirements of paragraph C51.

## **IX. USE OF FORCE AND RESTRAINTS POLICIES**

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

The Monitor last assessed the DPD's compliance with paragraphs C52-54 during the quarter ending August 31, 2008. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

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<sup>123</sup> As previously mentioned, the Monitor intends to conduct supplemental inspections in connection with the next Food Service audit submitted by the DPD.

<sup>124</sup> Refer to the *Current Assessment of Compliance* for paragraph C71 for information regarding the Monitor's assessment of the audit.

### **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***

The Monitor last assessed the DPD's compliance with paragraph C52-53 during the quarter ending August 31, 2008, finding the DPD in compliance with paragraph C52, but not yet in compliance with paragraph C53. Based on the ten incidents contained within the UOF in Holding Cells (*UOFHC*) *Audit* Report submitted by the DPD on July 31, 2008, DPD officers complied with the UOF policies as required by paragraph C52, but had not utilized appropriate precautions when dealing with resistant detainees as required by paragraph C53.

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

In order to assess the DPD's compliance with the paragraphs C52-53 during the current quarter, the Monitor conducted an independent review of eleven force incidents included in the *Holding Cells Investigations Audit (HCI Audit)* Report.<sup>125</sup> The *HCI Audit* identified all use of force incidents that occurred in a holding cell (or holding cell area) from May 1 through November 30, 2008.<sup>126</sup>

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<sup>125</sup> The *HCI Audit* was submitted on January 31, 2009 to address the requirements of paragraph C65. Paragraph C65 requires the AT to audit the "investigations" of force, prisoner injuries, and misconduct, but does not require the AT to audit the force incidents, themselves. The Monitor has not yet completed its evaluation of the audit; however, the evaluation of the audit is not an element of the Monitor's work in this area. Refer to the *Current Assessment of Compliance* for paragraph C65, below.

<sup>126</sup> The *HCI Audit* included a review of all types of HC investigations combined; however, the Monitor completed its review of only the force incidents in connection with paragraph C52-53.

In regards to the requirements of paragraph C52, the types of force used by officers in nine of the eleven incidents included hard-hands (compliance controls and physical controls) only, and were appropriate given the situation and subject's resistance described within the documentation. However, in two incidents, both of which involved the same detention officer, the force used was inappropriate and excessive, and resulted in criminal charges being filed against the officer. Additionally, five other officers were also charged with misconduct because they were present and witnessed the incidents, but took no action to stop the detention officer's inappropriate use of force against the detainees, and they failed to report the incidents to a supervisor. The Monitor notes that the DPD's investigations and subsequent actions taken in connection with these incidents were handled appropriately. The Monitor commends the DPD for taking appropriate actions in connection with these incidents. Overall, of the eleven force incidents that occurred within holding cells reviewed, two were in violation of the DPD's use of force policies, which resulted in an 82% compliance rate.<sup>127</sup>

In regards to subparagraph C53a,<sup>128</sup> four of the incidents included circumstances in which the officers should have used precautionary measures to avoid the use of force, namely, summoning additional officers when dealing with resistant detainees. Although the reports indicate that other detention officers were present and observed the force incidents, the reports failed to document that assistance was requested or provided.<sup>129</sup> The DPD has recently indicated that going forward officers will begin documenting any assistance requested and/or provided in connection with force incidents.<sup>130</sup>

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<sup>127</sup> It could be argued that since these two incidents were handled appropriately, the DPD should be found in compliance with paragraph U52; however, this logic does not take into account the agreed-upon methodology for determining compliance, which is a rate of greater than 94%. Under this reasoning, 50% of the Department could be found to have violated use of force policies and as long as the DPD handled the matters appropriately following the investigations, the Department would be found in compliance despite the fact that there is clearly a problem. It is exactly this type of situation that was contemplated when the finding of partial compliance was instituted, so that the Department would appropriately get "credit" for their good efforts. This is not to suggest that when smaller populations are judged over time to be close to compliance that there might not be good reason to depart from the stated methodology of greater than 94%. However, that departure would not only be based on the fact that the Department handled the matter(s) appropriately, but would also be based on the fact that a very small number of incidents continue to keep the Department from achieving compliance time and time again.

<sup>128</sup> The requirements of subparagraphs C53b and C53c were not applicable to any of the incidents identified in the audit.

