

REPORT OF
THE INDEPENDENT MONITOR
FOR THE
DETROIT POLICE DEPARTMENT



REPORT FOR THE QUARTER ENDING
MAY 31, 2009
ISSUED JULY 16, 2009

Sheryl Robinson Wood
Independent Monitor of the
Detroit Police Department

Assisted by: **KROLL**

EXECUTIVE SUMMARY

On June 12, 2003, the United States Department of Justice (DOJ) and the City of Detroit (City) (collectively, the parties) filed two Consent Judgments with the United States District Court for the Eastern District of Michigan (Court).¹ 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"² of the Consent Judgments. On July 18, 2003,³ 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-third quarterly report of the Independent Monitor.⁴

The two Consent Judgments contain a total of 201 substantive paragraphs and subparagraphs with which the City and the DPD must substantially comply, 129 from the UOF CJ and 72 from the COC CJ.⁵ The City and the DPD have achieved compliance with the policy components of the applicable paragraphs in both Consent Judgments, a significant accomplishment.⁶ 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.⁷ 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

¹ 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).

² 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").

³ The "effective date" of the Consent Judgments.

⁴ The Monitor's quarterly reports may be found on the Internet at www.kroll.com/detroit.

⁵ 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 previously stood at 203. This quarter, another adjustment was made since the C65 audit, which was previously evaluated as three subparagraphs, was submitted in one combined audit. Therefore the total number of paragraphs and subparagraphs currently being monitored is 201. These paragraphs and subparagraphs are identified in the Report Card attached as Appendix B to this report.

⁶ 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.

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

remain in compliance; the DPD has complied with 11 such paragraphs or subparagraphs: U82-85; U88a, b, d, and e; C22; C44; and C46.

Each quarter, the Monitor examines a certain number of substantive paragraphs and subparagraphs. During the twenty-third quarter, which ended on May 31, 2009, the Monitor examined a total of 60 paragraphs or subparagraphs (34 paragraphs or subparagraphs of the UOF CJ and 26 paragraphs or subparagraphs of the COC CJ). Of these, the City and the DPD are in compliance with 24, in partial compliance with two, and not yet in compliance with 33;⁸ the Monitor did not complete its evaluation⁹ of one paragraph.¹⁰

As described above, overall, the Monitor is assessing the City and DPD's compliance with 201 paragraphs and subparagraphs, 129 from the UOF CJ and 72 from the COC CJ. The City and the DPD are currently in compliance with 78 of these paragraphs and subparagraphs (50 from the UOF CJ and 28 from the COC CJ) and in partial compliance with six (two from the UOF CJ and four from the COC CJ).

Use of Force Paragraphs

The Monitor intended to assess the Department's compliance with UOF CJ requirements regarding the implementation of its use of force policy; however, the audits did not provide a sufficient sample of serious use of force investigations. Therefore, the Monitor deferred its assessment of these requirements to a future quarter.

This quarter, the Monitor assessed the DPD's conduct of general, use of force and prisoner injury investigations. The DPD regained compliance with requirements related to the Garrity protocol but still did not regain compliance with the requirements prohibiting leading questions and the use of interviews via written questions when contrary to appropriate law enforcement

⁸ The Monitor continues to utilize the terms "notable progress" and "significant progress" for paragraphs that are not yet in compliance or partial compliance.

⁹ 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.

¹⁰ 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.

techniques.¹¹ The DPD remained out of compliance with a majority of the remaining UOF CJ and COC CJ investigatory requirements related to uses of force and prisoner injury investigations occurring in holding cells. Once again, it was generally the command investigations that caused the DPD's failure to achieve compliance with the UOF CJ investigatory requirements.

The DPD continues to achieve compliance with the requirements to ensure that it accepts and processes all external complaints regarding incidents occurring in holding cells consistent with the DPD's external complaint policies; however, compliance has not yet been achieved with the requirement to ensure that the investigations of these incidents adhere to the DPD's investigative policies for external complaints.

This quarter, in keeping with the Court's order regarding timing of the submissions, the DPD submitted its annual report on critical firearm discharges and in-custody deaths for 2008. The Monitor found that the 2008 report was well-written and met Consent Judgment requirements.

Arrest and Detention Paragraphs

The Monitor assessed the Department's compliance with UOF CJ requirements regarding review of arrests; documentation of stops and frisks, interviews and interrogations, and conveyances; arrest and detention documentation and Commanding Officer reviews. The Monitor again found that sufficient probable cause existed for all arrests and, significantly, the DPD regained compliance with requirements related to reviews of arrests for probable cause.

The DPD has not yet effectively implemented the documentation and review requirements related to stops and frisks, as there was no articulation of reasonable suspicion and no evidence of supervisory review in the logs reviewed by the Monitor. Although significant improvements have been made with regards to supervisory reviews in the documentation for interviews, interrogations and conveyances, for the majority of the activities, the DPD was either unable to provide the documentation requested or the documentation that was provided was incomplete.

The Monitor continues to find that the DPD is not yet capturing all information specifically required in connection with custodial detentions. With regard to Commanding Officer reviews, in the vast majority of instances, reviews occurred for arrests for which an arrest warrant was not sought. With regard to arrests, the DPD improved since the Monitor's last evaluation. However, auditable forms were not generated and therefore such reviews did not occur for stops and/or frisks or for interviews, interrogations and conveyances.

¹¹ After achieving compliance in the quarter ending May 31, 2008, the DPD has now been out of compliance with this requirement for two consecutive assessments.

General Policies Paragraphs

The Monitor again found the DPD in compliance with UOF CJ and COC CJ requirements to ensure all terms contained within the Consent Judgments are clearly defined in Departmental policies and to make available to the community proposed policy revisions.

Audit Paragraphs

During the current quarter, the Monitor completed its review of the *Holding Cells Investigations Audit*; the *Fire Safety Practices and Policies Audit*; the *Emergency Preparedness Program Audit*; the *Medical/Mental Health Program and Policies Audit*; and, the *Detainee Safety Program and Policies Audit* that were all submitted on January 31, 2009. The Monitor also completed its review of the *Arrests Audit* that was submitted on February 16, 2009, and the *Prisoner Injury Investigations Audit* and *Custodial Detention Practices Audit*, which were both submitted on February 28, 2009.

The Monitor found the *Holding Cells Investigations Audit* was not in compliance with Consent Judgment requirements, as it contained numerous flaws in its scope and audit processes that significantly affected the quality of the audit. In particular, the audit contained incorrect mathematical calculations, failed to report the DPD's compliance with a number of paragraphs, and contained several other errors, including incorrectly reporting the DPD in compliance with one paragraph. The Monitor found the *Fire Safety Practices and Policies Audit* in compliance, as it was a quality and thoroughly completed audit; and found the *Emergency Preparedness Program Audit* partially compliant, as it contained material deficiencies related to the reporting of certain findings that had some effect on the quality of the audit. The Monitor found that the *Medical/Mental Health Program and Policies Audit* was not compliant, as it contained a considerable number of significant and material performance-related deficiencies associated with the audit methodology and reporting-- all of which affected the quality of the audit. The Monitor found the *Detainee Safety Program and Policies Audit* partially compliant, as it contained some material performance-related deficiencies related to its methodologies that had an impact on the overall quality of the audit.

The Monitor found the *Arrests Audit* in compliance. The audit covered each of the required paragraphs, reached appropriate conclusions in its assessments of the underlying paragraphs, and addressed concerns previously raised by the Monitor. The audit findings were succinctly and clearly reported. While the Monitor identified quantitative and material performance-related deficiencies in the audit, these issues when viewed in totality did not have a negative effect on the overall quality of the audit. The Monitor determined that the *Prisoner Injury Investigations* was non-compliant because it contained substantial performance-related deficiencies associated with the AT's testing of six subparagraphs, as well as material performance-related issues associated with the AT's testing of the DPD's use of required auditable forms and several reporting deficiencies. All of these issues had a significant effect on the overall quality of the audit. The Monitor found the *Custodial Detention Practices Audit* in compliance, as it was a quality audit that correctly assessed the DPD's compliance with the underlying Consent Judgment paragraphs and contained thoughtful recommendations.

Also during the current quarter, the Monitor found the DPD in compliance with the Holding Cell Compliance Committee (HCCC) requirement of paragraph C66. The Monitor found that the committee meetings were attended by appropriate HCCC members and addressed issues in areas pertinent to achieving compliance with various COC CJ provisions. The Monitor also reviewed documentation submitted by the DPD in response to requirements to follow up on officer-specific audit findings, specifically in connection with its COC CJ required audits submitted as described above. While the DPD is making progress in its development of a system to ensure that necessary actions are taken to correct deficiencies and that those actions are tracked in a manner to allow for adequate follow-up, the Monitor found a considerable amount of detail missing and inconsistencies in the documentation submitted. As a result, the Monitor found the DPD non-compliant with the pertinent COC CJ requirements.

Training Paragraphs

This quarter, the DPD is nearing the end of its annual in-service training program that began on August 4, 2008. Once the program concludes, the Monitor will determine whether more than 94% of the DPD's members attended the training courses. The Monitor has continued to attend a substantial number of in-service training classes and has provided feedback to the DPD.

The DPD has not yet effectively implemented its semi-annual review of all Use of Force and Arrest and Detention training. It also has not yet developed an adequate evaluation system or needs assessment tool, trained a sufficient number of trainers, or developed adequate training records.

The Monitor again 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.

Conditions of Confinement Requirements

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

The DPD reported that it had successfully completed the retrofitting of its district buildings that contain holding cells in order to comply with the LSC requirements by the Court-ordered deadline of December 31, 2008. During the current quarter, the Monitor assessed the DPD's implementation of the fire safety requirements by reviewing the *Fire Safety Practices and Policies Audit Report* submitted on January 31, 2009, and conducting on-site inspections. Significantly, the Department achieved compliance with the Life Safety Code by retrofitting the holding cells. Furthermore, the DPD received annual approval of the most recent revisions to the Fire Safety Program, installed fire equipment, and took interim fire safety measures as required by the COC CJ. Although the majority of the Fire Safety Program has been implemented, the

DPD is not yet in compliance with the requirement to implement procedures to keep records documenting that all fire safety equipment is routinely inspected, tested and maintained. The DPD also has not yet established timing requirements or a method for documenting that fire equipment is routinely tested and maintained.

The audits and the Monitor's inspections also found that the DPD remains in compliance with requirements regarding the enforcement of the no-smoking policy within holding cells and the proper storage of flammable liquids.

In assessing compliance with the requirements regarding emergency preparedness plans for all facilities that maintain holding cells, the Monitor relied upon the DPD's *Emergency Preparedness Program Audit* submitted on January 31, 2009. The audit had essentially the same findings as previously reported: each building had an Emergency Response Plan placed in a clearly marked red binder at each operations front desk and 98%¹² of the detention area staff who were interviewed demonstrated knowledge of their responsibilities under the emergency preparedness plans, but the DPD did not perform and maintain adequate documentation of fire drills for all buildings containing holding cells, on all shifts, every six months as required. Furthermore, with regard to key control policies, the audit and the Monitor found that although DPD members can identify the keys by touch and manually unlock/open all holding cell doors, the other requirements are not being met. Specifically, the DPD's policy for inventory, inspection and maintenance of keys and locks does not reflect the current practice and the DPD lacks a consistent procedure for documenting these actions.

¹² This is an increase from a finding of 92% in the last audit.

REPORT CONTENTS:

SECTION ONE: INTRODUCTION.....1

- I. BACKGROUND1**
- II. MONITOR’S ROLE.....2**
- III. FINDINGS FROM COMPLIANCE ASSESSMENTS2**
- IV. METHODOLOGIES3**
- V. REPORT CARD5**
- VI. FOCUS ISSUES5**
 - A. Challenges to the Successful Implementation of An Effective In-Car Video System.....5
 - B. Status of the DPD’s Management Awareness System (MAS)7
- VII. MONITOR’S PLEDGE.....9**

SECTION TWO: COMPLIANCE ASSESSMENTS - THE USE OF FORCE AND ARREST AND WITNESS DETENTION CONSENT JUDGMENT10

- I. USE OF FORCE POLICY.....10**
 - A. General Use of Force Policies.....10
 - B. Use of Firearms Policy.....11
 - C. Intermediate Force Device Policy.....12
 - D. Chemical Spray Policy.....12
- II. INCIDENT DOCUMENTATION, INVESTIGATION, AND REVIEW13**
 - A. General Investigations of Police Action13
 - B. UOF and Prisoner Injury Investigations18
 - C. Review of Critical Firearms Discharges and In-Custody Deaths21
- III. ARREST AND DETENTION POLICIES AND PRACTICES.....23**
 - A. Arrest Policies23
 - B. Investigatory Stop Policies24
 - C. Witness Identification and Questioning Policies25

D. Prompt Judicial Review Policies	27
E. Hold Policies	27
F. Restriction Policies	27
G. Material Witness Policies	27
H. Documentation of Custodial Detention	28
I. Command Notification.....	29
IV. EXTERNAL COMPLAINTS	31
A. Intake and Tracking	34
B. External Complaint Investigations.....	34
V. GENERAL POLICIES	35
VI. MANAGEMENT AND SUPERVISION	38
A. Risk Management Database.....	38
B. Performance Evaluation System.....	39
C. Oversight.....	39
D. Use of Video Cameras	47
E. Discipline	48
VII. TRAINING	49
A. Oversight and Development	49
B. Use of Force Training	55
C. Firearms Training.....	55
D. Arrest and Police-Citizen Interaction Training.....	55
E. Custodial Detention Training.....	55
F. Supervisory Training	55
G. Investigator Training.....	56
H. Field Training.....	56
VIII. MONITORING, REPORTING, AND IMPLEMENTATION.....	56

SECTION THREE: COMPLIANCE ASSESSMENTS - THE CONDITIONS OF CONFINEMENT CONSENT JUDGMENT57

- I. FIRE SAFETY POLICIES57**
- II. EMERGENCY PREPAREDNESS POLICIES61**
- III. MEDICAL AND MENTAL HEALTH CARE POLICIES65**
- IV. PRISONER SAFETY POLICIES65**
- V. ENVIRONMENTAL HEALTH AND SAFETY POLICIES66**
- VI. POLICIES CONCERNING PERSONS WITH DISABILITIES.....66**
- VII. FOOD SERVICE POLICIES66**
- VIII. PERSONAL HYGIENE POLICIES.....67**
- IX. USE OF FORCE AND RESTRAINTS POLICIES67**
- X. INCIDENT DOCUMENTATION, INVESTIGATION AND REVIEW.....67**
- XI. EXTERNAL COMPLAINTS69**
- XII. GENERAL POLICIES.....70**
- XIII. MANAGEMENT AND SUPERVISION71**
- XIV. TRAINING89**
- XV. MONITORING AND REPORTING90**
- CONCLUSION.....91**

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 May 31, 2009

SECTION ONE: INTRODUCTION

I. BACKGROUND

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.¹³ This is the twenty-third report of the Independent Monitor.

In the first quarterly report, for the quarter ending November 30, 2003, the Monitor¹⁴ 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.¹⁵ 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,¹⁶ 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 May 31, 2009, are assessed in this report.¹⁷

¹³ 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.

¹⁴ The word "Monitor" will be used to describe both the Monitor and the Monitoring Team throughout this report.

¹⁵ 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.

¹⁶ 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 U148 and C106.

¹⁷ 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

The Monitor's role is to conduct compliance assessments,¹⁸ 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

During the twenty-third quarter, the City and the DPD continued to face the same ongoing challenges with regard to implementation of Consent Judgment requirements. As previously noted, these challenges are often due to the lack of automated systems and the failure to complete required documentation. Furthermore, two major reform requirements both reached critical points during this quarter. These issues are described as Focus Issues below in Section VI of this report. Nevertheless, the City and the DPD continue to generally move in the right direction and a small increase in the total number of paragraphs that are in compliance took place this quarter. Moving forward, the City and DPD leadership must ensure that the lines of communication with the Monitor are kept open and are well-utilized by all relevant personnel.

During this quarter, the DPD achieved compliance for the first time in several areas, including foot pursuits, the *Prisoner Injury Investigations Audit*, and many of the requirements related to the Fire Safety Program. In addition, paragraphs in three areas (Garrity Protocol, reviews of arrests for probable cause, and the *Fire Safety Practices and Policies Audit*) had fallen out of compliance but are now back in compliance. Two audits, the *Emergency Preparedness Program Audit* and the *Detainee Safety Program and Policies Audit*, which were previously in non-compliance are now in partial compliance. Significantly, there was only one paragraph where the DPD was previously in compliance and is now in non-compliance, the *Holding Cells Investigations Audit*.¹⁹

Of the 60 paragraphs or subparagraphs that the Monitor assessed during the current quarter, the Monitor found that the DPD achieved compliance with 34 paragraphs and subparagraphs and partial compliance with two paragraphs or subparagraphs. Overall, the DPD is currently in

¹⁸ 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.

¹⁹ The *Holding Cells Investigations Audit* was previously submitted as three separate audits. In the Quarter Ending November 30, 2008, two of the audits were found to be in compliance and one was in partial compliance. This quarter, the three audits were combined into one, which was found to be in non-compliance.

compliance with 78 of the 201 paragraphs and subparagraphs that are assessed in the combined Consent Judgments (50 of 129 paragraphs and subparagraphs from the UOF CJ and 28 of 72 paragraphs and subparagraphs from the COC CJ). This is an increase of five paragraphs or subparagraphs that are in compliance over the previous quarter.

IV. METHODOLOGIES

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 sample²⁰ of incidents from as recent a period as is practicable. For quantitative paragraphs, the Monitor will generally find that the DPD has achieved partial compliance where the overall compliance rate is greater than 80% to less than or equal to 94%. For quantitative paragraphs that are not yet in compliance, the Monitor now reports when the DPD has made significant progress by achieving an overall compliance rate greater than 66% to 80% for the implementation component of a paragraph or notable progress by achieving an overall compliance rate greater than 50% to 66% for the implementation component of a paragraph.

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

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

²⁰ If the total population of incidents is so small that the process of selecting a statistically valid random sample would take longer to perform than to evaluate 100% of the incidents in the population, 100% testing will be performed.

In 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.²¹ 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,²² while others do not.²³ 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.²⁴

²¹ 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.

²² See, for example, paragraph U43 – Arrest Policies and paragraph U45 – Stop and Frisk Policies and related training paragraph U114.

²³ See, for example, paragraphs U73 – Supervisory Deployment and paragraph U77 – Foot Pursuit Policies.

²⁴ As described in the Introduction to the Methodologies, this is the Training Component of compliance.

V. REPORT CARD

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 subparagraph²⁵ of the Consent Judgments for the five most recent quarters, including the current quarter, in which compliance has been assessed.²⁶ The quarter in which the most recent evaluation was made is also indicated, as is the quarter in which the Monitor anticipates conducting the next evaluation of compliance for each paragraph. The next evaluation is estimated based on available information at the date of issuance of this Quarterly Report and accompanying Report Card. These estimated dates are subject to change as information develops and circumstances change.

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

VI. FOCUS ISSUES

A. CHALLENGES TO THE SUCCESSFUL IMPLEMENTATION OF AN EFFECTIVE IN-CAR VIDEO SYSTEM

Since the inception of the Consent Judgment, DPD has struggled to achieve compliance with the implementation requirements relative to paragraphs U98, 100, 101 and 102. In its *20th Quarter Status Report*, the DPD reported the following: "In March 2007, the DPD placed into service 133 new fully-equipped patrol vehicles, which included an updated digital video camera system in each. To date, the DPD has increased the percentage of vehicles with operable video equipment from 15%, which was reported in February 2007, to 50%."

