

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

UNITED STATES  
OF AMERICA,

Plaintiff,

v.

BALTIMORE POLICE  
DEPARTMENT, et al.,

Defendants.

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CIVIL NO. JKB-17-0099

**SUBMISSION OF MONITORING TEAM'S SECOND SEMIANNUAL REPORT**

Under the Updated First-Year Monitoring Plan ("Monitoring Plan"), the Baltimore Police Department Monitoring Team ("Monitoring Team") hereby submits its Second Semiannual Report ("Report"). *See* ECF No. 138-1, Row 133 (approved in ECF No. 139 and modified in ECF Nos. 147 & 165). The Report is attached as **Exhibit 1**.

As the Monitoring Plan provides, the Monitoring Team will hold its next quarterly community meeting to discuss the contents of the Report on January 22, at 6:00 pm. at Edgewood Lyndhurst Recreation Center, 835 Allendale Street, Baltimore, MD 21229. *See id.*, Row 134. Additionally, on January 24, the Court will hold its next quarterly hearing, which will be devoted in part to discussing the contents of the Report. *See id.*, Row 135.

Respectfully submitted,

/s/

\_\_\_\_\_  
Kenneth Thompson, Monitor  
Seth Rosenthal, Deputy Monitor  
VENABLE LLP  
750 E. Pratt Street  
Baltimore, MD 21202  
[Ken.thompson@bpdmonitor.com](mailto:Ken.thompson@bpdmonitor.com)  
[Seth.Rosenthal@bpdmonitor.com](mailto:Seth.Rosenthal@bpdmonitor.com)  
(410) 244-7400

**CERTIFICATE OF SERVICE**

I hereby certify that on January 18, 2019, copies of the foregoing Submission of Monitoring Team's Second Semiannual Report were served via the Court's ECF system upon all counsel of record.

\_\_\_\_\_/s/\_\_\_\_\_  
Seth Rosenthal

# **EXHIBIT 1**



BALTIMORE CONSENT DECREE MONITORING TEAM  
SECOND SEMIANNUAL REPORT  
January 18, 2019

CD  
Monitoring  
Team

Venable LLP and 21CP Solutions LLC

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## OVERVIEW

### SECOND SEMIANNUAL REPORT – JAN. 18, 2019

#### THE MONITORING TEAM'S ACTIVITIES

- Assessed and provided technical assistance on numerous policy revisions
- Assessed and provided technical assistance on training plans and training curricula
- Assessed and provided technical assistance on plans and tools for collecting data on use of force, interactions with individuals in crisis, and stops, searches and arrests
- Assessed studies and/or plans on staffing, technology, crisis intervention, and youth interactions
- Began work on community and custodial arrestee surveys
- Performed diagnostic reviews of BPD inspections of transport vehicles and transport events, BPD documentation of investigative pedestrian and vehicle stops, certain OPR internal investigations, and BPD *Brady/Giglio* disclosure practices
- Developed instruments for assessing use of force incidents, internal investigations, sexual assault investigations, and First Amendment-involved incidents
- Met with community stakeholders and received community input on draft policies
- Deployed a team of neighborhood liaisons
- Held officer focus groups, went on ride-alongs, and attended training
- Updated the First-Year Monitoring Plan and drafted a Second-Year Monitoring Plan

#### THE MONITORING TEAM'S FINDINGS

- BPD and City leadership show commitment to broad institutional reform
- BPD's capacity for broad institutional reform remains unproven and uncertain
- BPD successfully revised numerous key policies
- BPD prepared a valuable technology resource plan, staffing study and hiring study
- BPD and the City are establishing a good foundation for improving police interactions with individuals with behavioral health disabilities and in crisis
- BPD needs a permanent Commissioner to initiate genuine culture change
- Though making incremental progress, OPR continues to require overhaul
- Training initiatives slated for Year Two present implementation challenges, including meeting the Academy's pressing need for additional qualified instructors
- The long-term technology and staffing challenges detailed in the first report remain unchanged: BPD's IT systems are outdated and ineffectual, and BPD suffers from staffing shortages, especially in Patrol, OPR and the Academy

#### THE NEXT SIX MONTHS

- BPD will prepare and deliver newly-designed training on policies addressing use of force, fair and impartial policing, and body-worn cameras
- BPD will also prepare newly-designed training on stops, searches and arrests and additional aspects of fair and impartial policing, to be delivered later in the year
- BPD will revise most additional policies requiring revision
- BPD and the City will complete diagnostic studies on the City's behavioral health system and youth diversion programs
- BPD will prepare Community Policing and Staffing Plans
- BPD will establish a timetable for revamping its IT systems

## INTRODUCTION

### The Consent Decree

In May 2015, the Civil Rights Division of the United States Department of Justice (“DOJ”) initiated an investigation of the Baltimore Police Department (“BPD”). The investigation, completed in 2016, found that BPD was engaged in a pattern-or-practice of constitutional violations, including using excessive force, infringing on the First Amendment freedoms of speech and assembly, and stopping, searching, and arresting people without probable cause and based on their race. After making these findings, DOJ entered into negotiations with BPD and the City in an effort to settle the parties’ differences. BPD and the City did not admit DOJ’s allegations, but they recognized that the allegations raised long-standing issues of considerable importance to City residents. As a result, BPD and the City agreed to resolve DOJ’s allegations through a Consent Decree. The Consent Decree is a court-approved settlement agreement between DOJ, the City and BPD. United States District Court Judge James K. Bredar is the judge who approved the Consent Decree. Judge Bredar now oversees the Consent Decree’s implementation. Because the Consent Decree is a court order, Judge Bredar has the power to enforce its provisions and ensure that BPD and the City do what it requires.

The Consent Decree obligates BPD and the City to adopt a comprehensive set of reforms designed to promote fair and constitutional policing, rebuild BPD’s relationships with Baltimore’s communities, and ensure public safety. The Consent Decree prescribes corrective action in a number of areas, including: community engagement; community policing; stops, searches, arrests, and voluntary police-community interactions; impartial policing; interacting with people with behavioral health disabilities and in crisis; use of force; interactions with youth; transportation of persons in custody; First Amendment protected activities; handling of reports of sexual assault; technology; supervision; misconduct investigations and discipline; coordination with Baltimore City School Police; recruitment, hiring, and retention; staffing, performance evaluations, and promotions; and officer assistance and support.

The Consent Decree, in short, requires transformational institutional change. BPD will achieve compliance with the Consent Decree and free itself from Court oversight when it demonstrates not only that it has successfully implemented all of the required foundational improvements required in policies, training, technology and operations, but that those improvements have translated, measurably and sustainably, into constitutional, community-oriented policing.

Achieving transformational change in a large police department does not happen overnight. As the Consent Decree envisions, it takes time, and it requires adherence to a rigorous, methodical reform process. In each area of the Consent Decree that addresses how officers discharge their duties (*e.g.*, stops/searches/arrests, use of force, and transportation of persons in custody, to name a few), BPD first must draft and adopt revised *policies*. Then BPD must develop and conduct *training* on those revised policies. At the same time, to ensure that the new policies and the new training take root, BPD must revamp vital components of its infrastructure. For instance, BPD must overhaul its technology to become a modern, data-driven, efficient police force, must fortify its system of internal investigations and discipline to enhance officer accountability, must improve the training and supervision of rank-and-file officers to ensure lawful, effective job performance, and must increase the number of qualified patrol officers to promote community-oriented policing. It is only after officers have been trained on the new policies, and after infrastructure upgrades are well underway, that community members can expect to see sustained, tangible changes in the conduct of BPD officers. The Consent Decree contemplates that this process will take several years or more.

### **The Monitoring Team**

On October 3, 2017, Judge Bedard appointed a Monitoring Team to assist him in overseeing implementation of the Consent Decree. The Monitoring Team consists of a lead monitor, Kenneth Thompson, and a team of experts in policing and police reform, civil rights enforcement, psychology, social science, organizational change, data and technology, and community engagement. Serving as an agent of the Court, the Monitoring Team plays three principal roles: arbiter, technical advisor, and facilitator. As *arbiter*, the Monitoring Team oversees the day-to-day efforts of BPD and the City to comply with the reforms the Consent Decree requires. The Monitoring Team reviews, provides feedback on, and ultimately recommends Court approval or disapproval of the changes BPD makes in its policies, its training and, ultimately, its policing practices. As *technical advisor*, the Monitoring Team draws upon decades of collective experience to provide BPD with technical assistance, including advice about national best practices, to help guide BPD toward satisfying the requirements of the Consent Decree. As *facilitator*, the Monitoring Team seeks to ensure that all stakeholders from within BPD and across Baltimore's diverse communities have the opportunity to participate in the reform process. (CD 442).<sup>1</sup>

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<sup>1</sup> All citations to a specific paragraph of the Consent Decree follow the text that relies on that paragraph and appears in parentheses containing "CD" and the number of the cited paragraph. Thus, the citation above, which is to Paragraph 442 of the Consent Decree, follows the relied-on provision of Paragraph 442 and appears as "(CD 442)."

While the work of the Monitoring Team is key to the successful implementation of the Consent Decree, the Monitoring Team's authority is limited. The Consent Decree expressly provides that "the Monitor will only have the duties, responsibilities, and authority conferred by [the Consent Decree]. The Monitor will not, and is not intended to, replace or assume the role and the duties of the City or BPD, or any duties of any City or BPD employee..." (CD 445). The Monitoring Team is, therefore, restricted to what the Consent Decree authorizes. It does not have the power or the ability to weigh in on all police-related matters. For instance, although the Monitoring Team assesses compliance with mandated reforms in the investigation and discipline of BPD officer misconduct, the Monitoring Team cannot bring, determine whether to bring, or recommend criminal charges against police officers accused of wrongdoing in specific cases. It is not a substitute for local or federal prosecutors. Likewise, the Monitoring Team cannot intervene in employment or disciplinary matters within BPD. It does not conduct independent investigations of allegations of misconduct by BPD officers or make employment or disciplinary recommendations or decisions affecting BPD officers. What the Monitoring Team does is assess whether BPD administers its disciplinary process—from intake to investigation to outcomes—consistent with the requirements of the Consent Decree. Under the terms of the Consent Decree, the Monitoring Team's job is to assess BPD's conduct, not direct it.

It should also be noted that the Court and the Monitoring Team are not alone in overseeing BPD's implementation of the requirements of the Consent Decree. DOJ continues to play an active role. As the plaintiff in the lawsuit that produced the Consent Decree, DOJ retains the right to enforce the Consent Decree when BPD fails to comply with its terms. Accordingly, like the Monitoring Team, DOJ is assessing BPD's progress toward compliance and will let the Monitoring Team and the Court know when it believes BPD is making progress and when BPD is not. In addition, like the Monitoring Team, DOJ provides technical assistance to BPD as BPD works toward compliance. The reform process under the Consent Decree thus involves three fully-engaged entities: BPD, the Monitoring Team/the Court, and DOJ.

## **This Report**

One of the essential duties of the Monitoring Team is to issue semi-annual public reports that inform the Court and the community about the progress BPD is making toward compliance with the Consent Decree's requirements. The reports explain: (1) which compliance measures BPD has taken in the preceding six months; (2) whether those measures demonstrate compliance, substantial progress toward compliance, reasonable progress toward compliance, or non-compliance with Consent

Decree requirements; (3) what challenges BPD will continue to face as it strives to achieve compliance; and (4) what to expect from BPD in the next reporting period.

This document is the Monitoring Team's second semi-annual report. The first report was filed in July 2018. *See* ECF No. 126-1. When reading this report, keep in mind what is explained above: achieving transformational change in a large police department takes years, not months, and requires adherence to a rigorous process for reform. Also keep in mind that the reform process began in earnest only eleven months ago, with the Court's approval of the First-Year Monitoring Plan, a detailed, structured blueprint for the initial year of reform. *See* ECF No. 91-1 (initial First-Year Monitoring Plan), as modified by ECF Nos. 112, 124 & 125, and ECF No. 138-1 (Updated First-Year Monitoring Plan), as modified by ECF Nos. 147 & 165. Thus, BPD has not yet had substantial time to make significant progress toward lasting change. The First-Year Monitoring Plan implicitly acknowledges that not every Consent Decree requirement can be or will be addressed, much less met, in the first year. BPD, its officers and community members need sufficient time and opportunity to focus on each area of the Consent Decree, and on each requirement within each area, to ensure that reform is real and enduring. Change that is rushed, haphazard and superficial is not sustainable and does not qualify as true reform.

For these reasons, this report will not address BPD's progress on each and every one of the Consent Decree's requirements. For the many of those requirements, BPD has neither satisfied them, made reasonable progress toward satisfying them, nor failed to satisfy them. Rather, it is still getting started.

Indeed, while BPD has worked diligently to revise key policies and practices, initiate development of new training curriculum, and complete critical studies on technology and staffing, it is still completing even these initial, foundational steps. To use an analogy: if the Consent Decree requires BPD to rebuild a house from the ground up, BPD is just beginning to lay the foundation for the new house; it has not yet finished the foundation, much less started construction. For instance, BPD has not yet trained officers on the policies that have successfully undergone revision, and it has not revamped its IT systems so that they are capable of storing and aggregating the data necessary for comprehensive evaluation of the integrity of BPD's law enforcement actions. Therefore, the Monitoring Team remains a long way from being able to comprehensively assess whether BPD officers are consistently and sustainably engaged in constitutional, community-oriented policing.

That is not to say that the Monitoring Team has not been examining the conduct of BPD officers on the street, or determining how to measure whether BPD is making tangible improvements in its performance. As the First-Year Monitoring

Plan prescribes, the Monitoring Team has been working with BPD and DOJ to identify which indicators of constitutional policing can be evaluated now, given the current state of BPD's data, and for the indicators that can be evaluated, the Monitoring Team is developing methodologies to assess them. These preliminary assessments are designed to establish "baselines" for evaluating BPD's future progress toward compliance, as BPD begins to implement reforms in training, policies and operations.

Rather than inventorying BPD's efforts to satisfy each and every one of the Consent Decree's separate provisions, this report assesses BPD's progress toward satisfying the provisions that the First-Year Monitoring Plan requires BPD to address. In addition, this report gauges BPD's current position along the long arc of compliance in each area of the Consent Decree and identifies the challenges BPD will have to overcome to make meaningful progress toward compliance in each area. In this way, the report implicitly demonstrates that, although crucial, BPD's nascent work to satisfy the Consent Decree's foundational requirements—revising policies, conducting studies, preparing plans, drafting training curricula, performing audits, implementing officer assistance programs—is only part of the compliance equation. Full compliance will not be achieved until, *in practice*, those reforms result in policing that is community-oriented, accountable and constitutional.

## EXECUTIVE SUMMARY

For the past six months, BPD and the City have been working to fulfill the requirements of the First-Year Monitoring Plan. Approved by the Court in February 2018, *see* ECF No. 91-1 (as modified by ECF Nos. 112, 124 & 125), and updated in September 2018, *see* ECF No. 138-1 (as modified by ECF Nos. 147 & 165), the First-Year Monitoring Plan is a detailed roadmap for the progress BPD is expected to make during the first year of monitoring, which runs from February 16, 2018 through February 15, 2019. The Plan identifies and establishes dozens of deadlines for Consent Decree “deliverables.” Because the Plan covers only the first year, it naturally focuses on the front-end of the reform process: policy revision, training curriculum development, and studies and action plans for improving technology, data collection, staffing, and interactions with people with behavioral health disabilities.

Over the past six months, BPD and the City have complied with most of the deadlines in the First-Year Monitoring Plan. Due to capacity issues at BPD, the delay in confirming a permanent Commissioner, the need for additional time for collaboration with the Monitoring Team and DOJ, or some combination of these reasons, a small number of deadlines had to be extended. BPD and the City nevertheless met, or are currently on track to meet, the revised deadlines.

As evidenced by their good faith efforts to meet Monitoring Plan deadlines, BPD and the City—particularly personnel from BPD’s Consent Decree Implementation Unit and the City’s Law Department—are working conscientiously toward reform. They are not simply going through the motions. Nor are they running to stand still. They are, in fact, moving forward. The Monitoring Team thus concludes that BPD and the City continue to make reasonable progress toward satisfying the early-stage requirements of the Consent Decree, including in some of the areas most in need of transformative change, such as misconduct investigations/discipline and technology.

Nevertheless, it is still far too early to assess BPD’s progress toward satisfying the vast majority of the Consent Decree’s requirements or to predict whether or when BPD will achieve effective and substantial compliance with any section of the Consent Decree. That stands to reason: the First-Year Monitoring Plan requires BPD and the City to begin work toward certain foundational Consent Decree requirements, but it leaves the rest of the requirements for future years. BPD and the City have finalized revisions to a number of policies and have completed, or are in the process of completing, studies and implementation plans covering technology and staffing. But BPD and the City have not even begun, much less completed, work on numerous other requirements. BPD has not yet trained its officers on the revised policies or

made needed improvements in its Training Academy. Nor has BPD implemented new IT systems or a new IT governance structure (which likely will take at least another two years), increased the number of qualified officers, particularly in Patrol, the Training Academy, and the Office of Professional Responsibility (“OPR”), improved the overall quality of OPR operations and investigations, implemented reforms for supervisors, or overhauled its systems for reporting, collecting and maintaining data so as to facilitate effective supervision, meaningful discipline, and useful analysis of Department trends in key areas of the Consent Decree, including stops, searches, arrests, and uses of force.

Because of the vital work BPD still must do—work that will require considerable time and effort—it remains unclear, at this point, whether BPD will have the capacity to achieve compliance with all of the Consent Decree’s provisions. The questions the Monitoring Team asked in its first report are as relevant today as they were six months ago, perhaps even more so given the City’s continuing inability to put in place a permanent Police Commissioner:

Will [BPD] be able to purchase, design and effectively utilize modern policing technology? Can it develop a robust system of supervision and officer accountability? Will it be able to hire and retain enough qualified patrol officers to fulfill the Consent Decree’s community-oriented policing goals and maintain the morale of a Patrol Division that is currently overworked and stretched thin? These are open questions right now and, with [only eleven months] of active monitoring completed, the Monitoring Team cannot say what the answers are likely to be. What the first [eleven] months of monitoring have revealed is that, despite BPD’s hard work, the challenges ahead are daunting.

The following summary describes BPD’s noteworthy achievements so far, as well as noteworthy challenges ahead. It does not cover all achievements to date or all challenges ahead. Rather, it is a short recap of what the Monitoring Team views as the key achievements and key challenges at this preliminary stage in the reform process. The body of this report provides more detailed treatment of these and many other achievements and challenges.

## **Notable Achievements to Date**

### *Policy Revisions*

Since the beginning of the first year of monitoring, BPD has made considerable progress on revising its policies in a number of areas of the Consent Decree, including:

- Use of force
- Stop, searches, arrests and voluntary police-community interactions
- Impartial policing
- First Amendment-protected activities
- Body-worn camera
- Misconduct investigations
- Transportation of persons in custody
- Sexual assault investigations
- Officer assistance and support

These policies are clearer, better organized and more comprehensive than the policies they are replacing. They are the product of intensive collaboration among BPD, DOJ and the Monitoring Team. Importantly, the revised policies also reflect substantial input from both community stakeholders and BPD officers, who, under the First-Year Monitoring Plan, have been given an opportunity to provide their feedback on each policy before it was finalized. BPD's Best Practices Unit deserves considerable credit for the difficult, time-consuming work they have done, under often tight deadlines, to produce revisions that comply with Consent Decree requirements and are responsive to community and officer input.

As the Court and the Monitoring Team have observed, rewriting policies could be characterized as the "easy" part of Consent Decree compliance. After all, revising policies only requires making changes on paper. It will take time to convert those changes on paper into changes in practice. Nevertheless, clear, comprehensive policies are essential to the reform process. Policies reflect core Departmental values. They inform officers what must be done to police safely, effectively and constitutionally. They provide the basis for officer training, which is the next step in the reform process. And they establish the rules for holding officers accountable for proper conduct and for imposing discipline when officers engage in misconduct. Although strong new policies will not, by themselves, spawn the change in culture that the Consent Decree envisions, they are indispensable building blocks for reform.

#### *Foundational Studies and Plans*

In the past six months, the First-Year Monitoring Plan has required BPD to: (1) complete a comprehensive Technology Resource Plan, which builds on the Technology Resource Study performed during the prior reporting period and establishes a detailed framework for revamping BPD's IT systems and IT governance; (2) complete a comprehensive Staffing Study to identify BPD's staffing needs; (3) commence a detailed evaluation of gaps in the City's behavioral health system that

need to be filled to achieve the Consent Decree’s goal of “promot[ing] connection of people with behavioral health disabilities or in crisis to the behavioral health system, and decreas[ing] inappropriate criminal justice involvement for people with behavioral health disabilities or in crisis” (CD 96) (“Gap Analysis”); and (4) commence a detailed study of City programs designed to divert youth from the criminal justice system (“Youth Assessment”). These efforts are intended lay the groundwork for necessary, Consent Decree-mandated reforms in technology, staffing, BPD interactions with individuals with behavioral health disabilities and in crisis, and BPD interactions with youth. These efforts are vital because they are foundational: without obtaining a comprehensive understanding of BPD’s and the City’s deficiencies in each of these areas, and without formulating thoughtful, methodical plans for improvement, BPD will not be able to achieve Consent Decree objectives.

Following from the Technology Resource Study finalized in June 2018, *see* ECF No. 116, BPD prepared and finalized the Technology Resource Plan this past fall in partnership with Gartner Consulting. The Monitoring Team approved the Plan and filed it with the Court at the beginning of December 2018. *See* ECF No. 164. The Plan is thorough. It identifies BPD’s IT system needs (*e.g.*, Records Management System, staffing systems), as well as foundational IT business and management needs, and includes a comprehensive roadmap for improvements. The Plan thus accomplishes its purpose, which is to establish the blueprint “for adopting the Technology necessary to satisfy the Material Requirements of [the Consent Decree].” (CD 269).

With assistance from the National Police Foundation, BPD finalized the Staffing Study in late summer 2018. The Monitoring Team filed its notice of approval in September 2018. *See* ECF No. 137. The Study addresses BPD’s staffing needs and furnishes the foundation for a Staffing Plan that will provide for sufficient personnel to meet the requirements of the Consent Decree (CD 429). Notably, the Staffing Study identifies acute personnel shortages in Patrol, the Office of Professional Responsibility and the Training Academy, documents the need for more first-line supervisors, and recommends civilianization of certain functions currently performed by sworn personnel. Following from the Staffing Study, BPD is scheduled to produce the preliminary draft of the Staffing Plan in the next reporting period, once a full-time Commissioner is in place and has a chance to formulate his own vision for the Department.