<sup>129</sup> Several of these incidents documented that other detention staff were present and observed the force, but do not document if assistance was offered or provided. Similar to previous assessments on this topic, the Monitor acknowledges that the documentation reviewed could be incomplete, in that precautionary measures may have been taken but not documented. However, any measures taken must be documented in order to satisfy Consent Judgment requirements.

<sup>130</sup> Similar to previously reported findings, the Monitor again notes that none of the investigations of incidents that included a use of force specifically evaluated the officers' tactics surrounding the use of force. During the current quarter, on January 7th, the Monitor met with the DPD to discuss the fact that the tactics are generally not being evaluated in the Department's investigations, despite the fact that several areas of the Consent Judgments require

Based on the foregoing, the Monitor finds the DPD in compliance with the policy requirement and in partial compliance with the implementation requirements of paragraph C52; the Monitor notes that the DPD was previously in full compliance with the implementation requirements of the paragraph. The Monitor also finds that the DPD is 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 August 31, 2008, finding the DPD in compliance. Holding Cell Compliance Committee (HCCC) inspections conducted in all five holding cell facilities supported the DPD’s contention that the practice of handcuffing detainees to fixed objects has become increasingly rare, and in the instances where it does occur, detainees are not handcuffed for more than three hours.<sup>131</sup> The Monitor indicated that an independent assessment would be done during the next quarter that the paragraph is scheduled for review.

***Current Assessment of Compliance***

In connection with paragraph C62, the Monitor reviewed completed DPD715 forms (*Evaluation of the Operation of the Holding Cells*) from inspections conducted by the HCCC during September through December 2008.<sup>132</sup> The inspections included an evaluation of whether detainees were being handcuffed to benches. An excerpt from the form follows:

Were any detainees observed handcuffed to an object?	<input type="checkbox"/> Yes (Comment on the length of time). <input type="checkbox"/> No
If YES – ascertain the length of time that the detainee was handcuffed (place info in the comments section) (Paragraph 54)	

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that tactics be considered, in connection with both the officers’ uses of force and the investigations of the force incidents. The DPD has indicated that they will begin evaluating tactics and will include it in their training program.

<sup>131</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.

<sup>132</sup> For more detail regarding the inspections see the *Current Assessment of Compliance* for paragraph C62.



As reported with the previous inspections, no detainees were observed handcuffed to fixed objects at all. While the Monitor commends the DPD for testing these requirements in the inspections, the Monitor once again expresses its concern that these inspections are spot-checks and may not reveal whether individuals are being handcuffed to objects. The Monitor recommends that the DPD conduct additional reviews to ensure that the DPD is meeting the requirements of this paragraph by utilizing the periodic random surveys of video equipment required by paragraph C64d.

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 November 30, 2008, and is scheduled to again assess compliance with these paragraphs during the quarter ending May 31, 2009.

## **XI. EXTERNAL COMPLAINTS**

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

The Monitor last assessed the DPD's compliance with paragraphs C58-59 during the quarter ending November 30, 2008, and is scheduled to again assess compliance with these paragraphs during the quarter ending May 31, 2009.

## **XII. GENERAL POLICIES**

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

The Monitor last assessed the DPD's compliance with paragraphs C60-61 during the quarter ending November 30, 2008, and is scheduled to again assess compliance with these paragraphs during the quarter ending May 31, 2009.

### 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 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>133</sup>

The Monitor last assessed the DPD's compliance with paragraphs C62-64, the Fire Safety Audit requirement of paragraph C66, and paragraphs C67, C68, and C70 during the quarter ending August 31, 2008; with subparagraphs C65a-c, the HCCC requirement of paragraph C66, paragraph C69, and paragraphs C71-C72 during the quarter ending November 30, 2008.

The Monitor again assessed the DPD's compliance with paragraphs C62-64, subparagraphs C65a-c, the Fire Safety Audit requirement of paragraph C66, and paragraphs C67-C71 during the current quarter. The results of our current assessments follow.