²⁵ 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.

²⁶ 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.

The Monitor's Inspections and Subsequent Actions by the DPD

Having previously relied upon the information and statistics submitted by the DPD, on September 11, 2008, members of the Monitoring Team conducted inspections at six DPD districts to evaluate the implementation of in-car video systems. During the inspections, the Monitor discovered that many vehicles had inoperable cameras and there was a complete failure to check operability of microphones. Many vehicles had camera failures due to inadequate ventilation of the trunk units. The Monitor also learned for the first time that the DPD also lacked an adequate system to ensure the proper uploading of the digital data from the patrol cars to a central repository. Based on these inspections, in its Report for the Quarter Ending August 31, 2008 (issued on October 15, 2008), the Monitor concluded that "the video recording system in patrol cars, in its present state, is useless."

In February 2009, the DPD took delivery of prototype in-car video systems and began testing them in an effort to address the previously identified problems. Additionally, the DPD attempted to develop an appropriate triggering mechanism to start recordings in an effort to reduce the volume of data that is uploaded. Despite these efforts, the DPD continued to struggle with the integration of new technologies into the existing infrastructure, with no real solution in sight.

As a result of the Monitor's findings and the DPD's difficulty in identifying solutions, the DOJ engaged the services of an expert in the field of in-car video systems to evaluate the DPD's current system and to assist in finding a solution that will facilitate effective implementation of video technology. In May 2009, after a background briefing, the expert, the DOJ, and a member of the Monitor's team conducted on-site visits of several DPD facilities and inspections of prototype vehicles. A number of DPD executives, City of Detroit Information Technology staff, DPD Systems Administrators, DPD patrol supervisors and DPD patrol officers were interviewed. The interviews revealed a high level of frustration with the video technology failures. No one had a sufficient level of confidence in the system or a workable plan to fix the current system.

Just prior to the expert's visit, in April 2008, the DPD's Office of Civil Rights (OCR) had completed an inspection of the successful upload rate of in-car video data.²⁷ In the report, the OCR concluded that only 17% of deployed patrol cars successfully uploaded video. If any video was uploaded, the patrol car was credited with a successful upload. However, many of those uploads were partial, a great number had the wrong date-time stamps, were of poor visual quality, were simply blank due to malfunctioning hardware, or were clips that were uploaded several hundred times due to software problems. The DPD acknowledged that as a result, the rate of successful uploads was likely overstated.

²⁷ *Inspection of Video Downloads and Entry of Daily Details into the MAS System – Friday, April 24, 2009, Detroit Police Department, Office of Civil Rights.*

The DOJ Expert's Report

The DOJ's expert provided an exit-report jointly to command staff of the DPD, the DOJ and the Monitor. The exit-report detailed elements "leading to a complete failure of the scout car video system infrastructure within the DPD." In an attempt to integrate different technologies, each in-car video system appeared to have some level of customization, leaving "no two vehicles...wired the same." All of the participants from DPD and the City of Detroit were candid and agreed with the general observation that the current in-car video and archive system does not meet the Department's operational needs, nor does it perform to the level required by the Consent Judgment. Additionally, the current piecemeal technology cannot be salvaged and integrated into any future workable solution.

The DPD has successfully developed the required policies in this area, however it has failed to integrate a comprehensive in-car video and archive system. The in-car video component is essential to the DPD's compliance efforts and an invaluable tool in the reform process within the DPD organization. As the expert's report indicated, "[R]eliable in-car video infrastructure requires that the department integrate proven and compatible technology." Without a functioning video system, confidence in training, implementation of use of force policies, supervisory oversight, evidence collection, officer safety and public confidence will continue to be undermined. The DPD's acquisition of a fully integrated in-car video system, from a proven vendor, is an essential step toward compliance with the critical Consent Judgment requirements.

Next Steps

The Monitor understands that the DPD is adopting the expert's recommendation to issue a Request for Proposal (RFP) for a single system with an experienced vendor. The DPD has undertaken the drafting of an appropriate RFP for in-car video systems for its patrol cars, and had already taken the initiative by seeking federal funding for in-car cameras through eligible DOJ grants. The DPD has revised its grant proposal based on the expert's recommendations.

B. STATUS OF THE DPD'S MANAGEMENT AWARENESS SYSTEM (MAS)

Relying on information provided by the City and DPD, the Monitor reported that in August 2008, Department-wide implementation of the MAS "was proceeding smoothly."²⁸ In January 2009, the Monitor, the DOJ and the DOJ's expert spent two days evaluating the MAS. The parties met with command staff, line supervisors, patrol officers and IT personnel. The parties toured a district station, randomly sampled MAS capabilities and provided feedback and technical input to City and DPD IT personnel.

At that time, the MAS was available Department-wide. However, the Monitor reported that MAS lacked user acceptance and the ability to link and cross-reference information. The system

²⁸ Report of the Independent Monitor for the Quarter Ending November 30, 2008.

also appear[ed] incapable of accurately capturing and aggregating information for statistical analysis.²⁹ The Monitor concluded that the DPD was not yet in compliance with the implementation requirements of the MAS paragraphs.

The Monitor, the DOJ and the DOJ's expert returned on May 28, 2009, for a follow up visit and demonstration of the MAS. Prior user problems such as character limits and time-out features had been addressed. However, when provided with incident specific information for various officers, the system was unable to create reports containing data that was known to exist. The system appeared to require a sophisticated understanding of the system's operation in order to successfully locate certain information. Following the May meeting, the DOJ expert issued a written report containing his findings.

The DOJ's expert's report identified three strategic problems to be addressed by the DPD in order to improve the performance of the MAS: 1. Inadequate administrative commitment; 2. Poorly articulated technical objectives; and 3. Inadequate underlying technical infrastructure. The report noted that during the May visit, "On repeated occasions during the demo DPD personnel had to escape to a system administrator view (not ordinarily available to supervisors) in order to hunt through raw database tables in order to find a combination of record values needed to plug into the MAS form for it to yield a successful search."

The report also suggested several options going forward, ranging from a new system to continuing to "firefight" problems until the system functions at an acceptable level. No obvious issue-free solution presented itself, and further testing of the information contained in MAS and of the system's ability to aggregate that information for statistical analysis will need to take place.

The DPD responded that the MAS is, in fact, a functioning system. As an example of this, the DPD indicates that the system has generated 174 Performance Evaluation and Enhancement Review Sessions to date.³⁰ The Department maintains that the testing problems that occurred during the May meeting were aberrational and invited further testing of the system.

The MAS is a critical risk management tool that will assist supervisors in evaluating the performance of DPD officers. Going forward, the Department should also address the strategic problems identified in the expert's report. The DPD should conduct internal testing to address

²⁹ Report of the Independent Monitor for the Quarter Ending February 28, 2009.

³⁰ A Performance Evaluation and Enhancement Review Session (PEERS) is a meeting between the Bureau or District Deputy Chief, at least one immediate supervisor of the member who has been identified for intervention, and the member, for the purpose of discussing identified work performance issues. During the May inspection of the system, a PEERS had been generated for a member whose incidents were searched in the MAS; however, although the PEERS had been generated over six months ago, the session had not yet taken place. The system contained no indication as to why the session had not taken place; however, the DPD checked with the personnel department and found that the member had been out on extended leave. Nevertheless, it appears that even if a PEERS is generated, that does not mean that the session has necessarily taken place or that anyone has followed up on it.

the user and search problems identified by the Monitor and DOJ's expert. The DPD should also implement subparagraph U84k, which requires quarterly audits of the system to ensure that the various requirements in the MAS Review Protocol are, in fact, taken.³¹

VII. MONITOR'S PLEDGE

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

To that end, we have provided the parties with interim assessments of compliance throughout each quarter, including the quarter ending May 31, 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,³² and to provide the parties with an opportunity to seek clarification on any aspect of compliance articulated in this report.

³¹ One of the requirements in paragraph U84 (subparagraph U84g) is that the information in MAS should be accessible to commanders, supervisors and the Board of Police Commissioners. Information about certain specific incidents was not available to the appropriate supervisory level staff when the May 28, 2009 inspection took place. The DPD did not appear to be aware of this system performance issue and indicated that they have not tested the system in a manner that would have revealed the issue.

³² As required by paragraphs U142 and C97.

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

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

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.³³

The Monitor last assessed the DPD's compliance with paragraph U18 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.

Paragraph U18 – Revision / Implementation of UOF Policy

Paragraph U18 requires the DPD to develop a revised UOF policy within three months of the effective date of the UOF CJ. The policy must be submitted for review and approval of the DOJ. The DPD must implement the revised UOF policy within three months of the review and approval of the DOJ. Paragraph U18 includes the implementation of paragraphs U14-17 and U19.

Background

During the quarter ending November 30, 2008, the Monitor completed an assessment of the DPD's implementation of its UOF policies and its compliance with paragraph U18 by reviewing

³³ 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.

additional force incidents contained in the *Use of Force Investigations Audit (UOF Audit)* submitted by the DPD on August 31, 2008. The *UOF Audit* detailed incidents that were generally compliance and control holds, including one involving the use of chemical spray, one serious use of force (strike to the head), and the two Critical Firearm Discharges.

The Monitor conducted an independent review of UOF investigations and identified several areas of concern with regard to officers' tactical procedures surrounding the force incidents, including the officers' and investigators' reports failure to address the precautionary measures described in subparagraph U15c. The Monitor found DPD in continued compliance with the policy requirements of paragraph U18; however, the Monitor found the DPD not yet in compliance with all of the implementation requirements of paragraph U18.

Current Assessment of Compliance

During the current quarter, the Monitor reviewed the *Holding Cells Investigations (HCI) Audit*³⁴ and the *Prisoner Injury (PI) Investigations Audit*³⁵ submitted by the DPD. In these audits, a total of 25 investigations were reviewed, of which 15 were conducted at the command level, three were conducted by Internal Affairs (IA), six were conducted by Force Investigations (FI), and one was conducted by the Joint Incident Shooting Team (JIST).³⁶ The types of investigations covered by the audits and reviewed by the Monitor consisted of UOF, Allegations of Force (AOF), Prisoner Injuries (PI), and Allegations of Misconduct (AOM).

The Monitor's prior assessment of compliance found that the DPD was not yet in compliance, and prior reports identified that officers had used inappropriate force techniques related to more serious uses of force. However, the *HCI Audit* and the *PI Investigations Audit*, taken together, did not produce an adequate sample of serious UOF to form the basis for an assessment. As a result, the Monitor has not completed its evaluation of compliance with paragraph U18.

B. USE OF FIREARMS POLICY

This section comprises paragraphs U20-23. The Monitor found the DPD in compliance with paragraph U20, which is a "policy-only" paragraph, during the quarter ending August 31, 2006. The DPD will remain in compliance with this paragraph 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 February 28, 2009, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2009.

³⁴ The *HCI Audit*, which was submitted on January 31, 2009, is separately evaluated under paragraph C65 of this report.

³⁵ The *PI Investigations Audit*, which was submitted on February 28, 2009, is separately evaluated under subparagraph U94b of this report.

³⁶ Twenty-one investigations were reviewed in the *HCI Audit* and four investigations were reviewed in the *PI Audit*.

C. INTERMEDIATE FORCE DEVICE POLICY

This section comprises paragraph U24. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending February 28, 2009, and is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending August 31, 2009.

D. CHEMICAL SPRAY POLICY

This section comprises paragraphs U25-26. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending February 28, 2009, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2009.

II. INCIDENT DOCUMENTATION, INVESTIGATION, AND REVIEW

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, PIs, critical firearms discharges (CFDs) and in-custody deaths. In addition to various changes in general investigatory procedures, reports and evaluations, the UOF CJ requires that the DPD develop a protocol for compelled statements and develop an auditable form³⁷ 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. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraphs U27-33 – Revision of General Investigation Policies; Investigation Procedures; Investigatory Interview Procedures; Prohibitions of Investigatory Interviews; Protocol for Garrity Statements; Investigatory Reports and Evaluations; Review of Investigations

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

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

³⁷ The UOF CJ defines an auditable form as a discrete record of the relevant information maintained separate and independent of blotters or other forms maintained by the DPD.

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

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

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

Paragraph U32 requires the DPD to revise its policies regarding all investigatory reports and evaluations to require:

- a. a precise description of the facts and circumstances of the incident, including a detailed account of the subject's/complainant's and officer's actions and an evaluation of the initial stop or seizure;
- b. a review of all relevant evidence, including circumstantial, direct and physical evidence;
- c. that the fact that a subject or complainant pled guilty or was found guilty of an offense shall not be considered as evidence of whether a DPD officer engaged in misconduct, nor shall it justify discontinuing the investigation;
- d. reasonable credibility determinations, with no automatic preference given to an officer's statement over a non-officer's statement or discounting of a witness's statement merely because the witness has some connection to the subject or complainant;
- e. an evaluation of whether an officer complied with DPD policy;
- f. an evaluation of all UOF, including the officer's tactics, and any allegations or evidence of misconduct uncovered during the course of the investigation;
- g. all administrative investigations to be evaluated based on a preponderance of the evidence standard;
- h. written documentation of the basis for extending the deadline of a report and evaluation and provide that the circumstances justifying an extension do not include an investigator's vacation or furlough and that problems with investigator vacations or workload should result in the matter being reassigned; and
- i. any recommended non-disciplinary corrective action or disciplinary action be documented in writing.

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

Background

The Monitor last assessed the DPD's compliance with paragraphs U27-33 during the quarter ending November 30, 2008. The Monitor found the DPD in compliance with the policy requirements of paragraphs U27-33. However, the Monitor found that the DPD was no longer in compliance with the implementation requirements of paragraphs U30-31 and not yet in compliance with the implementation requirements of paragraphs U27-29 and U32-33. The Monitor based its findings on its reviews of the *Prisoner Injury in Holding Cells (PIHC) Audit*, the *AOM Audit*, and the *UOF Audit*, which evaluated the DPD's compliance with paragraphs U27-33, among others.

Current Assessment of Compliance

In order to assess the DPD's compliance with the General Investigation requirements contained in paragraphs U27-33, among other requirements, the Monitor reviewed the *HCI Audit*,³⁸ and the *PI Investigations Audit*³⁹ submitted by the DPD on January 31, 2009 and February 28, 2009, respectively. As described above, in these audits, a total of 25 investigations were reviewed, of which 15 were conducted at the command level, three were conducted by IA, six were conducted by FI, and one was conducted by JIST.⁴⁰ The types of investigations covered by the audits and reviewed by the Monitor consisted of UOF, AOF, PIs and AOM.⁴¹

Overall, the audits found that the DPD was in compliance with paragraph U31 but not yet in compliance with paragraphs U27-30 and U32-33, with variances only in regard to some of the detailed components of the paragraphs, which are detailed below. Based on its evaluation of the audits, the Monitor concurs with the audits' findings.⁴²

The specific findings in connection with the various requirements contained in paragraphs U27-33 follow:⁴³

³⁸ As mentioned in the *Current Assessment of Compliance* for paragraph U18, the *HCI Audit* is separately evaluated under paragraph C65 of this report.

³⁹ As also mentioned in the *Current Assessment of Compliance* for paragraph U18, the *PIHC Audit* is separately evaluated under subparagraph U94b of this report.

⁴⁰ Twenty-one investigations were reviewed in the *HCI Audit* and four investigations were reviewed in the *PI Audit*.

⁴¹ When assessing paragraphs U27-33, the total population of 25 investigations was not always used, depending on the applicability of the investigation to the respective Consent Judgments requirement. As an example, only 22 of the 25 investigations in the population were applicable to paragraph U30.

⁴² In several instances, the audit finding in connection with certain subparagraphs and/or components was found to be incorrect. Where this occurred the Monitor has corrected and modified the particular finding based on its review. Nevertheless, the audit findings in connection with the DPD's overall compliance with each paragraph were found to be correct.

⁴³ As the DPD moves closer to compliance with a particular requirement, the Monitor will provide more detail on the specific level of compliance achieved for each primary paragraph and its subparagraphs. However, due to the

- In evaluating compliance with the requirements of paragraph U27, both audits found that the investigations appropriately determined if the officer's conduct was justified and investigations were not closed because the subject or complainant was unavailable, unwilling or unable to cooperate; however, the investigations were not thorough and complete because they were not in compliance with the general investigative requirements overall as described below.
- Similar to previous audit findings, both audits concluded that the DPD was not yet in compliance with the requirements of paragraph U28 based on deficiencies related to a lack of witness interviews; the lack of photographs of injuries and/or alleged injuries; and/or the failure to document canvassing of the scene for witnesses. As was found in the prior DPD audits, the investigations generally included appropriate medical documentation, when required, and the names and badge numbers of all officers on the scene.
- As in prior audits, both audits found that the DPD was not yet in compliance with paragraph U29. Generally the audits found that the investigative files complied or partially complied with all of the requirements of this paragraph except for a lack of videotape or audiotape interviews when required (subparagraph U29c). In these instances, the file did not include a signed refusal from the complainant when an interview was not video- or audiotaped.
- Both audits found that, for the most part, the IA, FI and JIST interviews were conducted in accordance with paragraph U30. However, neither audit could determine compliance because the command investigations did not include written questions and did not video- or audiotape the interviews.⁴⁴ Given these deficiencies in the 15 command investigations out of the 22 (68%) applicable investigations included in these audits, the DPD is no longer in compliance with paragraph U30.
- Regarding paragraph U31, both audits found that all applicable investigations complied with the Garrity Protocol in connection with the officers' statements. As a result, the DPD is in compliance with paragraph U31.
- Paragraph U32 includes a large number of subparagraphs and components of investigative requirements. The findings specific to each subparagraph follow:
 - Subparagraph U32a: According to the audits, all of the investigations contained a precise account of the facts and circumstances of the incident and evaluated any stops or seizures.

continued non-compliant assessments of the implementation of the majority of these requirements, the current findings are summarized.

⁴⁴ Although paragraph U30 does not require investigations to include interview question documentation (written questions, videotape or audiotape), the DPD must document its interview questions in order to demonstrate that investigators are not using leading questions during interviews.