Both the Gap Analysis and the Youth Assessment are well underway and will be completed in the next reporting period. The Community Planning and Collaboration Committee (“CPIC”) (described below) selected a nationally recognized research firm, Health Services Research Institute, to conduct the Gap Analysis. In combination with its Youth Assessment Advisory Board, which consists of community stakeholders and City representatives, BPD selected the Children’s Center for Law and Policy to conduct the Youth Assessment. CCLP has held several sessions to finalize its “system mapping,” which it will use to complete the Assessment, and has been diligently conducting stakeholder interviews, including youth focus groups and

interviews of diversion program personnel, BPD officers, and representatives from the Office of the Public Defender.

*Preliminary Work of the Collaborative Planning and Implementation Committee (“CPIC”)*

CPIC is devoted to improving the behavioral health systems in Baltimore. One of its central goals is to improve, and ultimately reduce, interactions between BPD officers and individuals with behavioral health disabilities and in crisis. The membership of CPIC, which was created under the Consent Decree, includes relevant City and State officials, advocacy groups such as Disability Rights Maryland and the National Alliance on Mental Illness, individuals with lived experience, community mental health providers, substance use services providers, local hospitals, advocates, and committed philanthropists (CD 104). CPIC’s leadership represents key components of the crisis intervention system and includes the CEO of Behavioral Health System Baltimore and the Director of the Mayor’s Office of Human Services.

CPIC has made good progress in its Consent Decree-focused work in recent months. Initially, it completed a First-Year Work Plan, which provides a roadmap for developing a staffing plan for BPD’s specialized Crisis Intervention Team (“CIT”), a CIT officer selection process, crisis intervention policies for the Patrol Division and Dispatch Unit, a crisis intervention form for BPD to capture data on interactions with individuals in crisis, and the Gap Analysis mentioned above. *See* ECF No. 129. Under the First-Year Work Plan thus far, CPIC, as noted, has selected an organization to perform the Gap Analysis, which is now underway. Moreover, CPIC has completed a Crisis Intervention Plan for addressing BPD Crisis Intervention Team (“CIT”) staffing needs, as well as a CIT Officer Selection Process *See* ECF No. 154. Additionally, CPIC’s Data Subcommittee has revised and expanded the form BPD uses to record interactions with individuals in crisis. *See* ECF No. 170. CPIC’s Policy Subcommittee also has worked hard to prepare draft revisions to BPD’s crisis intervention policies for officers and dispatchers. The work has covered eight different BPD policies and has included soliciting, receiving and incorporating community feedback. The subcommittee will make recommendations on the policy revisions near the beginning of the next reporting period.

Beyond implementing the specific requirements of the First-Year Monitoring Plan, CPIC has begun to function effectively as a broadly representative entity committed to assessing the behavioral health needs of City residents and, ultimately, to making genuine improvements in the City’s behavioral health systems. This is an encouraging development, as it is what the Consent Decree envisions over the long-term, after BPD and the City achieve substantial compliance and are released from

court oversight. To take one example, the City and BHSB are drawing on the collective experience of CPIC's members to attempt to coordinate and align the work of certain specialized City programs, each of which is targeted at diverting a discrete cohort of individuals (*i.e.*, individuals experiencing homelessness, individuals with substance abuse issues, and individuals with behavioral health issues) from the criminal justice system to the health care system. To take another example, CPIC is providing a productive forum for advocates and those with lived experience to talk to BPD representatives about concerns they have with BPD crisis intervention programs that are dedicated to diversion (*i.e.*, BPD's Crisis Response Team, Law Enforcement Assisted Diversion Team, and Homeless Outreach Team), but that, in the eyes of these stakeholders, risk being implemented in a way that compromises the constitutional rights and personal autonomy of the intended beneficiaries.

## **Notable Challenges Ahead**

### *Leadership*

As BPD has gone without a confirmed Commissioner for the better part of a year, it has become increasingly clear that, notwithstanding the determined efforts of BPD's Consent Decree Implementation Unit, the absence of permanent leadership is impeding BPD's ability to make reasonable progress toward realizing key Consent Decree objectives.

As a general matter, the absence of permanent leadership has delayed planting the seeds for the expansive change in culture that the Consent Decree contemplates. With continuous turnover and uncertainty at the top, there is little chance that officers—from the rank-and-file to seasoned commanders—are fully receiving and absorbing a clear, consistent message about the primacy of the reform effort. As the Court has observed repeatedly in recent months, BPD needs a leader with full and unquestioned authority to adopt a Consent Decree-compliant vision for change and to effectively convey the “what, how, when and why” of that vision to Department personnel.

The absence of permanent leadership is also delaying implementation of certain, specific Consent Decree requirements. For example, the Monitoring Team believes the City's failure to confirm a new Commissioner explains, at least in part, BPD's delay in providing adequate resources and personnel to the Training Academy, which has the most immediate staffing needs for the second monitoring year. In addition, the City's failure to confirm a new Commissioner has required the extension of the deadlines for both the Staffing and Community Policing Plans under the First-Year Monitoring Plan. The development of each Plan is crucial to BPD's progress under the Consent Decree. The Staffing Plan will establish how, in the coming years,

BPD plans to resolve efficiency-depleting, morale-sapping personnel shortages in Patrol, OPR and the Training Academy, including through reassignment, recruitment and hiring, and civilianization of certain functions currently performed by sworn officers. The Community Policing Plan will establish how, consistent with the Consent Decree, BPD intends to transform its operational model into one fully committed to community-oriented, constitutional policing. The deadlines for issuing drafts of both Plans had to be extended to accommodate the appointment of a new Commissioner because, at root, each Plan must reflect the vision of a politically accountable leader, and as the parties and the Monitoring Team recognized, BPD's new Commissioner will require two or three months to thoroughly evaluate and weigh in on the Department's staffing resources and needs, as well as the Department's community policing needs, capacity and goals, before either Plan is finalized.

### *Misconduct Investigations and Discipline*

The first semiannual report explains why reforming OPR presents such daunting challenges. *See* ECF No. 126-1 at 11-13, 34-38. There is the need to overhaul OPR's structure and streamline its operations, the need for more investigators and supervisors to handle crushing caseloads, the need for proper, uniform classification of civilian complaints, the need to ensure thorough investigations and appropriate resolutions, the need to improve the unit's data collection and analysis practices, the need to facilitate more effective civilian oversight by the Civilian Review Board ("CRB"), and the need to address the fallout from the Gun Trace Task Force scandal. *Id.* None of these challenges has waned in the last six months.

To its credit, BPD is making incremental progress on certain fronts. It is simplifying and streamlining OPR's organizational structure. BPD also finalized OPR's complaint intake policy and complaint classification system; altered OPR's case assignment system to end both real and perceived problems with investigator impartiality; worked diligently to draft a first-ever protocol for information-sharing between OPR and CRB; terminated the problematic practice of detailing OPR investigators to the Patrol Division, where they might have been assigned to work with the same officers they were investigating; and planned to provide interim (*i.e.*, non-Consent Decree) training on internal affairs investigations to OPR investigators, many of whom have never received specialized training on such investigations.

Notwithstanding these achievements, the challenge of restoring BPD's reputation for integrity by repairing its broken accountability mechanisms remains severe. Over the past six months, the Monitoring Team observed that OPR continues to be understaffed, caseloads remain staggering, investigations take too long to complete, and minor cases occupy too much investigator time. Reinforcing its conclusions from a review of 60 sample OPR files during the first reporting period,

see ECF No. 126-1 at 37, the Monitoring Team also observed anecdotally that certain OPR investigations were incomplete, the accompanying files were in disarray, the outcomes relied on faulty or insufficiently explained reasoning, and files from different cases were organized in different, non-uniform ways. Additionally, the Monitoring Team learned that, for a number of years until recently, BPD was improperly expunging OPR files that were administratively closed following sustained findings of misconduct—a practice that impedes compliance with BPD's constitutional obligation to provide prosecutors (who must provide defense counsel) information that potentially casts doubt on the credibility of officers who have obtained such expungements and are witnesses or investigators in criminal cases prosecutors decide to charge.

In the next six months, the Monitoring Team will pay close attention to whether BPD can capitalize on the momentum created by its reform efforts thus far, and move toward transforming OPR into a unit that classifies, assigns, investigates and resolves cases appropriately, communicates effectively with complainants, and cooperates fully with CRB.

### *Training*

Training officers on policies revised over the past twelve months will be the focus of the second monitoring year. Under the draft Second-Year Monitoring Plan, BPD will devise training curricula on revised policies and train officers on use of force, fair and impartial policing, stops/searches/arrests, and body-worn camera policies. Toward the latter part of the second year, BPD also will develop training curricula for sexual assault investigations, crisis intervention (for recruits, officers, specially-trained crisis intervention officers, and dispatchers), interactions with youth, and community policing. Training on these topics will take place during Year Three.

Successfully designing, writing lesson plans for, and delivering these new training initiatives would be difficult for any police department, even a well-functioning one. For several reasons, it will be extremely challenging for BPD:

*First*, as noted, the Training Academy is severely understaffed. The current plan assumes—and the Monitoring Team fully expects—that BPD will promptly assign to the Academy the number of full-time, qualified officers required to satisfy the Monitoring Plan's training requirements.

*Second*, to meet the Monitoring Plan's requirements, BPD is restructuring its customary training schedule. Until now, officers have received all in-service training on all topics within a single two-week period each year. Beginning in 2019, each

officer will receive training in shorter blocks, each devoted to different subjects, at several junctures throughout the year. Splitting up the training this way will enable BPD to hold officers accountable to new Consent Decree-mandated policies as quickly as possible after receiving training, rather waiting until the end of the year, after all officers have cycled through a single, all-topic in-service program.

*Third*, BPD will be altering the means of training. Consistent with best practices for adult learning, BPD is developing a less lecture-focused, more facilitative, increasingly scenario-based model for in-person training at the Academy. BPD also will be developing and delivering training on certain subjects through its electronic platform, PowerDMS, which will enable BPD to train officers more efficiently on topics that are suitable for web-based learning.

*Fourth*, the Monitoring Team has questions about whether, under the time constraints established in the draft Second-Year Monitoring Plan, current Academy personnel are capable of writing well-organized, comprehensive e-learning curricula and lesson plans for in-person instruction that properly incorporate interactive, adult learning principles. The initial lesson plans BPD produced for training on use of force and certain aspects of fair and impartial policing, for both e-learning and in-person instruction, require changes and do not yet fully reflect the lengthy prior discussions the Monitoring Team and DOJ had with BPD training personnel about the organization, form and content of those materials.

Devising new training programs using new training techniques, assigning and training new Academy staff, and operationalizing the logistics of a new training schedule will require a great deal of work in a concentrated period of time. Provided that BPD assigns an adequate complement of qualified personnel to the Academy, the Monitoring Team believes BPD is up to the task, particularly with technical assistance from Monitoring Team and DOJ subject matter experts. But make no mistake, even with an adequate number of training personnel, the second monitoring year will be an extremely busy one, filled with drafting, refining and delivering detailed lesson plans that incorporate interactive, scenario-based learning concepts that are still somewhat new to BPD.

### **The Next Reporting Period**

In the next six months, BPD will continue work on foundational reforms. As explained, a substantial amount of the work will concentrate on developing training programs in the areas of use of force, fair and impartial policing, stops/searches/arrests, and body-worn cameras. In addition, BPD will tackle most of the remaining policy revisions required by the Consent Decree, including revisions to

policies involving supervision effectiveness, internal investigations of complaints against officers by OPR, the sharing of investigation information between OPR and CRB, disclosure of officer disciplinary information in criminal cases, interactions with youth, interactions with individuals with behavioral health disabilities or in crisis, and technology acquisition.

In the next six months, BPD also will also finalize diagnostic reports on the City's youth diversion programs and gaps in the City's behavioral health systems, prepare comprehensive plans for community policing and staffing, and assemble a detailed timetable for implementing the elements of the Technology Resource Plan. Finally, BPD will begin engaging in self-evaluation. It will prepare and publish its first Consent Decree-mandated analyses of stops/searches/arrests/voluntary police-community interactions (covering encounters during the final quarter of 2018) and sexual assault investigations (covering 2018); conduct and prepare logs of monthly inspections of transport vehicles to ensure they are properly equipped; and begin quarterly audits of transport events to ensure officers are adhering to BPD transport policies and Consent Decree requirements.

The Monitoring Team will continue to assess BPD's early stage reform efforts and offer technical assistance as required. In addition, the Monitoring Team will conduct its initial surveys to gauge community, custodial arrestee, and officer attitudes toward BPD and reform. The results from these surveys should be published near the end of the next reporting period.

Based on available data, which remains imperfect due the antiquated nature of BPD's data collection systems, the Monitoring Team will begin to conduct qualitative reviews of both OPR investigations and use of force reports/incidents. The Monitoring Team also will continue to work with BPD and DOJ to develop proper methodologies for both qualitative and quantitative assessments in other areas of the Consent Decree, including stops/searches/arrests and First Amendment-protected activities.

## SUMMARY OF MONITORING TEAM ACTIVITIES

Over the past six months, the Monitoring Team has done work in each of its three roles—arbiter, technical advisor and facilitator. As arbiter, the Monitoring Team, among other things, has assessed BPD’s progress in revising policies and preparing foundational studies and plans on staffing and technology, reviewed and evaluated BPD’s handling of various misconduct investigations and training issues, and determined compliance with basic Consent Decree provisions requiring the development of plans for training officers, for collecting data on incidents involving the use of force and interactions with individuals with behavioral health disabilities and in crisis, and for improving the way BPD interacts with such individuals. As technical advisor, the Monitoring Team has drawn on the expertise of its members to provide BPD guidance on policy revisions, technology improvements that will facilitate robust data collection and analysis, training plans and curriculum, internal investigations and discipline, staffing issues, officer wellness issues, and interactions with individuals in crisis. As facilitator, the Monitoring Team has sought to engage both community stakeholders and BPD officers in the reform process.

The Monitoring Team’s work in this reporting period is summarized below. The details of the Monitoring Team’s work, recorded on time sheets for each Monitoring Team member in 1/10 hour increments, are reflected in the Monitoring Team’s approved invoices, which are available on the Monitoring Team’s website at <https://www.bpdmonitor.com/monthly-statements>. The Consent Decree provides that the Monitoring Team will be paid \$1,475,000 per year in fees and expenses. For the first year of its work (October 2017 through September 2018), the City paid the Monitoring Team \$1,485,858.25 in fees and \$67,654.18 in expenses.<sup>2</sup> In addition, from October 2017 through September 2018, the Monitoring Team contributed *pro bono* services for its work on the Consent Decree in an amount equal to \$797,093.55, meaning that 34.9% of the Monitoring Team’s work during the first year was at no cost to the City.

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<sup>2</sup> The billed total for the first year of the Monitoring Team’s work exceeds a flat \$1,475, 000 because the first year of the Monitoring Team’s work (October 2017 – September 2018) and the City’s fiscal year (July 2017 – June 2018) did not align, and the City chose to budget for the Monitoring Team’s work based on its fiscal year. As a result, the first year of the Monitoring Team’s work crossed two City fiscal years—FY2018 and FY2019. Between the date of the Monitoring Team’s appointment at the beginning of October 2017 and the end of the City’s FY2018 on June 30, 2018, the Monitoring Team’s fees and expenses totaled \$1,119,826.53, or \$355,173.47 less than the City budgeted for FY2018. That amount, \$355,173.47, was carried over to City’s FY2019 so that the total available for the Monitoring Team’s work in FY2019 is \$1,830,173.47. The Monitoring Team’s billed fees and expenses during the City’s FY2019—again July 1, 2018 – June 30, 2019—will not exceed that amount.

## Engagement with Stakeholders

### *Community Engagement*

The Monitoring Team continues to engage in active, affirmative community outreach. In addition to holding Consent Decree-mandated community forums in July and October 2018, the Monitoring Team is meeting with community members where they live. The Monitoring Team's community liaison has established a structured community engagement plan that has Monitoring Team members engaged in outreach on a monthly schedule. In the past six months, Monitoring Team members have attended or convened community meetings in different parts of the City, including meetings of neighborhood associations, faith-based organizations, civic leaders, and affinity groups (e.g., advocates for individuals with behavioral health disabilities, LGBTQ advocates, a seniors center, and an anti-violence organization). The meetings are intended to inform community members about the Consent Decree process and to listen to their views about BPD.

One Saturday each month, Monitoring Team members also have either done a "corner crawl" or conducted a "town hall meeting." On the corner crawls, Monitoring Team members canvass a chosen neighborhood on foot, seeking to engage residents in discussions about the Consent Decree and BPD. At town hall meetings (which have replaced corner crawls during colder months), the Monitoring Team invites residents of a particular neighborhood to a local meeting place, like a community center, to engage them in similar discussions. The town hall meetings are also recorded and broadcast on Facebook Live.

Recently, the Monitoring Team's community engagement team, including Monitoring Team leadership, began bimonthly Facebook Live sessions from the offices of the Monitoring Team's community liaison, Baltimore Community Mediation Center ("BCMC"). During these sessions, community members are given the opportunity to post questions online and obtain real-time answers from the Monitoring Team.

As discussed in the first semiannual report, the Monitoring Team expanded its community engagement effort by hiring neighborhood liaisons to serve in BPD's nine police districts. The Monitoring Team will be hiring additional neighborhood liaisons in the future. Overseen by the team's head community liaison (formerly Shantay Guy and now Ray Kelly) and community engagement coordinator (Darnyle Wharton)—all of whom are or were with BCMC—the neighborhood liaisons educate their neighbors about the Consent Decree and the work of the Monitoring Team and serve as the

Team's initial points of contact for information and opinions about the performance and conduct of BPD officers, which the Team will need to fully assess BPD's compliance with the Consent Decree. In their first several months on the job, the Monitoring Team's neighborhood liaisons have held "office hours" at local libraries and community centers, attended community meetings in their districts, and canvassed neighborhood civic organizations, businesses, and faith-based institutions to educate community members about the Consent Decree.

In addition to conducting affirmative, localized outreach to inform and hear from community members about the reform process and BPD, the Monitoring Team has pursued targeted engagement with community members around specific Consent Decree requirements. This is consistent with the parties' recognition that, if policing in Baltimore is to be "responsive to community priorities," the community must have a direct, ongoing role in BPD's reforms. *See* ECF No. 2-2 ¶ 1; *see also* ECF No. 68 at 1 (Court order emphasizing the importance of "ensur[ing] that the community's voice is heard throughout the implementation of the Consent Decree"). Led by BPD, and in coordination with DOJ and community advocates from the Campaign for Justice, Safety and Jobs, the Monitoring Team has participated in community forums specifically convened to obtain community input on certain key policies. Together with BPD, DOJ and CJSJ, the Monitoring Team has developed the framework and scenario-based content for these forums. The first forums took place in September and early October and addressed proposed revisions to BPD policies on stops, searches, arrests, and voluntary police-community interactions.

In this reporting period, the Monitoring Team also continued to elicit written community input on proposed BPD policies. Under the First-Year Monitoring Plan, the Monitoring Team built a community feedback component into the process for revising each policy and training program. (BPD and DOJ also have their own feedback mechanisms). As the Monitoring Team's First-Year Monitoring Plan submission explains:

[T]he final proposed Plan provides a specific two-step process for involving community members in the implementation of policy and training reforms under the Consent Decree. First, for each policy or training program to be developed, the Plan gives community members a chance to provide their views up front, before a draft has been finalized, in order to influence the content of the final draft. The Plan identifies each of these up front feedback opportunities as an "Initial Comment Period." During the Initial Comment Period, the Parties and the Monitoring Team will hear the views, concerns and experiences of community members, including police officers, relating to the pertinent policy or training program, and then will synthesize what they receive

into a written document for review by the public, the Parties and the Monitoring Team during a “Collaboration Period.” In the Collaboration Period, BPD will work actively with DOJ and the Monitoring Team to craft a final draft of the policy or training program.

Once the draft is finalized, community members will be given a second opportunity for review. BPD will post the proposed policy or training program to its website and provide affirmative, intensive opportunities for the public, including BPD officers, to comment. This “Comment Period” allows community members to gauge for themselves whether the final draft accounts for the concerns they expressed during the Initial Comment Period. Following the Comment Period, BPD will consider whether any further revisions are appropriate in response to the community’s feedback, and either re-commence collaboration with the Parties to make further refinements or provide the final draft to DOJ and Monitor for review and approval.

ECF No. 86 at 15-16.

Over the past six months, the Monitoring Team, like BPD and DOJ, sought and received meaningful public comment on draft policies in all of the following areas: use of force, body-worn cameras, transportation of persons in custody, stops/searches/arrests, impartial policing, First Amendment-protected activities, sexual assault investigations, misconduct investigations and discipline, and officer assistance and support. To solicit community feedback on these draft policies, the Monitoring Team posted and received comments in response to surveys on its website, received detailed letters and e-mails from community members and organizations, and welcomed more informal oral feedback from community members. The Monitoring Team shared whatever feedback it received with BPD. In turn, BPD revised each draft policy in response to all feedback provided (that is, feedback provided to BPD, the Monitoring Team and DOJ), collaborated with the Monitoring Team and DOJ to ensure that the revised drafts properly reflected that feedback, and then published a final policy following approval by DOJ and the Monitoring Team. Subsequent sections of this report address all of the revised policies that BPD finalized over the past six months.

### *Communications with the Parties*

The Monitoring Team communicates with BPD, the City and DOJ multiple times on a daily basis—in in-person meetings, in conference calls, and by email. Monitoring Team members have worked exhaustively with the parties to make sure BPD produces all of the “deliverables” the First-Year Monitoring Plan requires. In the past six months, the Monitoring Team and DOJ have collaborated with BPD and

provided extensive oral and written comments and written line edits on the following deliverables, among others:

- (1) Drafts of numerous revised policies due under the First-Year Monitoring Plan, including policies on use of force, transportation of persons in custody, body-worn cameras, stops/searches/arrests, misconduct investigations and discipline, impartial policing, sexual assault investigations, First Amendment-protected activities, interactions with individuals with behavioral health disabilities and in crisis, and officer wellness, *see* ECF Nos. 132, 134, 135, 140, 142, 144, 149, 151, 153, 171 & 175;
- (2) A draft training plan, which establishes a comprehensive program for developing and delivering training on various Consent Decree-mandated subjects in 2019 and 2020, *see* ECF No. 148, as well as draft curriculum for training on body-worn cameras (*see* ECF No. 176), use of force and impartial policing;
- (4); A draft staffing study, which identifies BPD's staffing deficiencies and needs, *see* ECF No. 137;
- (5) A draft technology resource plan, which establishes a comprehensive roadmap for improving BPD's IT systems, *see* ECF No. 164;
- (6) Draft plans for ensuring the robust collection of data on use of force incidents, interactions with individuals in crisis, and stops, searches and arrests, *see* ECF Nos. 128, 149 & 170;
- (7) A draft plan for assessing youth interactions with BPD and the criminal justice system in Baltimore, *see* ECF No. 131; and
- (8) A draft crisis intervention plan, which establishes how BPD will train and deploy a sufficient number of officers to respond to calls involving individuals with behavioral health disabilities and in crisis, as well as a draft crisis intervention form for capturing data on BPD interactions with such individuals, and a comprehensive draft needs assessment that details the gaps in the City's system for providing services to such individuals. *See* ECF Nos. 154 & 170.