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

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

#### *Background*

The Monitor last assessed the DPD's compliance with paragraph C62 during the quarter ending August 31, 2008, finding that the DPD was not yet in compliance with the paragraph. Although the DPD had conducted some inspections of the building containing holding cells, the quality of such inspections needed improvement and the HCCC failed to inspect the DPD holding cells located at the DRH. The Monitor reviewed the Guidelines document for the inspection checklist (DPD715) and identified a few areas that required clarification and/or improvement. The DPD indicated that the Guidelines document would be revised and disseminated to the HCCC members conducting the inspections to ensure consistency and quality in the inspections that are performed.

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<sup>133</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.

### *Current Assessment of Compliance*

In order to assess the DPD's compliance with paragraph C62 during the current quarter, the Monitor reviewed completed DPD715 forms, *Evaluation of the Operation of the Holding Cells*, for inspections conducted by the HCCC during this quarter. The Monitor notes that the DPD did not submit a revised Guideline during the quarter, but indicated that a revised document would be submitted in early March, after the end of the current quarter. The documentation submitted indicates that two HCCC members conducted one inspection per month in each of the five Districts from September 3 through December 13, 2008, totaling 20 inspections. While the inspections conducted were sufficient in frequency within the District buildings, as with the Monitor's prior assessment, inspections were not conducted at DRH, even though that building contains holding cells that must be routinely evaluated as required by paragraph C62.<sup>134</sup>

In regards to the content of the inspections conducted, as illustrated in the table below, the inspections identified a number of problems within the holding cells, such as fire doors being propped open due to poor ventilation; unclean cells; a missing cell door key; and, burned-out light bulbs. Based on the data in the table, some Districts appear to use the HCCC inspection process effectively, ensuring that inoperable equipment identified during inspections are repaired in a timely manner. However, in two of the Districts,<sup>135</sup> lighting problems persisted over the course of several inspections. The lack of adequate lighting within holding cells and cellblock aisles can be a safety hazard to both staff and detainees, and should be repaired in a timely manner. Additionally, untimely repairs make it more difficult for the DPD to minimize the risk of harm to staff and detainees, as required by this paragraph.

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<sup>134</sup> The DPD has previously indicated that it planned to implement a modified version of the checklist and conduct the inspection process for the DRH. On March 9, 2008, after the end of the quarter, the Monitor received revised guidelines for the DPD715 form and an inspection form for the DRH. The DRH inspection took place in February 2009. However, there were no DRH inspections submitted for the time period evaluated here – September through December 2008. The Monitor will evaluate the revised guidelines and provide feedback to the DPD.

<sup>135</sup> The Eastern and Northeastern Districts had broken or burned out lighting fixtures over a three-month time period.

District	September Inspection	October Inspection	November Inspection	December Inspection
Western	N/A [1]	aisle lights	aisle lights	cell #8 [2]
Eastern	aisle and holding cell lights [3]	aisle lights	spotlights and aisle	toilet
Northeastern	TDD	4 aisle lights & TDD	aisle and spotlights & TDD	8 spotlights and 9 aisle lights
Southwestern	TDD	[1]	toilet, sprinkler	-
Northwestern	sink & door	ventilation, cell and bullpen lights, TDD, & key missing	lights, wire exposed, TDD, & lock cover missing	lock, sink, wire exposed

[1] Cell block closed for retrofit at the time of inspections

[2] Specific problem within cell not documented

[3] One cell with lighting problems was occupied at the time of the inspection.

The Monitor notes that the finding in the DPD's *EH&S Audit* that the DPD is in compliance with paragraph C43, *Repair of Holding Cell Equipment*, was appropriately based only on cells that were commissioned at the time of the audit inspections (i.e. it excluded cells that were prohibited from use),<sup>136</sup> while the HCCC inspections are meant to evaluate the safety of all cells and capture all needed repairs. The checklist employed by the HCCC does not, but should, include a place to affirmatively note if the cells containing inoperable equipment were occupied at the time of the inspection.

Additionally, although it appears that the inspections conducted covered all necessary items and were completed consistently without adequate Guidelines, the Monitor noted that all 20 inspections were conducted by the same two HCCC members. The DPD may find that when these inspections are transitioned to other HCCC members, it would be helpful to have the revised Guidelines in place so that the quality of such inspections remains adequate.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph C62. However, the Monitor commends the DPD for the significant progress it has made in its efforts to comply with the requirements of this paragraph.

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<sup>136</sup> The *EH&S Audit* findings related to holding cell equipment repairs are discussed in the *Current Assessment of Compliance* in both paragraphs C71 and C43.