- Subparagraph U32b: Similar to previous audit findings, because of missing witness interviews and missing photographs of injuries, many of the investigations did not consider all evidence as part of the investigation.
- Subparagraph U32c: The investigations were not discontinued, nor was the guilt of the subject considered when determining if misconduct by the involved officer(s) had occurred.
- Subparagraph U32d: Of the five applicable investigations, the investigator in one did not make a reasonable credibility determination regarding witness and officer statements because the investigator interviewed only the involved officers and failed to interview the subject and a key witness to the incident.
- Subparagraph U32e: 20 of the 24 applicable investigations included an evaluation of whether or not the officers complied with DPD policy with regard to any sustained allegations and/or the UOF policies as they related to the specific force evaluated. Two of the four non-compliant investigations lacked an evaluation of all of the officers' uses of force and, consequently, failed to evaluate the officers' compliance with the applicable force policies. The other two non-compliant investigations failed to evaluate policy violations surrounding detainee processing and the failure to report a UOF.
- Subparagraph U32f: As described above, two of the investigations did not evaluate each instance of the officers' force, and none of the 16 applicable investigations that involved a UOF completely or adequately evaluated the fundamental tactics used by officers surrounding the UOF incidents. Investigators must include a specific evaluation of the officers' tactics, and ensure that the officers' reports include sufficient information and an accurate account of the tactics used surrounding the incidents, including the decisions made and actions taken before the force occurred.
- Subparagraph U32g: With the exception of one PI investigation in the *PI Audit* in which the investigator failed to interview the complainant and a key witness connected with an allegation of force, the remaining 23 applicable investigations evaluated the incidents based on the preponderance of evidence standard.
- Subparagraph U32h: Similar to previous audits, neither audit found the DPD in compliance with the components of this subparagraph, mainly due to the lack of documentation evidencing that extensions were requested and/or granted for permissible reasons.
- Subparagraph U32i: Recommendations of disciplinary or non-disciplinary corrective action made by the investigators were documented in writing.
- Paragraph U33 mainly describes requirements related to the review process of the investigations. While all the investigations were reviewed by the chain of command above the investigator, similar to previous audit findings, the reviewing supervisors did not identify many of the errors in the investigations, such as those described in the preceding paragraphs. When corrections were identified and returned to the investigators, the documentation rarely demonstrated that corrections were made within seven days, as required by subparagraph

U33b. Additionally, the documentation did not demonstrate that any corrective action (non-disciplinary and/or disciplinary) was taken when an investigator failed to conduct or a reviewing supervisor failed to evaluate an investigation appropriately, as required by subparagraph U33d.

Based on the foregoing, the Monitor finds that the DPD is in compliance with the policy requirements of paragraphs U27-33 and the implementation requirements of paragraph U31. However, the DPD is not yet in compliance with the implementation requirements of paragraphs U27-30 and U32-33.

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

Paragraphs U34-36 – Documentation of UOF and Prisoner Injury; UOF and Prisoner Injury Notification Requirements; Command Investigation Time Limits

Paragraph U34 requires the DPD to revise its reporting policies to require officers to document on a single auditable form any PI, UOF, allegation of UOF, and instance in which an officer draws a firearm and acquires a target.

Paragraph U35 requires the DPD to revise its policies regarding UOF and PI notifications to require:

- a. officers to notify their supervisors following any UOF or PI;
- b. that upon such notice, a supervisor must respond to the scene of all UOF that involve a firearm discharge, a visible injury or a complaint of injury. A supervisor must respond to all other UOF on a priority basis. Upon arrival at the scene, the supervisor must interview the subject(s), examine the subject(s) for injury, and ensure that the subject(s) receive(s) needed medical attention;
- c. the supervisor responding to the scene to notify IA⁴⁵ of all serious UOF, UOF that result in visible injury, UOF that a reasonable officer should have known were likely to result in injury, UOF where there is evidence of possible criminal misconduct by an officer or PI; and
- d. IA to respond to the scene of, and investigate, all incidents where there is evidence of possible criminal misconduct by an officer; where a prisoner dies, suffers serious bodily

⁴⁵ The DPD formerly referred to this entity as the Internal Affairs Section.

injury or requires hospital admission; or that involve a serious UOF, and to permit IA to delegate all other UOF or PI investigations to the supervisor for a command investigation.

Paragraph U36 requires the DPD to revise its UOF and PI investigation policies to require:

- a. command UOF preliminary and final investigations⁴⁶ to be completed within 10 and 30 days of the incident, respectively; such investigations must include a synopsis of the incident, photographs of any injuries, witness statements, a canvas of the area, a profile of the officer's prior UOF and AOM, and a first-line supervisory evaluation;
- b. IA investigations to be completed within 60 days of the incident; and
- c. copies of all reports and command investigations to be sent to IA within 7 days of completion of the investigation.

Background

The Monitor last assessed the DPD's compliance with paragraphs U34-36 during the quarter ending November 30, 2008. The Monitor found that the DPD remained in compliance with the policy requirements but was not yet in compliance with the implementation requirements of the paragraphs. The Monitor based its findings on its reviews of the DPD's *PIHC* and *UOF Audits*, which were submitted by the DPD on July 31, 2008 and August 31, 2008, respectively. A total of 20 UOF and AOF investigations were reviewed in the two audits (12 commands, three OCI, three FI, and two JIST). Similar to previous audits conducted by the DPD's AT, the audits found that the DPD was not yet compliant with paragraphs U34-36 and the Monitor concurred with these findings.

Current Assessment of Compliance

In order to assess the DPD's compliance with the requirements contained in paragraphs U34-36, among others, during the current quarter, the Monitor reviewed the *HCI* and *PI Audits* submitted by the DPD on January 31, 2009, and February 28, 2009, respectively.⁴⁷ These audits included review of a total of 20 investigations in which a UOF either occurred or was alleged or a PI occurred. Twelve of the investigations were conducted at the command level, one was conducted by IA, six were conducted by FI, and one was conducted by JIST.⁴⁸

⁴⁶ The DPD's UOF investigation is documented on the Supervisor's Investigation Report, UF-002A.

⁴⁷ Refer to the Current Assessment of Compliance for paragraphs U27-33 for additional information regarding these audits.

⁴⁸ Sixteen investigations were reviewed in the *HCI Audit* and four investigations were reviewed in the *PI Audit*.

Similar to previous audits conducted by the AT, both of these audits correctly found that the DPD is not yet compliant with paragraphs U34-36. Following is a summary of the audit findings in connection with these paragraphs:

- Six of the 20 investigations evaluated in both audits did not include an auditable form⁴⁹ as required by paragraph U34, four of which were FI investigations, one was an IA investigation and one was a command investigation which was completed, but more than four months after the incident had occurred.⁵⁰ Additionally, in one of the command investigations the form was not completed correctly.
- During its identification of investigations in the *PI Audit*, the AT found that the officers and/or investigating supervisors misclassified at least 15 incidents as a detainee injury rather than a UOF or AOF. Through its inquiries regarding these errors, the AT determined that supervisors mismarked the forms because the detainees had sustained an injury as a result of a UOF and, as a result, the supervisors thought the “detainee injury” checkbox was appropriate.
- Three of the twenty incidents involved a UOF that was not reported by the involved or witness officers, as required by subparagraph U35a.
- The *HCI Audit* concluded that the requirements of subparagraph U35b were not met for two of the UOF incidents reviewed because a supervisor had not responded to the scene as required. However, the Monitor notes that a supervisor responded in 18 of the 20 applicable incidents, and each time a supervisor responded, the subject was examined at the scene and the subjects were provided medical attention when necessary.
- When DPD supervisors responded to the scene of a serious UOF, the supervisors notified FI as required by subparagraph U35c; however, FI was not notified as required in one of the PI incidents reviewed. Since FI was not notified, it could not respond as required by subparagraph U35d. For those incidents in which FI was notified, it appropriately responded to the scene and investigated the incidents as required.
- Subparagraph U36a describes requirements related to the content, timing and review process of command UOF and PI preliminary investigations. Both audits found that the investigations included synopses of the incidents, and the *HCI Audit* found that the UOF investigations reviewed also included all witness statements and a first-line supervisory review. However, the audits found that the investigations did not document that a canvass of the scene had occurred, generally did not include photographs of the detainees’ injuries, and did not contain profiles of the officers’ UOF and disciplinary histories.

⁴⁹The UF-002.

⁵⁰ The FI/IA OIC has indicated that although the involved Command members, and not FI/IA investigators, are responsible for completing the auditable form, the FI/IA has recently implemented a process to ensure that an auditable form is received from each Command when required.

Additionally, the Supervisor's Investigation Reports (SIRs) were not completed within 10 days; only four of 14 applicable command investigations were completed within 30 days; and only one of the 14 command investigations was forwarded to FI within seven days of completion, as required.

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 U34-36.

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. The Monitor is scheduled to again assess the DPD's compliance with paragraphs U37-40 during the quarter ending August 31, 2009, and again assessed compliance with paragraph U41 during the current quarter. The results of our current assessment follow.

Paragraph U41 – Annual Review of Critical Firearms Discharges

Paragraph U41 requires the Chair of the CLFRT to annually review CFDs and in-custody deaths in aggregate to detect patterns and/or problems and report his or her findings and recommendations, including additional investigative protocols and standards for all CFD and in-custody death investigations, to the Chief of Police.

Background

The Monitor last assessed the DPD's compliance with paragraph U41 during the quarter ending November 30, 2008, finding the DPD in compliance with the policy and implementation requirements of paragraph U41. The DPD submitted its 2007 paragraph U41 report in accordance with an order from the Court; the report essentially met the requirements of paragraph U41.

Current Assessment of Compliance

On May 29, 2009, the DPD provided the Monitor with the annual report required by paragraph U41 for the year 2008. Like the prior year's report, the 2008 report is well-written and indicates that FI is identifying patterns in CFDs by number, frequency, location, and demographic indicators for officers and suspects. The report provides a detailed history of FI and the nature of the cases investigated. The report also included a five-year comparison of cases investigated by FI and a five-year analysis of CFDs investigated by FI.⁵¹

⁵¹ The DPD previously indicated that it could not submit an accurate U41 report for 2005, and was relieved of that responsibility by the Court, because an effective method of gathering reliable information had not been developed at

The report positively highlighted the adoption of mandatory in-service training for sworn officers. The DPD analyzed the findings related to prisoner suicide attempts and identified the factors contributing to the dramatic improvement since 2006. FI also identified a dangerous trend in vehicle pursuits and recommended action to address the issue.

FI indicates that its investigators attend in-service training and command staff is involved in the review of investigations. The report did not conclusively identify any particular pattern or practice of using excessive force. Regarding a 12% increase in critical firearm discharges (CFDs) last year, FI noted four prevalent factors to consider: a majority of involved officers were assigned to the patrol function; a majority of officers had less than 10 years of seniority; a majority of incidents involved subjects who were armed with firearms; and 13 of 55 CFDs occurred when the officers were off duty. However, FI did not fully utilize these findings by making appropriate recommendations to the Chief of Police.

Based on the foregoing, the Monitor finds DPD in compliance with the policy and implementation requirements of paragraph U41.

that time; however, there is no mention of any issues with information gathered from 2005 or any other year during the five-year period in this report.

III. ARREST AND DETENTION POLICIES AND PRACTICES

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 unless the policy directly responsive to the paragraph is revised.⁵² The Monitor last assessed the DPD’s compliance with paragraph U43 during the quarter ending November 30, 2008. The Monitor again assessed the DPD’s compliance with this paragraph during the current quarter. The results of our current assessment follow.

Paragraph U43 – Review of Arrests

Paragraph U43 requires the DPD to review the merits of each arrest and opine as to whether or not adequate probable cause existed to support the arrest. The supervisory review must be made at the time an arrestee is presented at the precinct or specialized unit and memorialized within 12 hours of the arrest. For those arrests in which adequate probable cause does not exist, or for which the DPD does not request a warrant, the DPD is required to generate an auditable form memorializing such circumstances within 12 hours of the event.

Background

The Monitor last assessed the DPD’s compliance with paragraph U43 during the quarter ending November 30, 2008, at which time the Monitor found that the DPD was no longer in compliance. The Monitor determined that probable cause was present for 72 of 72 randomly selected arrests reviewed. The Monitor determined that supervisory review for probable cause occurred within 12 hours of the arrest for 60 of the 72 arrests reviewed. For eleven of the remaining 12 arrests, although supervisory review occurred, it was documented in excess of 12 hours. For one arrest, the time of supervisory review was not documented. Lastly, for 12 arrests, although the detainee was released, insufficient information was available to assess whether an auditable form was required.

⁵² 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.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraph U43 during the current quarter, the Monitor selected a sample⁵³ of 72 warrantless arrests and requested that the DPD provide the Monitor with access to the underlying documentation, including Case Reports, CRISNET reports and related auditable forms. The Monitor reviewed documentation for all 72 arrests and noted the following:

- Sufficient probable cause existed to effect each of the 72 arrests reviewed.
- For three of the 72 arrests reviewed, although the detainee was released, insufficient documentation prevented the Monitor from assessing compliance. The Monitor could not ascertain whether the detainee was released as a result of an arrest warrant not sought or an arrest warrant submitted and denied.⁵⁴
- For 70 of the 72 arrests reviewed, supervisory review occurred and was documented as having occurred within the mandated 12-hour period. For one arrest, although supervisory review occurred, it was documented in excess of 12 hours from the documented arrest time.⁵⁵ For another arrest, the time of supervisory review was not documented and, therefore, the Monitor could not assess compliance.

As previously reported, the current auditable form used to capture information for warrants not sought does not prompt the user to document the timing of decisions not to seek a warrant.

Based on the foregoing, the Monitor finds that the DPD is in compliance with paragraph U43.

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.⁵⁶ The Monitor last assessed the DPD's compliance with paragraph U45 during the quarter ending November 30, 2008. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

⁵³ The Monitor selected a random, statistical sample of 72 warrantless arrests out of a population of approximately 302 warrantless arrests that occurred during the period March 10, 2009 through March 18, 2009 utilizing a confidence level of 95% with an acceptable error rate of +/-4 percent.

⁵⁴ For the remaining 69 arrests, the Monitor determined that the arrest warrant was either submitted or was not applicable, as the detainee was permitted to post bond.

⁵⁵ The supervisory review occurred approximately 19 hours subsequent to the arrest.

⁵⁶ Implementation of the policy is tested under paragraph U45.

Paragraph U45 – Stop and Frisk Documentation Requirements

Paragraph U45 mandates written documentation of all investigatory stops and frisks by the end of the shift in which the police action occurred. The DPD must review all investigatory stops and frisks and document on an auditable form those unsupported by reasonable suspicion within 24 hours of receiving the officer's report.

Background

The Monitor last assessed the DPD's compliance with paragraph U45 during the quarter ending November 30, 2008, finding that the DPD was not yet in compliance. The Monitor reviewed and placed reliance on the AT's *Investigatory Stop and Frisk Practices Audit*, dated August 31, 2008. The AT's audit concluded for stops and frisks that in many instances the officers did not articulate reasonable suspicion for the stop. The AT was also unable to determine whether many of the stops and frisks were recorded within the requisite time period and whether related supervisory review occurred.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraph U45 during the current quarter, the Monitor requested a listing of all stops and frisks for March 20, 2009. The DPD provided photocopies of officer daily activity logs. The Monitor reviewed approximately 20 entries on the first few logs presented and noted that for virtually every stop or frisk there was no articulation of reasonable suspicion and no evidence of supervisory review. The Monitor presented preliminary review findings to the DPD's Office of Civil Rights (OCR), which concurred with our findings.

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

Paragraph U48 – Documentation of Interviews, Interrogations and Conveyances

Paragraph U48 requires the DPD to memorialize the content and circumstances of all interviews, interrogations and conveyances during the shift in which the police action occurred. The DPD is

also required to review all interviews, interrogations and conveyances and document, on a separate auditable form, any interrogation, interview or conveyance in violation of DPD policy within 12 hours of the event.

Background

The Monitor last assessed the DPD's compliance with paragraph U48 during the quarter ending November 30, 2008, finding that the DPD was not yet in compliance. The Monitor reviewed and placed reliance on the AT's *Witness Identification and Questioning Audit*, dated August 31, 2008. The AT noted that five of 20 interviews identified were not documented, four of ten interrogations identified were not documented and seven of 28 conveyances identified were not documented during the shift of occurrence. For virtually all interviews, interrogations and conveyances identified, no supervisory review occurred.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraph U48 during the current quarter, the Monitor requested and received photocopies of the Homicide and Sex Crime Units' daily activity logs for the period March 28, 2009 through March 30, 2009. The Monitor reviewed the logs for indication of an interview, interrogation or conveyance and, where indicated, requested underlying support.⁵⁷ The DPD provided the underlying documentation for 17 of the 26 activities selected.⁵⁸

The Monitor reviewed the underlying documentation for the 17 activities and noted that it was proper. The Monitor also noted the signature of a supervisor evidencing review within the requisite time period for 14 of the 17 activities. This is a significant improvement since the Monitor's last review of this paragraph. However, for 12 of the 17 activities reviewed, although a signature was secured, the date and time were not documented.

In regard to the nine of the 26 activities selected for review for which underlying documentation was not provided, the DPD represented that an interview actually had not occurred, despite the fact that information on the daily activity report clearly pointed to an interview. As a result of this review, the Monitor remains concerned regarding the accuracy of information documented on officer daily activity reports and the completeness of underlying documentation for documented interviews, interrogations and conveyances.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph U48.

⁵⁷ In total, the Monitor identified indicators for three interrogations, one conveyance and 22 interviews.

⁵⁸ The 17 activities comprised three interrogations, one conveyance, and 13 interviews.

D. PROMPT JUDICIAL REVIEW POLICIES

This section comprises paragraphs U49-51. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending February 28, 2009. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2009.

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.⁵⁹ The Monitor last assessed the DPD's compliance with paragraph U53 during the quarter ending February 28, 2009. The Monitor is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending August 31, 2009.

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.⁶⁰ The Monitor last assessed the DPD's compliance with paragraph U55 during the quarter ending February 28, 2009. The Monitor is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending August 31, 2009.

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.⁶¹ The Monitor last assessed the DPD's compliance with paragraph U57 during the quarter ending February 28, 2009. The Monitor is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending August 31, 2009.

⁵⁹ Implementation of the policy is tested under paragraph U53.

⁶⁰ Implementation of the policy is tested under paragraph U55.

⁶¹ Implementation of policy is tested under paragraph U57.

H. DOCUMENTATION OF CUSTODIAL DETENTION

This section comprises paragraph U58. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending November 30, 2008. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

Paragraph U58 – Arrest and Detention Documentation

Paragraph U58 mandates the DPD to revise its arrest and detention (A&D) documentation to require, for all arrests, a record or file to contain accurate and auditable documentation of:

- a. The individual's personal information;
- b. Crime(s) charged;
- c. Date and time of arrest and release;
- d. Date and time the arraignment warrant was submitted;
- e. Name and badge number of the officer who submitted the arraignment warrant;
- f. Date and time of arraignment;
- g. Date and time each warrant was lodged and cleared, if applicable; and,
- h. Custodial status e.g. new arrest, material witness or extradition.

Background

The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending November 30, 2008, at which time the Monitor found that the DPD was not yet in compliance. The Monitor reviewed 18 arrests that occurred during the period October 13 through October 18, 2008, noting that sufficient personal information and detainee release information were not obtained in many instances, and for all 23 arrests, items d through h of paragraph U58 were not captured.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraph U58 during the current quarter, the Monitor again tested the data entered into the Live Scan system. In order to accomplish this testing, the Monitor provided the DPD with a sample of 24 arrests that occurred during the period March 10 through March 12, 2009. The DPD provided the Monitor with Live Scan documentation for all 24 arrests. The Monitor reviewed the documentation provided and found the following:

- Name information was entered into the Live Scan for all 24 arrests. Similarly, for all 24 arrests, information regarding date of birth, place of birth, height, weight, hair color, eye color, race and sex was also entered. For 22 of the 24 arrests, the age of the arrestee was entered; for the remaining two arrests, zero (0) was entered for age. For all 24 arrests, no telephone information was entered. Lastly, social security information was entered for one of the 24 arrests.
- The detainees' crimes charged were captured for all 24 arrests.
- The dates and times of the detainees' arrests and subsequent release were captured for all 24 arrests.
- The system failed to capture any of the remaining information required by subsections d through h of paragraph U58.⁶²

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph U58.