### *Police Engagement*

As both the Court and the Monitoring Team have said repeatedly, engaging rank-and-file officers, sergeants and lieutenants in the reform process is as important—and arguably more important—than engaging City officials and BPD command staff. Therefore, in addition to conferring daily with members of BPD’s Consent Decree Implementation Unit, City Law Department attorneys representing BPD, and BPD command staff to work on implementing the requirements of the Consent Decree, the Monitoring Team continues to engage BPD members. Monitoring Team members have established relationships with union leaders, visited BPD Districts, spent time at BPD’s Training Academy (where recruit, in-service, and field training officer training is conducted) and Office of Professional Responsibility (which investigates allegations of officer misconduct), and gone on ride-alongs with patrol officers.

The Monitoring Team also has established and meets periodically with an informal group of rank-and-file officers to obtain their candid feedback on the Consent Decree, the positive attributes of BPD, and the challenges facing BPD. Moreover, as required by the Consent Decree, the Monitoring Team will be conducting more formal focus groups of BPD officers, supervisors and command staff to listen to their thoughts and gather their ideas about effective reform.

As indicated in the first semiannual report, the Monitoring Team, soon after its appointment, established a protocol for notification and potential response to critical incidents involving BPD officers, such as officer-involved shootings. The notification is immediate and allows for local Monitoring Team members or out-of-town members in Baltimore to respond to the scene and observe BPD officers in action. The notification protocol has been used several times in the reporting period.

### *Meetings with the Court*

On a daily basis, Judge Bedar remains engaged in ensuring BPD implements the reforms required by the Consent Decree. The Monitoring Team’s leadership, including Ken Thompson, Seth Rosenthal, Chuck Ramsey, Hassan Aden and Theron Bowman, communicate regularly with Judge Bedar—in person, by telephone, and by email—to update him on developments and to take direction from him.

In the very first stage of the reform process, Judge Bedar determined that each month he would hold a three-hour working session with the Monitoring Team and the parties to discuss developments and challenges in a specific area of the Consent Decree. In this reporting period, Judge Bedar has convened working

sessions to discuss stops, searches and arrests (July 2018), staffing (August 2018), First Amendment protected activities (September 2018), interactions with individuals with behavioral health disabilities and in crisis (October 2018), training (November 2018), officer assistance and support (December 2018), and misconduct investigations and discipline (January 2019).

Judge Bredar has made clear that he believes it is important for him to observe first-hand how BPD operates. Accordingly, for the working session on training, he met with the parties at BPD's Training Academy. Similarly, for the working session on misconduct investigations and discipline, Judge Bredar met with the parties at the Office of Professional Responsibility, which is in a separate location than other BPD facilities. In December, Judge Bredar also attended command staff training, which covered both Incident Command System protocols and BPD policies and constitutional requirements regarding stops, searches and arrests.

## **Assessments and Technical Assistance**

For the past six months, the Monitoring Team's work under the First-Year Monitoring Plan has focused on assessing BPD's performance, and assisting BPD, in the following areas: revising its policies; developing a comprehensive program to train officers, supervisors, recruits and trainers on the revised policies; establishing comprehensive plans to address BPD's personnel, technology and data collection needs; and conducting limited diagnostic reviews of BPD's performance in certain areas.

### *Policy Revisions*

As in the first reporting period, the principal work of the Monitoring Team over the past six months has been to assess BPD's efforts to revise policies in a number of areas and, at the same time, assist BPD in those efforts based on the Monitoring Team's members' expertise and knowledge of national best practices. As explained in more detail in the Findings section below, the Monitoring Team has assessed and advised BPD on revisions to approximately forty policies addressing:

- Use of force
- Stops, searches and arrests
- Transportation of persons in custody
- Misconduct investigations and discipline
- Impartial policing
- First Amendment-protected activities
- Sexual assault investigations
- Body-worn cameras

- Interactions with individuals with behavioral health disabilities and in crisis
- Officer wellness, assistance and support

### *Foundational Assessments and Reform Plans*

Some of the foundational work required by the Consent Decree entails assessing BPD's present capacity to implement reforms and, where BPD falls short, developing a plan for ensuring that those reforms are achievable. To date, the Monitoring Team has reviewed and worked with BPD and DOJ to develop the following:

- A comprehensive Staffing Study, which identifies BPD's personnel shortcomings and needs.
- A comprehensive Technology Resource Plan, which builds on the previously completed Technology Study (described in the first semiannual report) to establish a detailed blueprint for fixing BPD's extensive technology shortcomings and making the improvements needed to (1) facilitate more efficient recording, collection and synthesis of data on all facets of police work (e.g., stops, pat-downs, searches, arrests, uses of force, internal investigations and discipline), (2) effectively review officer performance and ensure officers are following the law, and (3) in the short term, permit the Monitoring Team and the Court to comprehensively assess BPD's compliance with the Consent Decree.
- A crisis intervention plan and crisis intervention team selection process, which, as described in more detail in the Findings section, establishes how BPD will select, train and deploy a sufficient number of officers to respond to calls for service involving individuals with behavioral health disabilities and in crisis. The crisis intervention plan and CIT selection process are part of a larger crisis intervention work plan, which was also devised during the reporting period. The work plan includes timelines for finalizing a crisis intervention data form, which will capture Consent Decree-required data on BPD interactions with individuals with behavioral health disabilities and in crisis, and revisions to BPD's crisis intervention policies, including policies for BPD dispatchers.
- A plan for completing a detailed assessment of City programs dedicated to diverting youth from the criminal justice system.

- Draft plans for improving the collection of data on use of force incidents and stops, searches and arrests.
- An outcome assessments methodology plan, which identifies the location and integrity of BPD's data in a number of areas covered by the Consent Decree, establishes which quantitative and qualitative compliance assessments the Monitoring Team will be able to perform in the short term given the current state of BPD's data, and for those assessments that are feasible in the short term, the methodologies the Monitoring Team will utilize to perform them.

### *Surveys*

Over the life of the Consent Decree, the Monitoring Team must conduct three different types of survey at regular intervals to measure community attitudes about BPD and whether those attitudes change over time. These surveys include a representative survey of community residents, a survey of detained arrestees, and a survey of BPD officers. In this reporting period, the Monitoring Team has done considerable work on developing the first of each type of survey.

- The Monitoring Team is partnering with the Institute for Urban Research at Morgan Street University to devise, conduct, analyze the results of, and prepare a report on the community survey. IUR developed a survey methodology and drafted the survey instrument with input from Monitoring Team members, and then refined and finalized the survey instrument after receiving input from the parties. The community survey is now underway.
- The Monitoring Team is partnering with researchers from the University of Toronto and Rose Street Community Center, a local organization that assists returning citizens, to conduct the custodial arrestee survey. The University of Toronto researchers have extensive experience with arrestee surveys, including, most recently, an arrestee survey they completed last year in connection with the Cleveland Division of Police's consent decree. The University of Toronto researchers, Rose Street Community Center associates and Monitoring Team members have developed an interview protocol and have finalized logistics for the survey, which will be conducted at Central Booking in Baltimore. The interviews are planned for February.
- With assistance from the Crime and Justice Institute, the Monitoring Team will conduct a series of six – eight focus groups of BPD personnel in February 2019. The groups will be divided by rank to ensure candor. There will be

separate focus groups for patrol officers and detectives, sergeants, lieutenants, and command staff.

Each of the surveys should be completed by the end of February 2019. The results will subsequently be analyzed, and the Monitoring Team and its partners plan to publish reports explaining the results by early June 2019.

### *Diagnostic Reviews*

As explained above, it is too early for the Monitoring Team to engage in comprehensive assessments of BPD's compliance with any Consent Decree requirement, particularly in those areas where comprehensive assessments are dependent upon data that BPD either does not reliably maintain yet or does not maintain in a way that can be meaningfully synthesized. However, in the first reporting period, the Monitoring Team conducted preliminary diagnostic reviews in several areas, mainly to get a better sense of BPD's current practices so that it can begin to determine what BPD must do over the long term to achieve compliance. Specifically, the Monitoring Team (1) inspected BPD's transport vehicles (vans and cruisers) to determine whether they are equipped with properly functioning restraints and video cameras, as the Consent Decree requires, (2) reviewed 60 recent internal investigations files from the Office of Professional Responsibility, and (3) spent several days reviewing BPD documentation of stops, searches and arrests.

The Monitoring Team continued to perform similar preliminary spade work over the past six months. As explained in more detail in the Findings section below:

- The Monitoring Team, BPD and DOJ conducted a mock audit to determine the effectiveness of the tool BPD has developed to audit compliance with Consent Decree requirements regarding transportation of persons in custody, and then the Monitoring Team followed up with a review of BPD's subsequent first quarterly audit of transportation events.
- The Monitoring Team received an orientation on, and conducted a preliminary assessment of, BPD's current methods for documenting voluntary field interviews and investigative and vehicle stops.
- The Monitoring Team and DOJ conducted an initial appraisal of the accessibility and robustness and BPD data on calls for service to determine the feasibility of certain outcome assessments required by Paragraph 459 of the Consent Decree.

- The Monitoring Team created separate evaluation instruments for performing qualitative assessments of (1) use of force incidents, (2) internal investigations by BPD's Office of Professional Responsibility, (3) sexual assault investigations, and (4) incidents involving First Amendment protected activities. The Monitoring Team and the parties have discussed the instrument for evaluating BPD's sexual assault investigations, and have agreed to conduct the review in the upcoming monitoring year. The other evaluation instruments remain under review by the parties. It is anticipated that each of them will be finalized and utilized in the second monitoring year.

Finally, as part of the work it must do to assess BPD's compliance with the various provisions of the Consent Decree, the Monitoring Team has been conducting diagnostic analyses of BPD's performance in discrete matters. The purpose of these analyses is not to formally gauge BPD's compliance with the Consent Decree, but rather to get a sense of how certain core functions are currently being performed and, if they are not being performed effectively or in compliance with the Consent Decree, to provide BPD guidance on how to improve performance. The ultimate objective is for BPD to meaningfully engage in its own after-action assessments so that when it finds problems, it will self-correct and take remedial action on its own, without prompting from the Monitoring Team or DOJ.

During the initial reporting period, the Monitoring Team conducted one of these diagnostic analyses by evaluating the propriety of BPD's interactions with civilians in the Harlem Park neighborhood following the shooting death of BPD Detective Sean Suiter. In the past two months, as a result of the Monitoring Team's findings (as well as the findings of an Internal Review Board that conducted a separate assessment of BPD's investigation of Detective Suiter's death), BPD prepared and delivered a full-day training for all command staff on both constitutional requirements for conducting stops, searches and arrests and proper use of an Incident Command System for responding to significant events. In addition, BPD prepared and delivered to all officers a mandatory e-learning training program on BPD policies and constitutional requirements on stops, searches and arrests through its PowerDMS system. The Monitoring Team and DOJ provided input on the lesson plan for the command staff training, attended that training (as did Judge Bredar), and provided BPD with feedback following the training. The Monitoring Team and DOJ also provided input on the e-learning lesson plan for the officer training on stops, searches and arrests.

The Monitoring Team has continued to perform diagnostic analyses of various discrete matters during the past six months. For instance, together with DOJ, the Monitoring Team evaluated the quality of OPR's internal investigation and findings regarding recent allegations that an officer gave false testimony during a criminal

trial. The Monitoring Team and DOJ reviewed the officer's testimony, the OPR file and OPR's findings, and delivered an assessment of what OPR could have done better. The assessment has led to fruitful discussions, and OPR plans to take corrective action by using the case as a training tool for OPR investigators on proper investigative procedures and case analysis. In the next reporting period, the Monitoring Team will assess whether BPD, in fact, takes such corrective action and will evaluate its efficacy.

The Monitoring Team and DOJ are actively monitoring approximately a dozen other OPR investigations, receiving regular updates from OPR. Once the investigations are concluded, the Monitoring Team will assess whether they were conducted and resolved properly.

In another matter, which involves allegations that certain members of a recent class of recruits failed to demonstrate adequate comprehension of constitutional requirements for stops, searches and arrests during their Academy training, the Monitoring Team and DOJ worked with BPD to develop a remedial plan: preliminarily re-test each of the subject officers on Fourth Amendment principles, re-train them on those principles if necessary, and then administer a second test post-training. As explained in more detail in the Findings section below, BPD is currently in the process of implementing this remedial plan.

Prompted by concerns expressed by the Office of the Public Defender, the Monitoring Team also conducted a thorough assessment of BPD practices regarding what are known as "*Brady/Giglio*" disclosures. *Brady* and *Giglio* are Supreme Court cases that require the prosecution to provide the defense with information that tends either to exculpate the defendant or impeach the prosecution's witnesses. Certain misconduct by investigating and testifying police officers that is documented in internal affairs files—typically, conduct that implicates officers' truthfulness—qualifies as *Brady/Giglio* material. Accordingly, BPD has a policy that, in every criminal case, it furnishes to the State's Attorney's Office the OPR files pertaining to the involved officers; the State's Attorney's Office, in turn, makes an independent decision about which information to disclose to the defense.<sup>3</sup>

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<sup>3</sup> The State's Attorney's Office is a state agency that is independent of both BPD and the City. It is not a party to the Consent Decree. Therefore, the Court and the Monitoring Team do not have the authority to review the *Brady/Giglio* practices of the State's Attorney's Office. Their authority is limited to reviewing the *Brady/Giglio* practices of BPD. BPD's practices, which are at the "front end" of the *Brady/Giglio* disclosure process, are important because, without front-end disclosure to the State's Attorney's Office, the State's Attorney's Office, which is at the "back end" of the

In its review of BPD's *Brady/Giglio* disclosure practices, the Monitoring Team identified two principal issues. First, as established in recent proceedings in a case tried in Baltimore City Circuit Court, BPD, in the past, granted officer requests to expunge OPR-sustained findings of misconduct that were "administratively closed" and thus did not result in adjudication by a trial board. These are cases in which (1) OPR determined that a violation of BPD rules occurred and recommended discipline, (2) the accused officer did not accept the finding and elected to have the matter adjudicated by a trial board, (3) prior to the trial board hearing, BPD-Legal and the Commissioner or his designee decided to close the case for "administrative" reasons (because the file was expunged, the reasons for the administrative closure are unknown), (4) BPD treated the administrative closure as a "not sustained" finding, and (5) after the requisite three-year period had elapsed under the Law Enforcement Officers' Bill of Rights ("LEOBR"), the officer requested expungement of the file and BPD granted the request. The result of this past practice—and it is unclear whether the practice was limited or widespread—is that, in criminal cases involving officers who had OPR-sustained findings of misconduct that were administratively closed and subsequently expunged, the defense has not been receiving the officers' expunged files because those files no longer exist. The expungement of these files is a problem under LEOBR because LEOBR does not authorize the conversion of sustained-but-administratively-closed findings to "not sustained" findings, nor does LEOBR authorize the expungement of administratively closed cases. (Note that the Consent Decree precludes OPR from continuing to "administratively close" cases (CD 344.k.v.). Correspondingly, the expungement of the OPR files is a problem under *Brady/Giglio* because the facts giving rise to OPR's sustained findings might cast doubt on the subject officer's credibility in the criminal case and, if they do, the defendant is entitled to know and use them in support of his defense.

The second issue the Monitoring Team identified in its review is guidance from the City Law Department that permits defense counsel to receive information about officer misconduct from OPR files, but arguably prohibits defense counsel from obtaining actual copies of the files. As several Baltimore City Circuit Court judges have ruled in recent months, that guidance is flawed because it violates the rules of criminal procedure in Maryland. The rules require the prosecution to provide actual copies of the files to the defense.

Within the past two months, the Monitoring Team and DOJ have raised both of these issues with BPD and the City and have discussed how to resolve them.

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process, cannot fulfill its constitutional obligation to provide *Brady/Giglio* material to the defense.

On the issue of prohibiting defense counsel in criminal cases from obtaining copies of officers' OPR files, the City Law Department clarified for the State's Attorney's Office at the end of December 2018 that its guidance should not be taken to suggest that the City and BPD believe that copies should not be provided to defense counsel. In the next reporting period, the Monitoring Team and DOJ will work with the City and BPD to revise the City Law Department's guidance so that it clearly explains City/BPD policy on the provision of copies to defense counsel.

Resolving the *Brady/Giglio* issues arising from the expungement of sustained-but-administratively-closed findings will be more difficult. The City and BPD have tentatively agreed with the Monitoring Team and DOJ that the City Law Department will need to revise its guidance to BPD, and that BPD will need to revise its corresponding guidance to officers, to make clear that an officer's affirmative obligation to provide information about the officer's OPR matters to state and federal prosecutors in criminal cases in which the officer is involved extends to *all* OPR matters, regardless of outcome—*i.e.*, pending, closed *and* expunged matters—so that prosecutors can make fully informed decisions about disclosure.

Beyond that, BPD must find a way to address the repercussions from the now-terminated practice of expunging administratively-closed-but-sustained findings of misconduct. That is, BPD must devise an effective system for proactively locating and disclosing to the State's Attorney's Office and federal prosecutors expunged OPR files that involve administratively-closed-but-sustained findings. BPD must develop this system to satisfy its *Brady/Giglio* obligations in pending and future state and federal prosecutions, as well as in response to requests made by the defense in post-conviction proceedings in prior prosecutions.

In addition to modifying the City Law Department's *Brady/Giglio* guidance to BPD and addressing the problems spawned by the expungement of administratively-closed-but-sustained findings of misconduct, BPD—with input from the Monitoring Team, DOJ, and community members—will develop and issue a formal *Brady/Giglio* disclosure policy in the second monitoring year, as contemplated by Paragraph 393 of the Consent Decree. Coupled with the revisions to the City Law Department's *Brady/Giglio* guidance, the development of this policy holds out the promise of turning BPD into one of the more proactive, forward-thinking law enforcement agencies in the country on *Brady/Giglio* requirements.

## FINDINGS

BPD and City leadership continue to demonstrate a firm commitment to implementing the reforms required by the Consent Decree. BPD's Consent Decree compliance team has worked diligently with the Monitoring Team and DOJ to attempt to meet the requirements of the First-Year Monitoring Plan. The new, revised policies BPD is issuing are a marked improvement over the old policies. The ambitious training program BPD is seeking to develop, with technical assistance from the Monitoring Team, DOJ and other experts, similarly marks a welcome departure from past practice. BPD is also obtaining a firmer, more comprehensive understanding of how much it will need to do to transform its Office of Professional Responsibility, fulfill its staffing needs (especially in the Patrol Division, OPR and the Training Academy), and overhaul its IT systems to enter the modern era of data-driven policing.

However, at the one year mark, BPD is still near the beginning of the reform process. It remains focused, as it must, on the foundational work of policy and training reform. Even then, although policy reform is well underway, training reform is just getting started. For most Consent Decree requirements, it is thus too soon to begin gauging compliance because compliance efforts have not yet begun, nor under the First-Year Monitoring Plan were they required to have begun. BPD nonetheless deserves credit for making reasonable progress on each requirement on which it has commenced work.

In the first semiannual report, the Monitoring Team observed that, while BPD and City leadership should be commended for their willingness to reform, there were concerns about BPD's capacity for reform. Six months later, those concerns have not abated. To a degree, they have been exacerbated. That is because BPD has been without a permanent, confirmed leader for many months. The extended absence of permanent leadership has made it that much more difficult to initiate the culture change that the Consent Decree envisions.

The monumental challenges that lay ahead six months ago still lay ahead today. One such challenge is revamping antiquated technology and ensuring that BPD personnel use the new technology properly—to record stops, searches, arrests, and uses of force; to supervise and evaluate junior officers and intervene when there are missteps and policy violations; and to analyze aggregated data to assess and improve both individual officer performance and performance across the Department, districts and specialized units. Another challenge is to develop and execute a comprehensive staffing plan that will increase the number of officers in the Patrol Division, the Training Academy and OPR, reallocate personnel from various

specialized units, and civilianize certain functions that need not be performed by sworn officers. Yet another challenge is transforming OPR so that it consistently receives complaints more openly and with fewer impediments, communicates better with complainants, conducts more robust investigations, and makes fact findings and disciplinary recommendations based on fair, unbiased evaluations of evidence.

Whether BPD is making measurable improvements in these and other areas will be the subject of future reports, once there has been time for the foundational reforms now underway to take root. In this report, the Monitoring Team continues to focus on BPD's progress toward implementing the foundational reforms.

This section sets forth the Monitoring Team's findings regarding BPD's progress to date in nearly every area of the Consent Decree. For each area, the Monitoring Team explains (1) what BPD will be required to do over the long term and what BPD has been required to do under the First-Year Monitoring Plan, (2) what progress has been made and whether it is reasonable or not, (3) the challenges facing BPD, and (4) immediate next steps. It bears repeating that the Monitoring Team is *not* evaluating BPD's progress toward satisfying each and every paragraph and each and every requirement within each area of the Consent Decree. Again, that kind of report card would not reveal much, if anything, about BPD's performance at this point in the reform process. The Monitoring Team instead assesses BPD's progress on the limited number of Consent Decree requirements that are included in the First-Year Monitoring Plan in each area, and then describes the road ahead.

This section begins in the areas of the Consent Decree that present perhaps the most pressing threshold challenges facing BPD: Misconduct Investigations and Discipline, Technology, and Staffing. BPD must ensure that its officers act with unimpeachable integrity in order to fulfill its mission and win the public's trust, must design and implement IT systems necessary for policing in the 21<sup>st</sup> century, and must hire and retain a sufficient number of qualified, ethical officers to police effectively. This section next addresses Training—a critical area—followed by areas where DOJ found or expressed concerns about a pattern or practice of constitutional violations: Stops, Searches and Arrests; Impartial Policing; Use of Force; Transportation of Persons in Custody; and First Amendment Protected Activities. This section concludes by assessing BPD's progress in other areas of the Consent Decree.