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

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

- a. the Risk Management Database (discussed in paragraphs U79-90);
- b. the performance evaluation system (discussed in paragraph U91);
- c. the auditing protocol (discussed in paragraph U92);
- d. regular and periodic review of all DPD policies; and
- e. regular meetings of DPD management to share information and evaluate patterns of conduct by DPD that potentially increase the DPD's liability.

### ***Background***

The requirements of paragraph C63 mirror those of paragraph U78. The Monitor last assessed the DPD's compliance with paragraph C63 during the quarter ending August 31, 2008, finding that the DPD was not yet in compliance with subparagraphs C63a and C63c, but was in compliance with subparagraphs C63d and e; the Monitor had not yet re-evaluated the DPD's compliance with subparagraph C63b pending its assessment of compliance with the requirements of paragraph U91.<sup>137</sup>

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

Regarding subparagraph C63a, as described in the *Current Assessment of Compliance* for paragraph U78, the DPD is not yet in compliance with the MAS implementation requirements.<sup>138</sup>

Regarding subparagraph C63b, as again described in the *Current Assessment of Compliance* for paragraph U78, the Monitor found that the DPD is not yet in compliance with paragraph U91, which contains requirements for the Department's performance evaluation system.<sup>139</sup>

Regarding subparagraph C63c, the DPD is not yet in compliance with many of the paragraphs relating to the auditing protocol. Specifically in connection with the COC CJ, the most recent audits of Emergency Preparedness, Medical and Mental Health, Detainee Safety and Food

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<sup>137</sup> Refer to the *Background* section for paragraph U78, above, for additional information regarding these finding.

<sup>138</sup> Refer to the *Current Assessment of Compliance* for subparagraph U79-81 and U86-87 for further information regarding the MAS database.

<sup>139</sup> See *Current Assessment of Compliance* for paragraph U91 for more detailed information.

Service all contained substantial qualitative and quantitative deficiencies and were consequently not conducted in compliance with the audit protocol.

Regarding subparagraph C63d, as again described in the *Current Assessment of Compliance* for paragraph U78, the DPD's Policy Focus Committee continues to meet and address issues consistent with the subparagraph's requirements.

Regarding subparagraph C63e, as again described in the *Current Assessment of Compliance* for paragraph U78, the DPD continues to hold Senior Management Team meetings that address issues of liability as required by subparagraph U78e.

Based on the foregoing, the Monitor finds that the DPD is in compliance with subparagraphs C63d and e, but not yet in compliance with subparagraphs C63a, b and c.

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

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

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

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph C64 during the quarter ending August 31, 2008, finding that the DPD was in compliance with the policy requirements but not yet in compliance with the training and implementation requirements of the paragraph. Although the cameras in the prisoner processing areas were functioning in each of the districts reviewed by the Monitor team, supervisory review of the videos was not occurring and the video archives were not properly maintained. While the Training Directive related to paragraph C64 was sufficient to meet the policy component of the subparagraph, the DPD had not yet implemented regular video review of the prisoner processing areas and training geared towards implementation.

### *Current Assessment of Compliance*

Regarding subparagraph C64a, the DPD states in its 22<sup>nd</sup> 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.

Regarding subparagraph C64b, in its 22<sup>nd</sup> Quarter Status Report, the OCR reviewed the 14 Command investigations from the *PI in Holding Cells (PIHC)*, *UOFHC*, and *Allegations of Misconduct in Holding Cells (AOMHC) Audits* where a supervisory review of the videotape should have been performed.<sup>140</sup> Of the 14 investigations, supervisory review was documented in six but not documented at all in four. For the remaining four investigations, documentation indicated a pending request for the videotape, the unavailability of the videotape, or that the video system did not work at the time of the incident.

Regarding subparagraph C64c, in its 22<sup>nd</sup> 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 connection with subparagraph C64b are relevant here, indicating that video archives are not being properly maintained.

Regarding subparagraph C64d, in its 22<sup>nd</sup> 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. 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, which had an electrical problem. A request was made to have an electrical contractor diagnose and repair the problem. However, this problem had not been corrected by the end of the quarter.