I. COMMAND NOTIFICATION

This section comprises paragraphs U59-60. The Monitor last assessed the DPD's compliance with paragraph U60 during the quarter ending February 29, 2009. The Monitor is scheduled to again assess the DPD's compliance with paragraph U60 during the quarter ending August 31, 2009. The Monitor last assessed the DPD's compliance with paragraph U59 during the quarter ending November 30, 2008. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

Paragraph U59 – Commanding Officer Review

Paragraph U59 requires all DPD Commanders of a precinct and, if applicable, of the specialized unit to review in writing all reported violations of DPD arrest, investigatory stop and frisk, witness identification and questioning policies and all reports of arrests in which an arraignment warrant was not sought. The Commanding Officer's (CO's) review must be completed within seven days of receiving the document reporting the event, and must include an evaluation of the actions taken to correct the violation and whether any corrective or non-disciplinary action was taken.

Background

The Monitor last assessed the DPD's compliance with paragraph U59 during the quarter ending November 30, 2008, finding that the DPD was not yet in compliance. The Monitor placed

⁶² Court Officers with this information cannot access the Live Scan System for input as of this writing.

reliance on the AT's *Investigatory Stop and Frisk Practices Audit* and *Witness Identification and Questioning Audit*, both dated August 31, 2008. These audits identified multiple instances involving stops, frisks, interviews, interrogations and conveyances in which auditable forms were not generated and therefore could not be reviewed by the CO. Similarly, in its review of arrest documentation, the Monitor noted the CO evaluation was documented on an auditable form for six of eleven arrests for which an arrest warrant was not sought.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraph U59 during the current quarter, the Monitor reviewed the arrest documentation and related auditable forms utilized in connection with the testing of compliance with paragraph U43.⁶³ The Monitor noted that a CO evaluation was documented on an auditable form for eight of nine arrests for which an arrest warrant was not sought. For one arrest, there was no evidence of CO review. The Monitor also requested auditable forms generated in connection with supervisory review of witness interviews, interrogations and conveyances. None were provided, and our assessment of the 17 incidents yielded no indication that an auditable form was required.

The Monitor conducted a cursory review of officer daily activity reports and identified several stops or frisks lacking articulation of reasonable suspicion and evidence of supervisory review. Given the deficiencies and the fact that there was no evidence of supervisory review for reasonable suspicion, the Monitor and the DPD agreed that continued testing in this area was not necessary.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph U59.

⁶³ Refer to the Current Assessment of Compliance for paragraph U48.

IV. EXTERNAL COMPLAINTS

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.⁶⁴

Section IV's introductory section comprises paragraphs U61-63. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending February 28, 2009. The Monitor will assess paragraph U61 during the quarter ending August 31, 2009. The Monitor assessed the DPD's compliance with paragraphs U62-63 during the current quarter. The results of our current assessments follow.

Paragraph U62 – Revision of External Complaints Policy

Paragraph U62 requires the DPD and the City to develop and implement an informational campaign regarding external complaints including:

- a. informing persons they may file complaints regarding the performance of any DPD employee;
- b. distributing complaint forms, fact sheets and informational posters at City Hall, OCI, all DPD precincts, libraries, on the internet and, upon request, to community groups and community centers;
- c. broadcasting public service announcements (PSAs) that describe the complaint process; and
- d. posting permanently a placard describing the complaint process, with relevant phone numbers, in the lobby of each DPD precinct.

Background

The Monitor last assessed the DPD's compliance with paragraph U62 during the quarter ending November 30, 2008, finding the DPD in compliance with paragraph U62.

⁶⁴ The OCI reports to the Board of Police Commissioners (BOPC) and is responsible for conducting external complaint investigations.

Current Assessment of Compliance

Subparagraph U62a Informing persons that they may file complaints

The methods by which the DPD will inform persons that they may file complaints regarding the performance of any DPD employee are included under subparagraphs U62b-d. The Monitor will not be conducting a separate assessment of compliance with this subparagraph.

Subparagraph U62b Distribution of complaint forms, fact sheets and informational posters

On May 8, 2009, the Monitor requested the DPD's most recent inspections in connection with paragraph U62. On May 26, 2009, the DPD submitted two reports of inspections conducted by the OCR and the Board of Police Commissioners (BOPC) that evaluated the requirements of subparagraph U62b. OCR staff inspected twenty-three libraries, five district stations and two precincts from May 4–7, 2009, while BOPC staff inspected twenty-four libraries, Police Headquarters, five district stations, two precincts and seven Neighborhood City Hall (NCH) locations from May 11–15, 2009.

In total, 24 libraries were visited. All 23 branch locations were visited twice and the Main Branch was visited once. Sixteen libraries had the required materials, as well as posters and fact sheets posted on the wall. Six did not have Fact Sheets posted and at one location employees were unable to locate citizen complaint forms. Additionally, the Main Branch did not have posters or fact sheets displayed, and no citizen complaint forms were available. All of these shortcomings were corrected by the second visit. OCR and BOPC staff replenished and updated the materials as needed and supplied other libraries with extra materials.

The BOPC also conducted inspections at seven NCH locations. Most locations had all of the required materials, as well as posters and fact sheets posted on the walls. One exception had no posters or citizen complaint forms. BOPC staff left posters and information for the manager to post and reinforced the importance of information availability. All locations were supplied with updated materials.

Lastly, OCR and BOPC conducted inspections of all five district stations, two precincts and Police Headquarters. All of the districts had all of the required and updated materials, posters and fact sheets posted on the walls, and citizen complaint forms and brochures available at the desks. One precinct was missing a poster and placard. This was corrected on the second visit. The lobby of Police Headquarters was also supplied with a placard, fact sheet and updated brochures. Additionally, individual officers at each district and precinct were interviewed to ensure they had Citizen Complaint Reports in their possession.

Based on the foregoing, the Monitor finds the DPD in compliance with subparagraph U62b.

Subparagraph U62c Complaint Process Broadcasts

The DPD previously submitted a copy of the PSA that is broadcast on Comcast Cable. According to the DPD, the broadcast is aired Monday – Friday at 12:00 a.m., 2:00 a.m., 8:00 a.m. and 9:00 a.m.; Monday, Wednesday and Friday at 2:30 p.m. and 3:00 p.m.; and Saturday and Sunday at 12:00 a.m., 2:00 a.m., 8:00 a.m., and 9:00 a.m. As previously reported, the PSA meets the minimum requirements of describing the complaint process.

Based on the foregoing, the Monitor finds the DPD in compliance with subparagraph U62c.

Subparagraph U62d Informational Campaign Placards

As described above in connection with subparagraph U62b, the OCR and BOPC conducted inspections from May 4-7, and May 11-15, 2009. All six district stations were inspected and continue to have permanent placards posted in their lobbies. One of the two precincts did not have a placard and was supplied with one to be posted.

Based on the foregoing, the Monitor finds the DPD in compliance with subparagraph U62d.

Recommendation

The OCR and BOPC should continue to make periodic inspections of libraries, city halls and district stations. The inspecting officers should continue to educate personnel on the importance of the informational campaign and to resupply materials.

Paragraph U63 – Informational Brochures and Contact Forms

Paragraph U63 requires all officers to carry informational brochures and contact forms in their vehicles at all times while on duty. The DPD must develop a contact form within 60 days of the effective date of the UOF CJ and submit it for review and approval of the DOJ. This contact form must be implemented within 60 days of the review and approval of DOJ. The DPD must require all officers to inform an individual of his or her right to make a complaint, if an individual objects to an officer's conduct. The DPD must prohibit officers from discouraging any person from making a complaint or refusing to take a complaint.

Background

The Monitor last assessed the DPD's compliance with paragraph U63 during the quarter ending November 30, 2007, finding the DPD in compliance. During inspections conducted that quarter, OCR staff interviewed on-duty officers in each DPD district and determined that they were carrying the required materials or had them in their vehicles.

Current Assessment of Compliance

During the OCR inspections of the DPD districts conducted during the period of May 4-15, 2009, described in the *Current Assessment of Compliance* for paragraph U62, OCR staff also observed DPD officers to determine if they were carrying their Citizen Complaint Brochures/Contact Forms as required by the paragraph. Twelve on-duty officers from six commands were interviewed, each of whom was able to produce the Citizen Complaint Brochures/Contact Forms.

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph U63.

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 February 28, 2009. The Monitor is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending August 31, 2009.

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 February 28, 2009. The Monitor is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending August 31, 2009.

V. GENERAL POLICIES

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 with paragraphs U72-77 during the quarter ending February 28, 2009. The Monitor is scheduled to again assess the DPD's compliance with paragraphs U72-76 during the quarter ending August 31, 2009. The Monitor again assessed the DPD's compliance with paragraphs U70-71 and U77 during the current quarter. The results of our current assessments follow.

Paragraph U70 – General Policies

Paragraph U70 requires the DPD, in developing, revising and augmenting policies, to ensure all terms contained within the UOF CJ are clearly defined.

Background

The Monitor last assessed the DPD's compliance with paragraph U70 during the quarter ending November 30, 2008, at which time the Monitor found the DPD in compliance with all of the requirements of the paragraph. The DPD produced a Special Order, *Policy Focus Committee*, establishing the Policy Focus Committee and defining its membership through December 2008.

The DPD also produced minutes from the Policy Focus Committee meeting held on December 15, 2008. The Monitor reviewed the meeting minutes and noted that the Committee's discussion centered on policy issues.

Current Assessment of Compliance

The *Policy Focus Committee* met again on May 12, 2009.⁶⁵ A member of the Monitoring Team attended the meeting, noting that the discussion centered on policy issues and consideration of survey results regarding whether the Officer-in-Charge (OIC) or the Cell Block Supervisor (CBS) should make a Probable Cause determination at the time of an arrest. The general consensus was that the OIC should make a Probable Cause determination, and personnel were subsequently advised that the decision would rest with the OIC.

The Department is currently sending policies to specific commands for review so that revisions can be made. The Department's ultimate goal is to disseminate policies via email.

There has been only one policy manual update approved by BOPC since the last meeting (December 2008): *Separation from Service*, Directive 401.9.

Based on the foregoing, the Monitor finds the DPD in continued compliance with paragraph U70.

Paragraph U71 – Proposed Policy for Community Review and Comment

Paragraph U71 requires that the DPD continue to make available proposed policy revisions to the community for review, comment and education. The DPD must also publish proposed policy on its website to allow for comment directly to the DPD.

Background

The Monitor last assessed the DPD's compliance with paragraph U71 during the quarter ending November 30, 2008, finding the DPD in compliance. The Monitor periodically accessed the DPD's website, noting in each instance that no new additional policy was posted for review and comment. Additionally, there were no revisions to the DPD's *Protocol for Proposed Policy Revisions*.

Current Assessment of Compliance

During the current quarter, the Monitor periodically accessed the DPD's website, noting that Directive 305.9, *Fingerprinting and Identification of Detainees*, and Directive 401.13, *Management Awareness System*, were posted for review and comment during the current assessment period.

⁶⁵ Special Order, *Policy Focus Committee*, dated February 13, 2009 was revised to reflect changes in membership effective January 1, 2009 through December 31, 2009.

Based on the foregoing, the Monitor finds the DPD in continued compliance with paragraph U71.

Paragraph U77 – Foot Pursuit Policy

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

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

Background

The Monitor last assessed the DPD's compliance with paragraph U77 during the quarter ending February 28, 2009, finding that the DPD remained in compliance with the policy requirements but was not yet in compliance with the training requirements of the paragraph. The Monitor had not yet evaluated the DPD's compliance with the implementation requirements of the paragraph.

Current Assessment of Compliance

In order to assess compliance during the current quarter, the Monitor requested and received a listing of all uses of force for the period September 1, 2008 through November 30, 2008. In total, the DPD identified 154 uses of force from which the Monitor selected a sample of 60 to review for indicators of a foot pursuit. Of the 60 reviewed, 26 UOF reports and related CRISNET reports included indicators of a foot pursuit leading up to the use of force and all were documented on the auditable form, UF-002.⁶⁶

Based on the foregoing, the Monitor finds the DPD in compliance with the requirements of paragraph U77.⁶⁷

⁶⁶ For three foot pursuits, although appropriately captured in the body of the UF-002, the related foot pursuit check box was not completed and therefore the foot pursuit was not recognized by the DPD database.

⁶⁷ On June 1, 2009, the Monitor and the parties agreed to assess the training requirements of paragraphs U72 through U77 in the training paragraphs of the Consent Judgment. As a result, in order to achieve overall compliance with these paragraphs going forward, the DPD must meet the policy and implementation requirements only of the paragraph as training will be separately assessed.

VI. MANAGEMENT AND SUPERVISION

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

The Monitor last assessed the DPD's compliance with paragraph U78, the introductory paragraph to section VI, during the quarter ending February 28, 2009. The Monitor is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending August 31, 2009.

A. RISK MANAGEMENT DATABASE

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

The Monitor has previously concluded that the DPD is in compliance with paragraphs U82-85 and subparagraphs U88a, b, d, and e, as the DOJ provided the DPD with verbal conditional approval of the Data Input Plan and approved the Review Protocol and the Report Protocol. The DPD will remain in compliance with these provisions unless these documents are revised. In addition, the Monitor has discontinued monitoring compliance with subparagraphs U88c⁶⁸ and U88f⁶⁹ and paragraph U89.⁷⁰

⁶⁸ 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.

⁶⁹ 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.

⁷⁰ 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

The Monitor last assessed the DPD's compliance with paragraphs U79-81 and U86-87 and subparagraph U88g during the quarter ending February 28, 2009. The Monitor is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending August 31, 2009.

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 February 28, 2009. The Monitor is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending August 31, 2009.

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,⁷¹ to perform periodic random reviews of scout car camera videotapes and video recording equipment, and to meet regularly with local prosecutors to identify any issues in officer, shift or unit performance. Each of these oversight provisions requires the DPD to examine a number of issues, but a common theme among them all is the requirement to assess and report on the appropriateness of the police activity being examined.

The Monitor last assessed the DPD's compliance with subparagraphs U94b and U95a, and paragraphs U96-97 during the quarter ending August 31, 2008; paragraph U92, subparagraphs U94a and U95b and paragraph U99 during the quarter ending November 30, 2008; and subparagraphs U94c and U95c and paragraph 98 during the quarter ending February 28, 2009.

The Monitor again assessed the DPD's compliance with subparagraphs U94b and U95a and paragraphs U96 and U99 during the current quarter. The results of our current assessments follow.

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

Paragraph U94 requires the DPD to conduct regularly scheduled annual audits covering all DPD units and commands that investigate UOF, PIs, and AOM. These audits were due by August 31, 2004, and annually thereafter. The DPD's AT has historically conducted three separate audits of a) UOF investigations, b) PI investigations, and c) AOM investigations. The Monitor has

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.

⁷¹ 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.

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 concluded that the *Use of Force Investigations Audit* submitted by the DPD on August 31, 2008 contained substantial performance-related deficiencies associated with the audit time period and scope. 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 U94b during the quarter ending August 31, 2008, finding that the DPD was not yet in compliance. The *PI Investigations Audit* submitted by the 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's current assessment of subparagraph U94b is detailed below.

The Monitor last assessed the DPD's compliance with subparagraph U94c during the quarter ending February 28, 2009, finding that the DPD was no longer in compliance. The Monitor concluded that the *AOM Audit* submitted by the DPD on August 31, 2008 contained three substantial performance-related deficiencies, three material performance-related issues, as well as several administrative deficiencies. The next audit of this topic is due to be submitted by August 31, 2009.

Current Assessment of Compliance

Subparagraph U94b – Prisoner Injury Investigations Audit

In order to assess the DPD's compliance with subparagraph U94b, the Monitor reviewed the *PI Investigations Audit Report* submitted by the AT on February 28, 2009. The Monitor also reviewed the audit work plan, matrices and other working papers, and all four of the PI investigations included in the audit.

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

- The audit was submitted on February 28, 2009, well before the required due date of May 31, 2009.
- The AT identified a total of four investigations, consisting of one command, two FI, and one JIST from April 1 through October 31, 2008. The AT reported that this population is significantly lower than the prior audit's population of 13 incidents (eight commands, three FI, and two JIST) and appropriately extended the period for reviewing command investigations by two months (to December 31, 2008) in an attempt to obtain a larger

population.⁷² However, no additional investigations were identified. Of the four investigations reviewed, one involved an Allegation of Force (AOF) and another involved a UOF by DPD officers.

- The AT performed suitable completeness testing. While no additional FI or JIST investigations were found, the AT reported serious problems with identifying the command population. Specifically, the AT found that the information in the MAS was misclassified and no other sufficient tracking system exists, making it impossible to identify a complete population.⁷³ The AT also found that the commands did not complete the correct auditable form to report a PI and did not investigate several PI incidents. The AT properly reported the problems associated with these issues.⁷⁴
- The AT covered all scope requirements in paragraph U94 and included all applicable substantive paragraphs. However, the AT failed to include an assessment of compliance with a component of subparagraph U36a that requires investigations to include a profile of the officer's prior UOF and AOF.
- The AT did not correctly assess compliance with subparagraph U35c, which requires the supervisor responding to the scene to notify IA/FI of specified types of UOF incidents. The AT only assessed whether Communications was notified, reasoning that because DPD policy (TD 04-07) requires Communications to notify IA, compliance with subparagraph U35c will be achieved when Communications is notified. However, the Monitor identified one incident in which Communications was notified but IA was not, yet the AT incorrectly reported the DPD was complaint with subparagraph U35c.
- In two of the four investigations (the AOF and the UOF), the AT incorrectly assessed compliance with subparagraph U32f requirements that an investigator evaluate all UOF, including officer's tactics, and any allegations or evidence of misconduct uncovered during the investigation. With regard to the UOF investigation, although the investigator evaluated the use of force, the AT incorrectly concluded that the investigator had not. Furthermore, the investigator had not evaluated the officers' tactics surrounding the force, but the AT did not mention this missing evaluation.

Regarding the AOF incident, the AT incorrectly reported that the audit was "unable to determine" if the investigator had conducted an evaluation of the AOF. Based on the Monitor's review, the investigator reviewed the alleged force but could not sustain the allegation because the alleged incident occurred out of view of the in-car video. The investigator articulated this within the investigative report. While the AT correctly reported

⁷² The AT concluded that the lower population was due to officers and supervisors not completing the auditable forms as required.

⁷³ The AT has reported similar concerns in every prior investigative audit.

⁷⁴ See further detail below in regard to the AT's assessment of paragraph U34.

that the DPD was non-compliant with subparagraph U32f, its correct finding was based on other deficiencies within the other two investigations.