## **Misconduct Investigations and Discipline**

The new policies that BPD is formulating in other areas of the Consent Decree will mean little if BPD does not hold all officers accountable for following them. As Paragraph 329 of the Consent Decree explains, “[a] robust and well-functioning accountability system in which officers are held to the highest standards of integrity is critical to BPD’s legitimacy and a priority of the Department.” The need for BPD to repair its Office of Professional Responsibility and establish a rigorous, effective accountability system is at the heart of the Consent Decree reform effort. Conversations with community members continue to focus on BPD’s ability to effectively police itself, underscoring that a properly functioning OPR is essential to re-establishing the community’s trust.

As the Monitoring Team observed in its previous report, the Misconduct Investigations and Discipline section of the Consent Decree is the longest and most comprehensive, spanning 87 paragraphs and 38 pages. It covers the location, independence, resources and authority of OPR (CD 330-34); the process for receiving complaints, classifying them, and communicating with complainants about them (CD 335-42); requirements for conducting fair, thorough, reliable misconduct investigations and making misconduct determinations (CD 343-58); requirements for handling and referring allegations of criminal misconduct (CD 359-71); the lodging of disciplinary charges, the administration of disciplinary hearings, and the imposition of discipline (CD 372-88); the process for community-centered mediation as an alternative to investigation for certain minor allegations of officer misconduct affecting civilians (CD 389-91); record-keeping for misconduct investigations (CD 392-95); measures for ensuring transparency, including issuance of quarterly public reports of aggregate data (CD 396-405); a testing program designed to evaluate the efficacy of the civilian complaint intake process (CD 406-08); and training of OPR investigators and supervisors (CD 409-15). The ultimate goals of the Consent Decree’s provisions implicating OPR are the full, fair, objective, and timely investigation of all potential officer misconduct; the rigorous review of all misconduct investigations; and an impartial, transparent, uniform process for the imposition of discipline and corrective action where appropriate.

Since the last report, the Monitoring Team’s meetings and interactions with BPD and DOJ have intensified. Monitoring Team members continue to visit OPR to engage with OPR personnel and observe operations. The Monitoring Team’s recent work has reinforced its firmly held view that OPR is in need of far more fundamental structural reform than contemplated at the time the First-Year Monitoring Plan was prepared. Consequently, despite good faith progress by BPD on early drafts of required OPR policies, more time will be needed to resolve basic deficiencies in OPR

operations. Without modifying OPR's structure to make the office run more efficiently, the revised policies and investigator training that the Consent Decree requires will not be as effective as intended.

Although the process for revising OPR's policies and procedural manual has been slowed to accommodate the need for organizational reform within OPR, BPD has nonetheless made strides. It has now finalized a revised policy on complaint intake, complaint classification, and communication with complainants, as well as a complaint classification protocol. Additionally, as explained in the first report, BPD has sought to remove prior impediments to the filing of misconduct complaints and reportedly has stopped detailing OPR investigators to non-OPR duties. These are changes that promise to make OPR more accessible to Baltimore residents and staffed more effectively to conduct its important work.

### **Areas of Progress**

In the past six months, BPD has made substantial progress toward revising policies and procedures for the intake and classification of complaints. Baltimore residents and DOJ identified deficiencies in the intake and classification process as areas of concern during the investigation that led to the Consent Decree. BPD worked diligently with the Monitoring Team and DOJ to finalize revisions to both Policy 306, which addresses complaint intake, complaint classification and communication with complainants, and OPR's Classification Protocols.

BPD completed drafts of Policy 306 and the Classification Protocols on October 31, 2018 and then made them available to for public comment through November 30, 2018. BPD then incorporated the public's feedback and produced final versions of both documents, which the Monitoring Team approved by filing a notice with the Court on December 28, 2018.

As noted in the last report, BPD also has taken steps to improve the complaint intake process. Previously, individuals who wanted to lodge misconduct complaints against police officers had to make their complaints in person, sign them, and have them notarized. BPD's revised policies have removed these impediments. Additionally, BPD has changed its website to facilitate the acceptance of complaints online and via email and has established a dedicated telephone number for individuals to call to make complaints.

## Challenges Ahead

In addition to revamping the structure of OPR to improve the fairness, objectivity, thoroughness and timeliness of its investigations, *see* ECF No. 26-1 (first semiannual report), at 34-36, OPR continues to face short- and long-term challenges that will test BPD leadership.

### *OPR Relationship with the Civilian Review Board*

Baltimore's Civilian Review Board ("CRB") is a separate, independent entity established by state law. Composed of one community member from each of the nine police districts in the City, the CRB receives and is authorized to investigate complaints that allege the use of excessive force, abusive language, harassment, false arrest, and false imprisonment by police officers. The CRB may also make disciplinary recommendations to the BPD Commissioner, review OPR investigations, and review and make recommendations about BPD policies and procedures.

Although OPR and CRB must interact and coordinate with each other to fulfill their respective statutory roles, the actual process for guiding such interactions has never been defined. Indeed, no protocol for communication or coordination between the entities has ever existed. The process of establishing such protocols requires careful consideration of applicable law, including the Maryland Public Information Act, Md. Ann. Code, Gen'l Provisions §§ 4-311, et seq., and case law interpreting the Act; the Law Enforcement Officer's Bill of Rights, Md. Ann. Code, Public Safety §§ 3-101, et seq.; and Public Local Law §§ 16-41, which is the enabling statute for the CRB.

Establishing an effective information-sharing system is vital to the work of the CRB. Without ready access to routine police records like incident reports and body-worn camera footage, and without OPR casebooks that include additional records like witness interview recordings, CRB cannot fulfill its statutorily-mandated civilian oversight function. Establishing an effective information-sharing system is also important for BPD. Without accepting and facilitating meaningful civilian oversight, BPD will be hard-pressed to achieve the Consent Decree's goal of rebuilding community trust.

Over the past six months CRB and OPR have engaged in good faith discussions with each other, and with DOJ and the Monitoring Team, about how to coordinate the exchange of information to ensure that each can fully, capably and responsibly carry out its respective duties. OPR and CRB have made tangible progress in the development of information-sharing protocols, but the progress has been slow. The information-sharing protocols were initially scheduled to be completed at the same

time as Policy 306 and the OPR classification protocols, but because of the difficulties encountered, the Monitoring Team and the parties received Court approval to put the information-sharing protocols on a separate track. Work is ongoing, and the protocols are now scheduled to be completed by the end of March 2019, just after the beginning of the second monitoring year.

Throughout the process of developing the information-sharing protocols, it has become clear to the Monitoring Team that, over many years, a lack of trust has developed between OPR and CRB. While the entities are working to overcome that history of mistrust, it has contributed to the slower pace of progress.

The Monitoring Team also observes that recent developments have bogged down progress, including the lengthy, recently resolved debate over whether CRB members had to sign a new confidentiality agreement prepared by the City Law Department in order to receive OPR files. Although OPR, CRB, DOJ and the Monitoring Team continued to work on developing the information-sharing protocols while that dispute persisted, the fact that OPR stopped sharing investigative files with CRB until the dispute was resolved produced some uncertainty about the utility of the working sessions.

An unfortunate by-product of the difficulties that have plagued the development of the OPR-CRB information-sharing protocols is that BPD has not yet been able to home in on improving the quality and integrity of OPR investigations, which the Consent Decree prioritizes. In the next reporting period, the Monitoring Team will insist that the parties intensify their focus on overhauling how BPD conducts and adjudicates misconduct investigations, even as discussions about ameliorating the OPR-CRB relationship continue.

### *Data and Technology*

By concentrating on Policy 306, complaint classification protocols, and OPR's relationship with CRB, BPD has not devoted much time to changing the way it utilizes IAPro, the platform used to record and store information about misconduct complaints and investigations. The past six months have highlighted the need for OPR to re-evaluate the way it uses IAPro so that it can better track information and dynamically manage cases under investigation. BPD will have to discontinue operating the old, tenuously supported version of the IAPro that it now uses and upgrade its server infrastructure. BPD will also need to re-assess OPR practices to make better use of IAPro's capabilities. Indeed, as the Monitoring Team recently advised BPD, CRB and DOJ, upgrading BPD's version of IAPro could, among other

things, readily resolve many, if not all, of the impediments to timely OPR-CRB information-sharing that have bogged down discussions about OPR-CRB protocols.

The Monitoring Team looks forward to providing sustained technical assistance on this front. It notes that most of the challenges OPR faces with respect to IAPro are not “technology problems.” Instead, they are IT governance problems. They stem from how BPD’s configuration of IAPro reflects or accommodates OPR’s deficient day-to-day business practices.

### *Staffing and Personnel*

As the Monitoring Team previously observed, constant turnover in the command staff that oversees OPR, as well as in the leadership of OPR itself, muddles and delays the clear, definitive guidance that OPR investigators must receive about the importance of their performance to the success of the Consent Decree. The rapid turnover in Commissioners—and the absence of a permanent Commissioner for many months—has presented an especially demanding test. Each Commissioner has had unique views on the structure, staffing and unit composition of OPR, and all have acted on those views, making it difficult to monitor, provide technical assistance on, and work with the parties to revise OPR policies and practices. BPD’s compliance team has continued to work diligently with the Monitoring Team and DOJ to implement the reforms required in the First-Year Monitoring Plan, but the Monitoring Team has concerns that the changes in administration, and the months-long failure to hire a permanent Commissioner, are adversely affecting the pace of BPD’s efforts to reform OPR.

Once new leadership is in place, BPD also must fill the need for more investigators, supervisors and data analysts in OPR. As the Staffing Study found, OPR is operating at a deficit in personnel.

### *Fallout from the Gun Trace Task Force Scandal*

BPD must continue to deal with the fallout from the convictions of eight officers from its now-disbanded Gun Trace Task Force. The officers were found to have routinely stolen and extorted money and drugs from civilians, often after making blatantly unconstitutional stops, searches and arrests.

BPD will not be able to move past the GTTF scandal, or to prevent a similar scandal, without attempting to understand how it happened. That will not be easy. It will require OPR to conduct thorough investigations of other, non-charged officers who were implicated in wrongdoing during the GTTF trial. Ideally, it should also

require a full-blown investigation of the root causes of the scandal by an independent entity, with BPD's full support and cooperation. Independent entities have performed similar "autopsies" of scandals in other police departments, and have issued worthwhile prescriptions for remediation. The Monitoring Team will continue to evaluate how BPD chooses to respond to the GTTF scandal.

More broadly, the GTTF scandal underscores the need to develop a robust, electronically-maintained Early Intervention System ("EIS"). A well-functioning EIS should allow supervisors to address and correct problematic officer behavior before it becomes entrenched and habitual. The development of a comprehensive EIS is a Consent Decree requirement, but a new EIS will not be implemented until BPD implements reforms in its IT systems and IT governance.

Relatedly, the GTTF scandal highlights the need for BPD to promote only qualified, conscientious officers to supervisory positions and to effectively train supervisors—from sergeants to command staff—how to lead. Only well-trained, principled leaders can prevent or ferret out and correct improper behavior and shift Department culture in the way the Consent Decree envisions.

### **The Next Six Months**

As a new Commissioner takes command of BPD, the Monitoring Team will be communicating with him about the operational priorities identified in the first year of monitoring. Among those will be the critical need to revamp OPR's structure, improve its operations, and ensure that it holds officer accountable for misconduct.

BPD has begun drafting provisions in OPR's procedural manual on complaint intake, complaint classification and communication with complainants. The final draft is due February 22, 2019, followed by a period of collaboration with the Monitoring Team and DOJ that will extend through May 3, 2019, and subsequently by a public comment period that will conclude on June 7, 2019. The Monitoring Team will approve or disapprove the manual provisions by August 2, 2019.

In the next six months, BPD also will revise both policies and provisions in the OPR manual that address the investigative process itself. Work will begin in early 2019, with a final draft due to be issued for public comment on May 3, 2019. The Second-Year Monitoring Plan will establish the remaining deadlines for adoption of the policies and manual provisions on OPR investigations.

In the next six months, BPD also will develop a *Brady-Giglio* disclosure policy—that is, a formal policy governing the provision of OPR files in criminal cases

involving investigation or testimony by BPD officers who have been investigated for misconduct by OPR. Relatedly, as explained in the Summary of Monitoring Team Activities section above: (1) the City Law Department must revise its guidance on *Brady/Giglio* disclosures to both the policy on providing defense counsel copies of OPR files and to the policy that affirmatively obligates officers to provide prosecutors information on all of their OPR cases, whether closed, pending or expunged; and (2) BPD must develop a reliable system for locating improperly expunged OPR records with administratively-closed-but-sustained findings of misconduct so that prosecutors can fully discharge their *Brady/Giglio* obligations in criminal cases involving officers who have obtained such expungements.

## Technology

Paragraph 267 of the Consent Decree requires BPD to “provide its officers with the Technology necessary to implement the Material Requirements of this Agreement . . . [including] the data collection and review required by this Agreement . . .” Paragraphs 268-278 then outline the Consent Decree’s technology requirements. Those provisions first require BPD and the City to complete a Resource Study (CD 268, 270). The Resource Study identifies the systems BPD currently uses to maintain data and track Departmental performance, describes the current state of those systems and explains why they are inadequate to serve BPD’s needs, and makes preliminary recommendations for improvements. Following completion of the Resource Study, BPD and the City must produce and submit a Resource Plan (CD 269-70, 272). The Resource Plan, which must be updated annually (CD 275), is intended to address a number of subjects, including how BPD will provide the necessary computer equipment and access required for personnel to discharge their duties, the implementation of a centralized records management system, and the development of an Early Intervention System (“EIS”). BPD is required to use its best efforts to implement the Resource Plan (CD 274).

The Technology provisions of the Consent Decree also require BDP to revise its policy on body worn cameras (CD 271) and to disclose to the public the acquisition of certain new equipment or activity to be used in enforcement activities (CD 276-78). Other provisions of the Consent Decree, in the Supervision section, require BPD to upgrade its Early Intervention System consistent with the Resource Plan (CD 312-17). The EIS must “include a computerized relational database that will be used to collect, maintain, integrate, and retrieve Department-wide, District-wide and Unit-wide data, as well as data for each officer.” The purpose of this upgraded EIS relational database is to “capture all information necessary to ensure supervisory awareness and early identification of potentially problematic individual and Department-wide conduct or signs of stress or other behavior that would benefit from being addressed.”

While certain technology requirements are identified in a section of the Consent Decree dedicated to technology, other requirements are woven throughout the Consent Decree. In particular, data collection and data analysis are required in nearly every area, not only to enable the Monitoring Team to assess compliance, but to enable BPD leadership to better manage the Department. Without technology improvements, BPD simply will not be in a position to come into compliance with the Consent Decree. As the Consent Decree states, compliance is truly “dependent upon BPD acquiring or developing the appropriate technology.” (CD 267).

## Areas of Progress

### *Resource Study*

BPD completed the Resource Study near the end of the first reporting period (CD 268, 270). The Monitoring Team filed its notice of approval on June 22, 2018. The Resource Study was prepared by the National Police Foundation. In preparing it, the NPF team conducted interviews and observed business processes, reviewed departmental policies and other process documentation, and inventoried all BPD IT systems.

The Resource Study thoroughly describes the current state of BPD's IT systems and identifies the issues with those systems from both an IT and business process perspective. Issues identified included:

- Data silos, with varying data reporting practices across the Department
- Lack of necessary IT resources
- Lack of a centralized IT strategy driven by the mission of BPD and the goals and priorities set by BPD leadership
- Very little IT training
- Lack of IT policies and procedures
- Lack of staff capacity to implement the technology and data requirements of the Consent Decree

### *Resource Plan*

In response to the findings in the Resource Study, BPD was required to prepare a Technology Resource Plan. (CD 274, 275). BPD complied with this requirement, and the Monitoring Team filed its notice of approval on December 1, 2018. *See* ECF No. 164. The Resource Plan, developed by Gartner Consulting, is thorough and thoughtful in its approach. Not only does it identify specific IT system needs (*e.g.*, Records Management System, staffing systems), but also address foundational business and management needs, including the need for proper IT governance, organizational change management, and IT staffing and resources. The Resource Plan also thoroughly addresses data management, governance and integration, which will be critical to Consent Decree compliance.

### *Body-Worn Camera Policy*

In the past six months, BPD incorporated public comments into, and completed revisions of, its body-worn camera policy. Because the revisions satisfy the requirements of Paragraph 271 of the Consent Decree, the Monitoring Team filed its notice of approval in September 2018.

BPD also prepared a training plan for both officers and recruits on the BWC policy, procedure and operation. The Monitoring Team filed its notice of approval in January 2019. The refresher BWC training for officers will begin in 2019 and will be delivered through BPD's electronic platform, PowerDMS. The recruit training, which will be conducted in person at the Academy, will also begin this year.

### *Upgrading IAPro*

As explained above, IAPro is the system BPD uses to track both use of force incidents/investigations and misconduct investigations/discipline. While BPD has not yet upgraded its IAPro functionality, it has made certain strides. BPD has installed new Storage Area Network (SAN) hardware and is ready for its IAPro vendor to convert its existing, outdated IAPro database from Oracle to Microsoft SQL. The vendor will begin the work as soon as the responsible BPD employees have passed their background checks.

Once the database conversion is completed, the IAPro vendor will upgrade IAPro to the most recent non-customized version, which will allow BPD to utilize IAPro's full functionality, including all available reporting capabilities.

The Monitoring Team has recommended that BPD document and walk through its user requirements with IA Pro instructors so that those instructors can advise BPD about how to best utilize the system to meet those requirements.

## **Challenges Ahead**

While BPD has made great progress by producing its Resource Study and developing its Resource Plan, the difficult work is just beginning. BPD and the City must commit significant resources to implement the Resource Plan. The Plan estimates that approximately \$59 million to \$65 million be required over the next four years to implement its recommendations and remedy the consequences of the poor IT governance practices that have plagued BPD for decades. Those cost estimates include the costs to plan, procure and implement all recommended hardware, software and staff/resources.

While acquiring and implementing the proper hardware and software are important to the success of the project, identifying the necessary staff and resources will be equally critical. BPD and the City do not currently have sufficient staff to see the Plan through to fruition. The Plan specifically identifies inadequate staff as an issue, and recommends that BPD and the City create a Consent Decree IT Task Force with a specific staffing and organizational structure. Creating the recommended Task Force as quickly as possible, while finding the right balance between hiring/contracting with IT professionals and utilizing sworn/operational subject matter experts, will be vital to successful Plan implementation. So, too, will be addressing all of the shortcomings in IT governance identified in the Resource Study and described in the Monitoring Team's first semiannual report. *See* ECF No. 126-1 at 44-45.

### **The Next Six Months**

The Monitoring Team will closely follow the steps the City and BPD take to acquire the resources needed to establish the Consent Decree IT Task Force and implement the Resource Plan. Over the next six months, implementation will include development of a process for procuring the equipment and technology required to meet the requirements of Paragraph 276 of the Consent Decree. Moreover, implementation must include establishing the IT governance and organizational change management structure called for in the Resource Plan.

In the next six months, BPD also will refine curriculum for training on the use of body-worn cameras.

The Monitoring Team looks forward to seeing BPD put in place an IT foundation that will enable the Department to transition into the era of modern, data-driven policing. As the Court and the Monitoring Team have said repeatedly, BPD must make that transition in order to achieve compliance with the Consent Decree. It must provide officers the tools they need to deliver quality service to the community and must enable data-driven decision-making and management by command staff.

### **Staffing, Performance Evaluations and Promotions**

BPD agreed to complete a comprehensive Staffing Study to determine the appropriate number of sworn and civilian personnel needed to effectively provide police services, enable supervision, and satisfy the requirements of the Consent Decree (CD 428). Based on this Staffing Study, BPD must develop a Staffing Plan that will ensure a sufficient number of deployed personnel to, among other things: implement and sustain effective community and problem-oriented policing; conduct timely misconduct investigations; supply sufficient patrol officers to each District without resorting to drafting, except under unforeseeable circumstances; promote Unity of Command when feasible; provide a sufficient number of supervisors; and account for BPD's and the City's existing and projected resources (CD 429). BPD must implement the Staffing Plan but may do so in a phased manner that reflects the City's and BPD's fiscal resources (CD 430).

As for performance evaluations and promotions, the Consent Decree obligates BPD to have supervisors meet with officers to discuss their annual performance reviews, which will include written discussions of the officer's performance during the rating period, any areas for growth and achievement, and any areas requiring further training and supervision (CD 431). Each officer's direct supervisor must use a formalized system to document annual performance evaluations for each officer and quarterly evaluations of probationary employees by their direct supervisor (CD 432). In addition to these formal evaluations, supervisors must meet with their subordinates on an ongoing basis to discuss performance and must document their communications regarding performance challenges and areas for growth (CD 433). The Consent Decree further requires BPD to conduct performance evaluations of each supervisor (from first line supervisor through commander), which will include assessments of ability and effectiveness in conducting performance reviews, including monitoring, deterring and addressing misconduct by officers they supervise (CD 434). Finally, BPD will ensure its promotional system has clear criteria prioritizing effective, constitutional, and community-oriented policing as factors for promotion (CD 435).

BPD met the deadlines for the Staffing Study in the First-Year Monitoring Plan. With the support of DOJ and the Monitoring Plan, BPD requested and received from Judge Bedard an extension of the deadlines for the Staffing Plan because the new Commissioner must be given time to develop a vision and weigh in on how the Department is staffed. BPD will complete the Staffing Plan in Year Two, likely in the late summer of 2019. BPD has not yet commenced efforts to comply with the other provisions of the Staffing, Performance Evaluations and Promotions section of the Consent Decree, as the First-Year Monitoring Plan did not require BPD to do so.

## Staffing Study

As explained in the Monitoring Team's first report, BPD contracted with the National Police Foundation to perform the Staffing Study. NPF began work on the study in February 2018, shortly before the Court approved the First-Year Monitoring Plan. Thereafter, the Monitoring Team, BPD, NPF and DOJ had bi-weekly phone calls to discuss the progress of the study, as well as the challenges it presented. During these discussions, the Monitoring Team raised questions and gave advice to help ensure compliance with the requirements of the Consent Decree. Additionally, the Monitoring Team and NPF met with a focus group of rank-and-file officers and first-line supervisors in April 2018 to solicit their ideas and concerns regarding Departmental staffing. NPF and BPD completed the Staffing Study in the summer of 2018 and submitted it to DOJ and the Monitoring Team for review.