With regard to training, the DPD has indicated that the requirements of this paragraph will be included in its *Supervisory Leadership and Accountability Lesson Plan*.<sup>141</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 C64.

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<sup>140</sup> These audits did not evaluate the DPD's compliance with paragraph C64.

<sup>141</sup> As indicated above, the DPD reported that approximately 295 of 665 supervisors, or 44%, completed this training as of March 10, 2009.

### **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.

#### ***Background***

In order to address the requirements of paragraph C65, the DPD 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 similarly split its evaluation of this paragraph into three separate evaluations (subparagraphs C65a, C65b and C65c).

The Monitor last assessed the DPD's compliance with subparagraphs C65a-c during the quarter ending November 30, 2008, finding that the DPD was in compliance with the requirements of subparagraphs C65b and c, and in partial compliance with the requirements of subparagraph C65a because the audit contained qualitative deficiencies that had some effect on the quality of the audit.

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

On January 31, 2009, the AT submitted the *HCI Audit Report*, which is its first audit that combined all types of holding cell investigations in one audit, namely audits of UOF, PI and AOM. The AT found the DPD in compliance with paragraphs U27, U31, U61, U65, U66 and U69; in partial compliance with paragraphs U29, U33 and U35; and, not yet in compliance with paragraphs U28, U30, U32, U34, U36 and U67. Due to the number of audits recently submitted, the Monitor has not yet completed its evaluation of this audit or the DPD's compliance with this paragraph. The Monitor expects to report its findings in the Monitor's Report for the Quarter Ending May 31, 2009.

### **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>142</sup>

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<sup>142</sup> The scope of such audits must include an evaluation of smoke detectors and sprinklers, the back-up power systems, and the DPD's fire equipment.



## ***Background***

The Monitor last assessed the DPD's compliance with the HCCC requirement of paragraph C66 during the quarter ending November 30, 2008, finding the DPD in compliance. The Monitor is expected to next report on the DPD's compliance with this requirement in the Monitor's Report for the Quarter Ending May 31, 2009.

The Monitor last assessed the DPD's compliance with the Fire Safety Program audit requirement of paragraph C66 during the quarter ending August 31, 2008, finding the DPD was no longer in compliance because the DPD did not submit an audit of its Fire Safety Program and Policies (FSPP), which was due by July 31, 2008. The Monitor found the previous audit submitted for this topic on January 31, 2008 in compliance for the quarter ended May 31, 2008.

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

### ***Fire Safety Policies Audit Requirement of Paragraph C66***

The DPD submitted the *FSPP Audit Report* to the Monitor on the due date of January 31, 2009. The AT found the DPD in compliance with paragraphs C14-18 and C20-21, and in non-compliance with paragraph C19. During the current quarter, the Monitor began its review of the audit report and the audit working papers for this audit; however, given the number of audits recently submitted by the DPD, the Monitor has not yet completed its evaluation of this audit or the DPD's compliance with paragraph C67. The Monitor expects to report its findings in the Monitor's Report for the Quarter Ending May 31, 2009.

### ***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 August 31, 2008, finding the DPD was not yet in compliance. The Monitor determined that the *EPP Audit* submitted by the DPD on July 31, 2008 contained substantial qualitative performance-related deficiencies that significantly affected the overall quality of the audit.

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

The DPD submitted the *EPP Audit Report* to the Monitor on the due date of January 31, 2009. The audit found that the Department was not yet in compliance with all paragraphs tested (paragraphs C23-25 and the training requirements of paragraph C75). During the current quarter, the Monitor began its review of the audit report and the audit working papers for this

audit; however, given the number of audits recently submitted by the DPD, the Monitor has not yet completed its evaluation of this audit or the DPD's compliance with paragraph C67. The Monitor expects to report its findings in the Monitor's Report for the Quarter Ending May 31, 2009.

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

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

#### ***Background***

The Monitor last assessed the DPD's compliance with the requirements of paragraph C68 during the quarter ending August 31, 2008, finding that the DPD was not yet in compliance, as it did not submit an audit of Medical/Mental Health Programs and Policies, which was due by July 31, 2008. In the quarter ended February 29, 2008, the Monitor found the previous audit submitted on January 31, 2008 non-compliant because a number of the audit results were unreliable.