- The AT incorrectly concluded that the UOF incident investigation was evaluated based upon a preponderance of the evidence standard, as required by subparagraph U32g. The Monitor determined that only the involved officers and an involved supervisor were interviewed; the investigator failed to interview the subject of the use of force and a key witness, and no other witnesses were located. The investigator determined that no policy violations occurred based solely on the involved DPD members' statements and did not provide any reason for not interviewing the subject and witness.⁷⁵ The AT concluded that the DPD was in compliance with subparagraph U32g, but should have concluded non-compliance.
- In one of the four investigations, the AT incorrectly found that the investigator did not interview the subject at a convenient time or place. As a result, the AT incorrectly concluded that the DPD was non-compliant with subparagraph U29b. Because the subject was in DPD custody at the time, this requirement did not apply to this investigation, and the AT should have reported the DPD in compliance with subparagraph U29b.
- The AT incorrectly found that an investigation included thorough and complete interviews as required by subparagraph U28b even though, as described above, the investigation did not include interviews of the subject of the UOF and PI, nor did the investigator interview a key witness to the incident. The AT concluded that the DPD was in compliance with subparagraph U28b, but should have reported non-compliance.
- Although the AT correctly reported that the DPD was non-compliant with paragraph U34, its assessment was based on testing solely for the presence of an auditable form in the investigations reviewed, but did not include a qualitative assessment of the accuracy or correctness of the forms. The AT also did not consider the auditable forms that were not completed as described above, as part of their calculations when assessing the DPD's compliance. The Monitor found that the auditable form for the PI-UOF incident was not completed properly to indicate that a force had occurred (i.e. the force checkbox was not marked) but the AT did not report the deficiency in this particular investigation.⁷⁶
- While the audit report was concise and made good use of tables, it contained several inconsistencies when compared to the findings in the audit matrices, and it was difficult to follow in several areas. According to the AT's supervisory staff, the audit was not submitted internally with sufficient time for an adequate review to occur.

⁷⁵ The Monitor noted that the subject was taken to Detroit Receiving Hospital (DRH) and then into custody following the incident.

⁷⁶ If the AT properly assessed the auditable forms, these additional findings of non-compliance would have served to further decrease the DPD's compliance rating.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with subparagraph U94b. In arriving at this conclusion, the Monitor identified six substantial performance-related deficiencies⁷⁷ and two material performance-related issues,⁷⁸ all of which had a significant effect on the overall quality of the audit.

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's current assessment of subparagraph U95a is detailed below.

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 28, 2009, finding that the DPD was in compliance, as the *Witness Identification and Questioning Audit* submitted on August 31, 2008 contained no substantial performance-related deficiencies, and was a quality audit. The next audit of this topic is due to be submitted by August 31, 2009.

⁷⁷ The issues associated with the AT's testing of subparagraphs U28b, U29b, U32f, U32g, U35c, and U36a.

⁷⁸ The lack of a qualitative assessment of auditable forms in connection with paragraph U34 and the various reporting deficiencies identified.

Current Assessments of Compliance

Subparagraph U95a – Arrests Audit

In order to assess the DPD's compliance with subparagraph U95a, the Monitor reviewed the *Arrests Audit Report* submitted by the AT on February 16, 2009. The Monitor also reviewed the audit work plan, audit matrices, other supporting work papers and a random sample of 48 arrest packages from the total population of 86 reviewed by the AT.⁷⁹

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

- The DPD submitted the *Arrests Audit Report* to the Monitor earlier than the required due date of May 31, 2009.
- The audit covered each of the required paragraphs and appropriately found that the Department remained in compliance with paragraph U42⁸⁰ and subparagraph U46c, and was not yet in compliance with paragraphs U43, U48, U59, U95 and U114.
- The Monitor commends the DPD for addressing concerns raised by the Monitor during its review of the prior *Arrests Audit* regarding the AT's methodology used to calculate the comparison required by paragraph U95: the number of arrests to the number of requests for warrants, and the number of warrants requested to the number of judicial findings of probable cause.
- The audit report continues to improve and report the findings succinctly and clearly.
- The Monitor commends the AT for following up on the DPD's use of the auditable form that tracks supervisory review of those arrests for which there is no probable cause. While the AT correctly found that DPD supervisors had not completed the form when required based on the sample of arrests reviewed, future audits should also include a review of the desk blotters entries to identify any individuals who were conveyed to a district but released prior to processing because the OIC concluded there was insufficient probable cause.⁸¹
- The Monitor identified one instance where the AT concluded that there was sufficient probable cause to arrest the individual but the arrest report contained only minimal information in relation to the incident and did not provide sufficient information to support the particular charge.⁸² While the Monitor concurred with the AT's ultimate conclusion that

⁷⁹ The sample was selected using a one-tailed test, a 95% confidence interval and a +/-4% error rate.

⁸⁰ Paragraph U42 is a "policy-only" paragraph. The finding of in compliance remains unchanged unless the DPD revises its policy so that it does not comply with the Consent Judgments.

⁸¹ In the current audit the AT based its assessment solely on arrests for which the AT concluded there was no probable cause.

⁸² According to the arrest report, the arrestee was charged with intent to "sell" cocaine; however, the arrest report only supported a charge of "possession" of cocaine.

probable cause to arrest was sufficient, the AT should have identified the deficiencies in the arrest report and reported these concerns as an “other related matter.” In instances where there is only minimal information in the arrest report and this information raises questions, the AT should also review and include the search warrant in its supporting audit working papers whenever necessary, as was the case in this situation.

- The AT incorrectly concluded that there was no probable cause for two arrests in connection with two incidents of domestic violence. The Monitor concurred with the AT’s findings that in both cases the arrest reports should have provided additional detail related to the scope and content of the arrest. However, based on the details contained in these arrest reports, the Monitor concluded that there was sufficient probable cause for the officers to arrest in each incident.
- The AT did not include nine misdemeanor arrests where warrants were appropriately sought in its assessment of paragraph U43 (whether or not a warrant was requested and subsequently tracked if denied). Had the AT included these nine arrests, AT’s calculation of the DPD’s compliance would have increased, but would not have changed the AT’s overall assessment of non-compliance with paragraph U43.
- The Monitor also identified a few administrative errors where the work papers did not correspond to the final report, or information could have been clarified within the report. The Monitor provided suggestions to the AT to prevent these types of inconsistencies, such as the use of formulas and a more thorough quality review.

In summary, of the 48 arrests reviewed for probable cause, the Monitor identified two errors (resulting in a 95.8% compliance rate) and two material performance-related deficiencies as described above, which did not have a significant effect on the quality of the audit. Based on the foregoing, the Monitor finds that the DPD is in compliance with subparagraph U95a.

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

In order to assess the DPD's compliance with paragraph U96, the Monitor reviewed the *Custodial Detention Audit* submitted by the DPD's AT on February 28, 2009, which was earlier than the required due date of May 31, 2009. The Monitor also reviewed the audit planning documents and conducted an assessment of the audit fieldwork and working papers.⁸³

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

- The audit was submitted on February 28, 2009, well before the required due date of May 31, 2009.
- The AT identified a total population of arrestees during two different time periods ranging from August 10 through August 16 and August 24 through August 30, 2008, and conducted thorough completeness tests of the populations. The AT appropriately excluded from its population all non-applicable arrestees, such as those with existing warrants and those that were released on bonds, and then selected statistically valid random samples of the populations in order to review holds, warrants and arrest documentation.
- The AT also reviewed restriction documentation for the period August 1 through August 31, 2008. Similar to previous audits of this topic, the Monitor advised the AT that it should review more recent data in order to ensure the findings and compliance conclusions are based on the most current available information.⁸⁴
- The AT properly included all of the substantive paragraphs related to this topic and determined that the DPD did not meet the requirements of any of the paragraphs tested (U49-55, U58, U60 and U115). The AT also properly defined and assessed the "time between arrest and arraignment" and the "time to adjudicate holds," as required by paragraph U96, and made appropriate recommendations to address the problems identified during the course of the audit. Based on the Monitor's testing of the audit fieldwork, the Monitor concurred with the AT's conclusions.
- The AT's matrix questions and working papers were well-formatted and organized. The Monitor identified several areas where the audit report could be improved, and communicated this information to the AT in order to improve future audit reports. However, the issues identified did not significantly affect the overall quality of the audit report.

⁸³ Consistent with the Monitor's Methodologies, the Monitor conducted an abbreviated review of this audit because the prior two 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.

⁸⁴ The Monitor notes that the data in this audit was just under six months old. Although it is not considered stale, as the DPD nears compliance with the underlying requirements regarding restrictions, it will become critical for the AT to assess more recent data.

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph U96.

Paragraph U99 – Regular Meetings with Prosecutors

Paragraph U99 requires the DPD to ensure regular meetings with local prosecutors to identify issues in officer, shift or unit performance.

Background

The Monitor last assessed the DPD's compliance with paragraph U99 during the quarter ending November 30, 2008, finding the DPD in compliance. The DPD and the Wayne County Prosecutor's Office (WCPO) continued to meet quarterly to identify and discuss issues relevant to the requirements of this paragraph.

Current Assessment of Compliance

The DPD and the WCPO continue to meet quarterly to identify issues in officer, shift or unit performance. During this quarter, the meeting was held on May 6, 2009. A member of the Monitor's team was in attendance. The meeting included, among other things, a discussion of the continued benefit of the monthly commander meetings with WCPO. The need for officers to remain cognizant of protocols when transferring evidence in certain cases was also discussed. Notification of DPD by Detroit Public Schools of crimes committed in the school system and juvenile warrants was also a discussion topic. WCPO inquired about the DPD's use of in-car video cameras and their value as evidence.

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph U99.

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 February 28, 2009. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2009.

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 February 28, 2009. The Monitor is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending August 31, 2009.

VII. TRAINING

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

Paragraph U106 – Review of all UOF and Arrest and Detention Training

Paragraph U106 requires the DPD to coordinate and review all UOF and A&D training to ensure quality, consistency and compliance with applicable law and DPD policy. The DPD must conduct regular subsequent reviews, at least semi-annually, and produce a report of such reviews to the Monitor and the DOJ.

Background

The Monitor last assessed the DPD's compliance with paragraph U106 during the quarter ending November 30, 2008, finding that the DPD was not yet in compliance. The DPD's Curriculum Design and Development Team (CDDT) submitted a Semi-Annual Report pursuant to paragraph U106 to the Monitor and the DOJ on October 15, 2008. The report purported to cover paragraph U106, subparagraphs U107a, b, d, e, and f, and paragraph U109, among others. The Monitor reviewed the report and identified numerous deficiencies, as well as the fact that the document was incomplete, in that the paragraphs identified were not sufficiently covered in the report. The Monitor met with the DPD on November 25, 2008 to discuss the report, its scope, underlying methodologies, and conclusions. The DPD agreed that during the next quarter it will provide the Monitor with the procedures it will employ to compile the report on a semi-annual basis.

Current Assessment of Compliance

The DPD Office of Training and Professional Development has indicated that it is taking steps to ensure that all UOF and A&D training courses are reviewed to ensure quality, consistency and compliance with applicable law and DPD policy. The DPD has not yet produced a report of its recent reviews.⁸⁵

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph U106.

Paragraph U107 – Michigan Law Enforcement Officers Training Council Standards

Paragraph U107 requires the DPD, consistent with Michigan law and the Michigan Law Enforcement Officers Training Council standards, to:

- a. ensure the quality of all UOF and Arrest and Detention training;
- b. develop UOF and Arrest and Detention training curricula;
- c. select and train DPD officer trainers;
- d. develop, implement, approve and oversee all training and curricula;
- e. establish procedures for evaluating all training curricula and procedures; and
- f. conduct regular needs assessments to ensure that training governing UOF and Arrest and Detention are responsive to the knowledge, skills and abilities of the officers being trained.

Background

The Monitor last assessed the DPD's compliance with paragraph U107 during the quarter ending November 30, 2008, finding that the DPD was not yet in compliance, as it had not yet implemented the requirements of subparagraphs a through f of paragraph U107. The DPD attempted to include subparagraphs U107a, b, d, e, and f in the semi-annual report it issued pursuant to paragraph U106; however, none of these subparagraphs were fully covered in the report and it failed to adequately address the requirements of these subparagraphs. The Monitor provided the DPD with feedback on the report during a meeting held on November 25, 2008.

With regard to subparagraph U107c, the Monitor was not able to substantiate the level of instructor development for instructors and questioned the quality and sufficiency of some of the

⁸⁵ After the end of the quarter, the DPD indicated that certain lesson plans have been submitted to the DPD Legal Advisor for a review to ensure adherence to applicable law. The DPD also reviewed the lesson plans to ensure compliance with policies and identified one lesson plan (Detention Officer) that must be updated. Review of other lesson plans were in progress at the end of the quarter.

DPD's instructor development courses.⁸⁶ With regard to subparagraph U107f, although the DPD reviewed the conclusions of lawsuits alleging officer misconduct and recommendations and findings from AT audit reports, these reviews did not constitute a training needs assessment. The DPD also indicated that a Job Task Analysis conducted by the Michigan Commission on Law Enforcement Standards (MCOLES) in 2006 was a needs assessment. The Monitor disagreed.

Current Assessment of Compliance

For subparagraphs U107a and e, the Training Committee is evaluating the training courses and instructors. These evaluations began on May 19, 2009 and continued after the end of the quarter. Upon receiving all evaluation forms, the Commander of Training and Professional Development will review the forms and discuss any issues with the instructors and correct any deficiencies that are identified. This procedure will also pertain to the requirement to oversee training and curricula as required by subparagraph U107d.

With regard to subparagraph U107c, the Monitor will be providing TA in the form of an Instructor Development class for 15 DPD trainers after the end of the quarter on June 30, July 1 and July 2, 2009.

During this quarter, the DPD accepted the Monitor's offer to provide Technical Assistance (TA) on conducting needs assessments pursuant to subparagraph U107f. The Monitor initially made this offer last year. The TA was provided to the DPD on March 17, 2009. According to the DPD, the Office of Training and Professional Development has begun work on the needs assessment. The DPD reports that a focus group was put together and met on May 18, 2009. This group consisted of members assigned to patrol, investigative, and administrative capacities to capture training needs from a variety of perspectives. A survey and questionnaire is being used to capture additional information necessary for the report. As of the end of the quarter, the assessment had not been completed.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph U107.

Paragraph U108 – Individual Training Records

Paragraph U108 directs the DPD to maintain individual training records for all officers, documenting the date and topic of all pre-service and in-service training.

⁸⁶ The Department agreed to provide additional information regarding the qualifications of its instructors. In addition, the Monitor maintained its offer of TA to the DPD in the form of an Instructor Development Class.

Background

The Monitor last assessed the DPD's compliance with paragraph U108 during the quarter ending November 30, 2008, finding that the DPD was not yet in compliance. The DPD indicated that it was continuing to work toward fulfilling the requirements of this paragraph by utilizing the MITN system to capture all training records for sworn members. The DPD assigned additional personnel to this project, and was continuing to enter training records into MITN. As of November 2008, the DPD estimated that training records would be current within six months. The method for capturing all training records for non-sworn members was still under review as of the end of the reporting period.

Current Assessment of Compliance

The DPD's 23rd Quarter Status Report did not identify any additional progress since in complying with the requirements of this paragraph since the Monitor's last assessment.⁸⁷ Due to the slowness of entering records in the MITN system, the DPD is exploring other means of capturing training records. Additionally, Training and Professional Development has been recording the attendance to training for the 2008/2009 in-service training program electronically.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph U108.

Paragraph U109 – Approved Lessons Plans/Scenario-Based Training

Paragraph U109 directs the DPD to ensure that approved lesson plans are taught by qualified instructors to provide training, while utilizing scenario-based examples, preferably based on DPD examples involving DPD officers.

Background

The Monitor last assessed the DPD's compliance with paragraph U109 during the quarter ending November 30, 2008, finding that the DPD was not yet in compliance. During that quarter, the Monitor commenced observing classroom presentations of approved lesson plans, including the scenarios contained therein, and identified the need for modifications to the scenarios, as well as the lack of facilitation skills of some instructors. The Monitor shared the details of these observations during a review meeting held on November 25, 2008.

⁸⁷ The status report indicates that “[t]he Office of Training and Professional Development was assigned additional personnel to address the issue of entering the records into the MITN system. It is anticipated that the entry of training records will be expedited as a result of the additional personnel assigned to this task. The method for capturing all training records for non-sworn members is under review at this time.”

Current Assessment of Compliance

The DPD's *23rd Quarter Status Report* indicates that the Office of Training and Professional Development is in the process of developing a procedure for attaining compliance with this paragraph. More recently, in response to a document request, the DPD indicated that it plans to use the evaluations described for subparagraphs U107a and e to achieve compliance with this paragraph as well.

As in previous quarters, the Monitor has continued to observe multiple days of classroom presentation of approved lesson plans and has shared the details of these observations, including the need for modifications to the scenarios and the lack of facilitation skills of the instructors, with the DPD.⁸⁸ This topic will be specifically covered in the upcoming TA described in the *Current Assessment of Compliance* for subparagraph U107c, and the Monitor expects the DPD to continue to work toward effective construction and facilitation of scenarios in all relevant training sessions.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph U109.

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 February 28, 2009, finding the DPD in compliance. As previously reported, the Monitor had not been attending quarterly meetings between the City Law Department and the DPD since March 2008, as the City raised concerns about the presence of the Monitor compromising confidential attorney-client discussions. However, during the previous quarter, the City indicated that it no longer objected to the Monitor's attendance at the meetings.

In response to the Monitor's request for all non-privileged minutes and meeting notes, the DPD provided detailed notes from meetings on July 30, 2008, and October 23, 2008. Based on these minutes, it appeared 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.

⁸⁸ The most recent communication was a written memorandum provided to the DPD on June 23, 2009.

Current Assessment of Compliance

A representative from the Monitoring Team attended the quarterly meeting between the DPD and the City Law Department that was held on April 27, 2009. In addition, in response to a request from the Monitor, the DPD provided summary meeting notes. During the meeting, recently concluded cases were discussed and suggested items for newsletters and training were developed. Specifically, the protection provided by in-car video to both the City and officers was discussed. Additionally, the DPD provided a copy of the Risk Management newsletter distributed in May 2009 focusing on the value of in-car video cameras.

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

Paragraph U111 – Distribution and Explanation of the UOF CJ

Paragraph U111 requires the City and the DPD to distribute and explain the UOF CJ to all DPD and all relevant City employees. The City and the DPD must provide initial training on the UOF CJ to all City and DPD employees whose job responsibilities are affected by it within 120 days of each provision's implementation. Thereafter, the DPD must provide training on the policies contained in the UOF CJ during in-service training.

Background

The Monitor last assessed the DPD's compliance with paragraph U111 during the quarter ending November 30, 2008, finding that the DPD was not yet in compliance. The Monitor had not yet received information previously requested regarding initial training provided to all City and DPD employees whose job responsibilities are affected by the UOF CJ.⁸⁹ Furthermore, the DPD has provided no documentation indicating that initial training had been conducted within 120 days of the implementation of each provision of the UOF CJ. The DPD commenced in-service training that covers the training paragraphs in the UOF CJ and several additional topics; this training was in progress after the end of the quarter.

Current Assessment of Compliance

Once again the DPD has indicated that the CJ has been distributed and explained to relevant City employees (e.g., Detroit Fire Department, Health Department and Neighborhood City Hall personnel) and DPD employees whose job responsibilities are affected by the CJ. However, as previously reported the Monitor has not received sufficient documentation of the DPD's compliance with this requirement.

⁸⁹ The Monitor specifically requested that the dates and subject matter of the training be provided, in addition to the applicable paragraph numbers that the training covered. The documentation provided by the DPD did not include these specifics.

At the end of the quarter, the DPD was nearing the end of its first cycle of in-service training. Once the first cycle of in-service training is completed and the Monitor assesses attendance, the DPD will be able to achieve compliance with the in-service training requirement of this paragraph. The DPD is scheduled to commence a new cycle of in-service training in July 2009. The DPD will implement a new training module which consolidates classroom and practical (firearms) trainings into one block. This module is a major step forward in DPD's training delivery methodology.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph U111.