In August 2018, the Monitoring Team reported to the Court its assessment of BPD and NPF's efforts, and on September 11, 2018, it filed with the Court a notice of approval of the Staffing Study. In the notice of approval, the Monitoring Team identified several concerns, including making sure that (1) Patrol Division staffing is tailored to BPD's unique needs, including its community policing needs, (2) BPD adequately accounts for the need for more first-line supervisors and Unity of Command, and (3) BPD adequately accounts for the need for additional personnel in both OPR and the training academy. The Monitoring Team understood then, and understands now, that the Staffing Plan will address these concerns.

The Monitoring Team's concerns about the conclusions of the Staffing Study arise from questions about the accuracy and completeness of BPD's data. To take one example, the Patrol Division workload analysis that the Study relied on was driven by 911 calls-for-service and associated computer aided dispatch ("CAD") data. However, a key component of this type of workload analysis is the amount of time it takes an average officer to handle a call, which is based on the time the call is dispatched and the time the officer clears the call with dispatch. This particular data point, which is dependent on officers consistently and accurately recording when a call is completed, was missing from a number of BPD records. Moreover, the data NPF examined was pulled from manually created reports and logs, which added a level of complication to the analysis. Relevant time-to-complete data for units outside of Patrol was even more limited: the aggregate number of cases was available but estimates on how long it took to investigate various types of cases was not. As a result, NPF, where possible, was forced to use estimates from other studies and standards suggested by academic literature.

Accurate staffing projections are dependent on accurate data. For the Staffing Study, it is open to question whether BPD's data was accurate and complete. Nevertheless, the Staffing Study does contain indicia of internal validity and appears to adequately identify BPD's current staffing shortfalls and future staffing needs. Moreover, as noted, the Staffing Plan should account for any gaps in the data examined in the Staffing Study.

## **Challenges Ahead**

In the short-term, as the Monitoring Team explained in its first report, officer shortages (particularly in Patrol) and BPD's attrition rate in recent years will make it difficult to devise a realistic Staffing Plan that satisfies the community-oriented policing objectives of the Consent Decree. The need for more officers in Patrol, OPR and Training is acute. As to the Training Academy, the need is also immediate. As the reform process begins to transition from policy revision to training, BPD must commit the resources needed to satisfy the training requirements of the Consent Decree.

Over the long-term, the biggest challenge will be implementing the Staffing Plan in a timely manner given the sizeable shortage of sworn officers. Part of that long-term challenge will be to remedy the critical shortage of officers in the Patrol Division. To make up for the shortage in recent years, BPD has required patrol officers to work extended hours on a routine basis. These regular overtime assignments have had a significant adverse effect not only on BPD's budget, but on officer morale. In both focus group sessions and informal conversations, the principal complaint of rank-and-file officers and first-line supervisors is the staffing shortage in the Patrol Division. Fortunately, the recent contract between the City and the FOP may help alleviate the problem, even though deploying more patrol officers is the only real way to fix it. The contract replaces the 10-hour shift/four days per week schedule with an 8-hour shift/five days per week schedule, and tightens up procedures around medical leave. The result should be increased, non-overtime coverage across the Department. The Staffing Plan must take into account the new shift schedule and the corresponding revision to the Patrol Division's mandatory posts.

The Staffing Plan must also carefully consider the Staffing Study's recommendations concerning civilianization of certain functions currently performed by sworn personnel, as well as the Staffing Study's recommendations for improvements in technology and process. It is not just a matter of having the right number of people working, but also having them do the right work. There is no doubt that, with civilianization and technology and process improvements, BPD can

redeploy certain sworn personnel to meet both Departmental needs and the demands of the Consent Decree.

### **The Next Six Months**

Beginning in August 2018, the Monitoring Team and the parties began regularly scheduled meetings to discuss development of the Staffing Plan. Those discussions continue. BPD also has begun working on civilianization plans. Those efforts also continue.

The initial draft of the Staffing Plan is now due March 29, 2019. The Second-Year Monitoring Plan will include subsequent deadlines. It is anticipated that the Plan will be finalized and approved in August 2019. The Plan should address the above issues and determine the proper allocation of sworn and civilian positions across the Department. For BPD to become the organization that the Consent Decree and community members envision, it will take the right number of personnel, in the right assignments, doing the right work.

## Training

This report summarizes BPD's recent progress on developing new and revised policies in a host of areas covered by the Consent Decree. These revamped policies will be meaningless if they are not fully understood, embraced and followed by BPD officers. Effectively training officers on the revamped policies is, therefore, essential to the Consent Decree enterprise. Training is the means by which BPD will translate new, Consent Decree-compliant policies into practice. For any new policy to take hold, BPD will need to create and implement instructional programs that properly facilitate the acquisition and application of new skills and information, effectively communicate the Department's expectations, and cogently furnish clear rules for holding officers accountable for professional, constitutional policing.

The Consent Decree expressly recognizes that "proper, effective, and comprehensive training is a necessary prerequisite to constitutional policing." (CD 291). It contains a number of specific training requirements on stops, searches, and arrests (CD 67–68); crisis intervention (CD 106–08, 112–113); use of force (CD 166–68); transportation of persons in custody; (CD 238); First Amendment-protected activities (CD 251); sexual assault investigations (CD 259); supervision and management (CD 303, 308–10); and misconduct investigations (CD 409–15). BPD must also enhance its Field Training Officer Program for new Academy graduates. (CD 301–02).

Even where the Consent Decree does not set forth specific training requirements, training is necessary to communicate new policies and performance expectations to BPD officers. For instance, because BPD recently completed revisions to its body-worn camera policy, it must provide instruction to its officers on that policy in 2019 so that it can hold officers accountable to the revisions.

The Consent Decree also reflects general requirements that address BPD's overall approach to training. Specifically, BPD must ensure that its training programs and Training Academy are "reasonably funded," which includes ensuring sufficient training facilities and "an adequate number of qualified instructors . . . assigned to the training academy." (CD 292, 293). Instructors will be qualified when they "are proficient in their subject matter," proficient in adult learning techniques or instructor experience, and have an adequate performance history. (CD 296).

As the remainder of this section explains, BPD has made some important, early strides in re-fashioning its training system in order to achieve compliance with the Consent Decree. Nevertheless, to develop the type of modern, high-quality training

system BPD needs to achieve compliance, significant work remains as to both specific training programs and the Training Academy overall.

## **Areas of Progress**

### *Changes to Training Structure*

Historically, BPD has scheduled each officer for in-service training for a two-week period every calendar year. This means that all officers have undergone all of their required in-service training during a single two-week period at some point during a calendar year. When officers complete that two-week block of training, they do not attend any further training until the next calendar year.

This once-a-year, two-week training model would pose significant challenges to BPD as it seeks to deliver targeted training on new policies required by the Consent Decree. For one thing, it would substantially delay the effective date of the new policies. Policies approved now could only be made effective, at the earliest, in early 2020, after all officers have received training on them. Similarly, policies approved in 2020 could only be made effective, at the earliest, in 2021. For a host of logistical and legal reasons, it would be impracticable to make new policies effective for each officer immediately after the officer receives training—that is, to make new policies effective in, say, April, for officers who receive training in March, but to delay making the policies effective for all other officers until after they receive their training. Simply put, BPD cannot effectuate new policies officer by officer; it must effectuate them for all officers at the same time. Doing so under the historical practice of offering a once-a-year, two-week block of training would substantially delay implementation of the policy revisions required by the Consent Decree.

Additionally, because the historical practice of using most of a calendar year to provide training to all BPD officers would prevent BPD from holding certain officers accountable to the new policies for as much as 11 or 12 months after receiving training, officers who receive their training earlier in the year might well forget some of that training by the time the new policies became effective. Training involves the development of perishable skills. An officer who receives training in February 2019 on revised policies that will not go in effect until January 2020, after all officers have cycled through the program, might not effectively retain adequate knowledge of the new requirements.

After discussions with the Monitoring Team and DOJ, BPD recognized the need to change its training structure in light of the Consent Decree. Accordingly, BPD has begun working with the Monitoring Team and DOJ to prepare to conduct Consent

Decree training in rolling, multi-day blocks on different topics throughout the year. As envisioned in the draft Second-Year Monitoring Plan, BPD would offer a two-day training on use of force and aspects of fair and impartial policing mid-year in 2019, another block of training on stops, searches and arrests and additional aspects of fair and impartial policing later in the year, and a final block on the remaining aspects of fair and impartial policing in early 2020. This staggered approach will allow for more rapid completion of training in each area and, as a result, for the policies in each area to become effective more quickly.

The rollout of this staggered approach will be substantially assisted by the use of an electronic learning platform. BPD will be developing and delivering foundational training on each subject through its e-platform, PowerDMS, which will enable BPD to train officers more efficiently on topics suitable for web-based learning and will provide essential groundwork for the more dynamic, interactive, in-person programs that will follow at the Academy.

#### *Changes to Training Approach*

Over the past year, BPD has taken time to evaluate the training programs of other law enforcement agencies, and has committed to adopting paradigms that have proven successful elsewhere. BPD contacted the Los Angeles Police Department (“LAPD”) and arranged for two cadres of BPD staff to attend training at the LAPD Training Academy in September 2018. LAPD developed its training program in the early 2000s, when it was under a consent decree similar to the Consent Decree in this matter. LAPD’s program, which prioritizes active student participation, is considered a model for reform. Members of the Monitoring Team accompanied BPD to the LAPD training. LAPD members are visiting BPD in early 2019 to conduct additional training of officers who are potential candidates for instructor positions at BPD’s Academy.

BPD recently created a Curriculum Coordination Committee (“CCC”) to address the training needs of the Department. The CCC is responsible for prioritizing training needs, eliminating duplication, ensuring instructor competence, certification and skill, and balancing Department priorities. The CCC is comprised of members of the training unit and receives input on training needs from other Department units.

Through consultation with LAPD, the Monitoring Team and DOJ and the work of the CCC, BPD is actively seeking to incorporate interactive, adult-learning principles in its training methods. Using training methods that draw on these principles promises to improve the delivery and the impact of the training BPD officers receive.

As the Monitoring Team and DOJ continue to work with BPD to meet specific short-term requirements, it will also be important for the Monitoring Team and DOJ to provide technical assistance, on a parallel and complimentary track, for the development of a new model for learning and professional development that will serve the needs of the organization in the future.

The new model must be supported by BPD leadership and must feature a professional culture of innovation, enhanced partnerships with academic institutions and other local resources, increased resources, and a state-of-the-art electronic learning platform.

### *Training to Address Departmental Missteps*

Over the past six months, the Monitoring Team has seen evidence that BPD is learning what it takes—and how hard it is—to become a self-correcting agency by using remedial training to respond to missteps. BPD provided in-person training to members of the command staff and delivered e-training to all BPD officers in response to the separate findings of the Monitoring Team and an Independent Review Board that BPD's response to the shooting of Detective Sean Suiter in the Harlem Park neighborhood in November 2017 was rife with both constitutional problems and operational deficiencies. *See* ECF No. 126-1 at 56-67. The Monitoring Team and DOJ provided comments on and approved the curriculum for both the in-person and web-based training. The Monitoring Team, DOJ and Judge Bedar also audited the in-person commander training. The in-person training had certain shortcomings—among other things, it was insufficiently interactive and at times unclear, failed to tie the principles being taught to specific BPD policies, and did not draw directly upon BPD's failures in Harlem Park to teach Fourth Amendment and Incident Command System principles. Nonetheless, the Monitoring Team found encouraging signs of progress. Command staff participants were actively engaged, inquisitive and reflective, suggesting a genuine desire to improve Departmental performance. Community members were invited and took part, which strengthened the quality and impact of the program. And although instructors did not consistently incorporate adult learning techniques (*e.g.*, group discussions around video recordings and written scenarios of real-world events) throughout the program, they did use those techniques effectively for parts of the program.

Separately, BPD is offering remedial testing—and re-training if necessary—to certain probationary officers who allegedly failed to demonstrate adequate comprehension of Fourth Amendment principles during their recruit training. The re-testing phase of this program also suffered from various shortcomings—more

severe shortcomings than the remedial Harlem Park training. The shortcomings included the absence of accountability to adhere to the schedule, as the instructor and certain participants arrived late without consequence; the failure to adequately communicate the purpose of the exercise to participating officers, which led to considerable confusion at the outset and was unfair to the officers; the apparent failure to adequately plan for the session, as officers do not appear to have been told how to dress or what equipment to bring; and the absence of a proper tool for performing the necessary evaluation of officer proficiency, as the test scenarios officers were given were more like re-training than an evaluative test. The Monitoring Team credits BPD for attempting to remedy reported deficiencies in officer knowledge and skills through re-testing and re-training, but its execution of the re-testing/re-training program will require improvement.

## **Challenges Ahead**

### *Leadership and Resources*

As in other areas, the lack of consistent, permanent leadership within BPD has impeded progress in the training function. One consequence is the failure to commit the resources necessary to implement the training requirements of the Consent Decree. Although many individuals within BPD clearly and openly acknowledge the Academy's tremendous resource needs, the Department continues to operate with an Academy staff that is shockingly small. At present, the Academy effectively has one sergeant and two officers, working with one lieutenant and the Consent Decree Implementation Unit, to write comprehensive lesson plans and oversee all Consent Decree training. (A separate, small complement of approximately five officers focuses on Academy training for new recruits.) To state the obvious, it is simply impossible for a small handful of people to prepare and oversee a constant stream of new training for more than 2,500 sworn officers in the near future. As one of DOJ's subject matter experts asserted, and consistent with the Monitoring Team's own experience and observations, there are departments of 150 or 200 officers that have full-time training staffs that are larger than BPD's.

Simply put, BPD will not be able to achieve compliance with the Consent Decree with an Academy staffed as sparsely as it is. Failure to provide the Academy with the resources it needs will not only violates the express requirements of the Consent Decree, (CD 293 ("BPD will ensure that an adequate number of qualified instructors are assigned to the training academy")), but will preclude BPD from meaningfully and effectively implementing the new policies that BPD has developed.

New training staff must be assigned to the Academy full-time. Academy personnel cannot be “detailed” to patrol functions, as they now are. The practice of detailing depletes an already inadequate number of Academy officers. Although the Monitoring Team is mindful of the real-world public safety challenges that BPD faces, BPD must commit the personnel necessary to strengthen a core function like training.

The Academy also needs better facilities. The absence of an adequate physical space for training continues to be an impediment to the professionalization and effectiveness of BPD’s training function. While BPD, the Monitoring Team and DOJ have begun discussions about creating an environment in which BPD officers are offered a professional, modern learning experience (*see* CD 292), BPD has not yet made concrete plans to upgrade its substandard training facilities.

### *Upcoming Consent Decree Training*

The second year of monitoring—and part of the third year as well—will feature a high volume of training on new policies and performance expectations for BPD officers. The development of new lesson plans and the delivery of training on numerous policies and procedures would be a heavy lift for any police department. For BPD, which must simultaneously work to comply with other Consent Decree requirements, the task is daunting. In the second monitoring year, BPD is tentatively scheduled to devise training curricula and train officers on use of force, stops/searches/arrests, fair and impartial policing, and body-worn cameras. Moreover, BPD is scheduled to develop training curricula in the following additional areas, with the training to take place in the third monitoring year: sexual assault investigations, crisis intervention (for recruits, officers, specially-trained crisis intervention officers, and dispatchers), interactions with youth, and community policing.

This is an ambitious agenda for training reform. It is all the more ambitious because, as explained above, the Academy is simultaneously facing a shortage of personnel and altering the way it delivers training by offering different courses at several junctures throughout the year, deploying more interactive adult-learning techniques, and incorporating e-learning.

### **Next Six Months**

In the next six months, BPD will need to design and begin to implement the first “Consent Decree training” program. As explained, that program will address BPD’s revised use of force policies and also cover certain material on fair and impartial policing. The current plan is for this training to begin in spring 2019 and

run for 16 weeks, with four classes of 36 officers completing the course each week. As with other major Consent Decree requirements, a draft curriculum will be issued to the community for feedback prior to finalization. BPD, DOJ and the Monitoring Team are continuing to discuss mechanisms for directly involving community members in the training curriculum.

As BPD moves from curriculum design to implementation, the Monitoring Team and DOJ will evaluate how BPD orients instructors to the curriculum, provide technical assistance as needed, and then audit training sessions to ensure that the instruction aligns with the curriculum and with sound adult educational practices. The next report will provide an update on BPD's progress.

In the next six months, BPD also will begin drafting curriculum for the second major Consent Decree training program of 2019, which will address revised policies on stops, searches, arrests and voluntary police-community interactions, as well as related policies on fair and impartial policing. It is currently contemplated that this training will begin in late summer/early fall 2019 and take approximately 16 weeks to complete. Thus, in the next reporting period, BPD is expected to make significant progress toward finalizing the curriculum for this second Consent Decree training program.

As BPD ramps up its training program, it must take both the short view and the long view. Over the short term, BPD must satisfy the immediate requirements of the current monitoring plan. Over the long term, BPD, working in collaboration with academic institutions and community representatives, must aspire to realize a new vision for officer learning and development, one that will promote a culture of professionalism and furnish clear, practical guidance on effective, constitutional policing.

## **Stops, Searches, Arrests and Voluntary Police-Community Interactions**

In recognition of the importance of the Consent Decree's requirements on stops, searches, arrests and voluntary police-community interactions ("S/S/A"), the Consent Decree's provisions addressing those interactions are extensive. They compel BPD to revise its policies and training curricula; provide thorough prescriptions for communicating with individuals, performing field interviews, and conducting stops, pat downs, searches and arrests; and establish detailed training, documentation, supervisory, and data collection and review obligations (CD 29-86).

During this reporting period, the Monitoring Team reviewed and provided technical assistance on S/S/A policies, training and reporting. On policies, BPD drafted, revised and/or finalized two different sets of S/S/A policies. On training, BPD prepared and finalized an S/S/A training plan, which will be implemented in the second monitoring year, and prepared lesson plans and provided training to both command staff and officers in response to the Monitoring Team's findings regarding BPD's interactions with civilians in Harlem Park following the shooting death of Detective Sean Suiter. On reporting, BPD met with the Monitoring Team to demonstrate its existing methods for recording stops, searches, arrests and voluntary interactions, and finalized a several-step plan for documenting investigatory stops going forward.

BPD thus far has met all of the First-Year Monitoring Plan deadlines relating to the S/S/A section of the Consent Decree. It has made reasonable progress toward satisfying the policy revision requirements. It is too soon to assess BPD's progress toward satisfying any of the other requirements.

### **Policy Revisions**

After receiving and incorporating public feedback, BPD finalized an initial set of six core S/S/A policies during the reporting period: Policies 1112 (Field Interviews, Investigative Stops/Detentions, Weapons Pat-Downs, and Searches), 1007 (Search and Seizure Warrants), 1013 (Strip Searches and Body Cavity Searches), 1106 (Warrantless Arrest Procedures and Probable Cause Standard), 1109 (Warrantless Searches) and 1505 (Foot Pursuits). The Monitoring Team filed its notice of approval of these policies on October 31, 2018.

BPD also finalized a second set of S/S/A policies, which the Monitoring Team approved on December 21, 2018. The second set includes six additional policies: Policies 906 (Traffic Citations), 1002 (Securing & Interviewing Witnesses), 1104 (Arrest Warrants), 1105 (Custodial Interrogations), 1108 (DUI/DWI Arrest

Procedure), and 1114 (Persons in Police Custody). Like the initial set of policies, the second set was not finalized until they went through a collaboration period with the Monitoring Team and DOJ and a public comment period that provided BPD with meaningful feedback.

The revisions to these twelve S/S/A policies are extensive and required considerable effort. As with revisions to other policies, the revisions greatly improve on BPD's previous S/S/A policies. They are more logically organized, provide a succinct, clear statement of objectives and supporting law, and furnish firm guidance on what officers are required to do, and what they are prohibited from doing, when they stop, search, arrest and conduct field interviews of civilians. Providing firm guidance in this area is essential because achieving compliance with the Consent Decree and rebuilding the community's trust will require BPD officers to perform their law enforcement duties vis-a-vis community members in a lawful, respectful manner.

### **Reporting on Stops, Searches and Arrests**

On October 31, 2018 the Monitoring Team met with BPD's Central Records Commander for an orientation on BPD's current reporting methods for documenting citizen contacts, with a focus on record-keeping for field interviews, investigative stops and vehicle stops. BPD recognizes that it uses an antiquated system for collecting data on these civilian encounters. The system relies on officers to complete two handwritten forms. BPD acknowledges that, because of the system's inadequacies, officers under-report both field interviews and investigative stops.

#### *The Current System for Reporting Stops*

The current citizen encounter reporting system is governed by Policy 1112 (Field Interviews, Investigative Stops, Weapons Pat Downs, and Searches). Although the policy was recently revised, officers have not yet been trained on the new version, so they are presently held accountable to the old version, which was implemented in August 2017.

In police/citizen encounters that do not result in arrests, the policy requires officers to complete an Incident Report (including a narrative) for investigative stops, weapons pat-downs, searches and the issuance of criminal citations. Separately, the policy requires officers to complete a Citizen Police Contact Receipt (aka stop ticket) for field interviews and the issuance of civil and traffic citations. Stop tickets are always hand-written; Incident Reports may be either handwritten or prepared in .pdf format on a computer (though the computer-generated forms ultimately must be

printed out for hand delivery to Central Records, *see* below). In encounters where an arrest is made, officers must complete both an Incident Report and, either remotely via a State-maintained URL or in person at the detention facility, an electronic report in the State's Offender Case Management System. For traffic violations, officers must complete a stop ticket if no citation is issued and, when a citation is issued, both a stop ticket and the citation. The vast majority of citations are handwritten, as BPD has very few "e-tix" systems available for officers in the field.

At the end of a shift, officers turn in their completed handwritten or computer-generated forms to supervisors, who review and approve the paperwork. The paperwork is next reviewed and cross-checked against the Computer Assisted Dispatch ("CAD")-generated incident list by the District Auditor, who then provides it to the District Property Officer for transmission, by hand delivery, forwards to the Central Records Division. Central Records maintains a handwritten log sheet in a three-ring binder for Property Officers to record the types of forms they submit. The log contains individual blocks for types of records, such as Incident Reports, domestic abuse reports, and stop tickets. Full-time civilian staff manually enter Incident Reports in BPD's Record Management System. Officers on light duty manually enter stop tickets.