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

The DPD submitted the *Medical/Mental Health Program and Policies Audit* to the Monitor on the due date of January 31, 2009. The audit found that the Department was not yet in compliance with all paragraphs tested (paragraphs C26-27, C30-33, C47 and the training requirements of paragraph C76). During the current quarter, the Monitor began its review of the audit report and the audit working papers for this audit; however, given the number of audits recently submitted by the DPD, the Monitor has not yet completed its evaluation of this audit or the DPD's compliance with paragraph C68. The Monitor expects to report its findings in the Monitor's Report for the Quarter Ending May 31, 2009.

### **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 November 30, 2008, finding the DPD was not yet in compliance. The Monitor determined that the *Detainee Safety Program and Policies Audit* submitted on July 31, 2008 contained both qualitative and quantitative deficiencies that had a significant impact on the overall audit quality.

### *Current Assessment of Compliance*

The DPD submitted the *Detainee Safety Program and Policies Audit* to the Monitor on the due date of January 31, 2009. The audit found that the Department was not yet in compliance with all paragraphs tested (paragraphs C35-38 and the training requirements of paragraph C77). During the current quarter, the Monitor began its review of the audit report and the audit working papers for this audit; however, given the number of audits recently submitted by the DPD, the Monitor has not yet completed its evaluation of this audit or the DPD's compliance with paragraph C69. The Monitor expects to report its findings in the Monitor's Report for the Quarter Ending May 31, 2009.

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

Paragraph C70 requires the HCCC to conduct regularly scheduled semi-annual audits covering all DPD buildings that contain holding cells of EH&S program.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph C70 during the quarter ending August 31, 2008, finding the DPD in compliance. The Monitor determined that the *EH&S Audit* submitted by DPD on July 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 *EH&S Audit* submitted by the DPD on January 31, 2009. The Monitor reviewed the audit report and planning documents, including the audit work plan and matrices.<sup>143</sup>

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

- The audit was submitted by the DPD in a timely manner on January 31, 2009, 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 the status of the related training. The audit methodology, including the time

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<sup>143</sup> Consistent with the Monitor's Methodologies, the Monitor conducted an abbreviated review of this audit because the prior three audits of this topic have been in compliance, the audit methodology had not been significantly altered, and the audit findings related to the DPD's compliance with Consent Judgment provisions had not changed from the prior audit.

periods selected for review and the population determination and sampling, sufficiently tested each of the objectives and substantive paragraphs.

- The Monitor noted that the Executive Summary of the audit report incorrectly reported *Objective 4 - Review of Weekly Maintenance Documentation* as being compliant in the summary table. While this error was clearly a typographical error, as the correct finding of non-compliance is reported in the detailed section of the audit report, the error is considerable because it was made in the Executive Summary and incorrectly reported the DPD as being in compliance with paragraph C41 rather than non-compliant.
- Other than the above exception, the reported findings were supported by well-organized working papers that reconciled to the underlying documentation. The Monitor concurs with all of the AT's reported conclusions, namely that the DPD is in compliance with paragraphs C34, C39-40, C42-45 but is not yet in compliance with paragraph C41.

The AT appropriately included DRH in the unannounced on-site inspections for cleanliness and repairs; however, as with prior audits of this topic, the AT did not assess cleaning or maintenance documentation at the DRH as part of its review.<sup>144</sup> While the Monitor recognizes that the AT cannot review documentation if none is completed, the AT did in fact obtain and review some DRH cleaning documentation but did not include it in its assessment of the DPD's compliance, reasoning that the DRH documentation is not on the "DPD" required log. The Monitor again notes the importance for the next audit conducted on this topic to include a review of DRH documentation in order to demonstrate the DPD's compliance with paragraph C41 at the DRH holding cells.<sup>145</sup>

Although the above issue is considered a material performance-related deficiency, based on the fact that it was the only material error and the audit contained no substantial deficiencies, the Monitor finds the DPD in compliance with paragraph C70.

### 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 FSP.

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<sup>144</sup> DRH Environmental Service Department (ESD) personnel assigned to the DRH holding cells are responsible for cleaning and maintenance of the holding cells; this is not the responsibility of the DPD.

<sup>145</sup> During its review of the prior audit (submitted by the DPD on July 31, 2008), the Monitor noted this same concern and reported that future audits should include a review of DRH. According to the OCR staff at that time, the HCCC was working with DRH personnel to facilitate the completion and review of the required documentation.