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 this paragraph during the quarter ending August 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 this paragraph during the quarter ending August 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 this paragraph during the quarter ending August 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 February 28, 2009, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2009.

F. SUPERVISORY TRAINING

This section comprises paragraphs U118-120. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending February 28, 2009, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2009.

G. INVESTIGATOR TRAINING

This section comprises paragraphs U121-122. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending February 28, 2009, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2009.

H. FIELD TRAINING

This section comprises paragraph U123 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending February 28, 2009, and is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending August 31, 2009.

VIII. MONITORING, REPORTING, AND IMPLEMENTATION

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

This section of the report contains the Monitor's compliance assessments of the COC CJ paragraphs scheduled for review during the quarter ending May 31, 2009.

I. FIRE SAFETY POLICIES

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.⁹⁰ The Monitor last assessed the DPD's compliance with paragraphs C14-21 during the quarter ending November 30, 2007. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

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

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

Paragraph C15 requires the DPD to develop and implement a comprehensive fire detection, suppression and evacuation program⁹¹ for all holding cells, and the buildings that contain them, in accordance with the requirements of the LSC and in consultation with the DFD.

⁹⁰ The DPD will remain in compliance with paragraph C22 unless it begins using buildings that contain Kane Fiber Ceiling Tiles to detain prisoners.

⁹¹ Within the COC CJ and in the Monitor's report, the Comprehensive Fire Detection, Suppression and Evacuation Program is also referred to as the "Fire Safety Program" or "FSP" (paragraph C16).

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

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

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

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

Paragraph C20 requires the DPD to immediately enforce its no-smoking policy in all holding cells or provide ashtrays and ensure that the holding cells are constructed and supplied with fire rated materials.⁹²

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

Background

The Monitor last assessed the DPD's compliance with paragraphs C14-C21 during the quarter ending August 31, 2008, finding that the DPD was in compliance with paragraphs C20-21 and in compliance with the policy requirements of paragraphs C14-19, but the DPD was not yet in compliance with the implementation requirements of paragraphs C14-19. The DPD was in the process of retrofitting the existing facilities containing holding cells in an effort to achieve compliance with the Consent Judgment paragraphs but had not yet completed that course of action. Additionally, the DPD had not fully implemented the Fire Safety Program (FSP) nor had

⁹² The Monitor notes that although paragraph C20 specifies that the DPD's no smoking policy be enforced within "holding cells," the DPD policy, which is in accordance with the Michigan Clean Indoor Air Act, P.A. 198 of 1986 and P.A. 296 of 1988, prohibits smoking throughout Department facilities.

they ensured that all fire safety equipment contained within these facilities was routinely inspected, tested and maintained.

Current Assessment of Compliance

In order to assess the DPD's compliance with the requirements contained in paragraphs C14-21⁹³ during the current quarter, the Monitor reviewed the *Fire Safety Practices and Policies (FSPP) Audit Report* submitted by the AT on January 31, 2009.⁹⁴ In this audit, all of the buildings containing holding cells were evaluated by the DPD's AT's, HCCC members, qualified/certified inspections, and the DFD Fire Marshal. The audit reviews consisted of both onsite inspections and the evaluation of the related documentation.

Overall, the audit found that the DPD was in compliance with paragraphs C14, C16-18, and C21, but not yet in compliance with paragraphs C15 and C19. Through the Monitor's evaluation of the audit and its own observations,⁹⁵ the aforementioned audit findings were determined to be reliable and are detailed below.

Paragraph C14 – LSC Compliance

As is described in the following paragraphs, the DPD has completed the retrofit of each of its holding cell facilities and is in compliance with all of the Fire Safety Policy paragraphs in the Consent Judgment with the exception of the record keeping requirements regarding fire equipment testing and maintenance. This is a major accomplishment for the City and the DPD and constitutes compliance with the Life Safety Code.

Paragraph C15 – Comprehensive Fire Detection, Suppression and Evacuation Program

As a result of recommendations in prior FSP audits, the DPD revised the FSP in order to simplify the instruction to its detention area staff and to merge provisions of paragraph C23, Comprehensive Emergency Preparedness Program (CEPP). While the DPD has implemented the majority of the FSP, the DPD had not yet implemented established procedures to maintain the records for documenting that all fire safety equipment contained within these facilities is routinely inspected, tested and maintained. Consequently, the DPD had not fully implemented the FSP.

⁹³ As described in previous reports, the DPD is in compliance with paragraph C22, removal of kane fiber ceiling tiles, and will remain in compliance unless it begins to use buildings with these tiles again.

⁹⁴ See *Current Assessment of Compliance* for paragraph C66 for detail on the Monitor's assessment of the FSP Audit.

⁹⁵ The Monitor accompanied the HCCC and DFD staff, along with DOJ and its SME on onsite inspections of the newly renovated holding cell facilities on December 11, 2008 to assess the DPD's compliance with the LSC, and conducted unannounced inspections on June 15-16, 2009 to assess selected requirements.

Paragraph C16 – Installation of Fire Equipment

Beginning in July 2008 and through October 2008, the DPD retrofitted its existing facilities containing holding cells by installing sprinkler systems, either installing or repairing fire alarm systems, and installing appropriate self-closures and/or positive-latching hardware on all fire doors. The installations were completed and operational between September 16 and October 16, 2008.⁹⁶

Paragraph C17 – Annual Approval of FSP, Including Revisions

The DPD had received annual approval of its previous versions of the FSP from the DFD as required. The DFD approved the most recent revisions to the FSP on June 5, 2008. The Monitor notes that the DPD and the DFD worked together to revise the FSP to ensure that any revisions to the program met the LSC requirements.

Paragraph C18 - Interim Fire Safety Measures

By installing the LSC approved fire alarms, the DPD has ensured that the fire alarms will properly activate in a fire emergency. Through a review of daily details, the audit confirmed the DPD's ongoing practice of having at least two holding cell area staff assigned to the holding cells each day, which is the DPD's method to ensure that detainees are able to communicate with holding cell area staff in case of emergencies. While Monitor concurs with the AT's findings, it notes that the staff is also able to visually monitor the cell block and individual holding cells via the video camera systems.

By reviewing the documented tests of the Detroit Utility, the audit confirmed that the back-up power systems in each of the holding cell facilities are capable of providing electrical power for a given length of time in the event of a failure of the normal power supply. In addition, the audit determined that as part of the retrofit, the DPD had all exposed pipes and duct work sealed with fire and smoke resistant materials in accordance with the National Fire Protection Association, and maintained fire doors in the closed position as required by the LSC.

Paragraph C19 - Testing of Fire Safety Equipment

Although the fire equipment systems were just recently installed, inspected, and approved/certified, the DPD had not yet established the particular timing requirements or the method for documenting that the fire equipment is routinely tested and maintained at the time of the audit. Subsequent to the audit time period the DPD established the requirements and has stated its intention to train the detention area staff on these standards.⁹⁷

⁹⁶ The Eastern and Western Districts were completed on September 16th, the Northwestern District was completed on September 25th, the Northeastern District was completed on October 2nd, and the Southwestern Annex was completed on October 16th.

⁹⁷ The DPD's Q23 Status Report described these details.

Paragraph C20 – Smoking Policy

The audit and the Monitor found no evidence of smoking within the holding cells during its inspections.

Paragraph C21 – Storage of Flammable Liquids

The audit found that none of the facilities containing holding cells were improperly storing flammable and combustible liquids. The results of the Monitor's onsite inspections agree with these findings.

Based on the foregoing, the Monitor finds that the DPD is in compliance with the policy requirements of paragraphs C14-21 and the implementation requirement of paragraphs C14, C16-18 and C20-21, but has not yet achieved compliance with the implementation of paragraphs C15 and C19.

II. EMERGENCY PREPAREDNESS POLICIES

This section of the COC CJ comprises paragraphs C23-25. It requires the DPD to develop and implement emergency preparedness plans for all facilities that maintain holding cells. These procedures and policies are to be designed to ensure that each precinct and the entire Department have a clear understanding of what actions are required in the event of an emergency.

The Monitor last assessed the DPD's compliance with paragraphs C23-25 during the quarter ending November 30, 2007. The Monitor again assessed compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraph C23 – Establishing of Safety Levels

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

Background

The Monitor last assessed the DPD's compliance with paragraph C23 during the quarter ending August 31, 2008, finding that the DPD was not yet in compliance. As noted by the Monitor, compliance with paragraph C23 cannot occur until the DPD attains compliance with paragraphs C24-25, and the DPD had not achieved compliance with these paragraphs as of the end of that quarter.

Current Assessment of Compliance

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

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

Paragraph C24 – Emergency Preparedness Program Development

Paragraph C24 requires the DPD to develop a comprehensive emergency preparedness program (CEPP or Emergency Preparedness Program (EPP)), with the written approval of the DFD, for all DPD buildings that contain holding cells. The program must be submitted for the review and approval of the DOJ within three months of the effective date of the COC CJ and implemented within three months of the DOJ's approval. The approved program must be reviewed and approved in writing by the DFD, at a minimum of once per year and prior to any revisions. The program must include an emergency response plan for each building that contains holding cells in the event of a fire-related emergency, which identifies staff responsibilities and key control procedures. The program must also require that fire drills be performed and documented for each building that contains holding cells on all shifts once every six months.

Background

The Monitor last assessed the DPD's compliance with paragraph C24 during the quarter ending August 31, 2008, finding that the DPD was not yet in compliance with the requirements of this paragraph. The *Emergency Preparedness Program (EPP) Audit* submitted by the DPD on July 31, 2008 identified a number of deficiencies in connection with the requirements of paragraph C24, including a significant number of detention area staff who could not demonstrate knowledge of their responsibilities under the EPP. The audit also determined that the DPD failed to document relevant information for each fire drill that was conducted.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraph C24 during the current quarter, the Monitor reviewed the *EPP Audit* submitted by the DPD on January 31, 2009. Although the Monitor concluded that the audit was in partial compliance with the requirements of paragraph C67, the circumstances contributing to that finding did not prevent the Monitor from relying upon the audit's findings in connection with the requirements of paragraph C24, as the Monitor's testing resulted in concurrence with the audit findings of non-compliance for all paragraphs tested as detailed below.⁹⁸

As previously reported, the DPD met the requirement of having the EPP, including the Emergency Response Plans (ERPs), annually reviewed and approved by the DFD and prior to any revisions. Based on difficulties in fully implementing some of the specific nuances of the ERPs, which are a part of the CEPP, the DPD opted to revise the ERP and incorporate the FSP

⁹⁸ Refer to the *Current Assessment of Compliance* for paragraph C67 for information regarding the Monitor's assessment of the audit.

into the revised ERP/CEPP. The newly revised ERPs were reviewed and approved by the DFD on June 5, 2008 for the five districts that contain holding cells.⁹⁹ The DPD continues to provide staff access to the ERPs by placing them in a red binder at the front desk areas, which addresses the policy component of paragraph C24.

In regards to the implementation of the EPP, the audit conducted onsite table-top exercises and interviews to assess the holding cell staff's knowledge of their duties described in the ERPs. The results indicate that detention area staff members are aware of close to 98% of the specified tasks in the ERPs. Specifically, the audit found that for the most part, OIC, CBS and Police Detention Officer (PDO) staff members knew their responsibilities in connection with notifications, evacuation procedures, and key control as described in the EPP. However, the audit again found that the DPD failed to ensure that all of their district facilities with holding cells and the DRH performed and properly documented at least one fire drill on all three shifts every six months.¹⁰⁰ The DPD must take corrective action in order to ensure complete implementation of the requirements of the COC CJ in this area.

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

Paragraph C25 – Key Control Policies

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

Background

The Monitor last assessed the DPD's compliance with paragraph C25 during the quarter ending August 31, 2008, at which time the Monitor found that the DPD was not yet in compliance with the requirements of this paragraph. The *EPP* submitted by the DPD on July 31, 2008 identified a number of deficiencies in connection with the requirements of paragraph C25, including failure to ensure routine inventory, testing and maintenance of keys and failure to implement a uniform procedure for performing and documenting key and lock maintenance.

⁹⁹ The DRH does not have its own ERP as it does not hold detainees unless they are in need of medical attention. It is governed by the hospital's own emergency plan.

¹⁰⁰ The deficiencies causing non-compliance are: failure to provide documentation of the performance of required number of fire drills (Northwestern District, Eastern District, DRH) and failure to properly/completely document performance of fire drills (Northwestern District, Eastern District, and DRH).

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraph C25 during the current quarter, the Monitor reviewed the *EPP Audit* submitted on January 31, 2009.¹⁰¹

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

- The PDOs and CBSs interviewed were able to demonstrate the ability to identify cellblock keys by touch and manually unlock/open all holding cell doors.
- As previously reported by the Monitor, the DPD policy for inventory, inspection and maintenance of keys and locks (Directive 305.4-6.6, *Holding Cell Areas*) does not reflect the practice of having the HCCC members use of the DPD Form 715, which is an inspection checklist, to document and conduct the inventory, testing and maintenance of keys and locks as required. The DPD should amend Directive 305.4 to reflect these current practices.
- Although the HCCC Inspection Team conducted and documented the inventory, testing and maintenance of keys and locks with sufficient frequency; similar to prior audit findings the HCCC again used several different versions of forms which prevented the AT from adequately assessing the DPD's compliance with this requirement. The most recent iteration of the form in August 2008 contains sufficient detail and therefore should be the only version of the form used to ensure that future assessments will allow for an adequate compliance assessment in this area.¹⁰²

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

¹⁰¹ Refer to the *Current Assessment of Compliance* for paragraph C67 for information regarding the Monitor's assessment of the audit.

¹⁰² The AT indicated that the form was again revised in March 2009.

III. MEDICAL AND MENTAL HEALTH CARE POLICIES

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

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

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.¹⁰³

The Monitor last assessed the DPD's compliance with paragraphs C39-43 and C45 during the quarter ending February 28, 2009, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending November 30, 2009.

VI. POLICIES CONCERNING PERSONS WITH DISABILITIES

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 that 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

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.

¹⁰³ 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.

The Monitor last assessed the DPD's compliance with paragraphs C49-50 during the quarter ending February 28, 2009, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending November 30, 2009.

VIII. PERSONAL HYGIENE POLICIES

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 February 28, 2009, and is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending November 30, 2009.

IX. USE OF FORCE AND RESTRAINTS POLICIES

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

The Monitor last assessed the DPD's compliance with paragraphs C52-54 during the quarter ending February 28, 2009, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2009.

X. INCIDENT DOCUMENTATION, INVESTIGATION AND REVIEW

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

Paragraph C55-57 – Prisoner Injury and Use of Force in Holding Cell Investigations

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

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

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

Background

The Monitor last assessed the DPD's compliance with paragraphs C55-57 during the quarter ending November 30, 2008, finding that the DPD was in compliance with the policy requirements but not yet in compliance with the implementation requirements of paragraphs C55-57. The Monitor conducted its assessment in conjunction with its review of the *PIHC* and *UOFHC Audits* that were submitted by the DPD on July 31, 2008, which correctly found that the DPD was not yet compliant with paragraphs C55-57, as the policies governing investigations of UOF and PI that occurred in holding cells had not been adequately implemented.

Current Assessment of Compliance

In order to assess the DPD's compliance with the requirements contained in paragraphs C55-57, among others, during the current quarter, the Monitor reviewed the *HCI Audit* submitted by the DPD on January 31, 2009.¹⁰⁴ The audit identified four investigations of PI incidents and twelve investigations of UOF incidents that occurred in holding cells. In these 14 investigations, the AT evaluated whether the DPD was investigating PIs and UOF that occur in holding cells in compliance with the DPD's general investigation policies, UOF investigation policies and PI investigation policies, as required by paragraphs C55-57.¹⁰⁵

Similar to previous audits conducted by the DPD's AT, the audit correctly found that the DPD is not yet compliant with paragraphs C55-57, as the policies governing investigations of UOF and PI that occurred in holding cells have not been adequately implemented. A summary of the *HCI Audit* findings in connection with the requirements for these investigations is described in the *Current Assessment of Compliance* for paragraphs U27-36, above.

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 C55-57.

¹⁰⁴ Refer to the Current Assessment of Compliance for paragraphs U27-33 for additional information regarding these audits.

¹⁰⁵ Although the AT failed to specifically report compliance, the AT indicated that these paragraphs were tested as part of its assessment of the related UOF CJ paragraphs (paragraphs U27-36).

XI. EXTERNAL COMPLAINTS

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

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

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

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

Background

The Monitor last assessed the DPD's compliance with paragraphs C58-59 during the quarter ending November 30, 2008, finding that the DPD was in compliance with paragraph C58 and in compliance with the policy requirements but not yet in compliance with the implementation requirements of paragraph C59. The Monitor conducted its assessment in conjunction with its review of the *AOMHC Audit* submitted by the DPD on July 31, 2008, which included external complaints regarding incidents that occurred in holding cells. The audit correctly found that although the incidents were appropriately investigated by IA due to the seriousness of the allegations, the investigations were non-compliant with paragraph C59 due to several deficiencies in their conduct and review.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraphs C58-59 during the current quarter, the Monitor reviewed the *HCI Audit* submitted by the DPD on January 31, 2009.¹⁰⁶ The *HCI Audit* reviewed three external complaints regarding incidents that occurred in holding cells, all of which were appropriately investigated by IA due to the seriousness of the allegations. Although the *HCI Audit* did not report compliance with these paragraphs, based on the Monitor's review of

¹⁰⁶ Refer to the Current Assessment of Compliance for paragraphs U27-33 for additional information regarding these audits.

the three investigations, the DPD complied with the requirements of paragraph C58, as all three complaints had been accepted and processed consistent with the DPD's external complaint policies. With regard to paragraph C59, the three investigations had several deficiencies, such as no documentation demonstrating the canvass of the scene for witnesses, a lack of photographs of injuries, a lack of audio or video taped interviews when required, and one investigation that did not determine if the officer's conduct was justified. Additionally, none of the three investigations were completed in a timely manner as required by the DPD's external complaint policies.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with paragraph C58 and in compliance with the policy requirements but not yet in compliance with the implementation requirements of paragraph C59.

XII. GENERAL POLICIES

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

Paragraph C60 – General Policies

Paragraph C60 requires the DPD, in developing, revising and augmenting policies, to ensure that all terms contained within the COC CJ are clearly defined.

Background

The Monitor last assessed the DPD's compliance with paragraph C60 during the quarter ending November 30, 2008, at which time the Monitor found the DPD in compliance with all of the requirements of the paragraph. The DPD produced a Special Order, *Policy Focus Committee*, establishing the Policy Focus Committee and defining its membership through December 2008.

The DPD also produced minutes from the Policy Focus Committee meeting held on December 15, 2008. The Monitor reviewed the meeting minutes and noted that the Committee's discussion centered on policy issues.

Current Assessment of Compliance

As described in the Current Assessment of Compliance for paragraph U71, a member of the Monitoring Team attended the *Policy Focus Committee* meeting held on May 12, 2009 and noted that the discussion centered on policy issues and related matters. In addition, policies are

currently being sent to specific commands for review so that revisions can be made, with the ultimate goal of disseminating policies via email.

Based on the foregoing, the Monitor finds the DPD in continued compliance with paragraph C60.

Paragraph C61 – Proposed Policy for Community Review and Comment

Paragraph C61 requires that the DPD continue to make available proposed policy revisions to the community for review, comment and education. The DPD must also publish proposed policy on its website to allow for comment directly to the DPD.