#### *Problems with BPD's Collection of Data on Stops*

BPD freely admits its system for reporting and maintaining records of field interviews, investigative pedestrian stops and traffic stops is antiquated and not useful for tracking stop data. The flaws include the following:

- BPD officers, on the whole, under-report stops, particularly investigative pedestrian stops. The Monitoring Team has been informed that officers believe the Incident Report form is long and cumbersome for encounters that are not arrests, including investigative stops. The Monitoring Team also has learned that BPD officers sometimes have difficulty obtaining an incident number from dispatch, which is needed to prepare an Incident Report, or think it is burdensome to contact dispatch for an incident number for every investigative stop, particularly those not resulting in arrests. The result of the purported burdensomeness of completing Incident Reports for investigative pedestrian stops is that some officers do not complete Incident Reports for them. Some prepare no report at all (particularly if they do not obtain an incident number). Some complete stop tickets instead, even though BPD policy does not contemplate completion of stop tickets for these encounters. The practices appear to vary from district to district and across the Department. The upshot is that, on the whole, under-reporting of

investigative stops is too frequent to ensure the integrity of BPD’s data on investigative stops. Making matters worse, the data that does exist is found in disparate sources—Incident Reports and stop tickets—and, as explained below, data from hundreds of thousands of stop tickets and Incident Reports completed in recent years has not been entered into BPD’s Record Management System (“RMS”).

- Neither the Districts nor Central Records appear to document the *number* of pedestrian stop tickets provided to Central Records. Upon reviewing several weeks of entries on the log sheet at Central Records, the Monitoring Team observed that, although the log reflected the number of filed domestic violence reports, the spaces for documenting the number of filed pedestrian stop tickets were mostly blank. Accurately tracking pedestrian stop tickets must become a higher priority. The Consent Decree requires it.
- Because of BPD’s personnel shortages, there is a large backlog of pedestrian stop tickets awaiting entry in RMS. As of October 2018, a number of pedestrian stop tickets prepared in 2015 and 2017 had not yet been entered. Because of the backlog, BPD recently ceased entering data for the 2015 and 2017 pedestrian stop tickets altogether and started entering data from stop tickets only from 2018. The total number of pedestrian stop tickets not entered into RMS for 2015 and 2017 is over 125,000. And as of September 5, 2018, there were still 64,507 pedestrian stop tickets from 2018 that had not been entered into BPD’s data system. BPD reports that Central Records has made recent changes to prevent backlogs of pedestrian stop tickets, including assigning data entry duties to the Districts rather than centralizing all of the work at Central Records. The Monitoring Team will track the progress of these reported improvements in the next reporting period.
- Perhaps even more troubling than the RMS entry backlog for stop tickets is the RMS entry backlog for Incident Reports—the reports required for investigative pedestrian stops, weapons pat-downs, searches and arrests. BPD has informed the Monitoring Team that the backlog for RMS entry of Incident Reports for Part II offenses is 30,000, including 9,300 more serious “priority” Part II offenses. The FBI categorizes Part II offenses as lesser, largely non-violent offenses (*e.g.*, simple assault, forgery, fraud, stolen property, vandalism, weapons possession, drug crimes, DUI, and all other non-traffic offenses that are not Part I offenses, *see* <https://ucr.fbi.gov/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/offense-definitions>). Data involving these more common offenses is *precisely* the

data that the Monitoring Team and BPD need to be able to perform Consent Decree-mandated analyses of the constitutionality of stops, searches and arrests by BPD officers. Data on stops, searches and arrests for Part II offenses can reveal whether or not, for example, an agency is engaged in disparate policing practices.

### *Usefulness of the Stop Data*

The Monitoring Team explained in its first report that the inadequacy of the stops data entered and stored in BPD's RMS makes it impossible for BPD to perform data-driven supervision of individual officer performance and to review and analyze Departmental trends and patterns. See ECF No. 126-1 at 59-60. The Monitoring Team's October visit to Central Records confirmed this conclusion. It also confirmed that, until BPD's data collection system is improved, the Monitoring Team will likely be unable to perform the systematic quantitative analyses of stops that the Consent Decree requires. However, diagnostic qualitative reviews remain possible. The Monitoring Team can and will examine samples of Incident Reports and, if possible, stop tickets to determine whether BPD officers are adequately documenting the reasons for their stops, adequately explaining the existence of reasonable suspicion or probable cause, and otherwise writing cogent narratives of their encounters.

### **The Next Six Months**

The next reporting period will be active. In conjunction with the development of a Community Policing Plan, BPD will draft and complete revisions to the final set of S/S/A policies, which address "quality of life" offenses. These include Policies 808 (Criminal and Civil Citations), 809 (Marihuana – Uniform Civil Citation), 812 (Misdemeanor Shoplifting Arrests), and 1018 (Quality of Life Offenses). BPD also will draft, issue for public comment, and finalize training curriculum on S/S/A, with the new training to commence in the second half of 2019. Additionally, BPD will begin issuing quarterly reports on stops, searches and arrests, as Paragraph 86 of the Consent Decree requires, and the Monitoring Team will conduct qualitative compliance reviews of BPD's S/S/A records.

## **Impartial Policing**

Paragraph 87 of the Consent Decree asserts that “policing fairly and without bias is central to promoting broad community engagement and building partnerships between law enforcement and community members that are an important part of effective policing.” To that end, the Consent Decree requires BPD to: document the demographic category of all individuals who are stopped, patted-down, searched, arrested or make a complaint (CD 88); adopt policies that require fair, impartial, nondiscriminatory policing (CD 89); establish an impartial policing training curriculum and properly train officers, with community input, to perform their duties in a nondiscriminatory manner (CD 90-94); and consider whether officers engage in nondiscriminatory policing in evaluating performance and making hiring and promotion decisions (CD 95).

### **Policy Revisions**

In the first half of 2018, as noted in the first semiannual report, BPD made substantial progress in revising two policies that address the Consent Decree’s impartial policing requirements: Policy 317 (“Fair and Impartial Policing”) and Policy 720 (“Interactions with Lesbian, Gay, Bisexual, Transgender and Queer/ Questioning Individuals”). In July 2018, after a great deal of work with the Monitoring Team, DOJ, and interested stakeholders, BPD issued final drafts of these policies for public comment. BPD took care to respond to the comments it received, either by editing the relevant policies or, in limited instances, by explaining to commentators the reasons why their proposed edits were not adopted. The Monitoring Team filed its notice of approval of revised Policies 317 and 720 in August 2018.

As noted in the first semiannual report, revised Policy 317 provides clear directives to officers to ensure fair, respectful, nondiscriminatory treatment of community members, and expressly notes its close connection with policies addressing specific law enforcement actions, such as stops, arrests, weapons pat-downs and searches. Similarly, Policy 720 on Interactions with LGBTQ provides key guidance on adherence to the requirements of both the Fourth and Fourteenth Amendments, so as to ensure that officers stop, pat-down, search and arrest individuals, including LGBTQ individuals, only with proper justification *and* that officers refrain from taking law enforcement action against individuals based on perceived sexual orientation or gender identity. The specificity of the two policies is essential to the development of a curriculum that will facilitate proper training of BPD officers.

## Training

From August through November 2018, BPD endeavored to develop a training curriculum that would satisfy Paragraphs 90-94 of the Consent Decree. This task proved to be extremely difficult. While the BPD personnel who prepared the initial draft of the curriculum are to be commended for their efforts, particularly given the time and resource constraints under which they have been working, the draft was in need of substantial additional work. It did not adequately convey the particular requirements of revised Policies 317 and 720, did not adequately incorporate scenario-based training, and did not cogently connect certain concepts underlying impartial policing requirements (*e.g.*, implicit bias and procedural justice) to the new policies. During the collaboration period, it became clear that BPD officers supervising the development of the training were requiring BPD trainers to squeeze the training into one eight hour block of in-service training time, which was all that was allotted. Once BPD agreed that one eight-hour session would be inadequate, Academy officers went back to the drawing board to develop a more comprehensive lesson plan, one that would more explicitly incorporate the requirements of the revised policies and integrate those requirements with the requirements of related policies, including S/S/A policies. Additionally, the Monitoring Team suggested that BPD think through opportunities for online learning to preserve time for in-person training in the Academy. BPD also consulted with experts on impartial policing training from across the country.

As BPD worked through these issues with the impartial policing training curriculum, the Monitoring Team, BPD and DOJ agreed that, as explained elsewhere in this report, it no longer made sense to try to deliver all annual in-service training in one two-week block at the Academy. Rather, BPD agreed that training should occur in smaller blocks of time throughout the year, supplemented by online learning. It was only in recent weeks that BPD, the Monitoring Team and DOJ established a detailed plan for development and delivery of this new training program. As a result of both the challenges posed by drafting the curriculum for impartial policing and the re-design of the overall training plan, the initial deadlines for finalizing the impartial policing training curriculum have been extended.

As explained above, BPD, the Monitoring Team and DOJ have agreed that the fair and impartial policing training curriculum should be divided into three parts, to be delivered at different times. The first part will be delivered with use of force training, the second part with S/S/A training, and the final part on its own. The first parts will be finalized in the next three months and delivered before the end of the next reporting period. The second part will be finalized in the next six months and

delivered in the second half of 2019. The final part will be developed later in 2019 and delivered in early 2020.

### **Challenges Ahead**

The principal challenge in the short-term will be to devise a training curriculum that effectively conveys to BPD officers the requirements of Policy 317 and 720 and the principles animating them and, at the same time, integrates impartial policing concepts into training curricula on related topics, particularly use of force and stops, searches and arrests. The integrated approach, which BPD is now committed to pursuing, should provide officers more effective guidance on how to perform their duties in a constitutional manner.

The principal long-term challenge remains ensuring that BPD officers consistently interact in a fair and respectful with community members and refrain from discrimination in the performance of their duties.

### **The Next Six Months**

The development of the three tranches of impartial policing training, described above, will be the focus of the next reporting period.

## Use of Force

The Consent Decree obligates BPD to ensure that its officers resolve incidents without using force when possible, employ de-escalation techniques to minimize the need to use force, avoid unnecessary injury or risk of injury to officers and civilians when force is necessary, stop other officers from using excessive force, report all uses of force, and be held accountable for using unreasonable force (CD 124). To accomplish these objectives, the Consent Decree's section on Use of Force contains requirements regarding policies on use of force (including weapons-specific policies) (CD 125-65), training on use of force (CD 166-68), reporting, reviewing and investigating use of force incidents (CD 169-210), and collecting, analyzing and reporting data on use of force incidents (CD 211-17).

BPD has met every deadline in the First-Year Monitoring Plan involving the Use of Force provisions of the Consent Decree and has made substantial progress toward satisfying the policy revision provisions. BPD also has begun to develop training curriculum on use of force policies. It remains too soon to assess BPD's progress toward compliance with the Consent Decree's other provisions on use of force.

### **Areas of Progress**

#### *Policy Revisions*

In the first reporting period, BPD successfully revised the core policy on use of force, Policy 1115 (Use of Force), as well as the policies addressing the most commonly used by patrol officers—Policies 409 (Firearms Regulations), 719 (Conducted Electrical Weapons—CEW), 1111 (Batons/Impact Weapons) and 1118 (Oleoresin Capsicum Spray). The Monitoring Team filed its notice of approval of these five policies in July 2018. *See* ECF No. 118.

In this reporting period, BPD has finalized the nine remaining use of force policies with input from the Monitoring Team, DOJ and community members. These policies cover, among other things, de-escalation and the reporting and investigation of use of force incidents. They include: 412 (Patrol Rifle Program), 414 (Less Lethal Munitions and Chemical Agents), 710 (Level 3 Use of Force Investigations – SIRT), 724 (Performance Review Board), 725 (Use of Force Reporting, Review and Assessment), 1005 (Non-Uniform Policing Standards), 1107 (De-escalation), 1503 (Emergency Vehicle Operation and Pursuit Policy), and 1602 (Canine Procedure).

BPD produced initial drafts of this second set of use of force policies in June 2018. BPD then collaborated with the Monitoring Team and DOJ on revisions. BPD issued revised drafts for public comment from the end of July until the end of August 2018. On September 17, 2018, after BPD incorporated the public feedback and finalized the policies, the Monitoring Team filed its notice of approval with the Court.

### *Development of Training Curriculum*

Once BPD completed revisions to its use of force policies, it turned its attention to preparing use of force training curriculum. BPD submitted its initial draft of the curriculum in July 2018. The Monitoring Team and DOJ worked with BPD to revise the curriculum through November. During the collaboration period, as reported above, representatives from BPD visited Los Angeles for an intensive week-long training session with the Los Angeles Police Department.

It was as the collaboration period concluded that BPD, DOJ and the Monitoring Team agreed that BPD needed to alter its customary training schedule to accommodate the reforms required by the Consent Decree, as explained above. Under the revised schedule, BPD has continued to refine the use of force training curriculum with input from the Monitoring Team and DOJ. That work is on-going. A draft curriculum should be issued for public comment by the end of February 2019. After receiving and incorporating public feedback, BPD will finalize the curriculum and then begin to train officers on it toward the middle of 2019.

### *Reporting of Use of Force Incidents*

Paragraphs 169 – 217 of the Consent Decree set forth the information that BPD officers and supervisors must capture for every event involving the use of force by a BPD officer. In addition, these paragraphs establish the responsibilities of the Special Investigation Response Team (“SIRT”), which investigates all Level 3 use of force incidents, as well as the responsibilities of the Performance Review Board, which reviews all Level 3 incidents.<sup>4</sup>

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<sup>4</sup> Level 3 uses of force include:

- Strikes to the head, neck, sternum, spine, groin, or kidney area with an impact weapon,
- Firearm discharges (including unintentional firearm discharges),
- Applications of more than three (3) Conducted Electrical Weapon (CEW) cycles in a single encounter, regardless of the mode or duration of the application, and regardless of whether the applications are by the same or different members,

As noted above, BPD successfully revised Policy 725, which governs the information that BPD must capture and maintain for all use of force incidents. Revised Policy 725 includes all of the Departmental forms that BPD uses for those purposes. Revised Policy 725 will ensure that BPD records and maintains all of the information needed for the Monitoring Team to perform the outcome assessments and compliance reviews required by the Consent Decree. Equally important, it will ensure that BPD records and maintains all of the information required for supervisors and command staff to assess compliance with Departmental policies and, correspondingly, to identify any pattern-or-practice of behavior by an individual officer that requires correction through better supervision, improved training or discipline, as well as any pattern-or-practice of unit- or Department-wide behavior that similarly requires improved supervision or training.

The primary method BPD uses, and will continue to use, to capture the required information for use of force incidents is the completion of Force Report, Form 96, by the involved officer and Use of Force Report, Form 99, by the officer's supervisor. These report forms are included as appendices to Policy 725. The information captured in these forms includes the involved officer's description of the events leading up to the interaction, identifying information for the involved officer and for the individual on whom force was used, witnessing officers, civilian witnesses, injuries sustained, weapons used, the existence of body worn camera footage or other video, the tactics used (including de-escalation), and the opinion of the reviewing supervisor as to the appropriateness of the involved officer's actions. Once Forms 96 and 99 are completed, the information from the Forms is uploaded to Blue Team, which is the front end module of IAPro, the software program used by the BPD's Office of Professional Responsibility. BPD is in the process of upgrading its current, customized version of IAPro to the most recent, standardized version.

Because the information supervisors are required to gather and submit is exhaustive, Policy 725 includes a Use of Force Preliminary Review Checklist for Supervisors. The checklist includes 20 items for supervisors at the scene to check off as they fulfill their responsibilities.

In addition to Forms 96 and 99, which are used for every use of force incident, BPD utilizes other forms for different situations involving uses of force. These forms are also included as appendices to Policy 725. Form 93 must be completed any time a weapon is drawn and pointed at an individual. Form 97, the Public Safety Statement, must be completed any time an officer is involved in a shooting in order to give the Department the information needed to ensure a safe and appropriate response. Form 25 must be completed any time a supervisor requires additional time to gather all of

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- CEW application for longer than 15 seconds whether the application is a single continuous application or from multiple applications,
  - Uses of force resulting in death, serious physical injury, loss of consciousness, or requiring hospitalization, and
  - Uses of deadly force/lethal force.

the documentation required for Level 1 and 2 use of force incidents under the strict deadlines set forth in the Use of Force Review Submission Table included in Policy 725.<sup>5</sup> Finally, for Level 2 use of force incidents, Policy 725 includes an assessment form that must be completed by a reviewer in the Use of Force Assessment Unit. The form requires the reviewer to evaluate the performance of both the involved officer and involved supervisors.

### Challenges Ahead

In ensuring that BPD officers satisfy the use of force requirements of the Consent Decree, BPD faces the same challenges it faced six months ago. *See* ECF No. 126-1 at 73-74.

The most immediate challenge is to craft an effective use of force training curriculum and then use that curriculum to properly train all officers by mid-2019, as currently planned. The challenge is daunting not only because the deadlines are

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<sup>5</sup> Level 2 use of force incidents include:

- Force that causes or could reasonably be expected to cause an injury greater than temporary pain or the use of weapons or techniques listed below — provided they do not otherwise rise to a Level 3 Use of Force:
- Discharge of a CEW in drive-stun or probe mode, in the direction of a person, including where a CEW is fired at a person but misses,
- Use of OC spray or other chemical agents,
- Weaponless defense techniques including, but not limited to, elbow or closed fist strikes and kicks,
- Discharge of a less-lethal launcher/munitions in the direction of a person,
- Canine-inflicted injuries that do not rise to a Level 3 Use of Force,
- Non-weapon strikes to the head, neck, sternum, spine, groin, or kidney area (except Level 1 open hand strikes),
- Striking of a person or a vehicle with a vehicle that does not rise to Level 3 Use of Force.

Level 1 uses of force include:

- Using techniques that cause Temporary Pain or disorientation as a means of gaining compliance, including open hand strikes, hand control or escort techniques (e.g., elbow grip, wrist grip, or shoulder grip) and pressure point compliance techniques. Force under this category is not reasonably expected to cause injury,
- Pointing a firearm, Less-Lethal Launcher, or CEW at a person,
- “Displaying the arc” with a CEW as a form of warning, and
- Forcible takedowns that do not result in actual injury or complaint of injury.

tight and the subject matter is dense, but also because the training academy remains understaffed.

A similarly pressing challenge continues to be completing the upgrade of Blue Team/IAPro so that it captures all of the data required for robust analysis of use of force incidents. The recording and maintenance of complete data on such incidents is essential to enable the Monitoring Team to perform the evaluations that the Consent Decree requires, and equally essential to enable BPD supervisors and commanders to review individual incidents and Departmental trends.

### **The Next Six Months**

As noted, BPD is scheduled to complete a draft of the use of force training curriculum in the coming weeks. It will then be available for public comment. After BPD incorporates the public's feedback and finalizes the curriculum, the Monitoring Team will either approve or disapprove it. BPD will commence training soon after, and complete training all officers by the end of summer 2019.

Over the next six months, BPD also plans to commence operations of the Performance Review Board. The PRB will review serious use of force incidents and resulting investigations and, if warranted, recommend remedial action to the Commissioner. In the next reporting period, BPD will identify new PRB members and create and provide them with orientation training on revised Policy 724, which sets forth the responsibilities and procedures of the PRB.

### **Transportation of Persons in Custody**

Ensuring the safety of individuals in police custody is among the most important obligations of any law enforcement agency. It was the death of Freddie Gray following transport in a BPD van that triggered unrest and demonstrated the deep divide between BPD and parts of the Baltimore community. For that reason, early compliance efforts focused partly on the Consent Decree's transportation of persons in custody provisions.

The Consent Decree requires BPD to: (1) equip all transport vans with seatbelts, holding straps located along the rear area of each seat that individuals being transported may grip for security during transport, and transport vehicle cameras (TVCs) and all transport cruisers with seatbelts (CD 223-24); (2) inspect transport vehicles monthly and create logs to memorialize the inspections (CD 225); (3) establish and adhere to appropriate procedures for transporting prisoners (including using seatbelts, straps, and TVCs) (CD 226-33), (4) establish and adhere to protocols for documenting and comprehensively auditing prisoner transport events (CD 234-37), and (5) revise policies and training curricula to ensure safe, effective prisoner transport (CD 238).

The Monitoring Team is assessing the Consent Decree's transport requirements in two phases. The transport equipment phase focuses on whether BPD has installed the required equipment in its transport vehicles and maintained the equipment in working order. The transport procedures phase focuses on whether BPD has implemented the transport policies required by the Consent Decree and whether officers are adhering to those policies and using the transport equipment correctly and consistently.

Thus far, BPD has made substantial progress toward satisfying the equipment requirements in Paragraphs 223-225 and the policy revision requirements in Paragraph 238. During the first reporting period, BPD outfitted all transport vehicles with the proper equipment and began routinely conducting monthly inspections to ensure the equipment is functional. In this reporting period, BPD has completed the required initial revisions to its transport policies.

In this reporting period, BPD also has begun making progress toward satisfying the transport procedures requirements in Paragraphs 226-233. It is not yet far along the path to compliance. It conducted its first inspection of compliance with transport procedures in October 2018.

## Areas of Progress

### *Policies*

After incorporating public feedback, BPD finalized its transport policies in July 2019. The Monitoring Team filed its notice of approval in August.

### *Equipment Audits*

BPD has continued to conduct monthly inspections of its transport vans to ensure they are properly equipped with seatbelts, holding straps located along the rear area of each seat that individuals being transported may grip for security during transport, and TVCs. It has also continued to conduct monthly inspections of all transport cruisers to ensure they are equipped with functional seatbelts. BPD is creating monthly logs of its transport vehicle inspections and, if any vehicle fails inspection, BPD is taking the vehicle out of service until the deficiency is fixed. The Monitoring Team and DOJ are reviewing every log.

### *Transport Procedures Audits*

In this reporting period, BPD developed a tool for auditing transport events to ensure that transport officers are following proper procedures. In September, members of BPD's audit section, together with both the Monitoring Team and DOJ, performed mock audits of transport events in an attempt to verify the functionality of the audit assessment tool. During the mock audits, BPD, DOJ and the Monitoring Team identified and discussed several issues. The principal issue was ensuring that the tool captures all of the information required by Paragraph 232 of the Consent Decree, including the location the subject is picked up, the time the transport vehicle leaves that location, the number of persons transported, the destination, the starting and ending mileage of the vehicle, the time of arrival at the destination, and whether at any time the driver felt the subject being transported needed medical attention. By performing the mock audits, BPD was able to adjust the audit inspection tool so that its audits will satisfy the requirements of the Consent Decree.