## *Background*

The Monitor last assessed the DPD's compliance with paragraph C71 during the quarter ending November 30, 2008, finding the DPD in non-compliance because the *FSP Audit* submitted on July 31, 2008 contained qualitative deficiencies that had a significant effect on the quality of the audit, including flaws in the mathematical calculations of compliance and scope problems related to the exclusion of important testing criteria in the calculations of compliance.

## *Current Assessment of Compliance*

During the current quarter, the Monitor completed its review of the *FSP Audit* submitted by the DPD on January 31, 2009. The Monitor reviewed the audit work plan, audit matrices, and supporting documentation.<sup>146</sup>

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

- The AT submitted this audit in a timely manner, on the required due date of January 31, 2009. The audit was conducted by members of the AT with the involvement of the HCCC, as specifically required by paragraph C71.<sup>147</sup>
- The audit tested all of the required substantive paragraphs and selected appropriate populations for each objective. Similar to previous audits of this topic, the AT included three on-site inspections per district.
- The reported findings were supported by well-organized working papers that reconciled to the underlying documentation. The Monitor concurred with the AT's findings for each objective, namely that the DPD is in compliance with paragraph C51, but not yet in compliance with paragraphs C49, C50 and C78.
- The Monitor noted several errors in the reported findings compared to the audit working papers. For the most part, the errors were minor and did not significantly affect the quality of the audit; however, the Monitor also noted three typographical errors in the AT's working papers and report that were related to percentages of compliance. These particular errors were made in connection with minute multipart details and thus did not affect the AT's conclusion regarding the DPD's overall compliance. Accordingly, these errors did not significantly affect the reliability of this particular audit.

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<sup>146</sup> Since the DPD stopped testing at +/-10%, the Monitor reviewed Daily Detainee Meal and Hygiene Logs for 100% of the documentation tested by the AT. Additionally the Monitor reviewed all of the matrices documenting the on-site inspections conducted by the AT.

<sup>147</sup> During this audit, two of every three inspections were conducted by the HCCC or the Detroit Department of Health and Wellness Promotion (DDHWP) Food Sanitation Section. The DDHWP reviews and approves the Detainee Feeding Policy; its members are also members of the HCCC.

Although the above reporting issue is considered a material performance-related deficiency, based on the fact that it was the only material issue and the audit contained no substantial performance-related deficiencies, the Monitor finds the DPD in compliance with paragraph C71.

#### **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>148</sup>

The Monitor last assessed the DPD's compliance with paragraph C74 during the quarter ending November 30, 2008, and is scheduled to again assess compliance with this paragraph during the quarter ending May 31, 2009. The Monitor last assessed the DPD's compliance with paragraphs C73, 75-78 during the quarter ending August 31, 2008, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2009.

#### **XV. MONITORING AND REPORTING**

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

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<sup>148</sup> Refer to the UOF CJ training section in this report for additional information regarding DPD training-related issues.

## CONCLUSION

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The DPD remains non-compliant with the majority of the paragraphs in both Consent Judgments. The challenges described in our previous reports with regard to a lack of adequate or complete documentation and a lack of supervisory review in various areas persist. However, the City and the DPD are making efforts toward compliance and accepting technical assistance from the Monitor and the DOJ to assist them in their efforts. The cooperative nature and commitment toward achieving compliance with the Consent Judgments are sure to have a positive impact.

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Independent Monitor

April 20, 2009

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**APPENDIX A:**

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

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

<b>ACRONYM</b>	<b>DEFINITION</b>
A&D	Arrest and Detention
AT	Audit Team
BOPC	Board of Police Commissioners
BOR	Board of Review
BRT	Board Review Team
CALEA	Commission on Accreditation for Law Enforcement Agencies
CAN report	Corrective Action Needed report
CBS	Cell Block Supervisor
CCR	Citizen Complaint Report
CDA	Commander's Disciplinary Actions
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
FCN	Force Control Number
FI	Force Investigation
FIS	Force Investigation Section
FIU	Force Investigation Unit
FRT	Force Review Team
FSP	Food Service 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
NCH	Neighborhood City Hall
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
WCSO	Wayne County Sheriff's Office
WIQD	Witness Identification and Questioning Documentation