Background

The Monitor last assessed the DPD's compliance with paragraph C61 during the quarter ending November 30, 2008, finding the DPD in compliance. The Monitor periodically accessed the DPD's website, noting in each instance that no new additional policy was posted for review and comment. Additionally, there were no revisions to the DPD's *Protocol for Proposed Policy Revisions*.

Current Assessment of Compliance

As described in the *Current Assessment of Compliance* for paragraph U71, the Monitor periodically accessed the DPD's website during the current quarter, noting that Directive 305.9, *Fingerprinting and Identification of Detainees*, and Directive 401.13, *Management Awareness System*, were posted for review and comment.

Based on the foregoing, the Monitor finds the DPD in continued compliance with paragraph C60.

XIII. MANAGEMENT AND SUPERVISION

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.¹⁰⁷

¹⁰⁷ 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.

The Monitor last assessed the DPD's compliance with paragraphs C62-64 and C70 during the quarter ending February 29, 2009, and is scheduled to again assess compliance with these paragraphs during the quarter ending August 31, 2009. The Monitor last assessed compliance with the Fire Safety Audit requirement of paragraph C66, and paragraphs C67, C68, and C70 during the quarter ending August 31, 2008 and 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 paragraph C65-69 and C72 during the current quarter. The results of our current assessments follow.

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 UOF, PIs, and AOM in holding cells.

Background

In order to address the requirements of paragraph C65, the 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

In order to assess the DPD's compliance with paragraph C65, the Monitor reviewed the *Holding Cells Investigations (HCI) Audit* submitted by the AT on the required due date of January 31, 2009. The Monitor also conducted an assessment of the audit planning and fieldwork documents related to this audit, and reviewed all 21 investigations included in the audit population.

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

- This is the first audit in which the AT combined all types of holding cell investigations (UOF, AOF, PI, and AOM) and reviewed them in a single audit. As stated above, the AT has historically conducted a separate audit and review for each type of investigation. Although the AT has indicated that it will not be combining the C65 audit in this manner

going forward, the Monitor notes that this combined review of holding cell investigations is actually superior because of the increased number of investigations reviewed at one time. The larger population provides a better perspective of the DPD's performance and allows for a comparison of the differing types of investigations. It also allows for a more detailed analysis and emphasis of the population identification and categorization issues that have been a problem at the command level since the inception of the CJ. The larger number of investigations also facilitated a more appropriate assessment of Consent Judgment compliance.¹⁰⁸

- For each of the three entities that are required to be included in this audit, command, FI, and IA, the AT selected the time period of May 1 through November 30, 2008 to identify a population of each of the three types of incidents that occurred in holding cells. During this time period, the AT identified and reviewed 21 investigations, consisting of 11 UOF, two AOF,¹⁰⁹ four PI, and five AOM. Of these 21 incidents, 14 were investigated by the commands, four by FI and three by IA.¹¹⁰
- The AT conducted suitable tests to ensure a complete population was identified. As a result, the AT identified seven additional command investigations that should have been, but were not reported by the commands when initially requested by AT. The AT's testing in this area also identified two investigations that the commands were unable to locate, and 10 investigations that were still open but should have been closed based on the timing requirements of the COC CJ. Similar to all other audits of command investigations, the AT again reported the problems associated with the inability to identify a complete population.
- The AT incorrectly calculated and reported overall compliance for each type of investigation by adding the percentages for each individual test and averaging these percentages to find the overall compliance rate. For example, based on the correct calculation, the UOF investigations were actually 69.2% compliant rather than 91.5%, as reported by the AT.¹¹¹ The AT should have calculated all attributes that were compliant (or non-compliant) and divided by all attributes tested to determine the overall compliance rate.¹¹²

¹⁰⁸ The previous individual audits had very low populations (e.g. only two or three investigations were reviewed in an audit). The impact of a very small population is that if one investigation contains errors the DPD is automatically in non-compliance due to the requirement for a greater than 94% compliance rate.

¹⁰⁹ The AT's report incorrectly referenced only one AOF rather than two. This was an administrative reporting error.

¹¹⁰ No Critical Firearm Discharges, In-Custody Deaths, or incidents involving chemical spray in holding cells were identified.

¹¹¹ The AT incorrectly added 76% + 90% + 100% + 100% totaling 366% and divided by 4 tasks to arrive at 91.5%, but should have added the number of compliant investigations (9) and divided by the total population (13) to arrive at 69.2% in this example.

¹¹² The Monitor notes that similar types of errors have recently been made in other audits and addressed this with the AT supervisory staff in order to prevent this mistake from recurring.

- The AT failed to conclude and report compliance for paragraphs C55-59. The summary table reported these paragraphs as “Compliance Not Reported” but provided no explanation.
- The AT incorrectly concluded and reported that the DPD was in compliance with paragraph U27. The AT made an error in its methodology of determining compliance with this paragraph by eliminating the requirement for the investigation to be “thorough and complete” from its assessment.¹¹³ The AT inconsistently measured the DPD’s compliance with subparagraph U32b, the requirement for the investigator to review all relevant evidence. For some investigations, the AT required that photographs be considered as evidence (as required by subparagraph U28c) and for others it did not.
- In regard to one UOF incident, the AT incorrectly found that the investigation was compliant with paragraph U34 (the requirement to complete an auditable form reporting the UOF), even though the officer had not completed the form until more than four months after the date of the incident. The supervisor’s investigation report (UF-002A) was also not completed until more than four months after the incident occurred. Despite these issues with this UOF incident, the Monitor notes that the AT correctly found the DPD in overall non-compliance with paragraph U34 for other reasons.
- The AT failed to identify and report errors in two investigations in connection with officers’ and supervisors’ failure to correctly classify the type of incident on the auditable forms. Specifically, on one form the UOF checkbox was marked, yet the incident was a PI, rather than a UOF. On another form, the officers labeled the incident as a PI only, while the circumstances articulated in the officer’s and supervisor’s investigation report indicated that the incident was also an AOF that was not labeled as such. The correct categorization on the auditable form is important to ensure accurate information is input into the DPD’s MAS database.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph C65. In arriving at this conclusion, the Monitor identified four substantial performance-related deficiencies: the incorrect mathematical calculations, the failure to report the DPD’s compliance for paragraphs C55-59, the incorrect testing and conclusion of paragraph U27, and the inconsistent testing of subparagraph U32b. The Monitor also identified two material performance-related issues associated with the AT’s testing of paragraph U34 and the auditable forms, and identified several quantifiable errors, all of which had significant effect on the quality of the audit.

¹¹³ All prior audits of DPD investigations had correctly found the DPD in non-compliance with paragraph U27 if the investigations did not comply with one or more of the other General Investigation requirements described within paragraphs U28-33, reasoning that the investigations could not be thorough or complete.

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.¹¹⁴

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 last assessed the DPD's compliance with the FSP audit requirement of paragraph C66 during the quarter ending August 31, 2008, finding that the DPD was no longer in compliance because the DPD did not submit an audit of its FSPP, which was due by July 31, 2008.

Current Assessment of Compliance

HCCC Requirement of Paragraph C66

On May 29, 2009, the DPD submitted electronic files of the tape-recorded HCCC meetings along with the Agendas for all HCCC meetings held in December 2008, January 2009, and February 2009, as well as the most recent roster of HCCC members. The Monitor reviewed these materials and attended a scheduled HCCC meeting on April 15, 2009. The Monitor determined that the HCCC met twice per month during the period reviewed, and the meetings were attended by members with appropriate expertise in the topic areas discussed. However, similar to previously reported findings, the Monitor again identified instances of meeting agenda items that were not discussed or addressed in the particular HCCC meeting. While this often occurs in executive meetings, the Monitor again suggests that participants address each item on the agenda during the meeting, even if just to state that the item cannot be discussed at the current meeting and further identify when the item will be put back on the agenda.

The Monitor also found numerous instances of persons who were slotted to attend and cover a particular topic on the Agenda who did not introduce themselves verbally (not on the recording), did not sign the "sign-in sheet," and did not appear to have attended the meeting. To address these issues, the Monitor suggests that the HCCC designate a person at each meeting to list all attendees and document each of the topics discussed (i.e., the creation of minutes).

¹¹⁴ 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.

Nevertheless, the HCCC members present discussed remedies to move the DPD toward full compliance with the COC CJ requirements and appeared to be actively involved in the process.

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

Fire Safety Policies Audit Requirement of Paragraph C66

In order to assess the DPD's compliance with the FSP audit requirement of paragraph C66 during the current quarter, the Monitor reviewed the *FSPP Audit Report* submitted by the AT on its required due date of January 31, 2009. The Monitor also reviewed the associated audit work plan and conducted an assessment of the audit fieldwork and working papers.¹¹⁵

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

- The AT conducted onsite inspections and documentation reviews, which covered the audit objectives in connection with the LSC, no smoking policy, and storage of flammable and combustible materials policies. The inspections were conducted by the AT and HCCC members, along with the DFD Fire Marshall and other qualified/certified personnel,¹¹⁶ during the period November 12 to November 18, 2008.¹¹⁷
- The AT reviewed daily detail sheets for the period January 4-10, 2009 to ensure that at least two holding cell area staff were assigned to the holding cells each day, which is the DPD's method to ensure that detainees are able to communicate with holding cell area staff in case of emergencies. The AT also reviewed Detroit Utility testing documentation during the month of December 2008 to verify the capacity of the various holding cell back-up generators.

¹¹⁵ While the DPD skipped the prior required FSP Audit that was due by July 31, 2008, and was therefore found to be non-compliant, the AT did so because of the ongoing retrofit of the DPD buildings containing holding cells, which was being done in order to comply with the Life Safety Code (LSC). Throughout the months that the audit would have covered, the DPD buildings were sporadically closed due to structural changes being made to sprinkler and fire alarm systems, fire doors, emergency exit lighting, etc. The three audits prior to the skipped audit were found to be in compliance by the Monitor. The AT has not significantly modified the audit methodology from the prior compliant audits. Although the current *FSPP Audit* findings indicated a significant change in the DPD's compliance (from a non-compliant to compliant status), the Monitor was able to substantiate those findings based on onsite inspections conducted by the Monitor's team and the DOJ Subject Matter Expert. For these reasons, the Monitor conducted a limited review of the current *FSPP Audit* fieldwork documentation.

¹¹⁶ As evidenced by photocopies of identification cards in the audit working papers, the persons conducting inspections of the respective systems are certified by the DFD and/or Certified Fire Technicians from the company "Fire Systems of Michigan."

¹¹⁷ The DRH undergoes its own inspections by the State of Michigan Bureau of Fire Services. A documented statement from the DRH/Detroit Medical Center regarding its inspections dated January 27, 2009 and a certificate from the state regarding the results of inspections dated November 21, 2008 were contained in the audit working papers.

- The AT included assessments of the required substantive paragraphs, C14-22.¹¹⁸ The AT found the DPD in compliance with all of these paragraphs with the exception of paragraph C19, which is the requirement to routinely test, inspect and maintain the fire equipment (for example, fire alarms and sprinklers).
- With regard to paragraph C19, the AT found the DPD in non-compliance based on the lack of records documenting that the fire equipment was maintained as required. Although these fire equipment systems were just recently installed, inspected, and approved/certified, the DPD had not yet established or documented the particular timing requirements/standards for the “routine” inspections. Consequently, the AT was unable to determine if the equipment had been tested, maintained and inspected as required.
- The audit matrices were well organized and easy to follow. The AT’s matrix questions were the same as in the prior audit. Based on its limited review, the Monitor found that the testing work performed in the matrices was accurately transferred to the audit report. The audit report was well-written, logical and informative, and included sound recommendations.

Based on the above findings, the Monitor finds this audit in compliance with the FSP Audit requirements of paragraph C66.

Paragraph C67- Audit of Emergency Preparedness Program

Paragraph C67 requires the HCCC to conduct regularly scheduled semi-annual audits of the DPD’s 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 that the DPD was not yet in compliance, since the *EPP Audit* submitted by the DPD on July 31, 2008 contained several substantial qualitative performance-related deficiencies that significantly affected the overall quality of the audit.

Current Assessment of Compliance

In order to assess compliance with paragraph C67 during the current quarter, the Monitor reviewed the *EPP Audit Report* submitted by the AT on the required date of January 31, 2009. In addition to the audit report, the Monitor also reviewed the audit work plan, the audit working papers and the District Emergency Response Programs (ERPs).¹¹⁹

¹¹⁸ As described in previous reports, the DPD is in compliance with paragraph C22, removal of Kane Fiber Ceiling Tiles, and will remain in compliance unless it begins to use buildings with these tiles again.

¹¹⁹ These are part of the CEPP.

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

- The audit was conducted by the AT and members of the HCCC, and assessed all of the related COC CJ paragraphs as required. Similar to previous audits of this topic, the AT again appropriately found the DPD in non-compliance with all paragraphs tested.
- In order to test implementation of the CEPP, the AT used the revised ERPs and the revised FSP, which were approved by the DFD on June 5, 2008 for each of the five districts.¹²⁰
- The overall period of review was August 1, 2008 through January 31, 2009; however, the AT appropriately varied its timing for several audit tests, such as the onsite table-top exercises, interviews to assess the holding cell staff's knowledge of their duties described in the ERPs, and the documentation review related to fire drills and key inventory, maintenance and testing records.
- The audit working papers/matrices were well organized and the AT's findings were accurately transferred to the audit report. The final report was concise and included sound recommendations; however, the Monitor identified a number of issues with regard to how the findings were reported:
 - For several different tests to assess the staff's knowledge of their responsibilities, the AT incorrectly added the percentages for each individual test and averaged these percentages to find the overall compliance rate.¹²¹ In keeping with the AT's method of calculating compliance for each of these particular findings, the AT should have divided the number of correct answers by the total number of questions asked to determine the DPD's compliance rate. However, since the end result of the correct calculation is 97.4%, and the AT's incorrect math resulted in 98%, this error did not have a significant impact on the AT's overall finding. Additionally, the AT also incorrectly used the PDO answers only in the calculation of compliance.
 - The AT did not clearly report the DPD's compliance with each Consent Judgment paragraph. For example, the report should have clearly illustrated that the DPD was actually in compliance with the requirement to manually unlock all holding cell doors and identify keys by touch, as required by paragraph C25, and that the only requirement that caused non-compliance was a failure to document the routine inventory, testing and maintenance of the keys and locks. Additionally, the audit matrices should be annotated to clearly identify which questions address which Consent Judgment paragraph so that the results flow through to the report.
 - The audit report included several obvious typos and grammatical errors (along with the math errors above) that should have been corrected prior to submission. According to the

¹²⁰ The DRH does not have its own ERP as it does not hold detainees unless they are in need of medical attention. It is governed by the hospital's own emergency plan.

¹²¹ For example the AT added 98% + 100% + 96%, totaling 294%, and divided by 3 tests to arrive at 98%.

AT's supervisory staff, the audit was not submitted internally with sufficient time for an adequate review to occur.

Based on the foregoing, the Monitor finds that the DPD is in partial compliance with paragraph C67. In arriving at this conclusion, the Monitor identified two material performance-related deficiencies: the incorrect mathematical calculations and the lack of clear reporting, which had some affect on the quality of the audit.

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 by the required due date of 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

During the current quarter, the Monitor completed its review of the *Medical and Mental Health Program and Policies (MMHPP) Audit Report*, submitted by the DPD's AT on the required due date of January 31, 2009. The Monitor also reviewed the associated audit work plan, working papers and fieldwork documents.

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

- The audit was conducted by the AT and included the involvement of an HCCC member as required. The primary audit documentation was obtained during a seven-day time period in August 2008 which was within six months of the audit submission date. The audit also included onsite observations of the DPD's intake process and management of detainees with medical and mental health needs during the period October to December 2008.

- The scope of the audit included all relevant sections of the COC CJ. Overall, the AT found the DPD in non-compliance with paragraphs C26-C33,¹²² C47-48 and C76; however, the DPD was found in compliance with certain subparagraphs and paragraph components.¹²³
- The Monitor identified several deficiencies in the AT's testing approach, which caused various audit results to be unreliable:
 - In connection with the standard intake procedures required by subparagraph C28c, the audit, for the most part, excluded the question of whether or not the appropriate alert sticker was on the Detainee File Folder (DFF) from its compliance assessment.¹²⁴ The Monitor identified a number of files without the appropriate sticker¹²⁵ and, as a result, concluded that the AT incorrectly found the DPD in compliance with subparagraph C28c.¹²⁶
 - The AT assessed compliance with the subparagraph C28d requirement that intake screening be conducted "through a verbal exchange" by reviewing documentation after-the-fact, reasoning that the written information could not have been obtained without a verbal exchange between the intake officer and the detainee. The Monitor questions this assumption, as the detention officer could have simply marked the answers without having asked the questions.¹²⁷ The AT should have incorporated the verbal exchange assessment into its observation testing. As a result of discussions with the AT, this aspect of testing subparagraph C28d will be addressed in future audits through onsite observation testing.

¹²² Note that, under current Consent Judgment methodologies, paragraphs C28 and 29 are "policy-only" paragraphs and will remain in compliance unless the policies are revised. The AT's audit and findings addressed the implementation of paragraphs C28 and C29, and found that the DPD was not in compliance.

¹²³ The AT found the following subparagraphs and paragraph components in compliance: C28c – adherence to standard intake procedures; Component of C28d – intake screening conducted through a verbal exchange; C30b – measures to prevent the spread of infectious diseases; Components of C31a – prisoner health information is recorded at intake and health information is immediately and readily available; C31b (partial) – health information is continually updated; C32d – secure location for storage of medication.

¹²⁴ The AT stated that the stickers kept falling off, so they assumed they had been on at one point as they could not prove they had not been attached. The audit report made a recommendation (page 42) to the effect that an alternative approach to stickers be employed.

¹²⁵ In the sample of 46 detainees reviewed by the Monitor, 11 DFFs (almost 24% in total) did not have appropriate stickers.

¹²⁶ This requirement is outlined in the DPD's Detainee Intake/Assessment Directive 305.1-5.3. The stickers are an important means of summarizing a detainee's alert status for reference during his or her detention, as there is no overall conclusion on the actual intake forms

¹²⁷ For example, during its onsite visit to the Northeastern District in February 2009, the Monitoring team observed two detainees being processed, during which the detention officer did not verbally ask all the questions of the detainees yet all of the answers were marked off on the intake form.