BPD used the revised assessment tool to perform its first inspection of transport events in October 2018. On October 30, BPD's Office of Inspector General submitted its inspection report to the Acting Commissioner. The inspection focused on the following items: whether the wagon TVCs were operating properly; whether seatbelts were used properly; whether subjects were only transported in vehicles with safety barriers; whether females and males were transported separately; whether juveniles and adults were transported separately; whether subjects requested medical attention and, if so, whether it was provided; and whether transport officers activated their BWCs during the transport. The inspection reviewed 31 different transport events and surveyed 211 individual items. In the end, the inspectors found

only four deficiencies requiring corrective action. Each of the required corrective actions were taken and detailed in the Inspector General's report.

The first inspection was not fully comprehensive because there remain logistical difficulties with capturing every single requirement of Paragraph 232 (*e.g.*, assessing whether transport officers are routinely checking on the welfare of their passengers). Nevertheless, the first inspection was thorough and covered the vast majority of Paragraph 232 requirements.

### **Challenges Ahead**

The most pressing challenge is for BPD's Audit Section to resolve how to effectively capture all of the data that Paragraph 232 requires. While BPD already captures most of the required data effectively, the mock and first inspection helped identify the few data points that are difficult to capture. For instance, as noted, it is presently difficult to discern from any available data source (*e.g.*, TVC, digital recording, voice recording) whether transport officers are routinely checking on the welfare of their passengers. BPD will need to develop a method for making those determinations. In addition, although BPD currently captures required data through both digital and voice recording, reviewing voice recordings (*i.e.*, calls with dispatch) is extremely time-consuming. Accordingly, as explained in the first semiannual report, see ECF No. 126-1 at 77-78, BPD will need to develop a way for officers to digitally record certain required data that is presently voice-recorded.

### **The Next Six Months**

In the next reporting period, BPD will continue conducting its monthly inspections of transport vehicles and will begin quarterly audits of compliance with transport procedures. It is expected that, for the transport procedures audits, BPD will determine how to overcome the logistical data-capture challenges identified above.

In addition, the Monitoring Team will continue its review of BPD's monthly inspection logs and quarterly transport procedures audits. The Monitoring Team's review of the quarterly audits will include, among other things, reviews of TVC recordings that BPD reviews in order to ensure that TVCs are properly recording transport events, that BPD is accurately documenting TVC functionality, and that officers are adhering to BPD transport policies. The Monitoring Team will also conduct random, unannounced inspections of BPD transport vehicles to ensure they are properly equipped.

### **First Amendment-Protected Activities**

As the Consent Decree and BPD's newly-revised policy on First Amendment Protected Activity explain, the exercise of First Amendment rights is fundamental to democratic governance because it promotes the free exchange of ideas. Moreover, the preservation and protection of First Amendment rights is vital to maintaining public trust in the rule of law because it fosters transparency and accountability in government functions, including policing (CD 239).

For these reasons, the Consent Decree requires BPD to protect several different First Amendment rights: the right to free speech and expression, which includes the right to criticize law enforcement and engage in speech in the presence of law enforcement without being subject to retaliation (CD 240-44); the right to freely organize and participate in lawful public assemblies (CD 245); and the right to observe and record the actions of BPD officers in the public discharge of their duties (CD 247). The Consent Decree also protects First Amendment rights by prohibiting the warrantless search and seizure of recorded video and images, except in limited circumstances (CD 249-50). The Consent Decree prescribes protection for all of these constitutional rights by obligating BPD to: -revise its policies and training programs (CD 239, 244, 246, 251); require supervisory approval for dispersing assemblies, seizing recording devices and recordings, and arresting individuals engaged in expressive activity (CD 252-54); and conduct annual assessments of its practices relating to First Amendment protected activity (CD 255).

To date, BPD has met the deadlines in the First-Year Monitoring Plan regarding First Amendment protected activities and has completed the initial revision of two policies addressing such activities. BPD has not yet begun working on revisions to training, as the First-Year Monitoring Plan has not required BPD to do so. It is thus too soon to gauge whether BPD has made progress toward implementing the policies or toward satisfying the other requirements in this area.

### **Policy Revisions**

With input from DOJ and the Monitoring Team, BPD successfully completed, during this reporting period, its revisions to BPD's core policies addressing First Amendment-protected activities: Policy 804, ("First Amendment Protected Activity") and Policy 1016 ("Public Observation and Recording of Officers"). Consistent with the requirements of the First-Year Monitoring Plan, the Monitoring Team and DOJ exchanged numerous edits and comments with BPD, BPD produced final drafts for public comment, BPD received and incorporated meaningful feedback from public interest organizations (including an organization that had been in litigation with

BPD over alleged First Amendment violations), and with approval from DOJ and the Monitoring Team, BPD finalized the two revised policies. *See* ECF No. 140.

Former Policy 804 was deficient. It was disjointed and hard to follow, focused on public assemblies to the exclusion of other First Amendment activity, and even with that focus was directed toward instructing officers when to restrict, interrupt and terminate such assemblies, rather than emphasizing that restriction, interruption and termination are a last resort. The revised policy is much more tightly organized and comprehensible: it tells officers expressly what they are required to do to protect First Amendment rights and then what they are prohibited from doing. It also clearly sets forth Departmental obligations for training and data collection and analysis on First Amendment events. Moreover, rather than focusing exclusively on policing public assemblies, revised Policy 804 also provides directives on respecting individuals' right to criticize police officers and police activity outside the context of a protest or assembly. This is vital, as DOJ's pattern-or-practice findings principally criticized how BPD officers detained, arrested and used unreasonable force against individuals who criticized or insulted officers—not how BPD officers handled public demonstrations. Finally, revised Policy 804 provides clearer and more comprehensive direction on preserving the right to public assembly, including express protocols for preparing for planned assemblies.

Policy 1016, which addresses the right to observe and record officers in the line of duty, is similarly improved. Although Policy 1016 did not require as many substantive changes as Policy 804, the revised policy provides more comprehensive guidance to officers and is better and more comprehensibly organized. The revised policy also includes detailed procedures for obtaining recorded material thought to be relevant to criminal investigations, clearly delineating what officers and supervisors may and may not do to secure such evidence.

While BPD has substantially revised Policies 804 and 1016, it has elected to rescind the Mobile Field Force policy (Policy 413), at the suggestion and with the approval of the Monitoring Team and DOJ. The Mobile Field Force is a specialized unit that monitors, maintains peace, and protects the right to assemble and speak at both planned and spontaneous public demonstrations, and intervenes to maintain public safety, while respecting First Amendment rights, when public demonstrations turn violent. With the input of the Monitoring Team and DOJ, BPD has incorporated the general provisions of the Mobile Field Force policy into Policy 804 and will create Standard Operating Procedures to provide detailed tactical guidance to Mobile Field Force officers about how to carry out their responsibilities while preserving First Amendment rights. The Monitoring Team, BPD and DOJ have determined that rescission of the standalone Mobile Field Force policy makes sense because the policy

is not so much a policy as it is an outline for a tactical procedural manual. The Monitoring Team is comfortable with how the mission and general responsibilities of the Mobile Field Force are reflected in revised Policy 804 and, together with DOJ, it will review and work with BPD to develop an appropriate Mobile Field Force SOP in the second monitoring year. The existing Mobile Field Force policy will not be rescinded until the SOP is developed and implemented.

## Challenges Ahead

After policy revisions are completed, the next major challenge will be to develop and implement a comprehensible, scenario-based training curriculum to ensure that officers respect First Amendment protections. Developing and training officers on that new curriculum is scheduled to take place during the second and third monitoring years. Additional challenges include ensuring vigilant supervisory review and data collection and analysis regarding BPD actions addressing First Amendment activity, as well as ensuring accountability for any policy violations.

Though just one event, the alleged assault of Dashawn McGrier by now-former BPD Officer Arthur Williams on August 11, 2018 exemplifies these challenges. (Williams is currently facing criminal charges.) In its investigation, DOJ found that officers routinely responded to oral criticisms, insults and non-violent provocations—speech protected by the First Amendment—by using unreasonable force. Based on the Monitoring Team’s review of evidence in the McGrier incident (which has not included additional evidence that might have been gathered in the criminal investigation), this is precisely what Williams appeared to do in response to McGrier’s purported insolence. Williams’ reaction to McGrier presents yet another teaching opportunity for BPD—an opportunity to instruct officers not only on the use of unreasonable force generally, but on the use of unreasonable force in response to oral remarks that might be irritating, but present no risk of physical harm and no risk of interference with police activities and are thus constitutionally protected.

Gathering data on officers’ responses to First Amendment-protected activity could also prove challenging. Paragraph 459(j)(i) of the Consent Decree requires the Monitoring Team to conduct outcome assessments to analyze the citations and arrests that require supervisory approval under the First Amendment section of the Consent Decree. The data needed for these assessments, however, is not readily available. To conduct the assessments, the Monitoring Team is going to have to work backward from District reports involving First Amendment assemblies or civil disturbances and locate corresponding incident reports in RMS or manually. *See* ECF No. 121 at 25. The Monitoring Team will have similar logistical challenges conducting the outcome assessments required by Paragraph 459(j)(ii), which calls for analysis of

the investigation and disposition of OPR complaints of individuals who claim not to have been permitted to observe, record or protest police activity, or to have been retaliated against for such conduct. While OPR complaint classifications currently include both “Recording device complaints” and “Impairing First Amendment activity,” BPD has informed the Monitoring Team that these categories are not used consistently. While “Recording device complaints” might be classified relatively consistently, complaints of infringement of other First Amendment rights are not. Sometimes they are classified under “impairing First Amendment activity,” but they also might be classified instead as “conduct unbecoming” or as something else—for instance, if the incident involved the use of unreasonable force in response to protected speech, it might have been classified only as an excessive force complaint and not also as a complaint implicating First Amendment rights. Thus, in performing the outcome assessments required under Paragraph 459(j)(ii), the Monitoring Team will have to canvass complaints under a number of complaint categories. *See* ECF No. 121 at 26.

Over the long term, BPD will have to collect and categorize data on events involving First Amendment-protected activity more rigorously so that the agency itself can properly measure officer and supervisory performance under Policies 804 and 1016.

### **The Next Six Months**

BPD will develop and finalize Standard Operating Procedures for its Mobile Field Force in the first part of 2019. In addition, BPD will develop training curriculum that corresponds with revised Policies 804 and 1016. BPD must submit the initial draft of that curriculum to the Monitoring Team and DOJ for review by early July 2019. The curriculum will be finalized toward the end of 2019, with training on the curriculum to commence in 2020.

During the next six months, the Monitoring Team hopes to begin conducting compliance reviews and outcome assessments regarding BPD’s actions in response to First Amendment activity. As noted above, the Monitoring Team has developed an instrument for performing these evaluations and will work with the parties to finalize it.

### **Interactions with Individuals with Behavioral Health Disabilities and in Crisis**

The Consent Decree reinforces BPD’s “commit[ment] to responding to individuals with behavioral health disabilities or in crisis in a manner that respects individuals’ civil rights and contributes to their overall health and welfare.” Paragraph 96 envisions that BPD will accomplish this goal by using appropriate crisis response techniques. Such techniques will help prevent situations that could lead to the unreasonable use of force, promote connection of people with behavioral health disabilities or in crisis to the behavioral health system, and decrease the inappropriate involvement of people with behavioral health disabilities in the criminal justice system. Paragraph 96 thus challenges BPD not only to provide effective law enforcement responses to events involving individuals with behavioral health disabilities and in crisis, but to participate in the development of an effective community strategy for improving the City’s support system for such individuals.

In this area, the Consent Decree identifies a series of objectives that are addressed in the First-Year Monitoring Plan. These objectives include the expansion of the Collaborative Planning and Implementation Committee (“CPIC”), which advises BPD on crisis intervention policies (CD 104-05); a work plan to accomplish the requirements of the Consent Decree (CD 96, 105); an assessment by CPIC of the gaps in the City’s behavioral health system coupled with recommendations for solutions (“Gap Analysis”) (CD 97); maintenance of a Crisis Intervention Team (“CIT”), whose officers have primary responsibility for responding to incidents involving individuals in crisis (CD 101-03, 110, 119); development of a Crisis Intervention Plan and CIT Officer Selection Process to ensure the efficacy of the CIT (CD 120); appointment and training of a Crisis Intervention Team leader (CD 115-18); training for all officers on responding to individuals with behavioral health disabilities and in crisis, and specialized training for CIT officers and dispatch personnel (CD 106-13); revision of policies, including dispatch policies, for responding to incidents involving individuals in crisis (CD 98, 114); and identification of quantitative and qualitative performance measures for the CIT program and collection of data needed to make those assessments (CD 121-22). Over the long-term, BPD will analyze the data and will issue quarterly public reports gauging its performance in responding to individuals in crisis.

As set forth below, BPD and the City have satisfied many of the short-term requirements in the First-Year Monitoring Plan in this area. BPD and the City have expanded CPIC membership; BPD has appointed a CIT Coordinator; and together with CPIC, BPD and the City have developed a detailed strategic plan for CPIC’s initial work, completed a crisis intervention plan and a plan for selecting CIT officers,

and created of a form to track data on responses to individuals in crisis. In addition, together with CPIC, BPD and the City are making reasonable progress toward satisfying the longer-term requirements identified in the First-Year Monitoring Plan, including completing the Gap Analysis and developing revised crisis intervention policies for patrol and dispatch officers.

### **Areas of Progress**

BPD, the City and CPIC have some tangible achievements under the First-Year Monitoring Plan. As indicated in the first semiannual report, these achievements include:

- Installation of a qualified CIT Coordinator, Lt. Azalee Johnson (CD 115)
- Expansion of CPIC’s membership to include relevant City and State officials, advocacy groups such as Disability Rights Maryland and the National Alliance on Mental Illness, individuals with lived experience, community mental health providers, substance use services providers, local hospitals, advocates, and committed philanthropists (CD 104). CPIC’s leadership—which includes the CEO of Behavioral Health Systems Baltimore (“BHSB”) and the Director of the Mayor’s Office of Human Services—represent key components of the crisis intervention system and have been committed to CPIC’s mission.
- Designation of BHSB to lead the subcommittee that identified an organization to conduct the Gap Analysis (CD 97).

BPD, the City and CPIC have built on the progress made during the first reporting period. In this reporting period, specific accomplishments include:

- CPIC, led by BHSB, selected a nationally recognized research firm, Health Services Research Institute (HSRI), to conduct the Gap Analysis (CD 97). CPIC’s Gap Analysis Subcommittee has tasked HSRI with obtaining comprehensive input representative of Baltimore’s diversity.
- The City, BPD and CPIC completed a First Year Work Plan for CPIC. The Work Plan provided a roadmap for developing a CIT Program staffing plan, a CIT officer selection process, crisis intervention policies for the Patrol Division and Dispatch Unit, a crisis intervention form for BPD to capture data on interactions with individuals in crisis, and the Gap Analysis (CD 97). The Monitoring Team filed its notice of approval of the Work Plan in August 2018.

- BPD, in coordination with CPIC, completed a Crisis Intervention Plan to address CIT staffing needs, as well as a CIT Officer Selection Process (CD 118-20). The Monitoring Team filed its notice of approval in November 2018. The Crisis Intervention Plan uses police dispatch data to estimate the overall number of crisis calls for service in each district and then projects the number of Patrol Division CIT officers needed to respond to the calls. The CIT Officer Selection Process makes use of the CIT Officer requirements in the Consent Decree to create a set of qualifications for CIT applicants. The document also details a systematic officer selection process for the CIT program. Together, the Crisis Intervention Plan and the CIT Officer Selection Process will allow BPD to respond with increased effectiveness to when interacting with people with behavioral health disabilities or in crisis.
- CPIC's Data Subcommittee revised and expanded the form BPD uses to record interactions with individuals in crisis (CD 122). The revised form is comprehensive. CPIC received input on it from experts at local universities, local advocacy organizations, and individuals with lived experience. BPD submitted the revised form to DOJ and the Monitoring Team, and the Monitoring Team filed its notice of approval in December 2018.

In addition to these accomplishments, CPIC's Policy Subcommittee has worked diligently on recommended revisions to BPD's crisis intervention policies for officers and dispatchers (CD 98, 102, 108, 110,111 and 114). The subcommittee's work has included reviewing eight different BPD policies implicating crisis intervention and individuals with behavioral health disabilities. The subcommittee has elicited and received substantial community input, which has generated candid discussions between BPD and community members. The subcommittee will make recommendations on policy revisions, and BPD will submit initial drafts of the revised policies to the Monitoring Team and DOJ in early February 2019.

As discussed in the first semiannual report, the City, BHSB and BPD are working to connect several programs in Baltimore that provide support for individuals in need, and they are drawing on the collective experience of CPIC's members to do so. The City and BPD have several specialized programs aimed at diverting individuals in crisis from the criminal justice system to the health care system. Each program focuses on an important issue, including homelessness, substance abuse and mental illness. The City, BHSB and BPD are aware that individuals can struggle with multiple issues and can benefit from integrated, comprehensive services that benefit their overall health and welfare. The City, BPD and BHSB have recognized that the Consent Decree presents a good opportunity to improve BPD's supportive services, and they have now assigned CPIC to an important advisory role for all of BPD's Crisis Intervention Programs. The City and

BPD should be credited for their willingness to broaden CPIC's role beyond what the Consent Decree explicitly prescribes.

A final observation: the enlargement of CPIC and the expansion of its role has meant that community stakeholders, including advocates and those with lived experience, are undertaking a closer review of BPD crisis intervention programs other than the CIT. These programs include BPD's Crisis Response Team (CRT), Law Enforcement Assisted Diversion (LEAD) Team, and Homeless Outreach Team (HOT). In their review, community stakeholders have expressed concerns that the programs present the risk that program officers, despite good intentions, might violate the Fourth Amendment in their street encounters with the programs' intended beneficiaries or might paternalistically override the decisions of intended beneficiaries to forgo treatment. BPD has shown a willingness to engage in constructive discussions around these concerns. As a result, common ground is beginning to emerge. The Monitoring Team has participated regularly in these discussions and is impressed with the sincerity and conviction of both community members and BPD to resolve their disagreements in pursuit of common goals. The discussions are not always easy, but they are laying the groundwork for successful implementation of the requirements of the Consent Decree.

### **Challenges Ahead**

Extensive work lies ahead. BPD must ensure that the revisions to its crisis intervention and dispatch policies satisfy Consent Decree requirements. BPD then must develop an effective training curriculum that incorporates not only those revised policies, but other revised policies, including those on use of force and de-escalation. Consistent with the Crisis Intervention Plan and CIT Officer Selection Process, BPD also will have to select a sufficient number of qualified CIT officers to meet Departmental needs. And finally, over the long-term, BPD and its officers must consistently comply with the Consent Decree's specific requirements for handling crisis events in the field, including requirements regarding on-scene leadership and supervision. Neither the Monitoring Team nor BPD will be able to comprehensively assess BPD's compliance with those requirements until BPD begins to routinely utilize and record information from the crisis intervention data form that it finalized in this reporting period.

More broadly, BPD and the City must be prepared to begin addressing the shortcomings in the City's behavioral health support systems, which the forthcoming Gap Analysis will identify. Diverting individuals in crisis from the criminal justice system into a system of community-wide support is the primary objective of the

provisions of the Consent Decree addressing BPD's interactions with individuals in crisis.

BPD, the City and CPIC have begun to build a foundation for achieving the Consent Decree's objectives regarding BPD's interactions with individuals with behavioral health disabilities or in crisis. Once that foundation is firmly established—that is, once policy revisions, training, an adequately staffed CIT, and a robust performance evaluation system are in place—BPD, the City and CPIC must develop a well-functioning “feedback loop” in which they are collectively able to identify and correct systemic shortcomings. The collaborative work CPIC has done to date, and the candid, thoughtful discussions in which BPD and CPIC's other members have engaged over the past six months, demonstrate that this ambitious objective is not out of reach.

### **The Next Six Months**

In the next reporting period, as part of the ongoing process of seeking input from community members, BPD, the City and CPIC will review CPIC's current membership and determine whether new members should be added (CD 104). CPIC will develop a Second Year Work Plan, which will complement the Second-Year Monitoring Plan and provide a roadmap for meeting the requirements of the Consent Decree in the area of Interactions with Individuals with Behavioral Health Disabilities and in Crisis (CD 96, 105).

The Gap Analysis will be completed in the next six months (CD 97). So will revisions to BPD's crisis intervention and dispatch policies (CD 98, 102, 108, 110, 111 and 114). BPD also will begin preparing crisis intervention training curriculum for both recruits and officers, with the development of training curriculum for dispatchers and dispatch supervisors to follow in the subsequent reporting period.

## **Interactions with Youth**

The Consent Decree requires BPD to alter its approach to how it interacts with youth. The Consent Decree obligates BPD officers to account for the personal characteristics (age, size, developmental/mental status, disability status and maturity) of youth they encounter and, where practical, use alternatives to arrest (e.g. warn and release, counseling, referral to community services and resources, warnings, civil citations) in order to divert youth from criminal justice system (CD218). To accomplish this goal, the Consent Decree requires the City to conduct a comprehensive assessment of its effort to reduce youth involvement in the juvenile and criminal justice systems (“Youth Assessment”) (CD219). It requires BPD to revise its policies and training as needed, and conduct training in order to properly guide officers in their interactions with youth (CD220-21). The Consent Decree envisions that, in preparing the Youth Assessment, the City will obtain input from a collaborative consisting of City Officials, BPD representatives and community stakeholders, including community organizations with experts in the field, academic and youth advocates (CD 219).

In this reporting period, the City and BPD have continued to make reasonable progress toward completing the Youth Assessment. However, the Assessment is merely the first step toward compliance with the requirements of the Consent Decree, and the Assessment is not yet finished. Because the Assessment is not yet complete and BPD has not yet begun revising policies and training curricula regarding interactions with youth, it remains premature to assess whether the City and BPD are making progress toward satisfying the long-term requirements of the Interactions with Youth section of the Consent Decree.

### **Youth Assessment**

On August 1, 2018, the City and BPD submitted a timeline for developing the Youth Assessment, as the First-Year Monitoring Plan required. The Monitoring Team filed its notice of approval with the Court three weeks later. *See* ECF No. 131. BPD developed the timeline in collaboration with the Youth Assessment Advisory Board, community stakeholders, the Monitoring Team and DOJ. The timeline sets a March 31, 2019 deadline for completion of the Assessment. The Assessment is being performed by the Center of Children’s Law and Policy (“CCLP”). BPD, the Youth Assessment Advisory Board and community stakeholders chose CCLP because of its national expertise in youth diversion programs.