- In assessing compliance with the subparagraph C31b requirement that the detainees' "health information is continually updated to incorporate any additional relevant information acquired during his/her detention," the AT reviewed the *Hospital Prisoner Forms, Platoon Daily Detainee Summary Logs* (PDDSLs) and desk blotters to determine whether there was any health information in these sources of information that should have been added to the respective detainee's intake form subsequent to any first visit to a hospital. The AT inappropriately assumed that if no new health information was contained on these sources, then the intake forms contained the most up-to-date health information and the DPD had met its obligations. The DPD currently has no set procedures in place to require or allow detention area staff to incorporate new health information acquired after intake into the DIF or DFF, yet the AT's assumption was based on the premise that detention area staff is following some type of protocol for doing so. Additionally, based on missing and incorrect documentation, the sources used were unreliable.¹²⁸ Furthermore, the test only considered the "detention" period as the time spent by the detainee in the cells after a first trip to hospital, as opposed to being the full extent of the custody period from time of arrest until release, including visits to the DRH if appropriate for medical and mental health issues. As a result of the above, the AT incorrectly concluded that the DPD was partially compliant with subparagraph C31b.¹²⁹
- In assessing the DPD's response to detainees with general health issues,¹³⁰ the AT tested the DPD's response to all detainees, rather than testing the DPD's response only to those who actually had medical conditions. Although the AT's finding of non-compliance with the related requirements was correct in this instance, the appropriate population to assess the DPD's response to detainees with medical conditions is a population of detainees with such conditions. The AT should revise its methodology in future audits of this topic accordingly.
- The Monitor noted several instances in which efforts were made to test certain paragraphs even though it was clear early on that the DPD was non-compliant due to a lack of electronic systems and/or poor records retention. Although this testing provided some useful information, it could have been terminated earlier because of the obvious non-compliance. The AT's resources would have been better utilized elsewhere. Specific examples include:
 - Access to information related to past incarcerations as required by C28b.
 - Documentation and communication of health information between consecutive shifts as required by C31c.
 - Transfer of detainee health information (C31d) and medication (C32g).

¹²⁸ Almost half of the logs were missing and many of the available logs were inaccurate when tested.

¹²⁹ As suggested by the AT during post-audit discussions, a more practical test would be to assess if a detainee's file folder contains all the appropriate health documents for any initial or subsequently identified health issues.

¹³⁰ The requirement for the DPD to respond to prisoners' medical and/or mental health conditions and information is specified in paragraph C26 and subparagraph C29a.

- Prescription medication procedures as required by C32b, c, e and g and C68c.

The Monitor recommends that in future audits, the AT review the DPD's systems and availability of documentation and make a qualified assessment as to the possibility of achieving compliance in these areas prior to initiating sample selection and extensive testing. If a decision is made not to test, the rationale should be fully documented in the report with an accompanying recommendation.

- The audit approach to the communication of information between consecutive shifts as recorded on the *Platoon Daily Detainee Summary Logs* (C31c) should be coordinated with the *Detainee Safety Program and Policies Audit* to ensure that all types of alert statuses are assessed within the scope of the audits, and that the relevant working papers document such testing.¹³¹ Furthermore, both audits should clarify and document in their working papers which intake screening questions are assessed by which audit.
- The AT's work on population completeness, sampling and the audit fieldwork testing was well performed and organized, accurate¹³² and included comprehensive explanatory notes. The testing results were accurately transferred into the audit report.
- The audit report demonstrated considerable improvement over the prior report, issued in 2008, with respect to accuracy, brevity and comprehension. The audit report would have been further improved if it included specific text describing the extent of non-compliance and contained stronger recommendations with respect to the core issues facing the DPD and the AT in relation to Medical and Mental Health requirements: the inability of the DPD's systems to identify detainees with health concerns and problems related to document availability and completeness. Also, future reports would be further improved if the findings are presented not only by objective and overall paragraph, but also by subparagraph.
- During the audit review, the Monitor and the AT sought confirmation from the DOJ regarding the intent of subparagraph C68a. The DOJ agreed with the Monitor that the AT need only ensure that the audit accomplishes the intent of subparagraph C68a "to assess the accuracy of screening and the appropriateness of the DPD's response to persons with medical conditions"¹³³ and need not accomplish those tasks by a comparison of *Hospital Prisoner Forms* to the *Detainee Intake Forms* as is directed in the wording of C68a.
- Subparagraph C28d states that screening has to be performed within two hours of intake, yet the Detainee Intake Directive 305.1-6.2 refers to screening being performed within two hours of the arrest. The audit actually tested to within two hours of the arrest (the most conservative approach) and found the DPD in non-compliance. This is holding the DPD to a higher standard than is necessary for this paragraph requirement; when possible, the DPD

¹³¹ The working papers related to the evaluation of information between consecutive shifts did not clearly identify the testing of high risk detainees.

¹³² Only minor quantitative testing errors were noted.

should amend its documents so that the arrival time at the holding cells is recorded and the time period tested as required.

Based on the above findings, the Monitor finds that the DPD is not yet in compliance with the requirements of paragraph C68. In arriving at this conclusion, the Monitor identified three substantial performance-related issues related to the AT's testing approach to subparagraphs C28c, C28d, and C31b. The Monitor also identified several material performance-related deficiencies related to the audit efficiency, population identification, and audit approach, as well as a number of administrative issues, as described above. These combined issues had a significant effect on the quality of the audit.

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

During the current quarter, the Monitor completed its review of the *Detainee Safety Program and Policies Audit Report* submitted by the DPD's AT on the required due date of January 31, 2009. The Monitor also reviewed the associated audit work plan, working papers and fieldwork documents.

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

- The AT selected a seven-day audit time period in August 2008 to gather its arrestee source documents for the principal audit tests on the screening of new detainees, communication of security information between shifts and the cell checks of the general population of detainees and those at the DRH. The time period was extended to the five-month period of August to December 2008 for the collection and review of the *Medical and Mental High Risk Monitoring Logs*. On-site inspection work was performed in January 2009.
- The scope of the audit addressed all relevant sections of the COC CJ and appropriately included the involvement of an HCCC member, as specifically required by paragraph C69. Overall, the AT found the DPD in non-compliance with paragraphs C35-38 and the training requirements of paragraph C77. The Monitor concurs with the AT's findings.

- The AT's work on gathering and ensuring the completeness of its source documents was well performed. Although for one objective, the sample selection was based on the 126 cell check logs that should have been submitted by the districts rather than the 124 cell check logs that were actually submitted, this did not affect the AT's sample size and associated findings.
- The AT's audit approach to the requirements for security screening should have included an assessment of the *Detainee File Folders* (DFF) to ensure the correct alert status was documented on the cover. The AT identified six detainees as security risks and none of the respective file folders had alert stickers/markers. Only one DFF had a written comment to indicate that the detainee was combative. The documentation of this alert status is required as part of the prisoner security screening program which is required by C36 and, as described in the *Current Assessment of Compliance* for paragraph C68, is outlined in Directive 305.1-5.3. As C36 was found to be out of compliance by the AT for other reasons, this issue did not affect the AT's overall findings.
- To assess the performance of the cell checks for high risk detainees in observation cells, as required by subparagraph C37b, the AT appropriately reviewed the *Medical and Mental High Risk Monitoring [cell check] Logs*. Although the AT did verify that the name, signature and badge of the monitoring officer and the date, time and reason for removal of the detainee from the log were documented, they included these results as additional information only and did not include them as "relevant" information for their compliance assessment. This resulted in the AT incorrectly finding the DPD in compliance with subparagraph C37b with respect to the logs; however, this did not affect the AT's overall finding of non-compliance with subparagraph C37b.¹³⁴
- After discussions with the AT it was agreed that its approach to auditing the *Medical and Mental High Risk Monitoring Log* supervisory review was incorrect for those logs that did not cover the end of a watch. If the log did not cover the end of a watch, the supervisory review answer should have been "N/A" and not "in compliance."¹³⁵ This issue did not affect the AT's finding of non-compliance for paragraph C37.
- As described in the *Current Assessment of Compliance* for paragraph C68, this audit should be coordinated with the *MHHP&P Audit* to ensure that the communication of all types of health and security alert statuses on the *Platoon Daily Detainee Summary Logs* is assessed by one or the other of the audits. Furthermore, both audits should clarify and document which intake screening questions are assessed by which audit.
- Overall, the AT's audit matrices were well organized and accurate,¹³⁶ included appropriate and well thought through crib notes, and the results flowed readily to the report. Future

¹³⁴ Subparagraph C37b requires the examination of cell checks for both the general population of detainees on the *Detention Cell Check Logs* and for the high-risk detainees on the *Medical and Mental High Risk Monitoring Logs*. The AT correctly found C37b out of compliance due to problems identified on the *Detention Cell Check Log*.

¹³⁵ This affected 15/49 of the AT's testing results.

¹³⁶ Two minor testing errors were identified, but they did not detract from the overall accuracy of the AT's findings.

audits would be further improved if the findings are presented not only by objective and paragraph, but also by subparagraph.

- The audit report demonstrated significant improvement over the previous report with respect to insight, comprehension and overall length. Specific text describing the extent of problems concerning incomplete documentation could have been included to strengthen the executive summary. Additionally, the summary could have highlighted to the DPD that until its document completion, control, retention and availability procedures in connection with the *Platoon Daily Detainee Summary Logs*¹³⁷ and *Medical and Mental High Risk Monitoring Logs*¹³⁸ improve, these issues will continue to prevent the DPD from achieving compliance as audit populations cannot be determined to be reasonably complete. Additionally, while the Monitor concurs with the AT's comments during post-audit discussions that Central District has to address its lack of supervisory review for DRH logs, the supervisory review at DRH is a unique situation and this should have been specifically identified in the audit report.

Based on the above, the Monitor finds this audit in partial compliance with the requirements of paragraph C69. In arriving at this conclusion, the Monitor finds the quantitative assessment to be in compliance, but identified three material performance-related deficiencies: the testing approaches to the security screening alert status and high risk log supervisory review, and the exclusion of relevant information in the compliance assessment of the high risk logs. There were also a number of administrative errors related to the AT's reporting that had some impact on the overall quality of the audit.

Paragraph C72 – Audit Reporting Requirements

Paragraph C72 requires the results of each of the COC CJ audits to be submitted via a written report to the Chief of Police and all precinct and specialized unit commanders. Paragraph C72 also requires commanders to take disciplinary or non-disciplinary corrective action, when appropriate, regarding employees under their command.

Background

The Monitor last assessed the DPD's compliance with paragraph C72 during the quarter ending November 30, 2008, finding that the DPD had submitted audits required by the COC CJ and distributed the audit reports to the Chief of Police and COs as required by this paragraph. The Monitor also found that the DPD had implemented procedures to ensure corrections were made

¹³⁷ Only 56 out of a possible 105 PDDSs were provided by the districts (53%). It is not known whether the missing logs were never filled out or simply could not be located.

¹³⁸ Neither Northwestern nor Northeastern Districts were able to provide any logs for the five month-period August to December 2008. Northeastern did not provide any for the previous audit (the period February to May 2008 was reviewed). The January 2009 *Medical and Mental Health Program and Policies Audit* identified 14 potentially suicidal detainees within a one-week period in August who should have been monitored in accordance with these logs.

to address deficiencies within DPD systems identified in an audit. However, the Department was not yet in compliance with paragraph C72, as there were three audits for which the DPD had not provided sufficient documentation evidencing that corrective action had been taken in connection with the employee-specific findings in the audits.

Current Assessment of Compliance

On January 31, 2009, the DPD's AT submitted a total of seven COC CJ required audits.¹³⁹ The OCR distributed the audit reports to the Chief of Police and COs as required.

In connection with the requirement for COs to take action to address the audit findings specific to employees under their commands, in early February 2009 the OCR staff implemented a process for issuing Correction Action Notices (CANs) to the CO of specific DPD members for which audit findings indicate that correction action should be taken. The OCR tracks the results of the corrective actions taken by the respective COs via a summary log. During the current quarter, the DPD submitted to the Monitor this summary log, which listed CANs issued in 2008 and 2009 along with supporting documentation for 76 CANs issued between January 6, 2009 and March 26, 2009.

On May 19, 2009, the Monitor met with the OCR staff to discuss this documentation, as it appeared to be incomplete. The OCR staff acknowledged that this process was still in the development stage and agreed that the documentation submitted did not address each of the audits submitted in January 2009. Nevertheless, in order to provide feedback to the DPD for improving the process, the Monitor selected a random sample¹⁴⁰ of these 76 CANs for review. Based on this review, the Monitor identified the following:

- The Monitor identified that the documentation provided by OCR did not include copies of all of the CANs listed in the summary or their supporting documentation.¹⁴¹
- In a majority of the incidents neither the OCR summary log nor the CANs provided any information to identify the particular audit in which the non-compliant action had taken place. Not only does this result in incomplete information being provided to the CO, but there is insufficient information for the Monitor or the OCR staff to reconcile the CANs submitted to the particular audit findings. This makes assessing the completeness of the

¹³⁹ The *HCI Audit*, the *Fire Safety Audit*, the *EPP Audit*, the *MMHPP Audit*, the *Detainee Safety Programs Audit*, the *EH&S Audit*, and the *Food Service Programs Audit* were submitted on January 31, 2009.

¹⁴⁰ The Monitor reviewed 13 CANs using a one-tailed test, with a 95% confidence interval and an error rate of +/- 10%.

¹⁴¹ Specifically, there were 12 CANs missing that were included in the OCR summary, one of which was in the Monitor's sample. Some of the CANs were referenced in documentation from a CO regarding how various CANs were addressed, so there is documentation other than the OCR Summary Log to indicate that the CANs were completed and forwarded to the respective officers' COs.

process impossible.¹⁴² Given that corrective action is a critical step in the DPD's efforts towards complying with Consent Judgment requirements, additional documentation and follow-up procedures should be further developed and implemented.

- In two instances, the available documentation indicated that a CAN was sent from the OCR to the CO, but there was no follow-up documentation provided to indicate that the CO took steps to address the CAN. In one instance the information provided in the OCR summary log simply did not agree with the information in the CAN submitted.
- One CAN was sent to the CO of the district in which the action took place, despite the CAN identifying that the involved officer was in a different district. The response from the CO indicated the officer had been transferred and that the CAN was forwarded, but there was no information relating to whether or not the officer's new CO received or responded to the CAN.¹⁴³
- In one instance, the OCR Summary Log indicated that the missing Warrant Tracking Form was corrected as a result of the CAN being sent to the CO. While this "corrects" the problem, the correction was made six months after the form was originally completed.¹⁴⁴ The DPD must determine the instances in which an action to correct missing information is appropriate.
- One CAN was issued to one district but it related to four different audit findings associated with CrisNet reports for different districts. This particular CAN described a CrisNet system-wide problem with the time stamp, which apparently has been addressed with a revision to the Detainee Input Sheet. The Monitor questions whether or a CAN was required in this instance.
- On two different dates, two separate CANs were issued that appear to come from the same audit and relate to the same supervisor. The district CO identified that the same problem had occurred with this supervisor more than once. DPD's OCR should consider issuing only one CAN that identifies multiple concerns for a supervisor.
- Although each of the CANs issued identified the non-compliant actions of a specific individual, many were for similar problems that appeared to be system-wide. For example,

¹⁴² For example, in the Monitor's random sample of the 76 CANs, there were at least two CANs that related to a UOF CJ required audit that was submitted in February 2009. If this happens in future assessments of paragraph C72, the Monitor will replace the sample item to ensure that action items related to only COC CJ audits are included.

¹⁴³ The Monitor identified that another CAN outside of the Monitor's sample had the same issue, as it was sent to the same CO in the wrong district identifying another instance of the same problem.

¹⁴⁴ The Monitor identified another CAN outside of the Monitor's sample where the Privilege Restriction Log was corrected by adding in additional information on the restriction and completing the missing supervisor's information. While the Monitor commends the DPD for trying to correct these errors, there was nothing to indicate that this additional information was provided six months later. Fortunately, the changes for the supervisor's signature and information were not backdated.

seven of the 13 CANs were for missing information on the Privilege Restriction Log, two were for the Weekly Holding Cell Maintenance Log missing information, and one was for the Detainee Safety and Visitor Restriction Log missing information. While the Monitor recognizes that incomplete documentation is a wide-spread source of non-compliance within the DPD, the DPD should determine if the solution to these types of audit findings is best suited to the CAN process or if these could be considered systemic problems that can be addressed through other means, such as training and reinforcement through ongoing supervisory oversight.¹⁴⁵

The Monitor commends the DPD for the steps it has taken to establish a process for correcting and tracking audit deficiencies. Nevertheless, the Monitor finds that the DPD is not yet in compliance with paragraph C72 due to the significant deficiencies in tracking the required actions and inconsistent information within the system.

¹⁴⁵ The Monitor notes that all of the DPD's audits contain many findings of systemic DPD-wide documentation problems. It would be a daunting task to issue and track a CAN for each of these types of audit findings.

XIV. TRAINING

This section of the COC CJ (paragraphs C73-78) requires the DPD to provide all detention officers with comprehensive training; maintain individual training records; and provide training in key areas, such as emergency response, intake and medical protocols, safety programs, maintenance protocols, and food preparation and delivery protocols.¹⁴⁶

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

The Monitor last assessed the DPD's compliance with paragraph C74 during the quarter ending November 30, 2008. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

Paragraph C74 – Individual Training Records

Paragraph C74 requires the DPD to create and maintain individual training records for all detention officers, documenting the date and topic of all pre-service and in-service training completed on or after the effective date of the COC CJ.

Background

The Monitor last assessed the DPD's compliance with paragraph C74 during the quarter ending November 30, 2008, finding that the DPD was not yet in compliance. The DPD indicated that it was continuing to work toward fulfilling the requirements of this paragraph by utilizing the MITN system to capture all training records for sworn members. The DPD assigned additional personnel to this project and was continuing to enter training records into MITN. As of November 2008, the DPD estimated that training records would be current within six months. The method for capturing all training records for non-sworn members was still under review as of the end of the reporting period.

Current Assessment of Compliance

The DPD's *23rd Quarter Status Report* did not identify any additional progress since in complying with the requirements of this paragraph since the Monitor's last assessment.¹⁴⁷ Due to

¹⁴⁶ Refer to the UOF CJ training section in this report for additional information regarding DPD training-related issues.

¹⁴⁷ The status report indicates that “[t]he Office of Training and Professional Development was assigned additional personnel to address the issue of entering the records into the MITN system. It is anticipated that the entry of

the slowness of entering records in the MITN system, the DPD is exploring other means of capturing training records. Additionally, Training and Professional Development has been recording attendance for the 2008/2009 in-service training program electronically.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph C74.

XV. MONITORING AND REPORTING

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.

training records will be expedited due to the additional personnel being assigned to this task. The method for capturing all training records for non-sworn members is under review at this time.”

CONCLUSION

The City and the DPD are making efforts toward compliance. This quarter, the DPD improved slightly with regard to the number of Consent Judgment paragraphs that are in compliance. However, the DPD remains non-compliant with the majority of the requirements. The challenges described in our previous reports persist. Additionally, this quarter, DOJ's expert concluded that the DPD's in-car camera system must be completely overhauled. And the DPD's Management Awareness System has serious deficiencies that must be remedied.

Sheryl Robinson Wood
Independent Monitor

July 16, 2009

Principal Contributors

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

APPENDIX A:

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

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

ACRONYM	DEFINITION
A&D	Arrest and Detention
AOM	Allegation of Misconduct
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
DFE	Detainee File Folders
DFO	Detention Facility Officer
DHWP	Detroit Health and Wellness Promotion
DIF	Detainee Intake Form
DOJ	Department of Justice
DPD	Detroit Police Department
DPR	Daily Prisoner Report
DRH	Detroit Receiving Hospital
ECD	Emergency Communications Division
EPP	Emergency Preparedness Program

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

MSP	Michigan State Police
NCH	Neighborhood City Hall
OCI	Office of the Chief Investigator
OCR	Office of Civil Rights
OIC	Officer in Charge
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
UOF CJ	Use of Force and Arrest and Witness Detention Consent Judgment

UOF	Use(s) of Force
USAO	United States Attorney's Office
WCPO	Wayne County Prosecutor's Office
WCSD	Wayne County Sheriff's Office
WIQD	Witness Identification and Questioning Documentation