Following completion of the Youth Assessment timeline, the City, BPD and its partners in the Youth Assessment process took the following actions:

- The City and BPD hosted three Youth Diversion Assessment Advisory Board meetings—one on October 17, 2018, another on November 20, 2018, and a third on January 10, 2019. CCLP led these sessions, which were aimed at establishing the scope of the Youth Assessment. During these sessions, CCLP conducted system mapping exercises with BPD, the City’s Department of Juvenile Services and the State’s Attorney’s Office. System mapping is a key component of the assessment process, as it determines how youth enter and move through the criminal and juvenile justice systems and also identifies deficiencies, available resources, and opportunities for improvement. In addition to conducting system mapping exercises, CCLP solicited feedback from community members on the efficacy of existing youth diversion programs.
- As noted in the first semiannual report, BPD received a grant to participate in CCLP’s Law Enforcement Leadership for Equity Initiative. BPD is now in the first phase of the grant. The first phase entails a review of youth diversion programs in the City. The review is running concurrently with the Youth Assessment.
- The University of Maryland has completed a review of literature on best practices in youth diversion. In addition, Loyola University has submitted a first draft of its evaluation of the City’s Juvenile Pre-Detention Diversion Programs. The reports from these reviews will inform the Youth Assessment.
- CCLP, the City and BPD are making progress toward completing the Youth Assessment by the March 31, 2019 deadline. CCLP is finalizing its system mapping and has begun conducting stakeholder interviews, including of youth focus groups. It has conducted three youth focus groups from Teen Court thus far, as well as interviews of the Public Defender’s Office, BPD patrol officers and BPD diversion programs. A number of other interviews and focus groups are taking place in January 2019.

## Challenges Ahead

Through their collaborative work on the Youth Assessment to date, the City, BPD and engaged community members all have shown a commitment to minimizing youth interactions with the juvenile and criminal justice systems. The immediate challenge will be for all of these stakeholders to take the findings and recommendations from the forthcoming Youth Assessment and work collectively to develop effective, scalable youth diversion programs.

## **The Next Six Months**

In the next reporting period, the City and BPD will complete the Youth Assessment. In addition, consistent with Paragraph 220 of the Consent Decree, BPD will prepare initial drafts of policies relating to youth. The policy revision process will begin with BPD identifying existing policies that implicate youth (*e.g.*, the policy governing youth interrogations), assessing whether those policies should be modified in light of the Youth Assessment or Consent Decree, and identifying additional policies that should implicate youth but do not do so expressly. Prior to the end of the next reporting period, BPD will collaborate with the Monitoring Team and DOJ on the development of revised policies, submit final draft policies to the Monitoring Team and DOJ for review, and issue the policies for public comment. BPD will not finalize the revised policies until the subsequent reporting period.

## Sexual Assault Investigations

The Consent Decree requires BPD to enhance the trust of victims of sexual assault in its performance, to strengthen its response to and investigations of reports of sexual assault, and to combat gender bias (CD 257). To achieve these goals, the Consent Decree requires BPD to: revise the policies and procedures for responding to and investigating reports of sexual assault (CD 258); provide initial and on-going annual training to support the revised policies and procedures (CD 259); ensure through proper supervision and internal oversight that reports of sexual assaults are thoroughly investigated (CD 260, 262, 263); ensure that officers transport victims to a medical facility for a forensic exam in all instances in which a forensic exam is warranted and the victim consents (CD 261); enhance its collection, analysis and reporting of data regarding the nature and extent of sexual assault crimes (CD 264); and share information about its sexual assault investigations with other law enforcement agencies, the public, and the Sexual Assault Response Team (“SART”) (CD 265). The City and BPD will ensure that their policies and protocols with the SART will empower them to engage in periodic reviews of services provided by BPD and to review samples of open cases and those classified as unfounded (CD 266).

The First-Year Monitoring Plan focuses on the required revisions to BPD’s sexual assault investigation policies. BPD has made substantial progress toward satisfying the policy revisions requirements in Paragraph 258 of the Consent Decree. It is too soon to assess whether BPD is making progress toward satisfying any other requirement.

### **Policy Revisions**

BPD submitted final revisions to both Policy 708 (Rape and Sexual Assault) and its standard operating procedures (SOP) for sexual assault investigations in early November 2018. The final revisions followed extensive collaboration with the Monitoring Team and DOJ, as well as a period for public comment. During the collaboration period, the Monitoring Team and DOJ shared examples of best practices in reporting and investigating sexual assault. The Monitoring Team notified the Court of its approval of Policy 708 and the SOP on sexual assault investigations on November 6, 2018. *See* ECF No. 152.

### **Challenges Ahead**

As in every area of the Consent Decree, revising sexual assault investigation policies and procedures is only the first step on the path to reform. The next step will

be to develop and deliver revised training on those policies and procedures. That is slated to take place in the second monitoring year. BPD then will have to demonstrate that it is making tangible improvements in its investigative practices and, correspondingly, that patrol officers are complying with the new policies and Sex Offense Unit supervisors are holding detectives accountable to them.

### **The Next Six Months**

The Consent Decree requires the Monitoring Team to conduct qualitative compliance reviews of BPD's sexual assault investigations. The Consent Decree also requires the Monitoring Team to perform a set of quantitative outcome assessments designed to measure whether the prescribed changes in sexual assault investigations are occurring (CD 459.k.). These assessments include the number of sexual assault reports made to BPD, the rate of victim participation in sexual assault investigations, the clearance rate in sexual assault cases, and the rate of declination of sexual assault cases referred to the State's Attorney's Office.

In the second monitoring year, and potentially within the next six months, the Monitoring Team hopes to conduct preliminary quantitative assessments and qualitative reviews in order to establish a baseline against which to assess BPD's future performance. The quantitative assessments and qualitative reviews will, over time, show whether BPD is, in fact, improving the way it handles sexual assault investigations, as the Consent Decree envisions. A key part of these reviews will focus on assessing how BPD is using trauma-informed techniques with victims of sexual assault.

BPD, DOJ and the Monitoring Team agree that BPD should create a separate policy to address officer-involved sexual misconduct. That policy will address the roles and responsibilities of (1) BPD's Sex Offense Unit in the investigation of an alleged crime by a BPD officer and (2) OPR in the investigation of administrative rule violations. BPD will begin crafting the policy in the next reporting period. The policy will be finalized in the subsequent reporting period.

Finally, the Memorandum of Understanding (MOU) establishing the Sexual Assault Response Team (SART) needs to be updated. The MOU governs the operations of SART, a multidisciplinary team that helps ensure that BPD's practices are current and in compliance with best practices. The MOU establishes the roles and responsibilities of all partner agencies, including the Baltimore Child Abuse Center, State's Attorney's Office for Baltimore City, Maryland Coalition Against Sexual Assault, Mayor's Office on Criminal Justice, Mercy Medical Center, TurnAround and the University of Maryland Pediatric Emergency Department. The MOU is currently

expired. Although the partners are operating in accordance with the expired MOU, a new MOU should be executed as soon as possible.

### **Recruitment, Hiring and Retention**

“Maintain[ing] high-level, quality service, ensur[ing] officer safety and accountability, and promot[ing] constitutional, effective policing” depends on the recruitment, hiring and retention of “a diverse group of qualified individuals.” (CD 419). While the Staffing section of the Consent Decree (discussed above) requires BPD to fortify its ranks in order to fulfill its mission, the Recruitment, Hiring and Retention provisions of the Consent Decree complimentarily require BPD to do so the right way. The Recruitment, Hiring and Retention provisions thus obligate BPD to develop a detailed Recruitment Plan with “clear goals, objectives and action steps for attracting and retaining a quality work force that reflects the diversity of the Baltimore Community” (CD 420-422); conduct an in-depth review of BPD’s current hiring processes (CD 423); include specific criteria in its background investigation of officer candidates (CD 424-425); create a Retention Plan to “identify challenges and recommend solutions to improve BPD’s retention of employees” (CD 426); and conduct internal annual assessments of its recruitment and retention practices (CD 427).

Improving BPD’s performance in the recruitment, hiring and retention of high-quality personnel is an inherently long-term undertaking. The First-Year Monitoring Plan focuses on the initial steps: reviewing current hiring and background investigation processes and issuing a hiring report resulting from that review (CD 423). BPD has complied with this requirement. Between April and November 2018, BPD, DOJ and the Monitoring Team participated in regularly scheduled, bi-weekly meetings regarding the completion of the review of BPD’s hiring processes. These meetings included discussions of State hiring criteria, Civil Service Commission procedures, and “whether any process, criterion, or requirement [has] had a disparate impact” on candidates based on their race, ethnicity, color, national origin, age, gender, gender expression or identity, sexual orientation, disability status, religion, or language ability (CD 423). Additionally, the discussions covered the processes and policies for background investigations of officer candidates, as well as the retention of a potential vendor to assist with the administration of background checks and written exams. At the same time the biweekly discussions were occurring, BPD conducted “an in-depth review of [its] current hiring processes for officers,” (CD 123), which included numerous discussions with community members and officers, as well as a review of literature on recruitment and experiences in other jurisdictions. In November, as a result of its in-depth review, BPD submitted a report that, as required by Paragraph 423, addresses hiring and attrition trends, including whether any process, criterion or requirement has a disparate impact based on Demographic Categories.” The Monitoring Team filed its notice of approval of the report with the Court on December 10, 2018. *See* ECF No. 169. The report is to be updated periodically as implementation of the Consent Decree progresses.

In addition to producing the required report about its hiring practices, BPD is making reasonable progress toward compliance with other requirements in the Recruitment, Hiring and Retention provisions of the Consent Decree. In November 2018, as a result of its own work as well as discussions with the Monitoring Team and DOJ, BPD adopted new standard operating procedures for its Recruitment Section. The SOPs cover the organization of the Section, hiring process and procedure, research and reporting on hiring and, consistent with Paragraphs 424-425 of the Consent Decree, background investigations for hiring officers. In addition, BPD has prepared advanced drafts of the Recruitment Plan required by Paragraphs 420-422 of the Consent Decree. Given BPD's staffing needs, BPD is to be credited for prioritizing recruitment and getting a head start on the Recruitment Plan, which is not included in the First-Year Monitoring Plan and is slated for Year Two. In the next reporting period, BPD, DOJ and the Monitoring Team will continue to meet to ensure the quality of BPD's review of recruitment and hiring processes.

The Monitoring Team credits BPD for exploring an innovative, community-oriented approach to hiring new officers. In this reporting period, BPD has been developing an interview process featuring a panel of interviewers that includes both current BPD officers and community members. It is rare for law enforcement agencies to include community members in the process for hiring officers. Thus far, BPD has conducted two day-long pilots with interview panels that include community members.

BPD also has replaced its civil service test with the National Testing Network's (NTN) "FrontLine National" exam as the first stage in the BPD officer selection process. The adoption of the new exam is part of BPD's broader effort to modernize how it recruits and selects new police officers. The FrontLine National exam is considered to be a top testing instrument for hiring law enforcement officers because it uses questions employing videos of real world policing scenarios to assess whether candidates possess the characteristics needed for community-oriented, constitutional policing.

While BPD has made progress toward satisfying the requirements of Paragraphs 420-425 of the Consent Decree, it is too soon to assess whether BPD is making progress toward meeting the other requirements in the Recruitment, Hiring and Retention section of the Consent Decree. That said, BPD, DOJ and the Monitoring Team have begun preliminary discussions about developing a Retention Plan (CD 426) and conducting recruiting and retention assessments (CD 427). Those discussions will continue. It is anticipated that BPD will submit its initial draft of the

Retention Plan in the next reporting period and will finalize the plan in the subsequent reporting period.

There is one practice in the area of Hiring, Recruitment and Retention that concerns the Monitoring Team. In recent months, members of BPD's Recruitment Section who review applications have been detailed periodically to the Patrol Division to make up for the deficit in patrol officers. The result has been a slow-down in the process for reviewing applications and, correspondingly, a slow-down in the hiring process. Given the acute need to onboard new, qualified officers, BPD should closely examine whether details from the Recruiting Section are necessary.

The Monitoring Team finally notes that, over the past year, the Mayor's Office of Innovation has provided tremendous support in conceptualizing improvements in BPD's recruitment, hiring and retention practices. The Monitoring Team is grateful for the office's assistance, and anticipates that the office will continue to play a key role in the future development of BPD's recruitment, hiring and retention practices.

## **Officer Assistance and Support**

Under the Consent Decree, BPD must take several important measures to support the health and wellness of its officers. The Consent Decree requires BPD to: provide, review and revise, as needed, an Employee Assistance Plan (“EAP”) that furnishes no- or low-cost counseling and mental health wellness services (CD 436-437); develop peer support services (CD 438); offer all officers a voluntary mental health evaluation before returning to duty after a traumatic incident (CD 439); develop well-being protocols to be utilized during officer deployments in periods of civil unrest (CD 440); and develop protocols for annually assessing the efficacy of all of BPD’s officer assistance programs (CD 441).

The First-Year Monitoring Plan requires BPD, DOJ and the Monitoring Team to begin holding regular meetings or informal focus groups with sworn personnel from across the Department (by rank and geographic assignment) to address available officers wellness resources. Further, the First-Year Monitoring Plan requires BPD to review and, if needed, refine both its EAP (CD 436-437) and its traumatic and high-stress incident protocols (CD 439-440).

BPD has complied with the deadlines in the First-Year Monitoring Plan and has made substantial progress toward satisfying the EAP and traumatic and high-stress incident protocol requirements of the Consent Decree. BPD also has continued conduct additional officer wellness initiatives. It is too early to gauge whether BPD is making progress toward satisfying the other Officer Assistance and Support provisions.

### **Areas of Progress**

#### *Focus Groups*

Early in the first monitoring year, in consultation with the Monitoring Team and DOJ, BPD convened a number of informal focus groups with representative sworn personnel from across the Department. There were focus groups of officers, two of supervisors, and two of command staff. The focus groups concentrated their discussions on currently-available officer wellness resources generally, as well as desired or potentially useful protocols and resources for officers following traumatic incidents and in the midst of officer deployments during public demonstration or civil unrest. BPD will continue to utilize the focus groups to obtain additional feedback on the Department’s officer wellness programs and to ensure that new initiatives are both utilized and effective.

### *Employee Assistance Plan*

In this reporting period, BPD finalized revisions to Policy 1703, which is its EAP. The Monitoring Team and DOJ collaborated on a draft of the revisions, BPD issued a final draft for public comment and then, after address the public comments, submitted its final revision to the Monitoring Team and DOJ. The Monitoring Team filed its notice of approval with the Court in November. *See* ECF No. 151.

BPD has implemented Policy 1703, and the Officer Safety and Wellness Section has commenced outreach to educate officers about it. The information campaign included posting information about the EAP and officer wellness services in each district and on social media, sending materials to supervisors for dissemination to their officers, and conducting direct personal outreach through roll-call trainings and “pop-up fairs” to the districts.

### *Additional Officer Wellness Initiatives*

BPD has implemented a therapy dog program for its officers. The program is receiving national attention.

As noted, BPD also has conducted wellness pop-up fairs in the Districts, at OPR, and for families. Recent fairs have been held in the Northeastern District, at OPR. The fairs have attracted hundreds of participants and, demonstrating buy-in from rank-and-file officers, have been co-sponsored by the Fraternal Order of Police and the Hispanic Officers Law Enforcement Association. Event participants have included BPD’s free and confidential mental health provider, which informs officers about services available through the EAP; Acupuncturists who perform various acupuncture techniques to relieve stress, depression and anxiety and educated officers on the benefits of acupuncture; Penny, BPD’s therapy dog; a sound therapist who shares the benefits of sound in helping balance the body through audio waveform; the City’s Wellness Coordinator, who provides information on wellness benefits offered by the City; the Department of Health, which provides free blood pressure checks and instructions on reducing hypertension; physical therapists who perform onsite evaluations; nutrition advisors; and BPD’s health/life and financial insurance personnel. BPD plans to offer more of these events in the next reporting period.

### *Traumatic and High-Stress Incident Protocols*

In this reporting period, BPD finalized revisions to Policy 1731, which are wellness protocols for (1) “all officers returning to duty following a traumatic incident

(e.g. serious injury, officer-involved shooting, officer-involved accident involving fatality, or all other uses of force resulting in death or serious injury)” (CD 439), and (2) “officer deployments during public demonstrations or civil unrest” (CD 440). After a period of collaboration with the Monitoring Team and DOJ and a period of public comment, BPD prepared and submitted final revisions to the Monitoring Team and DOJ in the fall. The Monitoring Team filed its notice of approval with the Court in October. *See* ECF No. 144. BPD has since begun training on the protocols.

### **The Next Six Months**

In the next reporting period, BPD, DOJ and the Monitoring Team will begin discussing the development of both the peer support program required by Paragraph 438a of the Consent Decree and the peer intervention program required Paragraph 439b. The peer support program will be developed by BPD’s Officer and Safety Wellness Section. Through the program, specially trained officer “peers” will be available to counsel officers either following a critical incident or when otherwise requested. The peer intervention program, which will be developed by a multi-disciplinary committee including BPD’s Education and Training Unit, will train officers to intervene before a fellow officer engages in unethical behavior, to accept intervention from another officer, and to provide support to officer who intervene to prevent unethical behavior.

## Community Policing and Engagement

One of the overarching goals of the Consent Decree is the adoption of a community-oriented model of policing. An interrelated overarching goal is to re-establish the community's trust in BPD. To accomplish these twin goals, the Consent Decree imposes on BPD a number specific requirements intended to affect the way BPD officers interact with community members when taking law enforcement action. These requirements—regarding, *e.g.*, use of force; stops, searches and arrests; fair and impartial policing; First Amendment protected activities; and interactions with youth and individuals with behavioral health disabilities or in crisis—are addressed in the preceding sections of this report.

The Consent Decree begins, however, with certain broad requirements intended to promote both community policing and community engagement. Preliminarily, it requires issuance of a new mission statement that integrates community-oriented principles into BPD “management, policies and procedures, recruitment, training, personnel evaluations resource deployment, tactics and accountability systems” (CD15). BPD prepared and the Monitoring Team approved a new mission statement in July 2018. *See* ECF No. 119.

In addition to a new mission statement, the Consent Decree outlines the kind of community policing training BPD officers must receive (CD16-17), as well as the data BPD should collect (CD18). The Consent Decree also requires the City and BPD to develop community engagement plans (CD19), to obtain input from community groups on policies, practices, training, engagement programs and enforcement strategies (CD20), to develop a community outreach program to educate and communicate with City residents about the Consent Decree (CD21), to publish annual reports on BPD's community policing efforts (CD22), and to use the results of community surveys to inform policies, training and practices (CD25).

It remains too soon to assess BPD's progress toward satisfying any of these Consent Decree requirements. That is largely because most of the requirements are long-term and were not included in the First-Year Monitoring Plan. Two requirements, however, were included: development of a community policing plan and community engagement, which is an ongoing requirement. BPD has not yet made reasonable progress toward satisfying the first requirement. It has begun to make progress on the second.

## Community Policing Plan

A concrete, comprehensive Community Policing Plan is critical to BPD's reform efforts, as it will define how BPD provides police services to Baltimore's diverse communities. Under the original First-Year Monitoring Plan, BPD was supposed to draft the Community Policing Plan, receive feedback from the Monitoring Team and DOJ, receive feedback from the community, and finalize the Plan by end of the first monitoring year. BPD, however, has experienced frequent changes in leadership. This instability at the top of the Department has delayed development of the Plan. Extension of the original deadlines was necessary because the Plan must reflect the vision of the new Commissioner, and the new Commissioner should be given sufficient time to fully assess BPD's community policing needs, capacity and goals, consistent with Consent Decree requirements, before BPD finalizes a draft.

The initial draft of the Community Policing Plan is now due toward the end of the spring of 2019. Provided that the recently-appointed Commissioner is in place by the end of February 2019, the new deadline should give the new Commissioner sufficient time to ensure that the initial draft reflects his vision for satisfying the community policing requirements of the Consent Decree.

While the Community Policing Plan will not be produced until the next reporting period, BPD has taken certain preliminary steps to prepare the plan. These include the following:

- In September 2018, BPD completed a Community Policing Plan Outline and posted it on BPD's website for community feedback since that time. The outline broadly establishes BPD's vision for the Community Policing Plan and how BPD anticipates implementing it.
- BPD has formed a Community Policing and Engagement Strategic Planning Committee consisting of Departmental personnel well-versed in community policy. The committee assisted with developing the Community Policing Plan Outline.
- In December 2018, BPD completed a 30-page Community Policing Report and submitted it to the Monitoring Team and DOJ. While the report focuses largely on community engagement, rather than community policing, it identifies deficiencies within BPD that currently prevent the development of a full-fledged community policing program.

## Community Engagement

Despite changes in leadership, BPD has begun in earnest to try to engage community members in the reform process. Since January 2018, BPD's Consent Decree Implementation Unit has organized or attended numerous community events, often with sworn BPD personnel in attendance. For instance, the Consent Decree Implementation Unit has:

- Conducted nine Consent Decree community briefings—one in each District (with one aired live from Morgan State University)
- Visited over 100 community fairs, community association meetings, and community partner collaborations
- Held multiple Consent Decree workshops at three city-wide conferences
- Participated in several meetings with the leadership of the Campaign for Justice, Safety and Jobs (“CJSJ”)
- Organized and attended two Consent Decree Advisory Board Meetings
- Conducted two officer focus groups, one at MICA and one at Morgan State, and 12 officer/civilian focus groups with Police Foundation assistance
- Attended roll calls in each District
- Participated in a community walk in the Southeastern District
- Completed a community engagement inventory with Police Foundation assistance through interviews of District command staff and other personnel who engage in community outreach
- Participated in ten meetings with Civilian Oversight Task Force membership

In addition, the Consent Decree Implementation Unit and other BPD personnel have canvassed neighborhoods to distribute information on reforms and upcoming Consent Decree meetings, attended meetings in each police district and throughout City to provide information on the reform process, and utilized social media, email, online surveys, and media outlets to share and collect information about reform efforts. In recent months, as noted above, BPD has worked with the Monitoring Team, DOJ and CJSJ to develop scenario-based content for community forums aimed at informing community members about revisions to BPD policies and training, and has begun hosting and attending community meetings designed to elicit community feedback on the revisions through use of the scenarios.